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

1261

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. KOLB, GIGLIO, BARCLAY, CORWIN -- Multi-Sponsored by -- M. of A. AMEDORE, BURLING, BUTLER, CALHOUN, CONTE, CROUCH, DUPREY, HAWLEY, JORDAN, P. LOPEZ, J. MILLER, MOLINARO, OAKS, RAIA, SALADINO, SAYWARD, TEDISCO, THIELE, TOBACCO -- read once and referred to the Committee on Economic Development, Job Creation, Commerce and Industry

AN ACT to amend the economic development law and the tax law, in relation to establishing the manufacturing jobs retention incentive program; and providing for the repeal of certain provisions upon expiration thereof

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

Section 1. This act shall be known and may be cited as the "manufacturing jobs retention incentive program".

S 2. Legislative findings and intent. The legislature finds and determines that historically manufacturing firms have helped to build our state. Today, manufacturing jobs are an essential part of the state's economy. Accordingly, the state should offer programs that support this important sector of the state economy. The purpose of this legislation is to establish a tax incentive program that would provide tax credits to manufacturing firms that retain current employment levels in the manufacturing sector over a specified period of time.

S 3. The economic development law is amended by adding a new article 4-D to read as follows:

ARTICLE 4-D

MANUFACTURING JOBS RETENTION INCENTIVE PROGRAM

SECTION 148. DEFINITIONS.

148-A. MANUFACTURING JOBS RETENTION INCENTIVE PROGRAM.

148-B. SPECIAL PROVISIONS RELATING TO CERTIFIED MANUFACTURERS.

148-C. REPORTING.

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

LBD05152-01-1

S 148. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING WORDS AND TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS THE CONTENT SHALL INDICATE ANOTHER OR DIFFERENT MEANING OR INTENT:

1. "PROGRAM" SHALL MEAN THE MANUFACTURING JOBS RETENTION INCENTIVE PROGRAM ESTABLISHED PURSUANT TO THIS ARTICLE.

2. "MANUFACTURING FIRM" SHALL MEAN AN ENTERPRISE ENGAGED IN THE BUSINESS OF PRODUCTION OF GOODS AND PRODUCTS FROM RAW MATERIALS.

3. "MJRI" SHALL MEAN MANUFACTURING JOBS RETENTION INCENTIVE.

S 148-A. MANUFACTURING JOBS RETENTION INCENTIVE PROGRAM. 1. THERE IS HEREBY CREATED A MANUFACTURING JOBS RETENTION INCENTIVE PROGRAM WITHIN THE DEPARTMENT TO PROVIDE TECHNICAL AND FINANCIAL ASSISTANCE IN THE FORM OF TAX INCENTIVES TO MANUFACTURING FIRMS THAT RETAIN THEIR CURRENT LEVELS OF EMPLOYMENT OVER A PERIOD OF TEN YEARS.

2. THE COMMISSIONER SHALL DETERMINE ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE PROGRAM, PROVIDED, HOWEVER, THAT SUCH REQUIREMENTS INCLUDE THE FOLLOWING:

(A) AN APPLICANT SHALL HAVE MAINTAINED OFFICES WITHIN THE STATE FOR AT LEAST FIVE YEARS PRIOR TO APPLICATION FOR PARTICIPATION IN THE PROGRAM;

(B) AN APPLICANT MAY NOT PARTICIPATE IN THE PROGRAM IF DESIGNATED AS A CERTIFIED BUSINESS LOCATED IN AN EMPIRE ZONE CREATED PURSUANT TO ARTICLE EIGHTEEN-B OF THE GENERAL MUNICIPAL LAW;

(C) AN APPLICANT THAT HAS PREVIOUSLY PARTICIPATED IN THE PROGRAM MAY REAPPLY FOR PARTICIPATION IN THE PROGRAM, PROVIDED THAT IF AN APPLICANT HAS HAD THEIR PARTICIPATION IN THE PROGRAM TERMINATED FOR FAILURE TO MEET THE RETENTION REQUIREMENTS THE APPLICANT MAY NOT REAPPLY FOR A PERIOD OF FIVE YEARS; AND

(D) AN APPLICANT MUST EMPLOY AT LEAST TEN EMPLOYEES.

3. APPLICATIONS FOR PARTICIPATION IN THE MANUFACTURING JOBS RETENTION INCENTIVE PROGRAM SHALL BE IN THE FORM AND CONTAIN SUCH INFORMATION, EXHIBITS AND SUPPORTING DATA AS THE COMMISSIONER MAY PRESCRIBE.

4. THE COMMISSIONER SHALL REVIEW ALL APPLICATIONS FOR PARTICIPATION IN THE PROGRAM FOR ELIGIBILITY AND SHALL REGISTER THE EMPLOYMENT LEVELS OF ELIGIBLE APPLICANTS. EACH YEAR, EACH REGISTERED APPLICANT SHALL SUBMIT TO THE COMMISSIONER AN ANNUAL REGISTRATION STATEMENT, TOGETHER WITH SUCH INFORMATION, EXHIBITS AND SUPPORTING DATA AS THE COMMISSIONER MAY REQUIRE. THE COMMISSIONER SHALL REVIEW THE REGISTERED APPLICANT'S FILE FOR CONTINUED ELIGIBILITY FOR THE TAX INCENTIVES. IF THE REGISTERED APPLICANT HAS MAINTAINED ITS INITIAL LEVELS OF EMPLOYMENT, THE COMMISSIONER SHALL PROVIDE A CERTIFICATE FOR THE TAXABLE YEARS THAT THE APPLICANT IS ELIGIBLE FOR THE TAX CREDITS PURSUANT TO THIS ARTICLE.

S 148-B. SPECIAL PROVISIONS RELATING TO CERTIFIED MANUFACTURERS. 1. DURING THE CERTIFICATION PERIOD, THE PARTICIPATING MANUFACTURING FIRM SHALL RECEIVE THE FOLLOWING TAX CREDITS:

(A) FOR THE MJRI PROPERTY TAX CREDIT, THE TAX CREDIT SHALL BE COMPUTED PURSUANT TO SECTION TWENTY-FOUR-A OF THE TAX LAW;

(B) FOR THE MJRI WAGE CREDIT, THE TAX CREDIT SHALL BE COMPUTED PURSUANT TO SECTION TWENTY-FOUR-B OF THE TAX LAW; AND

(C) FOR THE MJRI ENERGY CREDIT, THE TAX CREDIT SHALL BE COMPUTED PURSUANT TO SECTION TWENTY-FOUR-C OF THE TAX LAW.

2. AN APPLICANT SHALL RECEIVE TWENTY-FIVE PERCENT OF THE AVAILABLE CREDITS FOR EACH OF THE FIRST FIVE YEARS OF PARTICIPATION, FIFTY PERCENT OF THE AVAILABLE CREDITS FOR THE NEXT THREE YEARS AND ONE HUNDRED PERCENT OF THE AVAILABLE CREDITS FOR THE FINAL TWO YEARS OF PARTICIPATION. PARTICIPANTS MUST QUALIFY IN EVERY YEAR OF THE PROGRAM TO RECEIVE CREDITS.

S 148-C. REPORTING. THE COMMISSIONER SHALL, ON OR BEFORE SEPTEMBER FIRST, TWO THOUSAND TWELVE, AND ANNUALLY THEREAFTER, 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 THE ASSEMBLY ON THE OPERATION AND ACCOMPLISHMENTS OF THE PROGRAM PROVIDED FOR PURSUANT TO THIS ARTICLE.

S 4. The tax law is amended by adding three new sections 24-a, 24-b and 24-c to read as follows:

S 24-A. MJRI PROPERTY TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHICH HAS RECEIVED AN MJRI CERTIFICATE FOR THE TAXABLE YEAR, AND IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (D) OF THIS SECTION, TO BE COMPUTED AS HEREINAFTER SPECIFIED.

(B) DEFINITION. THE TERM "ELIGIBLE REAL PROPERTY TAXES" SHALL MEAN TAXES IMPOSED ON REAL PROPERTY WHICH HAS BEEN CERTIFIED AS MJRI PROPERTY PURSUANT TO ARTICLE FOUR-D OF THE ECONOMIC DEVELOPMENT LAW. IN ADDITION, THE TERM "ELIGIBLE REAL PROPERTY TAXES" INCLUDES PAYMENTS IN LIEU OF TAXES MADE BY THE TAXPAYER TO THE STATE, A MUNICIPAL CORPORATION OR A PUBLIC BENEFIT CORPORATION PURSUANT TO A WRITTEN AGREEMENT ENTERED INTO BY THE TAXPAYER AND THE STATE, MUNICIPAL CORPORATION OR PUBLIC BENEFIT CORPORATION.

(C) APPLICATION OF THE CREDIT. THE AMOUNT OF THE CREDIT SHALL EQUAL THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP) OF TEN PERCENT AND THE ELIGIBLE REAL PROPERTY TAXES.

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

(1) ARTICLE 9-A: SECTION 210: SUBDIVISION 43,

(2) ARTICLE 22: SECTION 606: SUBSECTION (SS).

S 24-B. MJRI WAGE CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHICH HAS RECEIVED AN MJRI CERTIFICATE FOR THE TAXABLE YEAR, AND IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (D) OF THIS SECTION, TO BE COMPUTED AS HEREINAFTER SPECIFIED.

(B) DEFINITION. THE TERM "ELIGIBLE WAGES" SHALL MEAN GROSS WAGES PAID TO EMPLOYEES WHO HAVE BEEN CERTIFIED AS MJRI EMPLOYEES PURSUANT TO ARTICLE FOUR-D OF THE ECONOMIC DEVELOPMENT LAW.

(C) APPLICATION OF THE CREDIT. THE AMOUNT OF THE CREDIT SHALL EQUAL THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP) OF ONE PERCENT AND THE ELIGIBLE WAGES.

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

(1) ARTICLE 9-A: SECTION 210: SUBDIVISION 44,

(2) ARTICLE 22: SECTION 606: SUBSECTION (TT).

S 24-C. MJRI ENERGY CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER WHICH HAS RECEIVED AN MJRI CERTIFICATE FOR THE TAXABLE YEAR, AND IS SUBJECT TO TAX UNDER ARTICLE NINE-A OR TWENTY-TWO OF THIS CHAPTER SHALL BE ALLOWED A CREDIT AGAINST SUCH TAX, PURSUANT TO THE PROVISIONS REFERENCED IN SUBDIVISION (E) OF THIS SECTION, TO BE COMPUTED AS HEREINAFTER SPECIFIED.

(B) DEFINITION. THE TERM "ELIGIBLE ENERGY COSTS" SHALL MEAN THE COST OF ELECTRICITY, NATURAL GAS, OR ANY OTHER ENERGY PRODUCT OR SERVICE WHICH THE TAXPAYER HAS USED AS PART OF THE OPERATION OF AN MJRI CERTIFIED FACILITY PURSUANT TO ARTICLE FOUR-D OF THE ECONOMIC DEVELOPMENT LAW.

(C) THE LIMITATION SHALL BE THE PRODUCT OF FIFTY DOLLARS AND THE NUMBER OF EMPLOYEES CERTIFIED AS MJRI EMPLOYEES PURSUANT TO ARTICLE FOUR-D OF THE ECONOMIC DEVELOPMENT LAW.

(D) APPLICATION OF THE CREDIT. THE AMOUNT OF THE CREDIT SHALL EQUAL THE PRODUCT (OR PRO RATA SHARE OF THE PRODUCT, IN THE CASE OF A MEMBER OF A PARTNERSHIP) OF ONE HUNDRED PERCENT AND THE ELIGIBLE ENERGY COSTS.

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

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

(2) ARTICLE 22: SECTION 606: SUBSECTION (UU).

S 5. Section 210 of the tax law is amended by adding three new subdivisions 43, 44 and 45 to read as follows:

43. MJRI PROPERTY TAX CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION TWENTY-ONE, AS ADDED BY CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) CARRYOVERS. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL 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. PROVIDED, HOWEVER, IF THE AMOUNT OF THIS CREDIT ALLOWABLE UNDER THIS SECTION FOR ANY TAXABLE YEAR REDUCES TAX TO SUCH AMOUNT, ANY AMOUNT OF THE CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

44. MJRI WAGE CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION TWENTY-ONE, AS ADDED BY CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) CARRYOVERS. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL 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. PROVIDED, HOWEVER, IF THE AMOUNT OF THIS CREDIT ALLOWABLE UNDER THIS SECTION FOR ANY TAXABLE YEAR REDUCES TAX TO SUCH AMOUNT, ANY AMOUNT OF THE CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

45. MJRI ENERGY CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION TWENTY-ONE, AS ADDED BY CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

(B) CARRYOVERS. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL 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. PROVIDED, HOWEVER, IF THE AMOUNT OF THIS CREDIT ALLOWABLE UNDER THIS SECTION FOR ANY TAXABLE YEAR REDUCES TAX TO SUCH AMOUNT, ANY AMOUNT OF THE CREDIT NOT DEDUCTIBLE IN SUCH TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS AND MAY BE DEDUCTED FROM THE TAXPAYER'S TAX FOR SUCH YEAR OR YEARS.

S 6. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding three new clauses (xxxii), (xxxiii) and (xxxiv) to read as follows:

(XXXII) MJRI PROPERTY TAX CREDIT UNDER SUBSECTION (SS)	AMOUNT OF MJRI PROPERTY TAX CREDIT UNDER SUBDIVISION FORTY-THREE OF SECTION TWO

	HUNDRED TEN
(XXXIII) MJRI WAGE CREDIT UNDER SUBSECTION (TT)	AMOUNT OF MJRI WAGE CREDIT UNDER SUBDIVISION FORTY-FOUR OF SECTION TWO HUNDRED TEN
(XXXIV) MJRI ENERGY CREDIT UNDER SUBSECTION (UU)	AMOUNT OF MJRI ENERGY CREDIT UNDER SUBDIVISION FORTY-FIVE OF SECTION TWO HUNDRED TEN

S 7. Section 606 of the tax law is amended by adding three new subsections (ss), (tt) and (uu) to read as follows:

(SS) MJRI PROPERTY TAX CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION TWENTY-ONE, AS ADDED BY CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

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

(TT) MJRI WAGE CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION TWENTY-ONE, AS ADDED BY CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

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

(UU) MJRI ENERGY CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN SECTION TWENTY-ONE, AS ADDED BY CHAPTER SIX HUNDRED EIGHTY-SIX OF THE LAWS OF TWO THOUSAND THREE, OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS ARTICLE.

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

S 8. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to taxable years beginning on or after January 1, 2012 and before January 1, 2021; provided, however, that the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made on or before such date; and provided, further that the MJRI property tax credit under subsection (ss) of section 606 of the tax law contained in section seven of this act shall expire on December 31, 2012.