

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

2375--A

2015-2016 Regular Sessions

I N A S S E M B L Y

January 16, 2015

Introduced by M. of A. LAVINE, McDONOUGH, SCHIMMINGER, SCHIMEL, OTIS, SIMANOWITZ, ZEBROWSKI, SALADINO, PERRY, RAIA, RA, GJONAJ, BENEDETTO, GUNTHER, CLARK, FAHY, ROBINSON, SKARTADOS, GRAF, HOOPER -- Multi-Sponsored by -- M. of A. CERETTO, COOK, FINCH, GOODELL, HEVESI, LALOR, PALMESANO, PEOPLES-STOKES, RIVERA, SOLAGES, THIELE -- read once and referred to the Committee on Small Business -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the economic development law and the tax law, in relation to authorizing the creation of small business tax-deferred savings accounts

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

- 1 Section 1. The economic development law is amended by adding a new
2 section 139 to read as follows:
3 S 139. SMALL BUSINESS TAX-DEFERRED SAVINGS ACCOUNTS. 1. A "SMALL
4 BUSINESS TAXPAYER" OR "SMALL BUSINESS" SHALL HAVE THE SAME MEANING AS
5 DEFINED IN SECTION ONE HUNDRED THIRTY-ONE OF THIS ARTICLE AND SHALL MEET
6 THE REQUIREMENTS OF PARAGRAPH (F) OF SUBDIVISION ONE OF SECTION TWO
7 HUNDRED TEN OF THE TAX LAW.
8 2. ANY SMALL BUSINESS SHALL BE AUTHORIZED TO ESTABLISH AND DEPOSIT
9 PROFITS INTO A SMALL BUSINESS TAX-DEFERRED SAVINGS ACCOUNT.
10 3. THE MONIES IN SUCH TAX-DEFERRED SAVINGS ACCOUNTS MAY BE DEPOSITED
11 OR WITHDRAWN TAX FREE WHEN THEY ARE EXPENDED FOR EXPANSION OF SUCH SMALL
12 BUSINESS FOR THE PURPOSE OF CREATING OR PRESERVING FULL TIME JOBS.
13 4. FOR THE PURPOSES OF THIS ACT, A QUALIFYING PURPOSE SHALL INCLUDE
14 SMALL BUSINESS TAXPAYER EXPENDITURES THAT RESULT IN THE CREATION OR
15 RETENTION OF FULL-TIME JOBS. IN ADDITION, WORKING CAPITAL USED FOR OTHER
16 ACTIVITIES, DEEMED APPROPRIATE BY THE DEPARTMENT, WHICH WILL IMPROVE THE
17 COMPETITIVENESS AND PRODUCTIVITY OF A SMALL BUSINESS AND RESULTS IN THE
18 CREATION OR RETENTION OF FULL-TIME JOBS SHALL BE CONSIDERED A QUALIFYING

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

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1 BUSINESS EXPENDITURE. QUALIFYING SMALL BUSINESS TAXPAYER EXPENDITURES
2 FOR THE PURPOSE OF THIS SECTION SHALL INCLUDE, BUT NOT BE LIMITED TO,
3 NEW CONSTRUCTION, RENOVATION OR LEASEHOLD IMPROVEMENTS, AND THE ACQUISSI-
4 TION OF LAND, BUILDINGS, MACHINERY AND EQUIPMENT.

5 5. THE MONIES ON DEPOSIT IN SUCH TAX-DEFERRED SAVINGS ACCOUNTS MAY NOT
6 EXCEED MORE THAN FIVE THOUSAND DOLLARS IN ANY TAXABLE YEAR.

7 6. ON OR BEFORE APRIL FIRST, AND ANNUALLY THEREAFTER, THE DEPARTMENT,
8 IN CONSULTATION WITH THE DEPARTMENT OF TAXATION AND FINANCE, SHALL
9 REPORT ON THE NUMBER OF SMALL BUSINESS TAXPAYERS UTILIZING THIS PROGRAM,
10 THE AVERAGE AGGREGATE AMOUNT ON DEPOSIT, THE QUALIFYING EXPENSES
11 CLAIMED, ANY QUALIFYING EXPENSES DEEMED INAPPROPRIATE AND ANY OTHER SUCH
12 DATA DEEMED NECESSARY AND APPROPRIATE BY THE DEPARTMENT.

13 S 2. Section 209 of the tax law is amended by adding a new subdivision
14 13 to read as follows:

15 13. FOR ANY TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO
16 THOUSAND SIXTEEN, ANY SMALL BUSINESS, AS SUCH TERM IS DEFINED PURSUANT
17 TO SECTION ONE HUNDRED THIRTY-NINE OF THE ECONOMIC DEVELOPMENT LAW,
18 SHALL BE EXEMPT FROM ALL STATE INCOME TAXES IMPOSED PURSUANT TO THIS
19 ARTICLE FOR ANY DEPOSIT OR WITHDRAWAL FROM A SMALL BUSINESS TAX-DEFERRED
20 SAVINGS ACCOUNT ESTABLISHED PURSUANT TO SECTION ONE HUNDRED THIRTY-NINE
21 OF THE ECONOMIC DEVELOPMENT LAW AND USED FOR THE EXPANSION OF SUCH SMALL
22 BUSINESS FOR THE PURPOSE OF CREATING OR PRESERVING FULL TIME JOBS. IF A
23 SMALL BUSINESS TAXPAYER FILES FOR AND RECEIVES AN EXEMPTION FROM THE
24 STATE INCOME TAX IMPOSED UNDER THIS SECTION PURSUANT TO THE PROVISIONS
25 OF THIS SUBDIVISION AND THE FUNDS DEPOSITED OR WITHDRAWN, OR ANY PORTION
26 THEREOF, ARE NOT EXPENDED FOR A QUALIFYING PURPOSE AS SET FORTH IN
27 SECTION ONE HUNDRED THIRTY-NINE OF THE ECONOMIC DEVELOPMENT LAW, THEN
28 THE AMOUNT OF SUCH EXEMPTION CLAIMED BY THE SMALL BUSINESS TAXPAYER
29 SHALL BE ADDED BACK TO THE AMOUNT OF STATE INCOME LIABILITY TAX IN THE
30 NEXT SUCCEEDING TAXABLE YEAR OR IN THE YEAR IN WHICH THE EXEMPTION IS
31 DISALLOWED.

32 S 3. Subsection (c) of section 612 of the tax law is amended by adding
33 a new paragraph 42 to read as follows:

34 (42) ANY DEPOSIT OR WITHDRAWAL FROM A SMALL BUSINESS TAX-DEFERRED
35 SAVINGS ACCOUNT ESTABLISHED PURSUANT TO SECTION ONE HUNDRED THIRTY-NINE
36 OF THE ECONOMIC DEVELOPMENT LAW AND USED FOR THE EXPANSION OF SUCH SMALL
37 BUSINESS FOR THE PURPOSE OF CREATING OR PRESERVING FULL TIME JOBS. IF A
38 SMALL BUSINESS TAXPAYER FILES FOR AND RECEIVES AN EXEMPTION FROM THE
39 STATE INCOME TAX IMPOSED UNDER THIS SECTION PURSUANT TO THE PROVISIONS
40 OF THIS PARAGRAPH AND THE FUNDS DEPOSITED OR WITHDRAWN, OR ANY PORTION
41 THEREOF, ARE NOT EXPENDED FOR A QUALIFYING PURPOSE AS SET FORTH IN
42 SECTION ONE HUNDRED THIRTY-NINE OF THE ECONOMIC DEVELOPMENT LAW, THEN
43 THE AMOUNT OF SUCH EXEMPTION CLAIMED BY THE SMALL BUSINESS TAXPAYER
44 SHALL BE ADDED BACK TO STATE INCOME TAX IN THE NEXT SUCCEEDING TAXABLE
45 YEAR OR IN THE YEAR IN WHICH THE EXEMPTION IS DISALLOWED.

46 S 4. The department of taxation and finance, in consultation with the
47 department of economic development, shall review and analyze all statis-
48 tical data available for such purposes of determining the economic and
49 revenue impact associated with this act. Such data shall be included in
50 an annual report that shall also include, but not be limited to, the
51 number of small business taxpayers utilizing this program, the average
52 aggregate amount on deposit, the qualifying expenses claimed, any quali-
53 fying expenses deemed inappropriate and any other such data deemed
54 necessary and appropriate by the department. Such annual report shall be
55 posted on the websites of the department of taxation and finance and the
56 department of economic development, and transmitted to the governor, the

1 temporary president of the senate, the senate minority leader, the
2 speaker of the assembly and the assembly minority leader.
3 S 5. Rules and regulations. The department of taxation and finance in
4 consultation with the department of economic development, is hereby
5 authorized to promulgate rules and regulations in accordance with the
6 state administrative procedure act that are necessary to fulfill the
7 purposes of this act. Such regulations shall include but not be limited
8 to deadlines for establishing a small business tax deferred savings
9 account, standard procedures and forms to be utilized in the program,
10 and any other such regulations deemed necessary to promote the full
11 utilization of this program. Such rules and regulations shall be
12 completed within 180 days after the effective date of this chapter.
13 S 6. This act shall take effect immediately.