

4946--C

2013-2014 Regular Sessions

I N S E N A T E

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Introduced by Sens. RANZENHOFER, GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, 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:

1 Section 1. The labor law is amended by adding a new section 25-b to
2 read as follows:
3 S 25-B. POWER TO ADMINISTER THE WORKERS WITH DISABILITIES TAX CREDIT
4 PROGRAM. (A) THE COMMISSIONER IS AUTHORIZED TO ESTABLISH AND ADMINISTER
5 THE WORKERS WITH DISABILITIES TAX CREDIT PROGRAM TO PROVIDE TAX INCEN-
6 TIVES TO EMPLOYERS FOR EMPLOYING INDIVIDUALS WITH DEVELOPMENTAL DISABIL-
7 ITIES. THERE WILL BE FIVE DISTINCT POOLS OF TAX INCENTIVES. PROGRAM ONE
8 WILL COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND FOURTEEN TO BE USED
9 IN TWO THOUSAND FOURTEEN AND TWO THOUSAND FIFTEEN. PROGRAM TWO WILL
10 COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND FIFTEEN TO BE USED IN TWO
11 THOUSAND FIFTEEN AND TWO THOUSAND SIXTEEN. PROGRAM THREE WILL COVER TAX
12 INCENTIVES ALLOCATED IN TWO THOUSAND SIXTEEN TO BE USED IN TWO THOUSAND
13 SIXTEEN AND TWO THOUSAND SEVENTEEN. PROGRAM FOUR WILL COVER TAX INCEN-
14 TIVES ALLOCATED IN TWO THOUSAND SEVENTEEN TO BE USED IN TWO THOUSAND
15 SEVENTEEN AND TWO THOUSAND EIGHTEEN. PROGRAM FIVE WILL COVER TAX INCEN-
16 TIVES ALLOCATED IN TWO THOUSAND EIGHTEEN TO BE USED IN TWO THOUSAND
17 EIGHTEEN AND TWO THOUSAND NINETEEN. THE COMMISSIONER IS AUTHORIZED TO
18 ALLOCATE UP TO SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM ONE, SIX

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

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1 MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM TWO, SIX MILLION DOLLARS OF
2 TAX CREDITS UNDER PROGRAM THREE, AND SIX MILLION DOLLARS OF TAX CREDITS
3 UNDER PROGRAM FOUR, AND SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM
4 FIVE.

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

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

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

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

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

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

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

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

44 (D) TO PARTICIPATE IN THE DEVELOPMENTALLY DISABLED WORKS TAX CREDIT
45 PROGRAM, AN EMPLOYER MUST SUBMIT AN APPLICATION (IN A FORM PRESCRIBED BY
46 THE COMMISSIONER) TO THE COMMISSIONER NO LATER THAN NOVEMBER THIRTIETH,
47 TWO THOUSAND FOURTEEN FOR PROGRAM ONE, AFTER JANUARY FIRST, TWO THOUSAND
48 FIFTEEN BUT NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND FIFTEEN FOR
49 PROGRAM TWO, AFTER JANUARY FIRST, TWO THOUSAND SIXTEEN BUT NO LATER THAN
50 NOVEMBER THIRTIETH, TWO THOUSAND SIXTEEN FOR PROGRAM THREE, AFTER JANU-
51 ARY FIRST, TWO THOUSAND SEVENTEEN BUT NO LATER THAN NOVEMBER THIRTIETH,
52 TWO THOUSAND SEVENTEEN FOR PROGRAM FOUR, AND AFTER JANUARY FIRST, TWO
53 THOUSAND EIGHTEEN BUT NO LATER THAN NOVEMBER THIRTIETH, TWO THOUSAND
54 EIGHTEEN FOR PROGRAM FIVE. THE QUALIFIED EMPLOYEES MUST START THEIR
55 EMPLOYMENT ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN BUT NO LATER
56 THAN DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN FOR PROGRAM ONE, ON OR

1 AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN BUT NO LATER THAN DECEMBER
2 THIRTY-FIRST, TWO THOUSAND FIFTEEN FOR PROGRAM TWO, ON OR AFTER JANUARY
3 FIRST, TWO THOUSAND SIXTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO
4 THOUSAND SIXTEEN FOR PROGRAM THREE, ON OR AFTER JANUARY FIRST, TWO THOU-
5 SAND SEVENTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND
6 SEVENTEEN FOR PROGRAM FOUR, AND ON OR AFTER JANUARY FIRST, TWO THOUSAND
7 EIGHTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHTEEN
8 FOR PROGRAM FIVE. THE COMMISSIONER SHALL ESTABLISH GUIDELINES AND CRITE-
9 RIA THAT SPECIFY REQUIREMENTS FOR EMPLOYERS TO PARTICIPATE IN THE
10 PROGRAM INCLUDING CRITERIA FOR CERTIFYING QUALIFIED EMPLOYEES. ANY REGU-
11 LATIONS THAT THE COMMISSIONER DETERMINES ARE NECESSARY MAY BE ADOPTED ON
12 AN EMERGENCY BASIS NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION
13 TWO HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT. SUCH REQUIRE-
14 MENTS MAY INCLUDE THE TYPES OF INDUSTRIES THAT THE EMPLOYERS ARE ENGAGED
15 IN. THE COMMISSIONER MAY GIVE PREFERENCE TO EMPLOYERS THAT ARE ENGAGED
16 IN DEMAND OCCUPATIONS OR INDUSTRIES, OR IN REGIONAL GROWTH SECTORS, SUCH
17 AS CLEAN ENERGY, HEALTHCARE, ADVANCED MANUFACTURING AND CONSERVATION. IN
18 ADDITION, THE COMMISSIONER SHALL GIVE PREFERENCE TO EMPLOYERS WHO OFFER
19 ADVANCEMENT AND EMPLOYEE BENEFIT PACKAGES TO THE QUALIFIED INDIVIDUALS.

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

27 S 2. Section 210 of the tax law is amended by adding a new subdivision
28 48 to read as follows:

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

48 (B) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY
49 NOT REDUCE THE TAX DUE FOR THAT YEAR TO LESS THAN THE AMOUNT PRESCRIBED
50 IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE
51 AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR
52 REDUCES THE TAX TO THAT AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN
53 THAT TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDIT-
54 ED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
55 EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, NO INTEREST WILL BE PAID
56 THEREON.

1 (C) THE TAXPAYER MAY BE REQUIRED TO ATTACH TO ITS TAX RETURN ITS
2 CERTIFICATE OF ELIGIBILITY ISSUED BY THE COMMISSIONER OF LABOR PURSUANT
3 TO SECTION TWENTY-FIVE-B OF THE LABOR LAW. IN NO EVENT SHALL THE TAXPAY-
4 ER BE ALLOWED A CREDIT GREATER THAN THE AMOUNT OF THE CREDIT LISTED ON
5 THE CERTIFICATE OF ELIGIBILITY. NOTWITHSTANDING ANY PROVISION OF THIS
6 CHAPTER TO THE CONTRARY, THE COMMISSIONER AND THE COMMISSIONER'S DESIG-
7 NEES MAY RELEASE THE NAMES AND ADDRESSES OF ANY TAXPAYER CLAIMING THIS
8 CREDIT AND THE AMOUNT OF THE CREDIT EARNED BY THE TAXPAYER. PROVIDED,
9 HOWEVER, IF A TAXPAYER CLAIMS THIS CREDIT BECAUSE IT IS A MEMBER OF A
10 LIMITED LIABILITY COMPANY OR A PARTNER IN A PARTNERSHIP, ONLY THE AMOUNT
11 OF CREDIT EARNED BY THE ENTITY AND NOT THE AMOUNT OF CREDIT CLAIMED BY
12 THE TAXPAYER MAY BE RELEASED.

13 S 3. Subsections (yy) and (zz) of section 606 of the tax law as
14 relettered by section 5 of part H of chapter 1 of the laws of 2003, are
15 relettered subsections (yyy) and (zzz) and a new subsection (xx) is
16 added to read as follows:

17 (XX) WORKERS WITH DISABILITIES TAX CREDIT. (1) A TAXPAYER THAT HAS
18 BEEN CERTIFIED BY THE COMMISSIONER OF LABOR AS A QUALIFIED EMPLOYER
19 PURSUANT TO SECTION TWENTY-FIVE-B OF THE LABOR LAW SHALL BE ALLOWED A
20 CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO (A) FIVE HUNDRED
21 DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE
22 EMPLOYER EMPLOYS IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK OR
23 TWO HUNDRED FIFTY DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALI-
24 FIED EMPLOYEE THE EMPLOYER EMPLOYS IN A PART-TIME JOB OF AT LEAST
25 FIFTEEN HOURS PER WEEK, AND (B) ONE THOUSAND DOLLARS FOR EACH QUALIFIED
26 EMPLOYEE WHO IS EMPLOYED FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE
27 QUALIFIED EMPLOYER IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK
28 OR FIVE HUNDRED DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR
29 AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A
30 PART-TIME JOB OF AT LEAST FIFTEEN HOURS PER WEEK. A TAXPAYER THAT IS A
31 PARTNER IN A PARTNERSHIP, MEMBER OF A LIMITED LIABILITY COMPANY OR
32 SHAREHOLDER IN AN S CORPORATION THAT HAS BEEN CERTIFIED BY THE COMMIS-
33 SIONER OF LABOR AS A QUALIFIED EMPLOYER PURSUANT TO SECTION
34 TWENTY-FIVE-B OF THE LABOR LAW SHALL BE ALLOWED ITS PRO RATA SHARE OF
35 THE CREDIT EARNED BY THE PARTNERSHIP, LIMITED LIABILITY COMPANY OR S
36 CORPORATION. FOR PURPOSES OF THIS SUBSECTION, THE TERM "QUALIFIED
37 EMPLOYEE" SHALL HAVE THE SAME MEANING AS SET FORTH IN SUBDIVISION (B) OF
38 SECTION TWENTY-FIVE-B OF THE LABOR LAW. THE PORTION OF THE CREDIT
39 DESCRIBED IN THIS PARAGRAPH SHALL BE ALLOWED FOR THE TAXABLE YEAR BEGIN-
40 NING ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN.

41 (2) IF THE AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBSECTION EXCEEDS
42 THE TAXPAYER'S TAX FOR THE TAXABLE YEAR, ANY AMOUNT OF CREDIT NOT DEDUC-
43 TIBLE IN THAT TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO
44 BE CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX
45 HUNDRED EIGHTY-SIX OF THIS ARTICLE. PROVIDED, HOWEVER, NO INTEREST WILL
46 BE PAID THEREON.

47 (3) THE TAXPAYER MAY BE REQUIRED TO ATTACH TO ITS TAX RETURN ITS
48 CERTIFICATE OF ELIGIBILITY ISSUED BY THE COMMISSIONER OF LABOR PURSUANT
49 TO SECTION TWENTY-FIVE-B OF THE LABOR LAW. IN NO EVENT SHALL THE TAXPAY-
50 ER BE ALLOWED A CREDIT GREATER THAN THE AMOUNT OF THE CREDIT LISTED ON
51 THE CERTIFICATE OF ELIGIBILITY. NOTWITHSTANDING ANY PROVISION OF THIS
52 CHAPTER TO THE CONTRARY, THE COMMISSIONER AND THE COMMISSIONER'S DESIG-
53 NEES MAY RELEASE THE NAMES AND ADDRESSES OF ANY TAXPAYER CLAIMING THIS
54 CREDIT AND THE AMOUNT OF THE CREDIT EARNED BY THE TAXPAYER. PROVIDED,
55 HOWEVER, IF A TAXPAYER CLAIMS THIS CREDIT BECAUSE IT IS A MEMBER OF A
56 LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP, OR A SHAREHOLDER

1 IN A SUBCHAPTER S CORPORATION, ONLY THE AMOUNT OF CREDIT EARNED BY THE
2 ENTITY AND NOT THE AMOUNT OF CREDIT CLAIMED BY THE TAXPAYER MAY BE
3 RELEASED.

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

| | |
|--------------------------------------|----------------------------|
| 7 (XXXVII) WORKERS WITH DISABILITIES | AMOUNT OF |
| 8 TAX CREDIT UNDER SUBSECTION (XX) | CREDIT UNDER SUBDIVISION |
| 9 | FORTY-EIGHT OF SECTION TWO |
| 10 | HUNDRED TEN |

11 S 5. This act shall take effect immediately.