

8492--B

I N   A S S E M B L Y

January 17, 2014

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Introduced by M. of A. LENTOL -- read once and referred to the Committee on Ways and Means -- 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:

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  
19    MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM TWO, SIX MILLION DOLLARS OF  
20    TAX CREDITS UNDER PROGRAM THREE, AND SIX MILLION DOLLARS OF TAX CREDITS  
21    UNDER PROGRAM FOUR, AND SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM  
22    FIVE.

23    (B) DEFINITIONS. (1) THE TERM "QUALIFIED EMPLOYER" MEANS AN EMPLOYER  
24    THAT HAS BEEN CERTIFIED BY THE COMMISSIONER TO PARTICIPATE IN THE WORK-

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

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ERS 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) TWO THOUSAND DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT LEAST SIX MONTHS BY THE QUALIFIED EMPLOYER IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK AND TWO 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, AND (2) ONE THOUSAND DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR AT LEAST SIX MONTHS BY THE QUALIFIED EMPLOYER IN A PART-TIME JOB OF AT LEAST FIFTEEN HOURS PER WEEK AND ONE THOUSAND 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 THOUSAND SEVENTEEN BUT NO LATER THAN DECEMBER THIRTY-FIRST, TWO THOUSAND SEVENTEEN FOR PROGRAM FOUR, AND ON OR AFTER JANUARY FIRST, TWO THOUSAND

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

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

23 S 2. Section 210 of the tax law is amended by adding a new subdivision  
24 48 to read as follows:

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

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

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

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

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

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

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

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

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

|                                      |                            |
|--------------------------------------|----------------------------|
| 4 (XXXVII) WORKERS WITH DISABILITIES | AMOUNT OF                  |
| 5 TAX CREDIT UNDER SUBSECTION (XX)   | CREDIT UNDER SUBDIVISION   |
| 6                                    | FORTY-EIGHT OF SECTION TWO |
| 7                                    | HUNDRED TEN                |

8 S 5. This act shall take effect immediately.