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

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I N A S S E M B L Y

May 27, 2014

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

AN ACT to amend the tax law, in relation to establishing business franchise tax and personal income tax credit for the amount of certain taxes and surcharges paid by certain taxpayers that are small businesses

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

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 28 to read as follows:

28. WIRELESS COMMUNICATIONS SALES TAX AND SURCHARGE CREDIT. (A) ALLOWANCE OF CREDIT. A TAXPAYER THAT IS A SMALL BUSINESS WITH A PERMANENT BUSINESS ADDRESS WITHIN THE STATE, FOR WHICH ITS MOBILE TELECOMMUNICATIONS SERVICE, AS DEFINED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS CHAPTER, IS THE PRIMARY MEANS OF CONTACTING SUCH SMALL BUSINESS, AND SUCH SMALL BUSINESS DOES NOT HAVE LANDLINE TELEPHONE SERVICE SUBJECT TO THE PROVISIONS OF ARTICLE FIVE OF THE PUBLIC SERVICE LAW, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE SUM OF (I) THE EXCISE TAXES ON TELECOMMUNICATIONS SERVICES PAID BY THE TAXPAYER FOR MOBILE TELECOMMUNICATIONS SERVICE DURING THE TAXABLE YEAR, PURSUANT TO SECTION ONE HUNDRED EIGHTY-SIX-E OF THIS CHAPTER, (II) THE PUBLIC SAFETY COMMUNICATIONS SURCHARGES PAID BY THE TAXPAYER AS A WIRELESS COMMUNICATIONS CUSTOMER DURING THE TAXABLE YEAR, PURSUANT TO SECTION ONE HUNDRED EIGHTY-SIX-F OF THIS CHAPTER, AND (III) THE SALES AND COMPENSATING USE TAXES PAID BY THE TAXPAYER AS A WIRELESS COMMUNICATIONS CUSTOMER DURING THE TAXABLE YEAR, PURSUANT TO SECTIONS ELEVEN HUNDRED FIVE, ELEVEN HUNDRED NINE AND/OR ELEVEN HUNDRED TEN OF THIS CHAPTER, TO THE EXTENT SUCH TAXES AND SURCHARGES ARE RELATED TO THE TAXPAYER'S SMALL BUSINESS.

(B) DEFINITION. THE TERM "SMALL BUSINESS" SHALL, FOR THE PURPOSES OF THIS SUBDIVISION, MEAN A BUSINESS WHICH IS RESIDENT IN THIS STATE, INDEPENDENTLY OWNED AND OPERATED, NOT DOMINANT IN ITS FIELD AND EMPLOYS TWENTY-FIVE OR LESS PERSONS.

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

LBD15327-02-4

(C) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR SHALL NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS THAN THE AMOUNT PRESCRIBED IN PARAGRAPH (D) OF SUBDIVISION ONE OF SECTION TWO HUNDRED TEN OF THIS ARTICLE. HOWEVER, IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO SUCH AMOUNT OR IF THE TAXPAYER OTHERWISE PAYS TAX BASED ON THE FIXED DOLLAR MINIMUM AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH 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, THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER NOTWITHSTANDING, NO INTEREST WILL BE PAID THEREON.

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

(XLI) WIRELESS COMMUNICATIONS SALES TAX AND SURCHARGE CREDIT UNDER SUBSECTION (CCC)	AMOUNT OF CREDIT UNDER SUBDIVISION TWENTY-EIGHT OF SECTION TWO HUNDRED TEN-B

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

(CCC) WIRELESS COMMUNICATIONS SALES TAX AND SURCHARGE CREDIT. (1) ALLOWANCE OF CREDIT. A TAXPAYER THAT OWNS A SMALL BUSINESS WITH A PERMANENT BUSINESS ADDRESS WITHIN THE STATE, FOR WHICH ITS MOBILE TELECOMMUNICATIONS SERVICE AS DEFINED IN PARAGRAPH TWENTY-FOUR OF SUBDIVISION (B) OF SECTION ELEVEN HUNDRED ONE OF THIS CHAPTER, IS THE PRIMARY MEANS OF CONTACTING SUCH SMALL BUSINESS, AND SUCH SMALL BUSINESS DOES NOT HAVE LANDLINE TELEPHONE SERVICE SUBJECT TO THE PROVISIONS OF ARTICLE FIVE OF THE PUBLIC SERVICE LAW, SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE EQUAL TO THE SUM OF (A) THE EXCISE TAXES ON TELECOMMUNICATIONS SERVICES PAID BY THE TAXPAYER FOR MOBILE TELECOMMUNICATIONS SERVICE DURING THE TAXABLE YEAR, PURSUANT TO SECTION ONE HUNDRED EIGHTY-SIX-E OF THIS CHAPTER, (B) THE PUBLIC SAFETY COMMUNICATIONS SURCHARGES PAID BY THE TAXPAYER AS A WIRELESS COMMUNICATIONS CUSTOMER DURING THE TAXABLE YEAR, PURSUANT TO SECTION ONE HUNDRED EIGHTY-SIX-F OF THIS CHAPTER, AND (C) THE SALES AND COMPENSATING USE TAXES PAID BY THE TAXPAYER AS A WIRELESS COMMUNICATIONS CUSTOMER DURING THE TAXABLE YEAR, PURSUANT TO SECTIONS ELEVEN HUNDRED FIVE, ELEVEN HUNDRED NINE AND/OR ELEVEN HUNDRED TEN OF THIS CHAPTER, TO THE EXTENT SUCH TAXES AND SURCHARGES ARE RELATED TO THE TAXPAYER'S SMALL BUSINESS.

(2) DEFINITION. THE TERM "SMALL BUSINESS" MEANS A BUSINESS WHICH IS RESIDENT IN THE STATE, INDEPENDENTLY OWNED AND OPERATED, NOT DOMINANT IN ITS FIELD AND EMPLOYS TWENTY-FIVE OR LESS PERSONS.

(3) APPLICATION OF CREDIT. IF THE AMOUNT OF THE CREDIT 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 4. This act shall take effect on the same date and in the same manner as part A of chapter 59 of the laws of 2014, takes effect.