

4434

2013-2014 Regular Sessions

I N S E N A T E

April 1, 2013

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to creating a telecommunication industry jobs tax credit; to amend the labor law, in relation to the New York call center jobs act; and to amend the public service law, in relation to utility service call centers

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

1 Section 1. The tax law is amended by adding a new section 38 to read
2 as follows:
3 S 38. TELECOMMUNICATION INDUSTRY JOBS TAX CREDIT. (A) ALLOWANCE OF
4 CREDIT. AN ELIGIBLE TAXPAYER SHALL BE ALLOWED A CREDIT, OF TWENTY
5 PERCENT OF THE QUALIFIED WAGES. THE TAXPAYER MAY CLAIM THIS CREDIT FOR
6 EACH NEW EMPLOYEE FOR A PERIOD OF THREE CONSECUTIVE YEARS OF EMPLOYMENT.
7 (B) DEFINITIONS. (1) "ELIGIBLE TAXPAYER" MEANS EVERY TELECOMMUNICATION
8 AND CABLE CORPORATION, THEIR SUBSIDIARIES OR THEIR INDEPENDENT CONTRAC-
9 TORS WHICH FURNISH TRADITIONAL LANDLINE TELEPHONE SERVICE, FIBER OPTIC
10 SERVICE, VOICE OVER INTERNET PROTOCOL (VOIP), CABLE OR INTERNET
11 SERVICES, THAT IS AN "EMPLOYER" AS DEFINED IN PARAGRAPH (A) OF SUBDIVI-
12 SION TWO OF SECTION SEVEN HUNDRED SEVENTY OF THE LABOR LAW.
13 (2) "CALL CENTER" SHALL MEAN A FACILITY OR OTHER OPERATION WHEREBY
14 EMPLOYEES RECEIVE TELEPHONE CALLS OR OTHER ELECTRONIC COMMUNICATION FOR
15 THE PURPOSE OF PROVIDING CUSTOMER ASSISTANCE OR OTHER SERVICES DESIG-
16 NATED IN PARAGRAPH THREE OF THIS SUBDIVISION.
17 (3) "CALL CENTER JOB" SHALL MEAN THE CREATION OF OR RELOCATION OF A
18 NEW CALL CENTER SERVICE ASSISTANCE JOB IN THIS STATE INCLUDING, BUT NOT
19 LIMITED TO OPERATOR SERVICES, REPAIR SERVICES, DIRECTORY ASSISTANCE
20 BUREAUS, RESIDENTIAL AND BUSINESS CUSTOMER ASSISTANCE, AND CALL
21 COMPLETION SERVICES FOR THE FOLLOWING TASKS:

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

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1 (A) EXPLAINING COMPANY RATES, REGULATIONS, POLICIES, PROCEDURES,
2 EQUIPMENT, CUSTOMER SERVICE OPTIONS AND COMMON PRACTICES;

3 (B) DETERMINING CUSTOMER FINANCIAL RESPONSIBILITY, REQUIRED DEPOSITS,
4 BILLING RATES, OR HANDLING PAYMENT AND OTHER CREDIT ARRANGEMENTS SUCH AS
5 OBTAINING DEPOSITS, FINANCIAL STATEMENTS AND PAYMENT PLANS;

6 (C) TAKING REQUESTS FOR NEW OR ADDITIONAL SERVICES, INCLUDING, BUT NOT
7 LIMITED TO, EMERGENCY SERVICE, COMPLETING ASSISTANCE WITH DIALING, USING
8 CALLING CARDS, CONNECTING COLLECT CALLS, BUSY LINE VERIFICATION OR RELAY
9 CENTERS FOR THE HEARING IMPAIRED, PROVIDING REQUESTED LOCAL AND NATIONAL
10 TELEPHONE NUMBERS, REVERSE NUMBER SEARCHES AND TAKING REQUESTS FOR AND
11 COMPLETING THE PUBLISHING AND NON-PUBLISHING OF A TELEPHONE NUMBER, AND
12 PROVIDING ASSISTANCE TO PAYPHONE CUSTOMERS; AND

13 (D) PREPARING INSTALLATION AND REPAIR SERVICE ORDERS AND OBTAINING
14 ACCESS TO SUBSCRIBER'S PREMISES.

15 (4) "QUALIFIED WAGES" SHALL MEAN GROSS WAGES PAID TO ANY NEW EMPLOYEE
16 DURING THE TAXABLE YEAR WHICH MEETS THE DEFINITION OF A CALL CENTER JOB.

17 (5) "NEW EMPLOYEE" SHALL MEAN ANY FULL TIME EMPLOYEE THAT IS HIRED BY
18 THE TAXPAYER AFTER JULY FIRST, TWO THOUSAND THIRTEEN THAT CAUSES THE
19 TOTAL NUMBER OF EMPLOYEES TO INCREASE ABOVE BASE EMPLOYMENT OR CREDIT
20 EMPLOYMENT, WHICHEVER IS HIGHER, WHO IS DOING THE SAME OR SUBSTANTIALLY
21 SIMILAR WORK, AND AT THE PAY RATE AND BENEFIT LEVEL OF OTHER CALL CENTER
22 JOBS IN THE GEOGRAPHIC AREA WITHIN THIS STATE OR WITHIN THE CORPORATION
23 AND ITS SUBSIDIARIES IN THIS STATE.

24 (6) "BASE YEAR" SHALL MEAN CALENDAR YEAR TWO THOUSAND TWELVE.

25 (7) "BASE EMPLOYMENT" SHALL MEAN THE AVERAGE NUMBER OF FULL TIME
26 EMPLOYEES OR FULL TIME EQUIVALENT EMPLOYEES DURING THE BASE YEAR. FOR A
27 NEW BUSINESS, BASE EMPLOYMENT SHALL BEGIN AT ZERO.

28 (8) "CREDIT EMPLOYMENT" SHALL MEAN BASE EMPLOYMENT PLUS THE NUMBER OF
29 NEW EMPLOYEES FOR WHICH A CREDIT IS EARNED FOR THE PRIOR TAX YEARS.

30 (C) CROSS-REFERENCES. FOR APPLICATION OF THE CREDIT PROVIDED IN THIS
31 SECTION, SEE THE FOLLOWING PROVISIONS OF THIS CHAPTER:

32 (1) ARTICLE 9: SECTION 187-S

33 (2) ARTICLE 9-A: SECTION 210: SUBDIVISION 46

34 S 2. Section 210 of the tax law is amended by adding a new subdivision
35 46 to read as follows:

36 46. TELECOMMUNICATION INDUSTRY JOBS TAX CREDIT. (A) ALLOWANCE OF CRED-
37 IT. A TAXPAYER WILL BE ALLOWED A CREDIT, TO BE COMPUTED AS PROVIDED IN
38 SECTION THIRTY-EIGHT OF THIS CHAPTER, AGAINST THE TAX IMPOSED BY THIS
39 ARTICLE.

40 (B) APPLICATION OF CREDIT. THE CREDIT ALLOWED UNDER THIS SUBDIVISION
41 FOR ANY TAXABLE YEAR MAY NOT REDUCE THE TAX DUE FOR SUCH YEAR TO LESS
42 THAN THE HIGHER OF THE AMOUNTS PRESCRIBED IN PARAGRAPHS (C) AND (D) OF
43 SUBDIVISION ONE OF THIS SECTION. HOWEVER, IF THE AMOUNT OF CREDIT
44 ALLOWED UNDER THIS SUBDIVISION FOR ANY TAXABLE YEAR REDUCES THE TAX TO
45 SUCH AMOUNT, ANY EXCESS AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH
46 TAXABLE YEAR MAY BE CARRIED OVER TO THE FOLLOWING YEAR OR YEARS, FOR A
47 MAXIMUM OF TEN CONSECUTIVE YEARS.

48 S 3. The tax law is amended by adding a new section 187-s to read as
49 follows:

50 S 187-S. TELECOMMUNICATION INDUSTRY JOBS TAX CREDIT. 1. ALLOWANCE OF
51 CREDIT. A TAXPAYER, SUBJECT TO THE TAX IMPOSED BY THIS ARTICLE, WHICH IS
52 A TELECOMMUNICATION OR CABLE COMPANY SHALL BE ALLOWED A CREDIT, TO BE
53 COMPUTED AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER, AGAINST
54 THE TAX IMPOSED BY SECTION ONE HUNDRED EIGHTY-SIX-A OF THIS ARTICLE.

55 2. APPLICATION OF CREDIT. IF THE AMOUNT OF CREDIT ALLOWED UNDER THIS
56 SECTION FOR ANY TAXABLE YEAR EXCEEDS THE TAXPAYER'S TAX FOR SUCH YEAR,

ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE MAY BE CARRIED FORWARD TO THE FOLLOWING YEAR OR YEARS, FOR A MAXIMUM OF FIVE CONSECUTIVE YEARS.

S 4. The labor law is amended by adding a new article 21 to read as follows:

ARTICLE 21

NEW YORK CALL CENTER JOBS ACT

SECTION 770. DEFINITIONS.

771. LIST OF RELOCATED CALL CENTERS.

772. GRANTS, GUARANTEED LOANS AND TAX BENEFITS.

773. PROCUREMENT CONTRACTS.

774. STATE BENEFITS FOR WORKERS.

775. NO PRIVATE RIGHT OF ACTION.

S 770. DEFINITIONS. AS USED IN THIS ARTICLE:

1. THE TERM "CALL CENTER" MEANS A FACILITY OR OTHER OPERATION WHEREBY EMPLOYEES RECEIVE TELEPHONE CALLS OR OTHER ELECTRONIC COMMUNICATION FOR THE PURPOSE OF PROVIDING CUSTOMER ASSISTANCE OR OTHER SERVICE DESIGNATED IN PARAGRAPH THREE OF SUBDIVISION (B) OF SECTION THIRTY-EIGHT OF THE TAX LAW.

2. (A) THE TERM "EMPLOYER" MEANS EVERY TELECOMMUNICATIONS AND CABLE CORPORATION, AND THEIR SUBSIDIARIES OR INDEPENDENT CONTRACTORS, THAT IS AN ELIGIBLE TAXPAYER, AS DEFINED IN PARAGRAPH ONE OF SUBDIVISION (B) OF SECTION THIRTY-EIGHT OF THE TAX LAW, AND THAT EMPLOYS FIFTY OR MORE EMPLOYEES, EXCLUDING PART-TIME EMPLOYEES; OR FIFTY OR MORE EMPLOYEES THAT IN THE AGGREGATE WORK AT LEAST FIFTEEN HUNDRED HOURS PER WEEK, EXCLUDING OVERTIME HOURS, FOR THE PURPOSE OF STAFFING A CALL CENTER.

(B) THE TERM "PART-TIME EMPLOYEE" MEANS AN EMPLOYEE WHO IS EMPLOYED FOR AN AVERAGE OF FEWER THAN TWENTY HOURS PER WEEK OR WHO HAS BEEN EMPLOYED FOR FEWER THAN SIX OF THE TWELVE MONTHS PRECEDING THE DATE ON WHICH NOTICE IS REQUIRED UNDER THIS ARTICLE.

S 771. LIST OF RELOCATED CALL CENTERS. 1. A CALL CENTER EMPLOYER THAT INTENDS TO RELOCATE A CALL CENTER, OR ONE OR MORE FACILITIES OR OPERATING UNITS WITHIN A CALL CENTER COMPRISING THIRTY PERCENT OR MORE OF THE CALL CENTER'S, OR OPERATING UNIT'S, TOTAL VOLUME WHEN MEASURED AGAINST THE PREVIOUS TWELVE MONTH AVERAGE CALL VOLUME OF OPERATIONS OR SUBSTANTIALLY SIMILAR OPERATIONS, FROM THIS STATE TO A FOREIGN COUNTRY SHALL NOTIFY THE COMMISSIONER AT LEAST ONE HUNDRED DAYS BEFORE SUCH RELOCATION.

2. A CALL CENTER EMPLOYER THAT VIOLATES SUBDIVISION ONE OF THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY NOT TO EXCEED TEN THOUSAND DOLLARS FOR EACH DAY OF SUCH VIOLATION, EXCEPT THAT THE COMMISSIONER MAY REDUCE SUCH AMOUNT FOR JUST CAUSE SHOWN.

3. THE COMMISSIONER SHALL COMPILE A SEMIANNUAL LIST OF ALL CALL CENTER EMPLOYERS THAT RELOCATE A CALL CENTER, OR ONE OR MORE FACILITIES OR OPERATING UNITS WITHIN A CALL CENTER COMPRISING THIRTY PERCENT OR MORE OF THE CALL CENTER'S TOTAL VOLUME OF OPERATIONS, FROM THIS STATE TO A FOREIGN COUNTRY.

4. THE COMMISSIONER SHALL DISTRIBUTE THE LIST REQUIRED IN THIS SECTION TO ALL RELEVANT AGENCIES IN THE STATE THAT MAY NEED SUCH LIST.

S 772. GRANTS, GUARANTEED LOANS AND TAX BENEFITS. 1. EXCEPT AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CALL CENTER EMPLOYER THAT APPEARS ON THE LIST DESCRIBED IN SECTION SEVEN HUNDRED SEVENTY-ONE OF THIS ARTICLE SHALL BE INELIGIBLE FOR ANY DIRECT OR INDIRECT STATE GRANTS, STATE GUARANTEED LOANS, TAX BENEFITS OR OTHER FINANCIAL GOVERNMENTAL SUPPORT FOR A PERIOD OF FIVE YEARS FROM THE DATE SUCH LIST IS PUBLISHED.

2. EXCEPT AS PROVIDED IN SUBDIVISION THREE OF THIS SECTION AND NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CALL CENTER EMPLOYER THAT APPEARS ON THE LIST DESCRIBED IN SECTION SEVEN HUNDRED SEVENTY-ONE OF THIS ARTICLE SHALL REMIT THE UNAMORTIZED VALUE OF ANY GRANT OR GUARANTEED LOANS, OR ANY TAX BENEFITS OR OTHER GOVERNMENTAL SUPPORT IT HAS PREVIOUSLY RECEIVED TO THE COMMISSIONER IN THE PREVIOUS FIVE YEARS. THE PROVISIONS OF THIS SUBDIVISION SHALL APPLY TO GRANTS, LOANS, TAX BENEFITS AND FINANCIAL GOVERNMENTAL ASSISTANCE THAT IS RECEIVED ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

3. THE COMMISSIONER, IN CONSULTATION WITH THE APPROPRIATE AGENCY PROVIDING A LOAN OR GRANT, MAY WAIVE THE REQUIREMENT PROVIDED UNDER SUBDIVISION TWO OF THIS SECTION IF THE EMPLOYER DEMONSTRATES THAT SUCH REQUIREMENT WOULD:

- (A) THREATEN STATE OR NATIONAL SECURITY;
- (B) RESULT IN SUBSTANTIAL JOB LOSS IN THE STATE;
- (C) VIOLATE THE CONTRACTUAL OBLIGATIONS OF THE STATE OR OF THE CALL CENTER EMPLOYER; OR
- (D) HARM THE ENVIRONMENT.

S 773. PROCUREMENT CONTRACTS. THE HEAD OF EACH STATE AGENCY SHALL ENSURE THAT ALL STATE-BUSINESS-RELATED CALL CENTER AND CUSTOMER SERVICE WORK BE PERFORMED BY STATE CONTRACTORS OR OTHER AGENTS OR SUBCONTRACTORS ENTIRELY WITHIN THE STATE. STATE CONTRACTORS WHO CURRENTLY PERFORM SUCH WORK OUTSIDE THE STATE SHALL HAVE TWO YEARS FOLLOWING THE EFFECTIVE DATE OF THIS ARTICLE TO COMPLY WITH THIS SECTION; PROVIDED, THAT IF ANY SUCH CONTRACTORS WHICH PERFORM WORK OUTSIDE THIS STATE ADDS CUSTOMER SERVICE EMPLOYEES WHO WILL PERFORM WORK ON SUCH CONTRACTS, THOSE NEW EMPLOYEES SHALL IMMEDIATELY BE EMPLOYED WITHIN THE STATE.

S 774. STATE BENEFITS FOR WORKERS. NO PROVISION OF THIS ARTICLE SHALL BE CONSTRUED TO PERMIT WITHHOLDING OR DENIAL OF PAYMENTS, COMPENSATION, OR BENEFITS UNDER ANY OTHER STATE LAW, INCLUDING BUT NOT LIMITED TO STATE UNEMPLOYMENT COMPENSATION, DISABILITY PAYMENTS OR WORKER RETRAINING OR READJUSTMENT FUNDS, TO WORKERS EMPLOYED BY EMPLOYERS THAT RELOCATE TO A FOREIGN COUNTRY.

S 775. NO PRIVATE RIGHT OF ACTION. NOTHING SET FORTH IN THIS ARTICLE SHALL BE CONSTRUED AS CREATING, ESTABLISHING, OR AUTHORIZING A PRIVATE CAUSE OF ACTION BY AN AGGRIEVED PERSON AGAINST AN EMPLOYER WHO HAS VIOLATED, OR IS ALLEGED TO HAVE VIOLATED, ANY PROVISION OF THIS ARTICLE.

S 5. Section 65 of the public service law is amended by adding a new subdivision 14 to read as follows:

14. (A) EVERY TELECOMMUNICATION CORPORATION AND THEIR SUBSIDIARIES FURNISHING TRADITIONAL LANDLINE TELEPHONE SERVICE, FIBER OPTIC SERVICE, VOICE OVER INTERNET PROTOCOL (VOIP), CABLE OR INTERNET SERVICES SHALL PROVIDE CALL CENTER SERVICE ASSISTANCE INCLUDING, BUT NOT LIMITED TO OPERATOR SERVICES, DIRECTORY ASSISTANCE BUREAUS AND CALL COMPLETION SERVICES FOR THE FOLLOWING:

- (1) EXPLAINING COMPANY RATES, REGULATIONS, POLICIES, PROCEDURES, EQUIPMENT, CUSTOMER SERVICE OPTIONS AND COMMON PRACTICES;
- (2) DETERMINING CUSTOMER FINANCIAL RESPONSIBILITY, REQUIRED DEPOSITS, BILLING RATES, OR HANDLING PAYMENT AND OTHER CREDIT ARRANGEMENTS SUCH AS OBTAINING DEPOSITS, FINANCIAL STATEMENTS AND PAYMENT PLANS;
- (3) TAKING REQUESTS FOR NEW OR ADDITIONAL SERVICES, INCLUDING, BUT NOT LIMITED TO, EMERGENCY SERVICE, COMPLETING ASSISTANCE WITH DIALING, USING CALLING CARDS, CONNECTING COLLECT CALLS, BUSY LINE VERIFICATION OR RELAY CENTERS FOR THE HEARING IMPAIRED, PROVIDING REQUESTED LOCAL AND NATIONAL TELEPHONE NUMBERS, REVERSE NUMBER SEARCHES AND TAKING REQUESTS FOR AND

1 COMPLETING THE PUBLISHING AND NON-PUBLISHING OF A TELEPHONE NUMBER, AND
2 PROVIDING ASSISTANCE TO PAYPHONE CUSTOMERS; AND

3 (4) PREPARING INSTALLATION AND REPAIR SERVICE ORDERS AND OBTAINING
4 ACCESS TO SUBSCRIBER'S PREMISES.

5 (B) NO TELECOMMUNICATION CORPORATION SHALL CLOSE A CALL CENTER OR
6 OTHER FACILITY PROVIDING THE CUSTOMER ASSISTANCE SET FORTH IN PARAGRAPH
7 (A) OF THIS SUBDIVISION OR RELOCATE SUCH CUSTOMER ASSISTANCE TO ANOTHER
8 AREA OF NEW YORK STATE OR OUTSIDE OF NEW YORK STATE WITHOUT NOTICE AND
9 HEARING BEFORE THE COMMISSION.

10 (C) THIS SUBDIVISION SHALL NOT APPLY TO THE COLLECTION OF DEBT WHEREBY
11 UTILITY COMPANY POLICY SUCH DEBT IS DIRECTED TO A COLLECTION AGENCY OR
12 SIMILAR SERVICE COMPANIES.

13 S 6. This act shall take effect immediately, provided that:

14 (a) sections one, two and three of this act shall apply to taxable
15 years beginning on and after January 1, 2013; and

16 (b) sections four and five of this act shall take effect on the one
17 hundred eightieth day after this act shall have become a law.