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

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I N A S S E M B L Y

May 24, 2012

Introduced by M. of A. KOLB -- read once and referred to the Committee on Economic Development

AN ACT to amend the economic development law and the tax law, in relation to enacting the BizBoom program act

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

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

ARTICLE 21
BIZBOOM PROGRAM ACT

SECTION 450. SHORT TITLE.
451. STATEMENT OF LEGISLATIVE FINDINGS AND DECLARATION.
452. DEFINITIONS.
453. ELIGIBILITY CRITERIA.
454. APPLICATION AND APPROVAL PROCESS.
455. POWERS AND DUTIES OF THE COMMISSIONER.

S 450. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "BIZBOOM PROGRAM ACT".

S 451. STATEMENT OF LEGISLATIVE FINDINGS AND DECLARATION. IT IS HEREBY FOUND AND DECLARED THAT NEW YORK STATE NEEDS, AS A MATTER OF PUBLIC POLICY, TO CREATE COMPETITIVE FINANCIAL INCENTIVES FOR BUSINESSES TO LOCATE AND INVEST IN NEW YORK STATE. THE BIZBOOM PROGRAM ACT IS CREATED TO INCENTIVIZE THE SITING OF NEW BUSINESSES AND THE CREATION OF BUSINESSES IN OUR STATE.

THIS LEGISLATION CREATES THE BIZBOOM PROGRAM, WHICH PROVIDES A TAX EXEMPT BENEFIT TO NEW BUSINESSES RELOCATING TO OR STARTING UP A NEW BUSINESS IN NEW YORK. THE BIZBOOM TAX EXEMPTION FOR QUALIFYING BUSINESSES IS ONE HUNDRED PERCENT THE FIRST YEAR, FIFTY PERCENT OF THE BUSINESS TAX LIABILITY IN THE SECOND YEAR, AND A TWENTY-FIVE PERCENT EXEMPTION IN THE THIRD YEAR. THIS EXEMPTION WOULD DISCONTINUE AFTER THREE YEARS AND ANY PARTICIPATING BUSINESS THAT LEAVES THE STATE BEFORE COMPLETING SIX YEARS OF OPERATION WOULD BE LIABLE TO REPAY ALL TAX BENEFITS RECEIVED UNDER THE PROGRAM. THESE EXEMPTIONS ARE DESIGNED TO PROMOTE BUSINESS EXPANSION AND INCREASE JOBS IN NEW YORK STATE. AT THE

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

SAME TIME, THE PROGRAM PROTECTS STATE TAXPAYERS' DOLLARS BY ENSURING THAT NEW YORK PROVIDES TAX BENEFITS ONLY TO BUSINESSES THAT REPRESENT NEW INVESTMENT IN OUR STATE.

S 452. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE: 1. "BIZBOOM BUSINESS" MEANS A BUSINESS ENTITY THAT HAS BEEN DETERMINED TO BE A NEWLY FORMED BUSINESS IN NEW YORK; AS DETERMINED BY THE COMMISSIONER OF TAXATION AND FINANCE AND THE DEPARTMENT.

2. "CERTIFICATE OF ELIGIBILITY" MEANS THE DOCUMENT ISSUED BY THE DEPARTMENT TO AN APPLICANT THAT HAS COMPLETED AN APPLICATION TO BE ADMITTED INTO THE BIZBOOM PROGRAM AND HAS BEEN ACCEPTED INTO THE PROGRAM BY THE DEPARTMENT. POSSESSION OF A CERTIFICATE OF ELIGIBILITY DOES NOT BY ITSELF GUARANTEE THE ELIGIBILITY TO CLAIM THE TAX EXEMPTION.

3. "CERTIFICATE OF TAX EXEMPTION" MEANS THE DOCUMENT ISSUED TO A PARTICIPANT BY THE DEPARTMENT AS AUTHORIZED BY THE DEPARTMENT OF TAXATION AND FINANCE, AFTER THE DEPARTMENT HAS VERIFIED THAT THE PARTICIPANT HAS MET ALL APPLICABLE ELIGIBILITY CRITERIA IN THIS ARTICLE.

S 453. ELIGIBILITY CRITERIA. 1. TO BE A PARTICIPANT IN THE BIZBOOM PROGRAM, A QUALIFYING BUSINESS ENTITY SHALL HAVE NOT OPERATED OR SHALL NOT HAVE HAD NEXUS IN NEW YORK STATE PRIOR TO THE FIRST YEAR OF THE IMPLEMENTATION OF THIS ACT AND ANY OTHER CRITERIA ESTABLISHED BY THE COMMISSIONER IN REGULATIONS PROMULGATED PURSUANT TO THIS ARTICLE. IN PROMULGATING SUCH REGULATIONS THE COMMISSIONER SHALL INCLUDE A REVIEW OF SUCH NEW BUSINESS CREATION CRITERIA.

2. FOR THE PURPOSES OF THIS ARTICLE, IN ORDER TO PARTICIPATE IN THE BIZBOOM JOBS PROGRAM A BUSINESS MUST BE IN COMPLIANCE WITH ALL WORKER PROTECTION AND ENVIRONMENTAL LAWS AND REGULATIONS. IN ADDITION, A BUSINESS MAY NOT OWE PAST DUE STATE TAXES, LOCAL PROPERTY TAXES OR ANY FINES ISSUED BY THE STATE OR MUNICIPALITY.

S 454. APPLICATION AND APPROVAL PROCESS. 1. A BUSINESS ENTITY MUST SUBMIT A COMPLETED APPLICATION AS PRESCRIBED BY THE COMMISSIONER.

2. AS PART OF SUCH APPLICATION, EACH BUSINESS ENTITY MUST:

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

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

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

(D) PROVIDE THE FOLLOWING INFORMATION TO THE DEPARTMENT UPON REQUEST:

(I) A PLAN OUTLINING THE SCHEDULE FOR JOB CREATION AND INVESTMENTS;

(II) UNEMPLOYMENT INSURANCE QUARTERLY RETURNS, REAL PROPERTY TAX BILLS AND AUDITED FINANCIAL STATEMENTS;

(III) THE AMOUNT AND DESCRIPTION OF PROJECTED TAX LIABILITY FOR WHICH IT PLANS TO CLAIM THE BIZBOOM TAX EXEMPTIONS; AND

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

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

3. AFTER REVIEWING A BUSINESS ENTITY'S COMPLETED APPLICATION AND DETERMINING THAT THE BUSINESS ENTITY WILL MEET THE CONDITIONS SET FORTH IN SECTION FOUR HUNDRED FIFTY-THREE OF THIS ARTICLE, THE DEPARTMENT MAY ADMIT THE APPLICANT INTO THE PROGRAM AND PROVIDE THE APPLICANT WITH A CERTIFICATE OF ELIGIBILITY.

4. IN ORDER TO BECOME A PARTICIPANT IN THE PROGRAM, AN APPLICANT MUST SUBMIT EVIDENCE OF BEING A NEWLY FORMED BUSINESS ENTITY IN SUCH FORM AS THE COMMISSIONER MAY PRESCRIBE. AFTER REVIEWING SUCH EVIDENCE AND FINDING IT SUFFICIENT, THE DEPARTMENT SHALL CERTIFY THE APPLICANT AS A PARTICIPANT AND ISSUE TO THAT PARTICIPANT A CERTIFICATE OF TAX EXEMPTION.

5. A PARTICIPANT MAY CLAIM TAX BENEFITS COMMENCING IN THE FIRST TAXABLE YEAR THAT THE BUSINESS ENTITY RECEIVES A CERTIFICATE OF TAX EXEMPTION. A PARTICIPANT MAY CLAIM A TAX EXEMPTION OF ONE HUNDRED PERCENT OF THE TAX LIABILITY IN THE FIRST YEAR OF OPERATION, FIFTY PERCENT EXEMPTION OF THE BUSINESS TAX LIABILITY IN THE SECOND YEAR OF OPERATION, AND A TWENTY-FIVE PERCENT EXEMPTION OF THE BUSINESS TAX LIABILITY IN THE THIRD YEAR OF OPERATION, PROVIDED THAT THE PARTICIPANT DEMONSTRATES TO THE DEPARTMENT THAT IT CONTINUES TO SATISFY THE ELIGIBILITY CRITERIA SPECIFIED IN SECTION FOUR HUNDRED FIFTY-THREE OF THIS ARTICLE AND SUBDIVISION TWO OF THIS SECTION IN EACH OF THOSE TAXABLE YEARS.

S 455. 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.

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

3. THE COMMISSIONER SHALL, IN CONSULTATION WITH THE DEPARTMENT OF TAXATION AND FINANCE AND THE DEPARTMENT OF LABOR, 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 SECTION FOUR HUNDRED FIFTY-THREE AND FOUR HUNDRED FIFTY-FOUR OF THIS ARTICLE.

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

S 37. BIZBOOM PROGRAM EXEMPTION. (A) GENERAL. A TAXPAYER SUBJECT TO TAX UNDER ARTICLES NINE-A AND TWENTY-TWO OF THIS CHAPTER SHALL BE ALLOWED AN EXEMPTION AGAINST SUCH TAX, ALLOWABLE FOR UP TO THREE CONSECUTIVE TAXABLE YEARS, IS PROVIDED AS FOLLOWS:

(1) ONE HUNDRED PERCENT EXEMPTION IN YEAR ONE OF OPERATION;

(2) FIFTY PERCENT EXEMPTION IN YEAR TWO OF OPERATION; AND

(3) TWENTY-FIVE PERCENT EXEMPTION IN YEAR THREE OF OPERATION.

(B) TO BE ELIGIBLE FOR THE BIZBOOM PROGRAM EXEMPTION, THE TAXPAYER SHALL HAVE BEEN ISSUED A "CERTIFICATE OF TAX EXEMPTION" BY THE DEPARTMENT OF ECONOMIC DEVELOPMENT PURSUANT TO SUBDIVISION FOUR OF SECTION FOUR HUNDRED FIFTY-FOUR OF THE ECONOMIC DEVELOPMENT LAW, WHICH CERTIFICATE SHALL SET FORTH THE AMOUNT OF EACH EXEMPTION COMPONENT THAT MAY BE CLAIMED FOR THE TAXABLE YEAR. A TAXPAYER MAY CLAIM SUCH EXEMPTION FOR THREE CONSECUTIVE TAXABLE YEARS COMMENCING IN THE FIRST TAXABLE YEAR THAT THE TAXPAYER RECEIVES A CERTIFICATE OF TAX EXEMPTION. THE TAXPAYER SHALL BE ALLOWED TO CLAIM ONLY THE PERCENTAGE AMOUNT LISTED ON THE CERTIFICATE OF TAX EXEMPTION FOR THAT TAXABLE YEAR. SUCH CERTIFICATE

SHOULD BE ATTACHED TO THE TAXPAYER'S RETURN. NO COST OR EXPENSE PAID OR INCURRED BY THE TAXPAYER SHALL BE THE BASIS FOR MORE THAN ONE COMPONENT OF THIS EXEMPTION OR ANY OTHER TAX EXEMPTION.

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

S 3. The tax law is amended by adding a new section 207-c to read as follows:

S 207-C. EXEMPTION OF BIZBOOM PROGRAM PARTICIPANTS. THIS ARTICLE SHALL NOT APPLY TO ANY BUSINESS ENTITY WHICH IS A QUALIFIED BIZBOOM PARTICIPANT AS PROVIDED BY SECTION THIRTY-SEVEN OF THIS CHAPTER.

S 4. Section 210 of the tax law is amended by adding a new subdivision 45 to read as follows:

45. BIZBOOM PROGRAM EXEMPTION. (A) ALLOWANCE OF EXEMPTION. A TAXPAYER WILL BE ALLOWED AN EXEMPTION, TO BE COMPUTED AS PROVIDED IN SECTION THIRTY-SEVEN OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) APPLICATION OF EXEMPTION. THE EXEMPTION ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF EXEMPTION ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT, ANY AMOUNT OF EXEMPTION THUS NOT DEDUCTIBLE IN SUCH TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE EXEMPTED 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.

S 5. Section 601 of the tax law is amended by adding a new subsection (j) to read as follows:

(J) BIZBOOM PROGRAM PARTICIPANTS. A QUALIFYING BUSINESS ENTITY, PARTICIPATING IN THE BIZBOOM PROGRAM PURSUANT TO ARTICLE TWENTY OF THE ECONOMIC DEVELOPMENT LAW, WHICH IS TAXABLE AS A BUSINESS ENTITY FOR FEDERAL INCOME TAX PURPOSES SHALL NOT BE SUBJECT TO TAX UNDER THIS ARTICLE; SUBJECT TO THE LIMITATION AS PROVIDED FOR BY SECTION THIRTY-SEVEN OF THIS CHAPTER.

S 6. Section 606 of the tax law is amended by adding a new subsection (uu) to read as follows:

(UU) BIZBOOM PROGRAM PARTICIPANTS. CREDITS ALLOWABLE UNDER THIS SECTION THAT A TAXPAYER IS ELIGIBLE FOR THAT RELATE TO THE BUSINESS WILL BE REDUCED BY ONE HUNDRED PERCENT IN THE FIRST YEAR OF OPERATION, FIFTY PERCENT IN THE SECOND YEAR OF OPERATION, AND TWENTY-FIVE PERCENT IN THE THIRD YEAR OF OPERATION.

S 7. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 39 to read as follows:

(39) BUSINESS INCOME, TO THE EXTENT INCLUDIBLE IN GROSS INCOME FOR FEDERAL INCOME TAX PURPOSES, IF THE TAXPAYER IS AUTHORIZED UNDER THE BIZBOOM PROGRAM; ONE HUNDRED PERCENT OF BUSINESS INCOME WILL BE SUBTRACTED FROM FEDERALLY ADJUSTED GROSS INCOME IN THE FIRST YEAR, FIFTY PERCENT IN THE SECOND YEAR, AND TWENTY-FIVE PERCENT IN THE THIRD YEAR.

S 8. Subsection (c) of section 615 of the tax law is amended by adding a new paragraph 9 to read as follows:

(9) THE AMOUNT OF ANY FEDERAL DEDUCTION FOR ANY BUSINESS RELATED EXPENSE FOR A TAXPAYER AUTHORIZED UNDER THE BIZBOOM PROGRAM WILL BE

REDUCED BY ONE HUNDRED PERCENT IN THE FIRST YEAR, FIFTY PERCENT IN THE SECOND YEAR, AND TWENTY-FIVE PERCENT IN THE THIRD YEAR.

S 9. Notwithstanding any other provision of law, rule or regulation, any and all application fees related to the creation of a business entity shall be reduced by fifty percent.

S 10. This act shall take effect January 1, 2013.