

5257--A

2015-2016 Regular Sessions

I N S E N A T E

May 11, 2015

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- recommitted to the Committee on Labor in accordance with Senate Rule 6, sec. 8 -- 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 establishing a qualified transportation fringe benefits 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 article 33 to read
2 as follows:

3 ARTICLE 33

4 TRANSPORTATION BENEFITS PROGRAM

5 SECTION 960. DEFINITIONS.

6 961. TRANSPORTATION BENEFITS PROGRAM.

7 962. ADMINISTRATION AND ENFORCEMENT.

8 963. SEVERABILITY.

9 S 960. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL
10 HAVE THE FOLLOWING MEANINGS:

11 1. "COVERED EMPLOYEE" SHALL MEAN ANY PERSON WHO PERFORMED AN AVERAGE
12 OF AT LEAST TEN HOURS OF WORK PER WEEK FOR COMPENSATION FOR THE SAME
13 EMPLOYER WITHIN THE PREVIOUS CALENDAR MONTH.

14 2. "COVERED EMPLOYER" SHALL MEAN AN EMPLOYER FOR WHICH AN AVERAGE OF
15 TWENTY OR MORE PERSONS PER WEEK PERFORM WORK FOR COMPENSATION. IN DETER-
16 MINING THE NUMBER OF PERSONS PERFORMING WORK FOR AN EMPLOYER DURING A
17 GIVEN WEEK, ALL PERSONS PERFORMING WORK FOR COMPENSATION ON A FULL-TIME,
18 PART-TIME OR TEMPORARY BASIS SHALL BE COUNTED, INCLUDING PERSONS MADE
19 AVAILABLE TO WORK THROUGH THE SERVICES OF A TEMPORARY SERVICES OR STAFF-
20 ING AGENCY OR SIMILAR ENTITY. A COVERED EMPLOYER SHALL NOT INCLUDE ANY
21 GOVERNMENTAL ENTITY.

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

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1 3. "TRANSIT PASS" SHALL MEAN ANY PASS, TOKEN, FARE CARD, VOUCHER OR
2 SIMILAR ITEM ENTITLING A PERSON TO TRANSPORTATION ON PUBLIC TRANSIT
3 WITHIN THE MEANING OF SUBCLAUSE (A) OF CLAUSE FIVE OF PARAGRAPH (F) OF
4 SECTION ONE HUNDRED THIRTY-TWO OF TITLE TWENTY-SIX OF THE UNITED STATES
5 CODE.

6 4. "VANPOOL" SHALL MEAN A COMMUTER HIGHWAY VEHICLE WITHIN THE MEANING
7 OF SUBCLAUSE (B) OF CLAUSE FIVE OF PARAGRAPH (F) OF SECTION ONE HUNDRED
8 THIRTY-TWO OF TITLE TWENTY-SIX OF THE UNITED STATES CODE.

9 S 961. TRANSPORTATION BENEFITS PROGRAM. ALL COVERED EMPLOYERS SHALL
10 PROVIDE AT LEAST ONE OF THE FOLLOWING TRANSPORTATION BENEFIT PROGRAMS TO
11 COVERED EMPLOYEES:

12 1. A PRE-TAX ELECTION PROGRAM, CONSISTENT WITH PARAGRAPH (F) OF
13 SECTION ONE HUNDRED THIRTY-TWO OF TITLE TWENTY-SIX OF THE UNITED STATES
14 CODE, ALLOWING EMPLOYEES TO ELECT TO EXCLUDE FROM TAXABLE WAGES AND
15 COMPENSATION, EMPLOYEE COMMUTING COSTS INCURRED FOR TRANSIT PASSES OR
16 VANPOOL CHARGES, EXCLUDING PARKING, UP TO THE MAXIMUM LEVEL ALLOWED
17 PURSUANT TO CLAUSE TWO OF PARAGRAPH (F) OF SECTION ONE HUNDRED
18 THIRTY-TWO OF TITLE TWENTY-SIX OF THE UNITED STATES CODE;

19 2. AN EMPLOYER PAID BENEFIT PROGRAM WHEREBY THE EMPLOYER SUPPLIES A
20 TRANSIT PASS FOR A PUBLIC TRANSIT SYSTEM OF THE EMPLOYER'S CHOOSING UPON
21 REQUEST BY EACH COVERED EMPLOYEE OR REIMBURSEMENT FOR EQUIVALENT VANPOOL
22 CHARGES EQUAL IN VALUE TO THE PURCHASE PRICE OF THE APPROPRIATE BENEFIT;
23 OR

24 3. EMPLOYER PROVIDED TRANSIT FURNISHED BY THE EMPLOYER AT NO COST TO
25 THE COVERED EMPLOYEE IN A VANPOOL OR BUS, OR SIMILAR MULTI-PASSENGER
26 VEHICLE OPERATED BY OR FOR THE EMPLOYER.

27 S 962. ADMINISTRATION AND ENFORCEMENT. 1. THE DULY AUTHORIZED OFFICER
28 HAVING PREDOMINANT JURISDICTION OVER TRANSPORTATION ISSUES IN THE MUNI-
29 CIPALITY IN WHICH A TRANSPORTATION BENEFITS PROGRAM IS ADMINISTERED
30 SHALL PROMULGATE SUCH RULES AND REGULATIONS AS NECESSARY TO IMPLEMENT
31 THE PROVISIONS OF THIS ARTICLE. SUCH RULES AND REGULATIONS SHALL, TO THE
32 EXTENT CONSISTENT WITH THIS ARTICLE, CONFORM TO INTERNAL REVENUE SERVICE
33 REGULATIONS UNDER PARAGRAPH (F) OF SECTION ONE HUNDRED THIRTY-TWO OF
34 TITLE TWENTY-SIX OF THE UNITED STATES CODE.

35 2. SUCH OFFICER SHALL MAINTAIN AN EDUCATION AND ADVICE PROGRAM TO
36 ASSIST COVERED EMPLOYERS WITH MEETING THE REQUIREMENTS OF SECTION NINE
37 HUNDRED SIXTY-ONE OF THIS ARTICLE.

38 3. ANY COVERED EMPLOYER WHO FAILS TO OFFER AT LEAST ONE TRANSPORTATION
39 BENEFIT PROGRAM TO COVERED EMPLOYEES, IN THE MANNER REQUIRED BY SECTION
40 NINE HUNDRED SIXTY-ONE OF THIS ARTICLE, SHALL BE LIABLE TO THE MUNICI-
41 PALITY IN WHICH SUCH PROGRAM IS ADMINISTERED FOR A CIVIL PENALTY NOT TO
42 EXCEED ONE HUNDRED DOLLARS FOR THE FIRST VIOLATION, TWO HUNDRED DOLLARS
43 FOR THE SECOND VIOLATION WITHIN THE SAME YEAR, AND FIVE HUNDRED DOLLARS
44 FOR EACH ADDITIONAL VIOLATION WITHIN THE SAME YEAR. PENALTIES COLLECTED
45 UNDER THIS SUBDIVISION SHALL BE USED TO FUND IMPLEMENTATION AND ENFORCE-
46 MENT OF SUCH PROGRAM.

47 S 963. SEVERABILITY. IF ANY PROVISION OF THIS ARTICLE SHALL BE
48 ADJUDGED TO BE UNCONSTITUTIONAL OR INVALID, SUCH JUDGMENT SHALL NOT
49 AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE
50 CONFINED IN ITS OPERATION TO THE PROVISION DIRECTLY INVOLVED IN THE
51 CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN RENDERED.

52 S 2. Subsection (c) of section 612 of the tax law is amended by adding
53 a new paragraph 44 to read as follows:

54 (44) FOR TAXABLE YEARS BEGINNING AFTER DECEMBER THIRTY-FIRST, TWO
55 THOUSAND SEVENTEEN THE AMOUNT OF QUALIFIED TRANSPORTATION FRINGE BENE-
56 FITS INCLUDED IN FEDERAL ADJUSTED GROSS INCOME, TO THE EXTENT THAT SUCH

1 QUALIFIED TRANSPORTATION FRINGE BENEFITS WOULD HAVE BEEN EXCLUDED FROM
2 GROSS INCOME PURSUANT TO PARAGRAPH FIVE OF SUBSECTION (A) OF SECTION ONE
3 HUNDRED THIRTY-TWO OF THE INTERNAL REVENUE CODE HAD THE FLUSH SENTENCE
4 OF PARAGRAPH TWO OF SUBSECTION (F) OF SECTION ONE HUNDRED THIRTY-TWO OF
5 THE INTERNAL REVENUE CODE THAT WAS IN EFFECT ON DECEMBER THIRTY-FIRST,
6 TWO THOUSAND SEVENTEEN CONTINUED IN EFFECT AFTER DECEMBER THIRTY-FIRST,
7 TWO THOUSAND SIXTEEN; PROVIDED, HOWEVER, THAT IF SUBPARAGRAPH (A) OF
8 PARAGRAPH TWO OF SUBSECTION (F) OF SECTION ONE HUNDRED THIRTY-TWO OF THE
9 INTERNAL REVENUE CODE IS AMENDED SO THAT FOR ANY MONTH THE DOLLAR AMOUNT
10 IN EFFECT UNDER SUCH SUBPARAGRAPH (A) IS GREATER THAN THE DOLLAR AMOUNT
11 IN EFFECT UNDER SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (F) OF
12 SECTION ONE HUNDRED THIRTY-TWO OF THE INTERNAL REVENUE CODE FOR THE SAME
13 MONTH, THE FLUSH SENTENCE OF PARAGRAPH TWO THAT WAS IN EFFECT ON DECEM-
14 BER THIRTY-FIRST, TWO THOUSAND SEVENTEEN SHALL BE DEEMED TO PROVIDE THAT
15 THE DOLLAR AMOUNT IN EFFECT FOR SUBPARAGRAPH (B) SHALL BE APPLIED AS IF
16 THE DOLLAR AMOUNT THEREIN WERE THE SAME AS THE DOLLAR AMOUNT IN EFFECT
17 FOR SUCH MONTH UNDER SUBPARAGRAPH (A). NOTWITHSTANDING THE FOREGOING,
18 IF, PURSUANT TO THIS PARAGRAPH, THE AMOUNT THAT WOULD BE IN EFFECT FOR
19 ANY MONTH UNDER SUBPARAGRAPH (A) OR (B) OF PARAGRAPH TWO OF SUBSECTION
20 (F) OF SECTION ONE HUNDRED THIRTY-TWO OF THE INTERNAL REVENUE CODE IS
21 LESS THAN ONE HUNDRED SEVENTY-FIVE DOLLARS, SUBPARAGRAPHS (A) AND (B)
22 SHALL BE APPLIED AS IF THE DOLLAR AMOUNT IN EFFECT FOR SUCH MONTH UNDER
23 SUCH SUBPARAGRAPHS WAS ONE HUNDRED SEVENTY-FIVE DOLLARS.

24 S 3. This act shall take effect immediately, provided, however, that
25 section one of this act shall take effect on the one hundred twentieth
26 day after it shall have become a law; provided, further, that effective
27 immediately, the addition, amendment and/or repeal of any rule or regu-
28 lation necessary for the implementation of section one of this act on
29 its effective date is authorized and directed to be made and completed
30 on or before such effective date; provided, further, that section two of
31 this act shall apply to taxable years beginning on and after January 1,
32 2018.