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

7387--B

2013-2014 Regular Sessions

I N A S S E M B L Y

May 14, 2013

Introduced by M. of A. GABRYSZAK, GUNTHER -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the tax law, in relation to the creation of the workers with disabilities tax credit program

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

Section 1. The labor law is amended by adding a new section 25-b to read as follows:

S 25-B. POWER TO ADMINISTER THE WORKERS WITH DISABILITIES TAX CREDIT PROGRAM. (A) THE COMMISSIONER IS AUTHORIZED TO ESTABLISH AND ADMINISTER THE WORKERS WITH DISABILITIES TAX CREDIT PROGRAM TO PROVIDE TAX INCENTIVES TO EMPLOYERS FOR EMPLOYING INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES. THERE WILL BE FIVE DISTINCT POOLS OF TAX INCENTIVES. PROGRAM ONE WILL COVER TAX INCENTIVES ALLOCATED FOR TWO THOUSAND FOURTEEN. PROGRAM TWO WILL COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND FIFTEEN TO BE USED IN TWO THOUSAND FIFTEEN AND TWO THOUSAND SIXTEEN. PROGRAM THREE WILL COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND SIXTEEN TO BE USED IN TWO THOUSAND SIXTEEN AND TWO THOUSAND SEVENTEEN. PROGRAM FOUR WILL COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND SEVENTEEN TO BE USED IN TWO THOUSAND SEVENTEEN AND TWO THOUSAND EIGHTEEN. PROGRAM FIVE WILL COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND EIGHTEEN TO BE USED IN TWO THOUSAND EIGHTEEN AND TWO THOUSAND NINETEEN. THE COMMISSIONER IS AUTHORIZED TO ALLOCATE UP TO SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM ONE, SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM TWO, SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM THREE, AND SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM FOUR, AND SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM FIVE.

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

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(B) DEFINITIONS. (1) THE TERM "QUALIFIED EMPLOYER" MEANS AN EMPLOYER THAT HAS BEEN CERTIFIED BY THE COMMISSIONER TO PARTICIPATE IN THE WORKERS WITH DISABILITIES TAX CREDIT PROGRAM AND THAT EMPLOYS ONE OR MORE QUALIFIED EMPLOYEES.

(2) THE TERM "QUALIFIED EMPLOYEE" MEANS AN INDIVIDUAL:

(I) WHO IS DEEMED TO HAVE A DEVELOPMENTAL DISABILITY, AS THAT TERM IS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL HYGIENE LAW AND WHO IS CERTIFIED BY THE EDUCATION DEPARTMENT OR THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES:

(A) AS A PERSON WITH A DISABILITY WHICH CONSTITUTES OR RESULTS IN A SUBSTANTIAL HANDICAP TO EMPLOYMENT; AND

(B) AS A PERSON HAVING COMPLETED OR AS RECEIVING SERVICES UNDER AN INDIVIDUALIZED WRITTEN REHABILITATION PLAN APPROVED BY THE EDUCATION DEPARTMENT OR OTHER STATE AGENCY RESPONSIBLE FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SUCH INDIVIDUAL; AND

(II) WHO IS UNEMPLOYED PRIOR TO BEING HIRED BY THE QUALIFIED EMPLOYER BUT IS NOT RESTRICTED IN HIS OR HER EMPLOYMENT UNDER A FEDERAL OR STATE LAW, RULE OR REGULATION; AND

(III) WHO WILL BE WORKING FOR THE QUALIFIED EMPLOYER IN A FULL-TIME OR PART-TIME POSITION THAT PAYS WAGES THAT ARE EQUIVALENT TO THE WAGES PAID FOR SIMILAR JOBS, WITH APPROPRIATE ADJUSTMENTS FOR EXPERIENCE AND TRAINING, AND FOR WHICH NO OTHER EMPLOYEE HAS BEEN TERMINATED, OR WHERE THE EMPLOYER HAS NOT OTHERWISE REDUCED ITS WORKFORCE BY INVOLUNTARY TERMINATIONS WITH THE INTENTION OF FILLING THE VACANCY BY CREATING A NEW HIRE.

(C) A QUALIFIED EMPLOYER SHALL BE ENTITLED TO A TAX CREDIT EQUAL TO (1) FIVE HUNDRED DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE EMPLOYER EMPLOYS IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK OR TWO HUNDRED FIFTY DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE EMPLOYER EMPLOYS IN A PART-TIME JOB OF AT LEAST FIFTEEN HOURS PER WEEK, AND (2) ONE THOUSAND DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK OR FIVE HUNDRED DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A PART-TIME JOB OF AT LEAST FIFTEEN HOURS PER WEEK. THE TAX CREDITS SHALL BE CLAIMED BY THE QUALIFIED EMPLOYER AS SPECIFIED IN SUBDIVISION FORTY-EIGHT OF SECTION TWO HUNDRED TEN AND SUBSECTION (XX) OF SECTION SIX HUNDRED SIX OF THE TAX LAW.

(D) TO PARTICIPATE IN THE DEVELOPMENTALLY DISABLED WORKS TAX CREDIT PROGRAM, AN EMPLOYER MUST SUBMIT AN APPLICATION (IN A FORM PRESCRIBED BY THE COMMISSIONER) TO THE COMMISSIONER NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND FOURTEEN FOR PROGRAM ONE, AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN BUT NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND FIFTEEN FOR PROGRAM TWO, AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN BUT NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND SIXTEEN FOR PROGRAM THREE, AFTER JANUARY FIRST, TWO THOUSAND SEVENTEEN BUT NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND SEVENTEEN FOR PROGRAM FOUR, AND AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN BUT NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND EIGHTEEN FOR PROGRAM FIVE. THE QUALIFIED EMPLOYEES MUST START THEIR EMPLOYMENT ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN FOR PROGRAM ONE, ON OR AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND FIFTEEN FOR PROGRAM TWO, ON OR AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND SIXTEEN FOR PROGRAM THREE, ON OR AFTER JANUARY FIRST, TWO THOU-

SAND SEVENTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN FOR PROGRAM FOUR, AND ON OR AFTER JANUARY FIRST, TWO THOUSAND EIGHTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHTEEN FOR PROGRAM FIVE. THE COMMISSIONER SHALL ESTABLISH GUIDELINES AND CRITERIA THAT SPECIFY REQUIREMENTS FOR EMPLOYERS TO PARTICIPATE IN THE PROGRAM INCLUDING CRITERIA FOR CERTIFYING QUALIFIED EMPLOYEES. ANY REGULATIONS THAT THE COMMISSIONER DETERMINES ARE NECESSARY MAY BE ADOPTED ON AN EMERGENCY BASIS NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION TWO HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT. SUCH REQUIREMENTS MAY INCLUDE THE TYPES OF INDUSTRIES THAT THE EMPLOYERS ARE ENGAGED IN. THE COMMISSIONER MAY GIVE PREFERENCE TO EMPLOYERS THAT ARE ENGAGED IN DEMAND OCCUPATIONS OR INDUSTRIES, OR IN REGIONAL GROWTH SECTORS, SUCH AS CLEAN ENERGY, HEALTHCARE, ADVANCED MANUFACTURING AND CONSERVATION. IN ADDITION, THE COMMISSIONER SHALL GIVE PREFERENCE TO EMPLOYERS WHO OFFER ADVANCEMENT AND EMPLOYEE BENEFIT PACKAGES TO THE QUALIFIED INDIVIDUALS.

(E) IF, AFTER REVIEWING THE APPLICATION SUBMITTED BY AN EMPLOYER, THE COMMISSIONER DETERMINES THAT SUCH EMPLOYER IS ELIGIBLE TO PARTICIPATE IN THE WORKERS WITH DISABILITIES TAX CREDIT PROGRAM, THE COMMISSIONER SHALL ISSUE THE EMPLOYER A CERTIFICATE OF ELIGIBILITY THAT ESTABLISHES THE EMPLOYER AS A QUALIFIED EMPLOYER. THE CERTIFICATE OF ELIGIBILITY SHALL SPECIFY THE MAXIMUM AMOUNT OF WORKERS WITH DISABILITIES TAX CREDIT THAT THE EMPLOYER WILL BE ALLOWED TO CLAIM.

S 2. Section 210 of the tax law is amended by adding a new subdivision 48 to read as follows:

48. WORKERS WITH DISABILITIES TAX CREDIT. (A) A TAXPAYER THAT HAS BEEN CERTIFIED BY THE COMMISSIONER OF LABOR AS A QUALIFIED EMPLOYER PURSUANT TO SECTION TWENTY-FIVE-B OF THE LABOR LAW SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO (I) FIVE HUNDRED DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE EMPLOYER EMPLOYS IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK OR TWO HUNDRED FIFTY DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE EMPLOYER EMPLOYS IN A PART-TIME JOB OF AT LEAST FIFTEEN HOURS PER WEEK, AND (II) ONE THOUSAND DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK OR FIVE HUNDRED DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A PART-TIME JOB OF AT LEAST FIFTEEN HOURS PER WEEK. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "QUALIFIED EMPLOYEE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION (B) OF SECTION TWENTY-FIVE-B OF THE LABOR LAW. THE PORTION OF THE CREDIT DESCRIBED IN THIS PARAGRAPH SHALL BE ALLOWED FOR THE TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN.

(B) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR THAT YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO THAT AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN THAT 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, NO INTEREST WILL BE PAID THEREON.

(C) THE TAXPAYER MAY BE REQUIRED TO ATTACH TO ITS TAX RETURN ITS CERTIFICATE OF ELIGIBILITY ISSUED BY THE COMMISSIONER OF LABOR PURSUANT TO SECTION TWENTY-FIVE-B OF THE LABOR LAW. IN NO EVENT SHALL THE TAXPAYER BE ALLOWED A CREDIT GREATER THAN THE AMOUNT OF THE CREDIT LISTED ON

THE CERTIFICATE OF ELIGIBILITY. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, THE COMMISSIONER AND THE COMMISSIONER'S DESIGNEES MAY RELEASE THE NAMES AND ADDRESSES OF ANY TAXPAYER CLAIMING THIS CREDIT AND THE AMOUNT OF THE CREDIT EARNED BY THE TAXPAYER. PROVIDED, HOWEVER, IF A TAXPAYER CLAIMS THIS CREDIT BECAUSE IT IS A MEMBER OF A LIMITED LIABILITY COMPANY OR A PARTNER IN A PARTNERSHIP, ONLY THE AMOUNT OF CREDIT EARNED BY THE ENTITY AND NOT THE AMOUNT OF CREDIT CLAIMED BY THE TAXPAYER MAY BE RELEASED.

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

(XX) WORKERS WITH DISABILITIES TAX CREDIT. (1) A TAXPAYER THAT HAS BEEN CERTIFIED BY THE COMMISSIONER OF LABOR AS A QUALIFIED EMPLOYER PURSUANT TO SECTION TWENTY-FIVE-B OF THE LABOR LAW SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO (A) FIVE HUNDRED DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE EMPLOYER EMPLOYS IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK OR TWO HUNDRED FIFTY DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE EMPLOYER EMPLOYS IN A PART-TIME JOB OF AT LEAST FIFTEEN HOURS PER WEEK, AND (B) ONE THOUSAND DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK OR FIVE HUNDRED DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A PART-TIME JOB OF AT LEAST FIFTEEN HOURS PER WEEK. A TAXPAYER THAT IS A PARTNER IN A PARTNERSHIP, MEMBER OF A LIMITED LIABILITY COMPANY OR SHAREHOLDER IN AN S CORPORATION THAT HAS BEEN CERTIFIED BY THE COMMISSIONER OF LABOR AS A QUALIFIED EMPLOYER PURSUANT TO SECTION TWENTY-FIVE-B OF THE LABOR LAW SHALL BE ALLOWED ITS PRO RATA SHARE OF THE CREDIT EARNED BY THE PARTNERSHIP, LIMITED LIABILITY COMPANY OR S CORPORATION. FOR PURPOSES OF THIS SUBSECTION, THE TERM "QUALIFIED EMPLOYEE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION (B) OF SECTION TWENTY-FIVE-B OF THE LABOR LAW. THE PORTION OF THE CREDIT DESCRIBED IN THIS PARAGRAPH SHALL BE ALLOWED FOR THE TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN.

(2) IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION EXCEEDS THE TAXPAYER'S TAX FOR THE TAXABLE YEAR, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN THAT TAXABLE YEAR WILL 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, NO INTEREST WILL BE PAID THEREON.

(3) THE TAXPAYER MAY BE REQUIRED TO ATTACH TO ITS TAX RETURN ITS CERTIFICATE OF ELIGIBILITY ISSUED BY THE COMMISSIONER OF LABOR PURSUANT TO SECTION TWENTY-FIVE-B OF THE LABOR LAW. IN NO EVENT SHALL THE TAXPAYER BE ALLOWED A CREDIT GREATER THAN THE AMOUNT OF THE CREDIT LISTED ON THE CERTIFICATE OF ELIGIBILITY. NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, THE COMMISSIONER AND THE COMMISSIONER'S DESIGNEES MAY RELEASE THE NAMES AND ADDRESSES OF ANY TAXPAYER CLAIMING THIS CREDIT AND THE AMOUNT OF THE CREDIT EARNED BY THE TAXPAYER. PROVIDED, HOWEVER, IF A TAXPAYER CLAIMS THIS CREDIT BECAUSE IT IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP, OR A SHAREHOLDER IN A SUBCHAPTER S CORPORATION, ONLY THE AMOUNT OF CREDIT EARNED BY THE ENTITY AND NOT THE AMOUNT OF CREDIT CLAIMED BY THE TAXPAYER MAY BE RELEASED.

S 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xxxvii) to read as follows:

(XXXVII) WORKERS WITH DISABILITIES TAX CREDIT UNDER SUBSECTION (XX)	AMOUNT OF CREDIT UNDER SUBDIVISION FORTY-EIGHT OF SECTION TWO HUNDRED TEN

S 5. This act shall take effect immediately.