

4946--D

2013-2014 Regular Sessions

I N S E N A T E

May 1, 2013

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 -- 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

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

LBD10299-11-4

1 EIGHTEEN AND TWO THOUSAND NINETEEN. THE COMMISSIONER IS AUTHORIZED TO
2 ALLOCATE UP TO SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM ONE, SIX
3 MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM TWO, SIX MILLION DOLLARS OF
4 TAX CREDITS UNDER PROGRAM THREE, AND SIX MILLION DOLLARS OF TAX CREDITS
5 UNDER PROGRAM FOUR, AND SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM
6 FIVE.

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

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

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

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

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

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

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

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

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

1 EMPLOYMENT ON OR AFTER JANUARY FIRST, TWO THOUSAND FOURTEEN BUT NO LATER
2 THAN DECEMBER THIRTY-FIRST, TWO THOUSAND FOURTEEN FOR PROGRAM ONE, ON OR
3 AFTER JANUARY FIRST, TWO THOUSAND FIFTEEN BUT NO LATER THAN DECEMBER
4 THIRTY-FIRST, TWO THOUSAND FIFTEEN FOR PROGRAM TWO, ON OR AFTER JANUARY
5 FIRST, TWO THOUSAND SIXTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO
6 THOUSAND SIXTEEN FOR PROGRAM THREE, ON OR AFTER JANUARY FIRST, TWO THOU-
7 SAND SEVENTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND
8 SEVENTEEN FOR PROGRAM FOUR, AND ON OR AFTER JANUARY FIRST, TWO THOUSAND
9 EIGHTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND EIGHTEEN
10 FOR PROGRAM FIVE. THE COMMISSIONER SHALL ESTABLISH GUIDELINES AND CRITE-
11 RIA THAT SPECIFY REQUIREMENTS FOR EMPLOYERS TO PARTICIPATE IN THE
12 PROGRAM INCLUDING CRITERIA FOR CERTIFYING QUALIFIED EMPLOYEES. ANY REGU-
13 LATIONS THAT THE COMMISSIONER DETERMINES ARE NECESSARY MAY BE ADOPTED ON
14 AN EMERGENCY BASIS NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION
15 TWO HUNDRED TWO OF THE STATE ADMINISTRATIVE PROCEDURE ACT. SUCH REQUIRE-
16 MENTS MAY INCLUDE THE TYPES OF INDUSTRIES THAT THE EMPLOYERS ARE ENGAGED
17 IN. THE COMMISSIONER MAY GIVE PREFERENCE TO EMPLOYERS THAT ARE ENGAGED
18 IN DEMAND OCCUPATIONS OR INDUSTRIES, OR IN REGIONAL GROWTH SECTORS, SUCH
19 AS CLEAN ENERGY, HEALTHCARE, ADVANCED MANUFACTURING AND CONSERVATION. IN
20 ADDITION, THE COMMISSIONER MAY GIVE PREFERENCE TO EMPLOYERS WHO OFFER
21 ADVANCEMENT, INCLUDING BUT NOT LIMITED TO INCREASED HOURS OF EMPLOYMENT,
22 OR INCREASED WAGES, AND EMPLOYEE BENEFIT PACKAGES TO THE QUALIFIED INDIV-
23 IDUALS.

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

31 S 2. Section 210 of the tax law is amended by adding a new subdivision
32 48 to read as follows:

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

52 (B) THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR MAY
53 NOT REDUCE THE TAX DUE FOR THAT YEAR TO LESS THAN THE AMOUNT PRESCRIBED
54 IN PARAGRAPH (D) OF SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE
55 AMOUNT OF THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR
56 REDUCES THE TAX TO THAT AMOUNT, ANY AMOUNT OF CREDIT NOT DEDUCTIBLE IN

1 THAT TAXABLE YEAR WILL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDIT-
2 ED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
3 EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, NO INTEREST WILL BE PAID
4 THEREON.

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

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

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

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

51 (3) THE TAXPAYER MAY BE REQUIRED TO ATTACH TO ITS TAX RETURN ITS
52 CERTIFICATE OF ELIGIBILITY ISSUED BY THE COMMISSIONER OF LABOR PURSUANT
53 TO SECTION TWENTY-FIVE-B OF THE LABOR LAW. IN NO EVENT SHALL THE TAXPAY-
54 ER BE ALLOWED A CREDIT GREATER THAN THE AMOUNT OF THE CREDIT LISTED ON
55 THE CERTIFICATE OF ELIGIBILITY. NOTWITHSTANDING ANY PROVISION OF THIS
56 CHAPTER TO THE CONTRARY, THE COMMISSIONER AND THE COMMISSIONER'S DESIG-

1 NEES MAY RELEASE THE NAMES AND ADDRESSES OF ANY TAXPAYER CLAIMING THIS
2 CREDIT AND THE AMOUNT OF THE CREDIT EARNED BY THE TAXPAYER. PROVIDED,
3 HOWEVER, IF A TAXPAYER CLAIMS THIS CREDIT BECAUSE IT IS A MEMBER OF A
4 LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP, OR A SHAREHOLDER
5 IN A SUBCHAPTER S CORPORATION, ONLY THE AMOUNT OF CREDIT EARNED BY THE
6 ENTITY AND NOT THE AMOUNT OF CREDIT CLAIMED BY THE TAXPAYER MAY BE
7 RELEASED.

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

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

15 S 5. This act shall take effect immediately.