

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

776--A

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. GANTT -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to job creation tax credits

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

1 Section 1. This act shall be known and may be cited as the "Job
2 Creation Tax Credit Act of 2012".
3 S 2. Section 210 of the tax law is amended by adding a new subdivision
4 21-b to read as follows:
5 21-B. JOB CREATION TAX CREDIT. (A) AS USED IN THIS SUBDIVISION, THE
6 FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: (1) "FULL-TIME
7 EMPLOYEE" MEANS AN INDIVIDUAL WHO IS EMPLOYED FOR CONSIDERATION FOR AT
8 LEAST THIRTY-FIVE HOURS A WEEK, OR WHO RENDERS ANY OTHER STANDARD OF
9 SERVICE GENERALLY ACCEPTED BY CUSTOM OR SPECIFIED BY CONTRACT AS
10 FULL-TIME EMPLOYMENT.
11 (2) "NEW EMPLOYEE" MEANS A FULL-TIME EMPLOYEE FIRST EMPLOYED BY A
12 TAXPAYER IN THE PROJECT THAT IS THE SUBJECT OF THE TAX CREDIT AUTHORIZED
13 UNDER THIS SUBDIVISION IN THE TAXABLE YEAR IN WHICH THE TAXPAYER SEEKS
14 THE CREDIT. "NEW EMPLOYEE" ALSO MAY INCLUDE AN EMPLOYEE REHIRED OR
15 CALLED BACK FROM LAY-OFF TO WORK IN A NEW FACILITY OR ON A NEW PRODUCT
16 OR SERVICE ESTABLISHED OR PRODUCED BY THE TAXPAYER DURING THE TAXABLE
17 YEAR IN WHICH THE CREDIT IS SOUGHT. "NEW EMPLOYEE" SHALL NOT INCLUDE ANY
18 EMPLOYEE OF THE TAXPAYER WHO WAS PREVIOUSLY EMPLOYED IN THIS STATE BY A
19 RELATED MEMBER OF THE TAXPAYER AND WHOSE EMPLOYMENT WAS SHIFTED TO THE
20 TAXPAYER DURING THE TAXABLE YEAR IN WHICH THE CREDIT IS SOUGHT. IN ADDI-
21 TION, "NEW EMPLOYEE" SHALL NOT INCLUDE A CHILD, GRANDCHILD, PARENT, OR
22 SPOUSE, OTHER THAN A SPOUSE WHO IS LEGALLY SEPARATED FROM THE INDIVID-

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

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UAL, OR ANY INDIVIDUAL WHO IS AN EMPLOYEE OF THE TAXPAYER AND WHO HAS A DIRECT OR INDIRECT OWNERSHIP INTEREST OF AT LEAST FIVE PERCENT IN THE PROFITS, CAPITAL, OR VALUE OF THE TAXPAYER. OWNERSHIP INTEREST SHALL BE DETERMINED IN ACCORDANCE WITH SECTION FIFTEEN HUNDRED SIXTY-THREE OF THE INTERNAL REVENUE CODE AND REGULATIONS PRESCRIBED THEREUNDER.

(3) "NEW INCOME TAX REVENUE" MEANS THE TOTAL AMOUNT WITHHELD UNDER THIS CHAPTER BY THE TAXPAYER DURING THE TAXABLE YEAR FROM THE COMPENSATION OF NEW EMPLOYEES FOR THE TAXES LEVIED UNDER THIS CHAPTER.

(4) "RELATED MEMBER" HAS THE SAME MEANING AS PROVIDED IN THIS CHAPTER.

(B) THE JOB CREATION TAX CREDIT AUTHORIZED UNDER THIS SUBDIVISION SHALL BE FOR THE PURPOSE OF FOSTERING JOB CREATION IN THIS STATE. SUCH A GRANT SHALL TAKE THE FORM OF A REFUNDABLE CREDIT ALLOWED AGAINST THE TAX IMPOSED UNDER THIS CHAPTER. THE CREDIT SHALL BE CLAIMED AFTER THE ALLOWANCE OF ALL OTHER CREDITS PROVIDED BY THIS CHAPTER. THE AMOUNT OF THE CREDIT SHALL EQUAL THE NEW INCOME TAX REVENUE FOR THE TAXABLE YEAR MULTIPLIED BY FIFTY PERCENT.

(C) IN ORDER TO QUALIFY FOR THE CREDIT THE TAXPAYER MUST SUBMIT TO THE DEPARTMENT OF ECONOMIC DEVELOPMENT IN THE TAXABLE YEAR FOR WHICH CREDIT IS SOUGHT A FORM PROVIDED BY SUCH DEPARTMENT IN WHICH THE TAXPAYER STATES THE FOLLOWING:

(1) THE TAXPAYER'S PROJECT WILL CREATE NEW JOBS IN THIS STATE;

(2) THE TAXPAYER'S PROJECT IS ECONOMICALLY SOUND AND WILL BENEFIT THE PEOPLE OF THIS STATE BY INCREASING OPPORTUNITIES FOR EMPLOYMENT AND STRENGTHENING THE ECONOMY OF THIS STATE;

(3) RECEIVING THE TAX CREDIT IS A MAJOR FACTOR IN THE TAXPAYER'S DECISION TO GO FORWARD WITH THE PROJECT;

(4) A DETAILED DESCRIPTION OF THE PROJECT THAT IS THE SUBJECT OF THE AGREEMENT;

(5) THE TERM OF THE TAX CREDIT WHICH SHALL NOT EXCEED TEN YEARS, AND THE FIRST TAXABLE YEAR FOR WHICH THE CREDIT MAY BE CLAIMED;

(6) THAT THE TAXPAYER SHALL MAINTAIN OPERATIONS AT THE PROJECT LOCATION FOR AT LEAST TWICE THE NUMBER OF YEARS AS THE TERM OF THE TAX CREDIT;

(7) THAT FIFTY PERCENT OF THE NEW INCOME TAX REVENUE WILL BE ALLOWED AS THE AMOUNT OF THE CREDIT FOR EACH TAXABLE YEAR;

(8) A SPECIFIC METHOD FOR DETERMINING HOW MANY NEW EMPLOYEES ARE EMPLOYED DURING A TAXABLE YEAR;

(9) THAT THE TAXPAYER ANNUALLY SHALL REPORT TO THE COMMISSIONER OF ECONOMIC DEVELOPMENT THE NUMBER OF NEW EMPLOYEES, THE NEW INCOME TAX REVENUE WITHHELD IN CONNECTION WITH THE NEW EMPLOYEES AND ANY OTHER INFORMATION THE COMMISSIONER OF ECONOMIC DEVELOPMENT NEEDS TO PERFORM HIS OR HER DUTIES UNDER THIS SUBDIVISION; AND

(10) THAT THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL ANNUALLY VERIFY THE AMOUNTS REPORTED PURSUANT TO SUBPARAGRAPH NINE OF THIS PARAGRAPH, AND AFTER DOING SO SHALL ISSUE A CERTIFICATE TO THE TAXPAYER STATING THAT THE AMOUNTS HAVE BEEN VERIFIED.

(D) A TAXPAYER CLAIMING A CREDIT UNDER THIS SECTION SHALL SUBMIT TO THE COMMISSIONER A COPY OF THE COMMISSIONER OF ECONOMIC DEVELOPMENT'S CERTIFICATE OF VERIFICATION, AS PROVIDED IN SUBPARAGRAPH NINE OF PARAGRAPH (C) OF THIS SUBDIVISION FOR THE TAXABLE YEAR.

(E) THE COMMISSIONER OF ECONOMIC DEVELOPMENT, AFTER CONSULTATION WITH THE COMMISSIONER SHALL ADOPT SUCH RULES AND REGULATIONS AS ARE NECESSARY TO IMPLEMENT THIS SUBDIVISION.

(F) FOR THE PURPOSES OF THIS SUBDIVISION A TAXPAYER MAY INCLUDE A PARTNERSHIP, A CORPORATION THAT HAS MADE AN ELECTION UNDER SUBCHAPTER S OF CHAPTER ONE OF SUBTITLE A OF THE INTERNAL REVENUE CODE, OR ANY OTHER

BUSINESS ENTITY THROUGH WHICH INCOME FLOWS AS A DISTRIBUTIVE SHARE TO ITS OWNERS. A CREDIT RECEIVED UNDER THIS SUBDIVISION BY A PARTNERSHIP, S-CORPORATION, OR OTHER SUCH BUSINESS ENTITY SHALL BE APPORTIONED AMONG THE PERSONS TO WHOM THE INCOME OR PROFIT OF THE PARTNERSHIP, S-CORPORATION, OR OTHER ENTITY IS DISTRIBUTED, IN THE SAME PROPORTIONS AS THOSE IN WHICH THE INCOME OR PROFIT IS DISTRIBUTED.

(G) IF THE COMMISSIONER OF ECONOMIC DEVELOPMENT DETERMINES THAT A TAXPAYER WHO HAS RECEIVED A CREDIT UNDER THIS SUBDIVISION IS NOT COMPLYING WITH THE REQUIREMENT OF SUBPARAGRAPH NINE OF PARAGRAPH (C) OF THIS SUBDIVISION, HE OR SHE SHALL NOTIFY THE COMMISSIONER OF THE NONCOMPLIANCE. AFTER RECEIVING SUCH A NOTICE, AND AFTER GIVING THE TAXPAYER AN OPPORTUNITY TO EXPLAIN THE NONCOMPLIANCE, THE COMMISSIONER MAY MAKE AN ASSESSMENT AGAINST THE TAXPAYER UNDER THIS CHAPTER FOR AN AMOUNT NOT EXCEEDING THE SUM OF ANY PREVIOUSLY ALLOWED CREDITS UNDER THIS SUBDIVISION.

(H) ON OR BEFORE THE THIRTY-FIRST DAY OF MARCH OF EACH YEAR, THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL SUBMIT A REPORT TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND THE MINORITY LEADERS OF THE SENATE AND ASSEMBLY ON THE TAX CREDIT PROGRAM PROVIDED FOR IN THIS SUBDIVISION. THE REPORT SHALL INCLUDE INFORMATION ON THE NUMBER OF TAXPAYERS RECEIVING TAX CREDITS PURSUANT TO THIS SUBDIVISION DURING THE PRECEDING CALENDAR YEAR, A DESCRIPTION OF THE PROJECTS THAT ARE THE SUBJECT OF THE CREDIT, AND AN UPDATE ON THE STATUS OF PROJECTS FOR WHICH CREDITS WERE ALLOWED DURING THE PRECEDING CALENDAR YEAR.

DURING THE FIRST YEAR OF THE TAX CREDIT PROGRAM, THE COMMISSIONER OF ECONOMIC DEVELOPMENT IN CONJUNCTION WITH THE DIRECTOR OF BUDGET SHALL CONDUCT AN EVALUATION OF SUCH PROGRAM. THE EVALUATION SHALL INCLUDE ASSESSMENTS OF THE EFFECTIVENESS OF THE PROGRAM IN CREATING NEW JOBS IN THIS STATE AND OF THE REVENUE IMPACT OF THE PROGRAM. SUCH REPORT MAY ALSO INCLUDE A REVIEW OF THE PRACTICES AND EXPERIENCES OF OTHER STATES WITH SIMILAR PROGRAMS. THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL SUBMIT A REPORT ON THE EVALUATION TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND THE MINORITY LEADERS OF THE SENATE AND ASSEMBLY ON OR BEFORE JANUARY FIRST, TWO THOUSAND FIFTEEN.

S 3. Section 606 of the tax law is amended by adding a new subsection (p-1) to read as follows:

(P-1) JOB CREATION TAX CREDIT. (1) AS USED IN THIS SUBSECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "FULL-TIME EMPLOYEE" MEANS AN INDIVIDUAL WHO IS EMPLOYED FOR CONSIDERATION FOR AT LEAST THIRTY-FIVE HOURS A WEEK, OR WHO RENDERS ANY OTHER STANDARD OF SERVICE GENERALLY ACCEPTED BY CUSTOM OR SPECIFIED BY CONTRACT AS FULL-TIME EMPLOYMENT.

(B) "NEW EMPLOYEE" MEANS A FULL-TIME EMPLOYEE FIRST EMPLOYED BY A TAXPAYER IN THE PROJECT THAT IS THE SUBJECT OF THE TAX CREDIT AUTHORIZED UNDER THIS SUBSECTION IN THE TAXABLE YEAR IN WHICH THE TAXPAYER SEEKS THE CREDIT. "NEW EMPLOYEE" ALSO MAY INCLUDE AN EMPLOYEE REHIRED OR CALLED BACK FROM LAY-OFF TO WORK IN A NEW FACILITY OR ON A NEW PRODUCT OR SERVICE ESTABLISHED OR PRODUCED BY THE TAXPAYER DURING THE TAXABLE YEAR IN WHICH THE CREDIT IS SOUGHT. "NEW EMPLOYEE" SHALL NOT INCLUDE ANY EMPLOYEE OF THE TAXPAYER WHO WAS PREVIOUSLY EMPLOYED IN THIS STATE BY A RELATED MEMBER OF THE TAXPAYER AND WHOSE EMPLOYMENT WAS SHIFTED TO THE TAXPAYER DURING THE TAXABLE YEAR IN WHICH THE CREDIT IS SOUGHT. IN ADDITION, "NEW EMPLOYEE" SHALL NOT INCLUDE A CHILD, GRANDCHILD, PARENT, OR SPOUSE, OTHER THAN A SPOUSE WHO IS LEGALLY SEPARATED FROM THE INDIVID-

1 UAL, OR ANY INDIVIDUAL WHO IS AN EMPLOYEE OF THE TAXPAYER AND WHO HAS A
2 DIRECT OR INDIRECT OWNERSHIP INTEREST OF AT LEAST FIVE PERCENT IN THE
3 PROFITS, CAPITAL, OR VALUE OF THE TAXPAYER. OWNERSHIP INTEREST SHALL BE
4 DETERMINED IN ACCORDANCE WITH SECTION FIFTEEN HUNDRED SIXTY-THREE OF THE
5 INTERNAL REVENUE CODE AND REGULATIONS PRESCRIBED THEREUNDER.

6 (C) "NEW INCOME TAX REVENUE" MEANS THE TOTAL AMOUNT WITHHELD UNDER
7 THIS CHAPTER BY THE TAXPAYER DURING THE TAXABLE YEAR FROM THE COMPEN-
8 SATION OF NEW EMPLOYEES FOR THE TAX LEVIES UNDER THIS CHAPTER.

9 (D) "RELATED MEMBER" HAS THE SAME MEANING AS PROVIDED IN THIS CHAPTER.

10 (2) THE JOB CREATION TAX CREDIT AUTHORIZED UNDER THIS SUBSECTION SHALL
11 BE FOR THE PURPOSE OF FOSTERING JOB CREATION IN THIS STATE. SUCH A
12 GRANT SHALL TAKE THE FORM OF A REFUNDABLE CREDIT ALLOWED AGAINST THE TAX
13 IMPOSED UNDER THIS CHAPTER. THE CREDIT SHALL BE CLAIMED AFTER THE ALLOW-
14 ANCE OF ALL OTHER CREDITS PROVIDED BY THIS CHAPTER. THE AMOUNT OF THE
15 CREDIT SHALL EQUAL THE NEW INCOME TAX REVENUE FOR THE TAXABLE YEAR
16 MULTIPLIED BY FIFTY PERCENT.

17 (3) IN ORDER TO QUALIFY FOR THE CREDIT THE TAXPAYER MUST SUBMIT TO THE
18 DEPARTMENT OF ECONOMIC DEVELOPMENT IN THE TAXABLE YEAR FOR WHICH CREDIT
19 IS SOUGHT A FORM PROVIDED BY SUCH DEPARTMENT IN WHICH THE TAXPAYER
20 STATES THE FOLLOWING:

21 (A) THE TAXPAYER'S PROJECT WILL CREATE NEW JOBS IN THIS STATE;

22 (B) THE TAXPAYER'S PROJECT IS ECONOMICALLY SOUND AND WILL BENEFIT THE
23 PEOPLE OF THIS STATE BY INCREASING OPPORTUNITIES FOR EMPLOYMENT AND
24 STRENGTHENING THE ECONOMY OF THIS STATE;

25 (C) RECEIVING THE TAX CREDIT IS A MAJOR FACTOR IN THE TAXPAYER'S DECI-
26 SION TO GO FORWARD WITH THE PROJECT;

27 (D) A DETAILED DESCRIPTION OF THE PROJECT THAT IS THE SUBJECT OF THE
28 AGREEMENT;

29 (E) THE TERM OF THE TAX CREDIT WHICH SHALL NOT EXCEED TEN YEARS, AND
30 THE FIRST TAXABLE YEAR FOR WHICH THE CREDIT MAY BE CLAIMED;

31 (F) THAT THE TAXPAYER SHALL MAINTAIN OPERATIONS AT THE PROJECT
32 LOCATION FOR AT LEAST TWICE THE NUMBER OF YEARS AS THE TERM OF THE TAX
33 CREDIT;

34 (G) THAT FIFTY PERCENT OF THE NEW INCOME TAX REVENUE WILL BE ALLOWED
35 AS THE AMOUNT OF THE CREDIT FOR EACH TAXABLE YEAR;

36 (H) A SPECIFIC METHOD FOR DETERMINING HOW MANY NEW EMPLOYEES ARE
37 EMPLOYED DURING A TAXABLE YEAR;

38 (I) THAT THE TAXPAYER ANNUALLY SHALL REPORT TO THE COMMISSIONER OF
39 ECONOMIC DEVELOPMENT THE NUMBER OF NEW EMPLOYEES, THE NEW INCOME TAX
40 REVENUE WITHHELD IN CONNECTION WITH THE NEW EMPLOYEES AND ANY OTHER
41 INFORMATION THE COMMISSIONER OF ECONOMIC DEVELOPMENT NEEDS TO PERFORM
42 HIS OR HER DUTIES UNDER THIS SUBSECTION; AND

43 (J) THAT THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL ANNUALLY VERI-
44 FY THE AMOUNTS REPORTED PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH,
45 AND AFTER DOING SO SHALL ISSUE A CERTIFICATE TO THE TAXPAYER STATING
46 THAT THE AMOUNTS HAVE BEEN VERIFIED.

47 (4) A TAXPAYER CLAIMING A CREDIT UNDER THIS SUBSECTION SHALL SUBMIT TO
48 THE COMMISSIONER A COPY OF THE COMMISSIONER OF ECONOMIC DEVELOPMENT'S
49 CERTIFICATE OF VERIFICATION AS PROVIDED IN SUBPARAGRAPH (I) OF PARAGRAPH
50 THREE OF THIS SUBSECTION FOR THE TAXABLE YEAR.

51 (5) THE COMMISSIONER OF ECONOMIC DEVELOPMENT, AFTER CONSULTATION WITH
52 THE COMMISSIONER SHALL ADOPT SUCH RULES AND REGULATIONS AS ARE NECESSARY
53 TO IMPLEMENT THIS SUBSECTION.

54 (6) FOR THE PURPOSES OF THIS SUBSECTION A TAXPAYER MAY INCLUDE A PART-
55 NERSHIP, A CORPORATION THAT HAS MADE AN ELECTION UNDER SUBCHAPTER S OF
56 CHAPTER ONE OF SUBTITLE A OF THE INTERNAL REVENUE CODE, OR ANY OTHER

1 BUSINESS ENTITY THROUGH WHICH INCOME FLOWS AS A DISTRIBUTIVE SHARE TO
2 ITS OWNERS. A CREDIT RECEIVED UNDER THIS SUBSECTION BY A PARTNERSHIP,
3 S-CORPORATION, OR OTHER SUCH BUSINESS ENTITY SHALL BE APPORTIONED AMONG
4 THE PERSONS TO WHOM THE INCOME OR PROFIT OF THE PARTNERSHIP, S-CORPORA-
5 TION, OR OTHER ENTITY IS DISTRIBUTED, IN THE SAME PROPORTIONS AS THOSE
6 IN WHICH THE INCOME OR PROFIT IS DISTRIBUTED.

7 (7) IF THE COMMISSIONER OF ECONOMIC DEVELOPMENT DETERMINES THAT A
8 TAXPAYER WHO HAS RECEIVED A CREDIT UNDER THIS SUBSECTION IS NOT COMPLY-
9 ING WITH THE REQUIREMENT OF SUBPARAGRAPH (I) OF PARAGRAPH THREE OF THIS
10 SUBSECTION, HE OR SHE SHALL NOTIFY THE COMMISSIONER OF THE NONCOMPLI-
11 ANCE. AFTER RECEIVING SUCH A NOTICE, AND AFTER GIVING THE TAXPAYER AN
12 OPPORTUNITY TO EXPLAIN THE NONCOMPLIANCE, THE COMMISSIONER MAY MAKE AN
13 ASSESSMENT AGAINST THE TAXPAYER UNDER THIS CHAPTER FOR AN AMOUNT NOT
14 EXCEEDING THE SUM OF ANY PREVIOUSLY ALLOWED CREDITS UNDER THIS
15 SUBSECTION.

16 (8) ON OR BEFORE THE THIRTY-FIRST DAY OF MARCH OF EACH YEAR, THE
17 COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL SUBMIT A REPORT TO THE GOVER-
18 NOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY
19 AND THE MINORITY LEADERS OF THE SENATE AND ASSEMBLY ON THE TAX CREDIT
20 PROGRAM PROVIDED FOR IN THIS SUBSECTION. THE REPORT SHALL INCLUDE INFOR-
21 MATION ON THE NUMBER OF TAXPAYERS RECEIVING TAX CREDITS PURSUANT TO THIS
22 SUBSECTION DURING THE PRECEDING CALENDAR YEAR, A DESCRIPTION OF THE
23 PROJECTS THAT ARE THE SUBJECT OF THE CREDIT, AND AN UPDATE ON THE STATUS
24 OF PROJECTS FOR WHICH CREDITS WERE ALLOWED DURING THE PRECEDING CALENDAR
25 YEAR.

26 DURING THE FIRST YEAR OF THE TAX CREDIT PROGRAM, THE COMMISSIONER OF
27 ECONOMIC DEVELOPMENT IN CONJUNCTION WITH THE DIRECTOR OF BUDGET SHALL
28 CONDUCT AN EVALUATION OF SUCH PROGRAM. THE EVALUATION SHALL INCLUDE
29 ASSESSMENTS OF THE EFFECTIVENESS OF THE PROGRAM IN CREATING NEW JOBS IN
30 THIS STATE AND OF THE REVENUE IMPACT OF THE PROGRAM. SUCH REPORT MAY
31 ALSO INCLUDE A REVIEW OF THE PRACTICES AND EXPERIENCES OF OTHER STATES
32 WITH SIMILAR PROGRAMS. THE DEPARTMENT OF ECONOMIC DEVELOPMENT SHALL
33 SUBMIT A REPORT ON THE EVALUATION TO THE GOVERNOR, THE TEMPORARY PRESI-
34 DENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY AND THE MINORITY LEADERS
35 OF THE SENATE AND ASSEMBLY ON OR BEFORE JANUARY FIRST, TWO THOUSAND
36 SEVENTEEN.

37 S 4. This act shall take effect immediately and shall apply to taxable
38 years commencing on and after April 1, 2012.