

4946--B

2013-2014 Regular Sessions

I N   S E N A T E

May 1, 2013

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Introduced by Sen. RANZENHOFER -- 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

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 FOR TWO THOUSAND FOURTEEN. PROGRAM  
9     TWO WILL COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND FIFTEEN TO BE  
10    USED IN TWO THOUSAND FIFTEEN AND TWO THOUSAND SIXTEEN. PROGRAM THREE  
11    WILL COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND SIXTEEN TO BE USED  
12    IN TWO THOUSAND SIXTEEN AND TWO THOUSAND SEVENTEEN. PROGRAM FOUR WILL  
13    COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND SEVENTEEN TO BE USED IN  
14    TWO THOUSAND SEVENTEEN AND TWO THOUSAND EIGHTEEN. PROGRAM FIVE WILL  
15    COVER TAX INCENTIVES ALLOCATED IN TWO THOUSAND EIGHTEEN TO BE USED IN  
16    TWO THOUSAND EIGHTEEN AND TWO THOUSAND NINETEEN. THE COMMISSIONER IS  
17    AUTHORIZED TO ALLOCATE UP TO SIX MILLION DOLLARS OF TAX CREDITS UNDER  
18    PROGRAM ONE, SIX MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM TWO, SIX  
19    MILLION DOLLARS OF TAX CREDITS UNDER PROGRAM THREE, AND SIX MILLION

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

LBD10299-06-3

1 DOLLARS OF TAX CREDITS UNDER PROGRAM FOUR, AND SIX MILLION DOLLARS OF  
2 TAX CREDITS UNDER PROGRAM FIVE.

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

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

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

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

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

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

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

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

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

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

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

25 S 2. Section 210 of the tax law is amended by adding a new subdivision  
26 48 to read as follows:

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

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

55 (C) THE TAXPAYER MAY BE REQUIRED TO ATTACH TO ITS TAX RETURN ITS  
56 CERTIFICATE OF ELIGIBILITY ISSUED BY THE COMMISSIONER OF LABOR PURSUANT

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

11 S 3. Section 606 of the tax law is amended by adding a new subsection  
12 (xx) 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) FIVE HUNDRED  
17 DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALIFIED EMPLOYEE THE  
18 EMPLOYER EMPLOYS IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK OR  
19 TWO HUNDRED FIFTY DOLLARS PER MONTH FOR UP TO SIX MONTHS FOR EACH QUALI-  
20 FIED EMPLOYEE THE EMPLOYER EMPLOYS IN A PART-TIME JOB OF AT LEAST  
21 FIFTEEN HOURS PER WEEK, AND (B) ONE THOUSAND DOLLARS FOR EACH QUALIFIED  
22 EMPLOYEE WHO IS EMPLOYED FOR AT LEAST AN ADDITIONAL SIX MONTHS BY THE  
23 QUALIFIED EMPLOYER IN A FULL-TIME JOB OF AT LEAST THIRTY HOURS PER WEEK  
24 OR FIVE HUNDRED DOLLARS FOR EACH QUALIFIED EMPLOYEE WHO IS EMPLOYED FOR  
25 AT LEAST AN ADDITIONAL SIX MONTHS BY THE QUALIFIED EMPLOYER IN A  
26 PART-TIME JOB OF AT LEAST FIFTEEN HOURS PER WEEK. A TAXPAYER THAT IS A  
27 PARTNER IN A PARTNERSHIP, MEMBER OF A LIMITED LIABILITY COMPANY OR  
28 SHAREHOLDER IN AN S CORPORATION THAT HAS BEEN CERTIFIED BY THE COMMIS-  
29 SIONER OF LABOR AS A QUALIFIED EMPLOYER PURSUANT TO SECTION  
30 TWENTY-FIVE-B OF THE LABOR LAW SHALL BE ALLOWED ITS PRO RATA SHARE OF  
31 THE CREDIT EARNED BY THE PARTNERSHIP, LIMITED LIABILITY COMPANY OR S  
32 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.