S T A T E O F N E W Y O R K

6868

2011-2012 Regular Sessions

I N A S S E M B L Y

April 5, 2011

Introduced by M. of A. KATZ -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to creating a sales tax exemption for green technology companies purchasing manufacturing equipment; and providing for the repeal of such provisions upon expiration thereof

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The tax law is amended by adding a new section 1124 to read as follows:

S 1124. EXEMPTION FROM TAX ON MANUFACTURING EQUIPMENT PURCHASES FOR GREEN TECHNOLOGY COMPANIES. (A) QUALIFYING GREEN TECHNOLOGY COMPANIES SHALL BE EXEMPT FROM THE SALES TAXES IMPOSED UNDER THIS ARTICLE WHEN PURCHASING NECESSARY MANUFACTURING EQUIPMENT TO BE USED IN CARRYING ON A GREEN TECHNOLOGY TRADE OR BUSINESS IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

(B) TO QUALIFY FOR TAX EXEMPT STATUS ELIGIBLE COMPANIES SHALL APPLY TO THE COMMISSIONER WHO SHALL EVALUATE THE APPLICATION PURSUANT TO THE GUIDELINES IN THIS SECTION AND RENDER A DECISION APPROVING OR DENYING THE APPLICATION. APPLICATIONS SHALL BE SUBMITTED FOR EACH ELIGIBLE PROJECT ON AN INDIVIDUAL BASIS AND SHALL STATE THE TOTAL DOLLAR AMOUNT THAT WILL BE EXPENDED ON THE PURCHASE.

(C) THE COMMISSIONER SHALL PUBLISH NOTICE OF THE AVAILABILITY OF PROJECT APPLICATIONS AND DEADLINES FOR SUBMISSION OF PROJECT APPLICATIONS TO THE COMMISSIONER AND SHALL EVALUATE PROJECT APPLICATIONS BASED UPON THE FOLLOWING CRITERIA:

1. THE EXTENT TO WHICH THE PROJECT DEVELOPS MANUFACTURING FACILITIES, OR PURCHASES EQUIPMENT FOR MANUFACTURING FACILITIES, LOCATED IN NEW YORK.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD09094-01-1

2. THE EXTENT TO WHICH THE ANTICIPATED BENEFIT TO THE STATE FROM THE PROJECT EQUALS OR EXCEEDS THE PROJECTED BENEFIT TO THE PARTICIPATING PARTY FROM THE SALES AND USE TAX EXCLUSION.

3. THE EXTENT TO WHICH THE PROJECT WILL CREATE NEW, PERMANENT JOBS IN NEW YORK.

4. TO THE EXTENT FEASIBLE, THE EXTENT TO WHICH THE PROJECT, OR THE PRODUCT PRODUCED BY THE PROJECT, RESULTS IN A REDUCTION OF GREENHOUSE GASES, A REDUCTION IN AIR OR WATER POLLUTION, AN INCREASE IN ENERGY EFFICIENCY, OR A REDUCTION IN ENERGY CONSUMPTION, BEYOND WHAT IS REQUIRED BY ANY FEDERAL OR STATE LAW OR REGULATION.

5. THE EXTENT OF UNEMPLOYMENT IN THE AREA IN WHICH THE PROJECT IS PROPOSED TO BE LOCATED.

6. ANY OTHER FACTORS THE AUTHORITY DEEMS APPROPRIATE IN ACCORDANCE WITH THIS SECTION.

(D) THE COMMISSIONER'S OFFICE SHALL BE PERMITTED TO EXEMPT A TOTAL NOT TO EXCEED ONE HUNDRED MILLION DOLLARS IN SALES TAX THROUGH THIS APPLICATION PROCESS TO INDIVIDUAL PROJECTS. APPLICATIONS MEETING THE CRITERIA OUTLINED IN SUBDIVISION (C) OF THIS SECTION SHALL BE GIVEN PRIORITY AND THE CREDIT SHALL BE EXTENDED TO AS MANY ELIGIBLE BUSINESSES AS POSSIBLE UP TO THE ONE HUNDRED MILLION DOLLAR CEILING.

(E) UPON APPROVAL OF AN ELIGIBLE PROJECT THE COMMISSIONER SHALL PROVIDE ELIGIBLE GREEN TECHNOLOGY COMPANIES WITH AN APPROVAL FORM TO BE SUPPLIED TO THE SELLER AT THE POINT OF PURCHASE.

1. SAID FORM MUST BE GIVEN TO THE SELLER FROM THE PURCHASER WITH ALL ENTRIES COMPLETED NO LATER THAN NINETY DAYS AFTER DELIVERY OF THE PURCHASED PROPERTY, OR THE SALE WILL BE DEEMED TO HAVE BEEN TAXABLE AT THE TIME OF THE TRANSACTION.

2. IF THE SELLER RECEIVES THE CERTIFICATE AFTER THE NINETY DAY PERIOD, BOTH THE SELLER AND THE PURCHASER ASSUME THE BURDEN OF PROVING THE SALE WAS EXEMPT, AND ADDITIONAL SUBSTANTIATION MAY BE REQUIRED.

(F) THE COMMISSIONER IN CONJUNCTION WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION SHALL REPORT TO THE LEGISLATURE AND THE GOVERNOR ON THE EFFECTIVENESS OF THIS PROGRAM, WITHIN ONE YEAR OF THE PROGRAM'S TERMINATION DATE, BY EVALUATING FACTORS, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

1. THE NUMBER OF JOBS CREATED BY THE PROGRAM IN NEW YORK.

2. THE NUMBER OF BUSINESSES THAT HAVE REMAINED IN NEW YORK OR RELOCATED TO NEW YORK AS A RESULT OF THIS PROGRAM.

3. THE AMOUNT OF STATE AND LOCAL REVENUE AND ECONOMIC ACTIVITY GENERATED BY THE PROGRAM.

4. THE AMOUNT OF REDUCTION IN GREENHOUSE GASES, AIR POLLUTION, WATER POLLUTION, OR ENERGY CONSUMPTION.

(G) THE COMMISSIONER SHALL ADOPT ANY REGULATIONS NECESSARY FOR PURPOSES OF IMPLEMENTING THIS SECTION.

(H) FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ELIGIBLE COMPANY" SHALL MEAN A COMPANY THAT IS A RESIDENT OF NEW YORK STATE AND ENGAGES IN A BUSINESS OR TRADE IN THE GREEN TECHNOLOGY INDUSTRY;

2. "ELIGIBLE PROJECT" SHALL MEAN NECESSARY MANUFACTURING EQUIPMENT PURCHASED TO BE USED IN CARRYING ON A GREEN TECHNOLOGY TRADE OR BUSINESS;

3. "GREEN TECHNOLOGY" INCLUDES BUT SHALL NOT BE LIMITED TO TECHNOLOGY THAT PROMOTES SUSTAINABILITY BY MEETING THE NEEDS OF SOCIETY IN WAYS THAT CAN CONTINUE INDEFINITELY INTO THE FUTURE WITHOUT DAMAGING OR

DEPLETING NATURAL RESOURCES AND HAS THE SMALLEST IMPACT ON THE ENVIRONMENT. SUCH TECHNOLOGY:

(I) CREATES PRODUCTS THAT CAN BE FULLY RECLAIMED OR RE-USED.

(II) REDUCES WASTE AND POLLUTION BY CHANGING PATTERNS OF PRODUCTION AND CONSUMPTION.

(III) DEVELOPS ALTERNATIVES TO TECHNOLOGIES, WHETHER FOSSIL FUEL OR CHEMICAL INTENSIVE AGRICULTURE, THAT HAVE BEEN DEMONSTRATED TO DAMAGE HEALTH AND THE ENVIRONMENT.

(IV) REDUCES GREENHOUSE GAS EMISSIONS.

(V) REDUCES ENERGY CONSUMPTION.

(VI) ADVANCES TRANSPORTATION TECHNOLOGIES THAT PROMOTE EFFICIENCY WHILE REDUCING ENERGY CONSUMPTION.

S 2. This act shall take effect immediately and shall expire one year after such effective date when upon such date the provisions of this act shall be deemed repealed.