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I N S E N A T E

June 12, 2012

Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the economic development law and the tax law, in relation to establishing the capital investment jobs retention program

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

1 Section 1. The economic development law is amended by adding a new
2 article 21 to read as follows:

3 ARTICLE 21

4 CAPITAL INVESTMENT JOBS RETENTION PROGRAM

5 SECTION 440. SHORT TITLE.

6 441. DEFINITIONS.

7 442. ELIGIBILITY CRITERIA.

8 443. APPLICATION AND APPROVAL PROCESS.

9 444. CAPITAL INVESTMENT JOBS RETENTION PROGRAM CREDIT.

10 445. POWERS AND DUTIES OF THE COMMISSIONER.

11 446. MAINTENANCE OF RECORDS.

12 447. REPORTING.

13 448. CAP ON TAX CREDIT.

14 449. PENALTIES.

15 S 440. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
16 THE "CAPITAL INVESTMENT JOBS RETENTION PROGRAM".

17 S 441. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE:

18 1. "AGRICULTURE" MEANS BOTH AGRICULTURAL PRODUCTION (ESTABLISHMENTS
19 PERFORMING THE COMPLETE FARM OR RANCH OPERATION, SUCH AS FARM OWNER-OP-
20 ERATORS, TENANT FARM OPERATORS, AND SHARECROPPERS) AND AGRICULTURAL
21 SUPPORT (ESTABLISHMENTS THAT PERFORM ONE OR MORE ACTIVITIES ASSOCIATED
22 WITH FARM OPERATION, SUCH AS SOIL PREPARATION, PLANTING, HARVESTING, AND
23 MANAGEMENT, ON A CONTRACT OR FEE BASIS).

24 2. "BACK OFFICE OPERATIONS" MEANS A BUSINESS FUNCTION THAT MAY INCLUDE
25 ONE OR MORE OF THE FOLLOWING ACTIVITIES: CUSTOMER SERVICE, INFORMATION
26 TECHNOLOGY AND DATA PROCESSING, HUMAN RESOURCES, ACCOUNTING AND RELATED
27 ADMINISTRATIVE FUNCTIONS.

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

LBD16139-01-2

1 3. "CERTIFICATE OF ELIGIBILITY" MEANS THE DOCUMENT ISSUED BY THE
2 DEPARTMENT TO AN APPLICANT THAT HAS COMPLETED AN APPLICATION TO BE
3 ADMITTED INTO THE CAPITAL INVESTMENT JOBS RETENTION PROGRAM AND HAS BEEN
4 ACCEPTED INTO THE PROGRAM BY THE DEPARTMENT. POSSESSION OF A CERTIFICATE
5 OF ELIGIBILITY DOES NOT BY ITSELF GUARANTEE THE ELIGIBILITY TO CLAIM THE
6 TAX CREDIT.

7 4. "CERTIFICATE OF TAX CREDIT" MEANS THE DOCUMENT ISSUED TO A PARTIC-
8 IPANT BY THE DEPARTMENT, AFTER THE DEPARTMENT HAS VERIFIED THAT THE
9 PARTICIPANT HAS MET ALL APPLICABLE ELIGIBILITY CRITERIA IN THIS ARTICLE.
10 THE CERTIFICATE SHALL BE ISSUED ANNUALLY IF SUCH CRITERIA ARE SATISFIED
11 AND SHALL SPECIFY THE EXACT AMOUNT OF EACH TAX CREDIT UNDER THIS ARTICLE
12 THAT A PARTICIPANT MAY CLAIM, PURSUANT TO SECTION FOUR HUNDRED
13 FORTY-FOUR OF THIS ARTICLE, AND SHALL SPECIFY THE TAXABLE YEAR IN WHICH
14 SUCH CREDIT MAY BE CLAIMED.

15 5. "DISTRIBUTION CENTER" MEANS A LARGE SCALE FACILITY INVOLVING PROC-
16 ESSING, REPACKAGING AND/OR MOVEMENT OF FINISHED OR SEMI-FINISHED GOODS
17 TO RETAIL LOCATIONS ACROSS A MULTI-STATE AREA.

18 6. "FINANCIAL SERVICES DATA CENTERS" OR "FINANCIAL SERVICES CUSTOMER
19 BACK OFFICE OPERATIONS" MEANS OPERATIONS THAT MANAGE THE DATA OR
20 ACCOUNTS OF EXISTING CUSTOMERS OR PROVIDE PRODUCT OR SERVICE INFORMATION
21 AND SUPPORT TO CUSTOMERS OF FINANCIAL SERVICES COMPANIES, INCLUDING
22 BANKS, OTHER LENDERS, SECURITIES AND COMMODITIES BROKERS AND DEALERS,
23 INVESTMENT BANKS, PORTFOLIO MANAGERS, TRUST OFFICES, AND INSURANCE
24 COMPANIES.

25 7. "IMPACTED JOBS" MEANS JOBS EXISTING AT A BUSINESS ENTERPRISE AT A
26 LOCATION OR LOCATIONS WITHIN THE COUNTY DECLARED AN EMERGENCY BY THE
27 GOVERNOR ON THE DAY IMMEDIATELY PRECEDING THE DAY ON WHICH THE EVENT
28 LEADING TO THE EMERGENCY DECLARATION BY THE GOVERNOR OCCURRED.

29 8. "MANUFACTURING" MEANS THE PROCESS OF WORKING RAW MATERIALS INTO
30 PRODUCTS SUITABLE FOR USE OR WHICH GIVES NEW SHAPES, NEW QUALITY OR NEW
31 COMBINATIONS TO MATTER WHICH HAS ALREADY GONE THROUGH SOME ARTIFICIAL
32 PROCESS BY THE USE OF MACHINERY, TOOLS, APPLIANCES, OR OTHER SIMILAR
33 EQUIPMENT. "MANUFACTURING" DOES NOT INCLUDE AN OPERATION THAT INVOLVES
34 ONLY THE ASSEMBLY OF COMPONENTS, PROVIDED, HOWEVER, THE ASSEMBLY OF
35 MOTOR VEHICLES OR OTHER HIGH VALUE-ADDED PRODUCTS SHALL BE CONSIDERED
36 MANUFACTURING.

37 9. "PARTICIPANT" MEANS A BUSINESS ENTITY THAT:

38 (A) HAS COMPLETED AN APPLICATION PRESCRIBED BY THE DEPARTMENT TO BE
39 ADMITTED INTO THE PROGRAM;

40 (B) HAS BEEN ISSUED A CERTIFICATE OF ELIGIBILITY BY THE DEPARTMENT;

41 (C) HAS DEMONSTRATED THAT IT MEETS THE ELIGIBILITY CRITERIA IN SECTION
42 FOUR HUNDRED FORTY-TWO AND SUBDIVISION TWO OF SECTION FOUR HUNDRED
43 FORTY-THREE OF THIS ARTICLE; AND

44 (D) HAS BEEN CERTIFIED AS A PARTICIPANT BY THE COMMISSIONER.

45 10. "PRELIMINARY SCHEDULE OF BENEFITS" MEANS THE MAXIMUM AGGREGATE
46 AMOUNT OF THE TAX CREDIT THAT A PARTICIPANT IN THE EMPIRE STATE JOBS
47 RETENTION PROGRAM IS ELIGIBLE TO RECEIVE PURSUANT TO THIS ARTICLE. THE
48 SCHEDULE SHALL INDICATE THE ANNUAL AMOUNT OF THE CREDIT A PARTICIPANT
49 MAY CLAIM IN EACH OF ITS TEN YEARS OF ELIGIBILITY. THE PRELIMINARY SCHE-
50 DULE OF BENEFITS SHALL BE ISSUED BY THE DEPARTMENT WHEN THE DEPARTMENT
51 APPROVES THE APPLICATION FOR ADMISSION INTO THE PROGRAM. THE COMMISSION-
52 ER MAY AMEND THAT SCHEDULE, PROVIDED THAT THE COMMISSIONER COMPLIES WITH
53 THE CREDIT CAPS IN SECTION THREE HUNDRED FIFTY-NINE OF THIS CHAPTER.

54 11. "PROJECT SITE" MEANS A SINGLE LOCATION FROM WHICH OPERATIONS ARE
55 CONDUCTED AND MANUFACTURERS MAY DESIGNATE MULTIPLE LOCATIONS CONSISTING

1 OF ONE OR MORE INTEGRATED BUILDINGS OR STRUCTURES WITHIN A FIFTEEN-MILE
2 RADIUS AS ONE PROJECT SITE.

3 12. "RELATED PERSON" MEANS A RELATED PERSON PURSUANT TO SUBPARAGRAPH
4 (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF SECTION FOUR HUNDRED SIXTY-
5 FIVE OF THE INTERNAL REVENUE CODE.

6 13. "SCIENTIFIC RESEARCH AND DEVELOPMENT" MEANS CONDUCTING RESEARCH
7 AND EXPERIMENTAL DEVELOPMENT IN THE PHYSICAL, ENGINEERING, AND LIFE
8 SCIENCES, INCLUDING BUT NOT LIMITED TO AGRICULTURE, ELECTRONICS, ENVI-
9 RONMENTAL, BIOLOGY, BOTANY, BIOTECHNOLOGY, COMPUTERS, CHEMISTRY, FOOD,
10 FISHERIES, FORESTS, GEOLOGY, HEALTH, MATHEMATICS, MEDICINE, OCEANOGRA-
11 PHY, PHARMACY, PHYSICS, VETERINARY, AND OTHER ALLIED SUBJECTS. FOR THE
12 PURPOSES OF THIS ARTICLE, SCIENTIFIC RESEARCH AND DEVELOPMENT DOES NOT
13 INCLUDE MEDICAL OR VETERINARY LABORATORY TESTING FACILITIES.

14 13. "SOFTWARE DEVELOPMENT" MEANS THE CREATION OF CODED COMPUTER
15 INSTRUCTIONS AND INCLUDES NEW MEDIA AS DEFINED BY THE COMMISSIONER IN
16 REGULATIONS.

17 S 442. ELIGIBILITY CRITERIA. 1. TO BE A PARTICIPANT IN THE CAPITAL
18 INVESTMENT JOBS RETENTION PROGRAM, A BUSINESS ENTITY SHALL:

19 (A) OPERATE IN NEW YORK STATE PREDOMINANTLY:

20 (I) AS A FINANCIAL SERVICES DATA CENTER OR A FINANCIAL SERVICES BACK
21 OFFICE OPERATION;

22 (II) IN MANUFACTURING;

23 (III) IN SOFTWARE DEVELOPMENT AND NEW MEDIA;

24 (IV) IN SCIENTIFIC RESEARCH AND DEVELOPMENT;

25 (V) IN AGRICULTURE;

26 (VI) IN THE CREATION OR EXPANSION OF BACK OFFICE OPERATIONS IN THE
27 STATE; OR

28 (VII) IN A DISTRIBUTION CENTER.

29 (B) INVEST AT LEAST FIFTY MILLION DOLLARS IN FIXED ASSETS FOR MANUFAC-
30 TURING OPERATIONS OR TWENTY MILLION IN FIXED ASSETS FOR SIGNIFICANT
31 CORPORATE ADMINISTRATIVE FUNCTIONS AT THE PROJECT SITE. SUCH INVESTMENT
32 SHALL BE COMPLETED WITHIN THE THREE CONSECUTIVE CALENDAR YEARS PRECEDING
33 THE TAXABLE YEAR IN WHICH SUCH PARTICIPANT FIRST CLAIMS THE TAX CREDIT
34 SET FORTH IN THIS ARTICLE. IN CALCULATING SUCH INVESTMENT, THE PARTIC-
35 IPANT MAY NOT INCLUDE:

36 (I) PAYMENTS MADE FOR THE ACQUISITION OF PERSONAL PROPERTY THROUGH
37 OPERATING LEASES,

38 (II) PAYMENTS MADE TO RELATED MEMBERS, INCLUDING, BUT NOT LIMITED TO
39 RELATED ENTITIES, COMPONENT MEMBERS, OR PERSONS TO OR FROM WHOM THERE IS
40 ATTRIBUTION OF STOCK OWNERSHIP,

41 (III) ELECTED CONSOLIDATED TAXPAYERS, OR

42 (IV) PERSONS TREATED AS SINGLE TAXPAYERS KNOWN AS COMBINED TAXPAYERS.

43 (C) AGREE TO MAINTAIN OPERATIONS AT THE PROJECT SITE FOR AT LEAST THE
44 GREATER OF:

45 (I) THE TERM OF THE TAX CREDIT PLUS THREE YEARS, OR

46 (II) SEVEN YEARS.

47 (D) DEMONSTRATE TO THE COMMISSIONER THAT:

48 (I) IT IS ECONOMICALLY SOUND AND POSSESSES THE FINANCIAL CAPABILITY TO
49 COMPLETE THE REQUIRED CAPITAL INVESTMENT, AND

50 (II) THE TAX CREDIT PROVIDED FOR IN THIS ARTICLE IS A MAJOR FACTOR IN
51 ITS DETERMINATION TO BEGIN, CONTINUE AND COMPLETE THE CAPITAL INVESTMENT
52 PROJECT.

53 (E) PROVIDE THE COMMISSIONER WITH A LETTER OF SUPPORT FROM THE LOCAL
54 COMMUNITY IN WHICH THE PROJECT IS LOCATED.

55 2. WHEN DETERMINING WHETHER AN APPLICANT IS OPERATING PREDOMINANTLY IN
56 ONE OF THE INDUSTRIES LISTED IN SUBDIVISION ONE OF THIS SECTION, THE

1 COMMISSIONER SHALL EXAMINE THE NATURE OF THE BUSINESS ACTIVITY AT THE
2 LOCATION FOR THE PROPOSED PROJECT AND WILL MAKE ELIGIBILITY DETERMI-
3 NATIONS BASED ON SUCH ACTIVITY.

4 3. FOR THE PURPOSES OF THIS ARTICLE, IN ORDER TO PARTICIPATE IN THE
5 CAPITAL INVESTMENT JOBS RETENTION PROGRAM, A BUSINESS ENTITY OPERATING
6 IN ONE OF THE STRATEGIC INDUSTRIES LISTED IN SUBDIVISION ONE OF THIS
7 SECTION:

8 (A) SHALL EMPLOY AT LEAST TWO HUNDRED FULL-TIME EQUIVALENT JOBS AT THE
9 PROJECT SITE DURING THE TIME FOR WHICH THE TAX CREDIT IS GRANTED, AND

10 (B) SHALL CONTINUE TO EMPLOY AT LEAST TWO HUNDRED FULL-TIME EQUIVALENT
11 EMPLOYEES FOR THE DURATION OF THE AGREEMENT ENTERED INTO WITH THE EMPIRE
12 STATE DEVELOPMENT CORPORATION; PROVIDED, HOWEVER, THAT THE BUSINESS
13 ENTITY SHALL NOT INCLUDE FULL-TIME EQUIVALENT POSITIONS WHOSE EXISTENCE
14 ARE PREDICATED UPON THE ASSISTANCE OFFERED BY THE TAX CREDIT.

15 4. AN INTRASTATE RELOCATION PROJECT, A NOT-FOR-PROFIT BUSINESS ENTITY,
16 A BUSINESS ENTITY WHOSE PRIMARY FUNCTION IS THE PROVISION OF SERVICES
17 INCLUDING PERSONAL SERVICES, BUSINESS SERVICES, OR THE PROVISION OF
18 UTILITIES, A BUSINESS ENTITY ENGAGED PREDOMINANTLY IN THE RETAIL OR
19 ENTERTAINMENT INDUSTRY, OR A COMPANY ENGAGED IN THE GENERATION OR
20 DISTRIBUTION OF ELECTRICITY, THE DISTRIBUTION OF NATURAL GAS, OR THE
21 PRODUCTION OF STEAM ASSOCIATED WITH THE GENERATION OF ELECTRICITY ARE
22 NOT ELIGIBLE TO RECEIVE THE TAX CREDIT DESCRIBED IN THIS ARTICLE.

23 5. A BUSINESS ENTITY MUST BE IN COMPLIANCE WITH ALL WORKER PROTECTION
24 AND ENVIRONMENTAL LAWS AND REGULATIONS. IN ADDITION, A BUSINESS ENTITY
25 MAY NOT OWE PAST DUE STATE TAXES. IN ADDITION, A BUSINESS ENTITY MUST
26 NOT OWE LOCAL PROPERTY TAXES FOR ANY YEAR PRIOR TO THE YEAR IN WHICH IT
27 APPLIES TO PARTICIPATE IN THE CAPITAL INVESTMENT JOBS RETENTION PROGRAM.

28 S 443. APPLICATION AND APPROVAL PROCESS. 1. A BUSINESS ENTERPRISE
29 SHALL SUBMIT A COMPLETED APPLICATION AS PRESCRIBED BY THE COMMISSIONER.
30 SUCH COMPLETED APPLICATION SHALL BE SUBMITTED TO THE COMMISSIONER WITHIN
31 ONE HUNDRED EIGHTY DAYS OF THE ENACTMENT OF THIS ARTICLE.

32 2. AS PART OF SUCH APPLICATION, EACH BUSINESS ENTERPRISE SHALL:

33 (A) AGREE TO ALLOW THE DEPARTMENT OF TAXATION AND FINANCE TO SHARE ITS
34 TAX INFORMATION WITH THE DEPARTMENT. HOWEVER, ANY INFORMATION SHARED AS
35 A RESULT OF THIS AGREEMENT SHALL NOT BE AVAILABLE FOR DISCLOSURE OR
36 INSPECTION UNDER THE STATE FREEDOM OF INFORMATION LAW.

37 (B) AGREE TO ALLOW THE DEPARTMENT OF LABOR TO SHARE ITS TAX AND
38 EMPLOYER INFORMATION WITH THE DEPARTMENT. HOWEVER, ANY INFORMATION
39 SHARED AS A RESULT OF THIS AGREEMENT SHALL NOT BE AVAILABLE FOR DISCLO-
40 SURE OR INSPECTION UNDER THE STATE FREEDOM OF INFORMATION LAW.

41 (C) ALLOW THE DEPARTMENT AND ITS AGENTS ACCESS TO ANY AND ALL BOOKS
42 AND RECORDS THE DEPARTMENT MAY REQUIRE TO MONITOR COMPLIANCE.

43 (D) AGREE TO BE PERMANENTLY DISQUALIFIED FOR EMPIRE ZONE TAX BENEFITS
44 AT ANY LOCATION OR LOCATIONS THAT QUALIFY FOR CAPITAL INVESTMENT JOBS
45 RETENTION PROGRAM BENEFITS IF ADMITTED INTO THE CAPITAL INVESTMENT JOBS
46 RETENTION PROGRAM.

47 (E) PROVIDE THE FOLLOWING INFORMATION TO THE DEPARTMENT UPON REQUEST:

48 (I) A PLAN OUTLINING THE SCHEDULE FOR MEETING THE JOBS RETENTION
49 REQUIREMENTS AS SET FORTH IN SUBDIVISION THREE OF SECTION FOUR HUNDRED
50 FORTY-TWO OF THIS ARTICLE. SUCH PLAN MUST INCLUDE DETAILS ON JOBS TITLES
51 AND EXPECTED SALARIES;

52 (II) THE PRIOR THREE YEARS OF FEDERAL AND STATE INCOME OR FRANCHISE
53 TAX RETURNS, UNEMPLOYMENT INSURANCE QUARTERLY RETURNS, REAL PROPERTY TAX
54 BILLS AND AUDITED FINANCIAL STATEMENTS; AND

1 (III) THE EMPLOYER IDENTIFICATION OR SOCIAL SECURITY NUMBERS FOR ALL
2 RELATED PERSONS TO THE APPLICANT, INCLUDING THOSE OF ANY MEMBERS OF A
3 LIMITED LIABILITY COMPANY OR PARTNERS IN A PARTNERSHIP.

4 (F) PROVIDE A CLEAR AND DETAILED PRESENTATION OF ALL RELATED PERSONS
5 TO THE APPLICANT TO ASSURE THE DEPARTMENT THAT JOBS ARE NOT BEING SHIFT-
6 ED WITHIN THE STATE.

7 (G) CERTIFY, UNDER PENALTY OF PERJURY, THAT IT IS IN SUBSTANTIAL
8 COMPLIANCE WITH ALL ENVIRONMENTAL, WORKER PROTECTION, AND LOCAL, STATE,
9 AND FEDERAL TAX LAWS.

10 3. AFTER REVIEWING A BUSINESS ENTERPRISE'S COMPLETED APPLICATION AND
11 DETERMINING THAT THE BUSINESS ENTERPRISE WILL MEET THE CONDITIONS SET
12 FORTH IN SUBDIVISION THREE OF SECTION FOUR HUNDRED FORTY-TWO OF THIS
13 ARTICLE, THE DEPARTMENT MAY ADMIT THE APPLICANT INTO THE PROGRAM AND
14 PROVIDE THE APPLICANT WITH A CERTIFICATE OF ELIGIBILITY AND A PRELIMI-
15 NARY SCHEDULE OF BENEFITS BY YEAR BASED ON THE APPLICANT'S PROJECTIONS
16 AS SET FORTH IN ITS APPLICATION. THIS PRELIMINARY SCHEDULE OF BENEFITS
17 DELINEATES THE MAXIMUM POSSIBLE BENEFITS AN APPLICANT MAY RECEIVE.

18 4. IN ORDER TO BECOME A PARTICIPANT IN THE PROGRAM, AN APPLICANT SHALL
19 SUBMIT EVIDENCE THAT IT SATISFIES THE ELIGIBILITY CRITERIA SPECIFIED IN
20 SECTION FOUR HUNDRED FORTY-TWO OF THIS ARTICLE AND SUBDIVISION TWO OF
21 THIS SECTION IN SUCH FORM AS THE COMMISSIONER MAY PRESCRIBE. AFTER
22 REVIEWING SUCH EVIDENCE AND FINDING IT SUFFICIENT, THE DEPARTMENT SHALL
23 CERTIFY THE APPLICANT AS A PARTICIPANT AND ISSUE TO THAT PARTICIPANT A
24 CERTIFICATE OF TAX CREDIT FOR ONE TAXABLE YEAR. TO RECEIVE A CERTIFICATE
25 OF TAX CREDIT FOR SUBSEQUENT TAXABLE YEARS, THE PARTICIPANT MUST SUBMIT
26 TO THE DEPARTMENT A PERFORMANCE REPORT DEMONSTRATING THAT THE PARTIC-
27 IPANT CONTINUES TO SATISFY THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION
28 FOUR HUNDRED FORTY-TWO OF THIS ARTICLE AND SUBDIVISION TWO OF THIS
29 SECTION.

30 5. A PARTICIPANT MAY CLAIM TAX BENEFITS COMMENCING IN THE FIRST TAXA-
31 BLE YEAR THAT THE BUSINESS ENTERPRISE RECEIVES A CERTIFICATE OF TAX
32 CREDIT OR THE FIRST TAXABLE YEAR LISTED ON ITS PRELIMINARY SCHEDULE OF
33 BENEFITS, WHICHEVER IS LATER. A PARTICIPANT MAY CLAIM SUCH BENEFITS FOR
34 THE NEXT NINE CONSECUTIVE TAXABLE YEARS, PROVIDED THAT THE PARTICIPANT
35 DEMONSTRATES TO THE DEPARTMENT THAT IT CONTINUES TO SATISFY THE ELIGI-
36 BILITY CRITERIA SPECIFIED IN SECTION FOUR HUNDRED FORTY-TWO OF THIS
37 ARTICLE AND SUBDIVISION TWO OF THIS SECTION IN EACH OF THOSE TAXABLE
38 YEARS.

39 S 444. CAPITAL INVESTMENT JOBS RETENTION PROGRAM CREDIT. 1. A PARTIC-
40 IPANT IN THE CAPITAL INVESTMENT JOBS RETENTION PROGRAM SHALL BE ELIGIBLE
41 TO CLAIM A CREDIT FOR THE IMPACTED JOBS. THE AMOUNT OF SUCH CREDIT SHALL
42 BE EQUAL TO SEVENTY-FIVE PERCENT OF THE NEW YORK STATE INCOME TAXES
43 WITHHELD FROM ELIGIBLE FULL-TIME EMPLOYEES.

44 2. THE TAX CREDIT ESTABLISHED IN THIS SECTION SHALL BE REFUNDABLE AS
45 PROVIDED IN THE TAX LAW. IF A PARTICIPANT FAILS TO SATISFY THE ELIGIBIL-
46 ITY CRITERIA IN ANY ONE YEAR, IT WILL LOSE THE ABILITY TO CLAIM CREDIT
47 FOR THAT YEAR. THE EVENT OF SUCH FAILURE SHALL NOT EXTEND THE ORIGINAL
48 TEN-YEAR ELIGIBILITY PERIOD.

49 3. (A) THE BUSINESS ENTERPRISE SHALL BE ALLOWED TO CLAIM THE CREDIT AS
50 PRESCRIBED IN SECTION THIRTY-SEVEN OF THE TAX LAW; PROVIDED, HOWEVER, A
51 BUSINESS ENTERPRISE SHALL NOT BE ALLOWED TO CLAIM THE CREDIT PRIOR TO
52 TAX YEAR TWO THOUSAND THIRTEEN.

53 (B) ANY INDIVIDUAL THAT IS A MEMBER OR EMPLOYEE OF A PARTICIPANT MAY
54 CLAIM THE PRO RATA SHARE OF THE CREDIT EARNED BY SUCH PARTICIPANT.

55 4. A PARTICIPANT MAY BE ELIGIBLE FOR BENEFITS UNDER THIS ARTICLE AS
56 WELL AS ARTICLE SEVENTEEN OF THIS CHAPTER, PROVIDED THE PARTICIPANT CAN

ONLY RECEIVE BENEFITS PURSUANT TO SUBDIVISION TWO OF SECTION THREE HUNDRED FIFTY-FIVE OF THIS CHAPTER FOR COSTS IN EXCESS OF COSTS RECOVERED BY INSURANCE.

S 445. POWERS AND DUTIES OF THE COMMISSIONER. 1. THE COMMISSIONER SHALL PROMULGATE REGULATIONS ESTABLISHING AN APPLICATION PROCESS AND ELIGIBILITY CRITERIA, THAT WILL BE APPLIED CONSISTENT WITH THE PURPOSES OF THIS ARTICLE, SO AS NOT TO EXCEED THE ANNUAL CAP ON TAX CREDITS SET FORTH IN SECTION THREE HUNDRED FIFTY-NINE OF THIS CHAPTER WHICH, NOTWITHSTANDING ANY PROVISIONS TO THE CONTRARY IN THE STATE ADMINISTRATIVE PROCEDURE ACT, MAY BE ADOPTED ON AN EMERGENCY BASIS. SUCH REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, CRITERIA FOR DETERMINING WHETHER A BUSINESS ENTITY IS ECONOMICALLY SOUND AND POSSESSES THE FINANCIAL CAPABILITY TO COMPLETE THE REQUIRED CAPITAL INVESTMENT AND WHETHER THE TAX CREDIT PROVIDED FOR IN THIS ARTICLE IS A MAJOR FACTOR IN THE DETERMINATION OF SUCH BUSINESS ENTITY TO BEGIN, CONTINUE AND COMPLETE THE CAPITAL INVESTMENT PROJECT.

2. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF TAXATION AND FINANCE, DEVELOP A CERTIFICATE OF TAX CREDIT THAT SHALL BE ISSUED BY THE COMMISSIONER TO PARTICIPANTS. PARTICIPANTS MAY BE REQUIRED BY THE COMMISSIONER OF TAXATION AND FINANCE TO INCLUDE THE CERTIFICATE OF TAX CREDIT WITH THEIR TAX RETURN TO RECEIVE ANY TAX BENEFITS UNDER THIS ARTICLE.

3. THE COMMISSIONER SHALL SOLELY DETERMINE THE ELIGIBILITY OF ANY APPLICANT APPLYING FOR ENTRY INTO THE PROGRAM AND SHALL REMOVE ANY PARTICIPANT FROM THE PROGRAM FOR FAILING TO MEET ANY OF THE REQUIREMENTS SET FORTH IN SUBDIVISION TWO OF SECTION FOUR HUNDRED FORTY-THREE OF THIS ARTICLE, OR FOR FAILING TO MEET THE JOB RETENTION REQUIREMENTS SET FORTH IN SUBDIVISION THREE OF SECTION FOUR HUNDRED FORTY-TWO OF THIS ARTICLE, OR FOR FAILING TO MEET THE REQUIREMENTS OF SUBDIVISION FIVE OF SECTION FOUR HUNDRED FORTY-TWO OF THIS ARTICLE.

S 446. MAINTENANCE OF RECORDS. EACH PARTICIPANT SHALL KEEP ALL RELEVANT RECORDS FOR THE DURATION OF ITS PROGRAM PARTICIPATION PLUS THREE YEARS.

S 447. REPORTING. 1. (A) IN ORDER TO RECEIVE A TAX CREDIT CERTIFICATE AND TO MAINTAIN ELIGIBILITY FOR THIS TAX CREDIT PROGRAM, THE TAXPAYER MUST SUBMIT AN ANNUAL REPORT TO THE DEPARTMENT OF TAXATION AND FINANCE BY MARCH FIRST OF THE YEAR FOLLOWING ANY YEAR FOR WHICH THE TAX CREDIT IS CLAIMED, THE FIRST REPORT OF WHICH IS DUE MARCH FIRST OF THE YEAR FOLLOWING THE CALENDAR YEAR IN WHICH THE INVESTMENT IS COMPLETED AND THE TAX CREDIT BEGINS.

(B) SUCH REPORT SHALL CONTAIN THE NUMBER OF ELIGIBLE FULL-TIME EQUIVALENT EMPLOYEES AND THE AMOUNT OF INCOME TAX WITHHELD FROM THOSE EMPLOYEES, AND THE AMOUNTS PAID TOWARDS THE COMPLETION OF THE CAPITAL INVESTMENT. ONCE THIS IS VERIFIED BY THE COMMISSIONER OF TAXATION AND FINANCE, THE COMMISSIONER WILL ISSUE A TAX CREDIT CERTIFICATE TO THE TAXPAYER.

(C) THE PARTICIPANT MUST THEN SUBMIT THE TAX CREDIT CERTIFICATE WITH THE APPLICABLE STATE TAX RETURN. IF THE TAX CREDIT IS GREATER THAN THE STATE TAX LIABILITY, THE UNUSED PORTION MAY BE CARRIED FORWARD UP TO THREE YEARS.

(D) FAILURE TO SUBMIT A COMPLETE AND TIMELY ANNUAL REPORT WILL RESULT IN THE ASSESSMENT OF A FIVE HUNDRED DOLLAR LATE FEE FOR EACH ENSUING CALENDAR MONTH THE REPORT REMAINS INCOMPLETE OR UNFILED.

(E) ONCE THE ACTIVE TERM OF THE TAX CREDIT ENDS, A POST-TERM PERIOD, LENGTH TO BE DETERMINED BY THE EMPIRE STATE DEVELOPMENT CORPORATION, WILL REQUIRE ANNUAL REPORTING REQUIREMENTS TO CERTIFY THAT SUBSTANTIAL OPERATIONS REMAIN AT THE PROJECT SITE.

2. EACH PARTICIPANT MUST SUBMIT A PERFORMANCE REPORT ANNUALLY, IN SUCH FORM AS THE COMMISSIONER MAY REQUIRE, WITHIN THIRTY DAYS OF THE END OF THEIR TAXABLE YEAR.

3. THE COMMISSIONER SHALL PREPARE ON A QUARTERLY BASIS A PROGRAM REPORT FOR POSTING ON THE DEPARTMENT'S WEBSITE. THE FIRST REPORT WILL BE DUE JUNE THIRTIETH, TWO THOUSAND FOURTEEN, AND EVERY THREE MONTHS THEREAFTER. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING: NUMBER OF APPLICANTS; NUMBER OF PARTICIPANTS APPROVED; NAMES OF PARTICIPANTS; TOTAL AMOUNT OF BENEFITS CERTIFIED; BENEFITS RECEIVED PER PARTICIPANT; TOTAL NUMBER OF RETAINED JOBS; AND SUCH OTHER INFORMATION AS THE COMMISSIONER DETERMINES.

S 448. CAP ON TAX CREDIT. 1. THE TOTAL AMOUNT OF TAX CREDITS LISTED ON CERTIFICATES OF TAX CREDIT ISSUED BY THE COMMISSIONER FOR ANY TAXABLE YEAR MAY NOT EXCEED THE FOLLOWING AMOUNTS:

- (A) FOR 2013, THIRTEEN MILLION DOLLARS.
- (B) FOR 2014, EIGHTEEN MILLION DOLLARS.
- (C) FOR 2015, TWENTY-THREE MILLION DOLLARS.
- (D) FOR 2016, TWENTY-EIGHT MILLION DOLLARS.
- (E) FOR 2017, THIRTY-THREE MILLION DOLLARS.

2. FOR EACH INDIVIDUAL PROJECT, THE EMPIRE STATE DEVELOPMENT CORPORATION SHALL APPROVE A SCHEDULE FOR THE MAXIMUM AMOUNT OF CREDITS TO BE ISSUED IN A CALENDAR YEAR.

S 449. PENALTIES. 1. IF A PARTICIPANT FAILS TO MAINTAIN THE JOB LEVELS REQUIRED IN SUBDIVISION THREE OF SECTION FOUR HUNDRED FORTY-TWO OF THIS ARTICLE, OR IN ANY OTHER WAY FAILS TO COMPLY WITH THE TERMS, THE EMPIRE STATE DEVELOPMENT CORPORATION MAY TERMINATE OR REDUCE THE BENEFITS, OR MAY ASK FOR A ONE HUNDRED PERCENT REFUND OF ASSISTANCE RECEIVED.

2. IF THE PARTICIPANT FAILS TO COMPLY WITH TERMS DURING THE POST-TERM REPORTING PERIOD, THE EMPIRE STATE DEVELOPMENT CORPORATION MAY REQUIRE A REFUND OF UP TO SEVENTY-FIVE PERCENT OF ASSISTANCE RECEIVED.

S 2. The tax law is amended by adding a new section 37 to read as follows:

S 37. CAPITAL INVESTMENT JOBS RETENTION PROGRAM CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SUBJECT TO TAX UNDER ARTICLE NINE-A, TWENTY-TWO, THIRTY-TWO OR THIRTY-THREE OF THIS CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (E) OF THIS SECTION. THE AMOUNT OF THE CREDIT, ALLOWABLE FOR TEN CONSECUTIVE TAX YEARS, IS EQUAL TO THE AMOUNT DETERMINED PURSUANT TO SECTION FOUR HUNDRED FORTY-FOUR OF THE ECONOMIC DEVELOPMENT LAW.

(B) ELIGIBILITY. TO BE ELIGIBLE FOR THE CAPITAL INVESTMENT JOBS RETENTION CREDIT, THE TAXPAYER SHALL HAVE BEEN ISSUED A CERTIFICATE OF TAX CREDIT BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT PURSUANT TO SUBDIVISION FOUR OF SECTION FOUR HUNDRED FORTY-THREE OF THE ECONOMIC DEVELOPMENT LAW, WHICH CERTIFICATE SHALL SET FORTH THE AMOUNT OF THE CREDIT THAT MAY BE CLAIMED FOR THE TAXABLE YEAR. A TAXPAYER MAY CLAIM SUCH CREDIT FOR UP TO TEN CONSECUTIVE TAXABLE YEARS COMMENCING IN THE FIRST TAXABLE YEAR THAT THE TAXPAYER RECEIVES A CERTIFICATE OF TAX CREDIT OR THE FIRST TAXABLE YEAR LISTED ON ITS PRELIMINARY SCHEDULE OF BENEFITS, WHICHEVER IS LATER.

HOWEVER, A TAXPAYER SHALL NOT BE ALLOWED TO CLAIM THE CREDIT PRIOR TO THE TAX YEAR COMMENCING ON OR AFTER JANUARY FIRST, TWO THOUSAND THIRTEEN AND BEFORE JANUARY FIRST, TWO THOUSAND FOURTEEN. THE TAXPAYER SHALL BE ALLOWED TO CLAIM ONLY THE AMOUNT LISTED ON THE CERTIFICATE OF TAX CREDIT FOR THAT TAXABLE YEAR. SUCH CERTIFICATE, IF REQUIRED BY THE COMMISSIONER, SHALL BE ATTACHED TO THE TAXPAYER'S RETURN. NO COST OR EXPENSE PAID

OR INCURRED BY THE TAXPAYER WHICH IS INCLUDED AS PART OF THE CALCULATION OF THIS CREDIT SHALL BE THE BASIS OF ANY OTHER TAX CREDIT.

(C) INFORMATION SHARING. (1) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER, EMPLOYEES AND OFFICERS OF THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE DEPARTMENT SHALL BE ALLOWED AND ARE DIRECTED TO SHARE AND EXCHANGE:

(A) INFORMATION DERIVED FROM TAX RETURNS OR REPORTS THAT IS RELEVANT TO A TAXPAYER'S ELIGIBILITY TO PARTICIPATE IN THE CAPITAL INVESTMENT JOBS RETENTION PROGRAM;

(B) INFORMATION REGARDING THE CREDIT APPLIED FOR, ALLOWED OR CLAIMED PURSUANT TO THIS SECTION AND TAXPAYERS WHO ARE APPLYING FOR THE CREDIT OR WHO ARE CLAIMING THE CREDIT; AND

(C) INFORMATION CONTAINED IN OR DERIVED FROM CREDIT CLAIM FORMS SUBMITTED TO THE DEPARTMENT AND APPLICATIONS FOR ADMISSION INTO THE CAPITAL INVESTMENT JOBS RETENTION PROGRAM.

EXCEPT AS PROVIDED IN PARAGRAPH TWO OF THIS SUBDIVISION, ALL INFORMATION EXCHANGED BETWEEN THE DEPARTMENT OF ECONOMIC DEVELOPMENT AND THE DEPARTMENT SHALL NOT BE SUBJECT TO DISCLOSURE OR INSPECTION UNDER THE STATE'S FREEDOM OF INFORMATION LAW.

(2) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER, THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE IS AUTHORIZED TO RELEASE THE NAME OF EACH TAXPAYER CLAIMING THE CREDIT AND THE AMOUNT OF THE CREDIT EARNED BY EACH TAXPAYER. HOWEVER, IF THE TAXPAYER CLAIMS A CREDIT BECAUSE THE TAXPAYER IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER IN A SUBCHAPTER S CORPORATION, ONLY THE NAME OF A LIMITED LIABILITY COMPANY, PARTNERSHIP OR SUBCHAPTER S CORPORATION PARTICIPATING IN THE CAPITAL INVESTMENT JOBS RETENTION PROGRAM AND THE AMOUNT OF CREDIT EARNED BY THAT ENTITY MAY BE RELEASED.

(D) CREDIT RECAPTURE. IF A CERTIFICATE OF ELIGIBILITY OR A CERTIFICATE OF TAX CREDIT ISSUED BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT UNDER ARTICLE TWENTY-ONE OF THE ECONOMIC DEVELOPMENT LAW IS REVOKED BY SUCH DEPARTMENT, THE AMOUNT OF CREDIT DESCRIBED IN THIS SECTION AND CLAIMED BY THE TAXPAYER PRIOR TO THAT REVOCATION SHALL BE ADDED BACK TO TAX IN THE TAXABLE YEAR IN WHICH ANY SUCH REVOCATION BECOMES FINAL.

(E) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED FOR IN THIS SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

(1) ARTICLE 9-A: SECTION 210, SUBDIVISION 45;

(2) ARTICLE 22: SECTION 606, SUBSECTION (UU);

(3) ARTICLE 32: SECTION 1456, SUBSECTION (Z);

(4) ARTICLE 33, SECTION 1511, SUBDIVISION (CC).

S 3. Section 210 of the tax law is amended by adding a new subdivision 45 to read as follows:

45. CAPITAL INVESTMENT JOBS RETENTION PROGRAM CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WILL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-SEVEN OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR WILL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE MINIMUM TAX FIXED BY THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

1 S 4. Section 606 of the tax law is amended by adding a new subsection
2 (uu) to read as follows:

3 (UU) CAPITAL INVESTMENT JOBS PROGRAM RETENTION CREDIT. (1) ALLOWANCE
4 OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS
5 PROVIDED IN SECTION THIRTY-SEVEN OF THIS CHAPTER, AGAINST THE TAX
6 IMPOSED BY THIS ARTICLE.

7 (2) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT ALLOWED UNDER
8 THIS SUBSECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH
9 YEAR, THE EXCESS WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED
10 OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX HUNDRED
11 EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST WILL BE
12 PAID THEREON.

13 S 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
14 of the tax law is amended by adding a new clause (xxxiv) to read as
15 follows:

16 (XXXIV) CAPITAL INVESTMENT	AMOUNT OF CREDIT UNDER SUBDIVISION
17 JOBS RETENTION PROGRAM CREDIT	FORTY-FIVE OF SECTION TWO HUNDRED
18	TEN OR UNDER SUBSECTION (Z) OF
19	SECTION FOURTEEN HUNDRED FIFTY-SIX

20 S 6. Section 1456 of the tax law is amended by adding a new subsection
21 (z) to read as follows:

22 (Z) CAPITAL INVESTMENT JOBS RETENTION PROGRAM CREDIT. (1) ALLOWANCE OF
23 CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED
24 IN SECTION THIRTY-SEVEN OF THIS CHAPTER, AGAINST THE TAXES IMPOSED BY
25 THIS ARTICLE.

26 (2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBSECTION
27 FOR ANY TAXABLE YEAR WILL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
28 THAN THE MINIMUM TAX FIXED BY THIS ARTICLE. HOWEVER, IF THE AMOUNT OF
29 CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE
30 TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH
31 TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR
32 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
33 EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF
34 SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER
35 NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

36 S 7. Section 1511 of the tax law is amended by adding a new subdivi-
37 sion (cc) to read as follows:

38 (CC) CAPITAL INVESTMENT JOBS RETENTION PROGRAM CREDIT. (1) ALLOWANCE
39 OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS
40 PROVIDED IN SECTION THIRTY-SEVEN OF THIS CHAPTER, AGAINST THE TAXES
41 IMPOSED BY THIS ARTICLE.

42 (2) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
43 FOR ANY TAXABLE YEAR WILL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
44 THAN THE MINIMUM TAX FIXED BY THIS ARTICLE. HOWEVER, IF THE AMOUNT OF
45 CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE
46 TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH
47 TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR
48 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
49 EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF
50 SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER
51 NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

52 S 8. This act shall take effect immediately; provided however that
53 sections two, three, four, five, six and seven of this act shall apply
54 to taxable years beginning on and after January 1, 2013.