

6031

2015-2016 Regular Sessions

I N A S S E M B L Y

March 11, 2015

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

AN ACT to amend the tax law, in relation to establishing small business savings accounts

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "savings accounts for a variable economy (SAVE) for small businesses
3 act".

4 S 2. The tax law is amended by adding a new section 42 to read as
5 follows:

6 S 42. SMALL BUSINESS SAVINGS ACCOUNTS. (A) GENERAL. (1) THE COMMIS-
7 SIONER SHALL ESTABLISH A PROGRAM TO ADMINISTER SMALL BUSINESS SAVINGS
8 ACCOUNTS UNDER THIS SECTION.

9 (2) THE COMMISSIONER SHALL ESTABLISH MINIMUM STANDARDS FOR SMALL BUSI-
10 NESS SAVINGS ACCOUNTS AND SHALL ESTABLISH ACCOUNTS, OR ENTER INTO AGREE-
11 MENTS THAT MEET THESE STANDARDS TO ADMINISTER SUCH ACCOUNTS. IN ESTAB-
12 LISHING SUCH STANDARDS AND MAKING SUCH AGREEMENTS THE COMMISSIONER
13 SHALL, TO THE EXTENT PRACTICABLE, SEEK TO MINIMIZE FEES, MINIMIZE RISK
14 OF LOSS OF PRINCIPAL, AND ENSURE A RANGE OF INVESTMENT RISK OPTIONS
15 AVAILABLE TO ACCOUNT BENEFICIARIES. ANY ELIGIBLE SMALL BUSINESS MAY
16 ESTABLISH A SMALL BUSINESS SAVINGS ACCOUNT WITH RESPECT TO SUCH BUSINESS
17 UNDER TERMS WHICH MEET THE REQUIREMENTS OF THIS SECTION.

18 (B) DEFINITION. FOR THE PURPOSES OF THIS SECTION, THE TERM "SMALL
19 BUSINESS SAVINGS ACCOUNT" MEANS A TAX PREFERRED SAVINGS ACCOUNT WHICH IS
20 DESIGNATED AT THE TIME OF ESTABLISHMENT OF THE PLAN AS A SMALL BUSINESS
21 SAVINGS ACCOUNT. SUCH DESIGNATION SHALL BE MADE IN SUCH MANNER AS THE
22 COMMISSIONER MAY BY REGULATION PRESCRIBE.

23 (C) CONTRIBUTIONS. (1) THERE SHALL BE ALLOWED AS A DEDUCTION AN AMOUNT
24 EQUAL TO THE CONTRIBUTIONS TO A SMALL BUSINESS SAVINGS ACCOUNT FOR THE
25 TAXABLE YEAR.

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

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1 (2) THE AGGREGATE AMOUNT OF CONTRIBUTIONS FOR ANY TAXABLE YEAR TO ALL
2 SMALL BUSINESS SAVINGS ACCOUNTS MAINTAINED FOR THE BENEFIT OF AN ELIGI-
3 BLE SMALL BUSINESS SHALL NOT EXCEED AN AMOUNT EQUAL TO TEN PERCENT OF
4 THE GROSS PROFITS OF THE BUSINESS FOR THE PRECEDING TAXABLE YEAR.

5 (D) DISTRIBUTIONS. (1) ANY QUALIFIED DISTRIBUTION FROM A SMALL BUSI-
6 NESS SAVINGS ACCOUNT SHALL NOT BE INCLUDIBLE IN GROSS INCOME.

7 (2) ANY AMOUNTS DISTRIBUTED OUT OF A SMALL BUSINESS SAVINGS ACCOUNT
8 THAT ARE NOT QUALIFIED DISTRIBUTIONS SHALL BE INCLUDED IN GROSS INCOME
9 FOR THE TAXABLE YEAR OF THE DISTRIBUTION.

10 (3) FOR PURPOSES OF THIS SECTION:

11 (A) THE TERM "QUALIFIED DISTRIBUTION" MEANS ANY AMOUNT:

12 (I) DISTRIBUTED FROM A SMALL BUSINESS SAVINGS ACCOUNT DURING A SPECI-
13 FIED PERIOD OF ECONOMIC HARDSHIP; AND

14 (II) THE DISTRIBUTION OF WHICH IS CERTIFIED BY THE TAXPAYER AS PART OF
15 A PLAN WHICH PROVIDES FOR THE REINVESTMENT OF SUCH DISTRIBUTION FOR THE
16 FUNDING OF WORKER HIRING OR FINANCIAL STABILIZATION FOR THE PURPOSES OF
17 JOB RETENTION OR CREATION.

18 (B) THE TERM "SPECIFIED PERIOD OF ECONOMIC HARDSHIP" MEANS:

19 (I) ANY ONE-YEAR PERIOD BEGINNING IMMEDIATELY AFTER THE END OF ANY TWO
20 CONSECUTIVE QUARTERS DURING WHICH THE ANNUAL RATE OF REAL GROSS DOMESTIC
21 PRODUCT (AS DETERMINED BY THE BUREAU OF ECONOMIC ANALYSIS OF THE DEPART-
22 MENT OF COMMERCE) DECREASES, OR

23 (II) ANY PERIOD, IN NO EVENT SHORTER THAN ONE YEAR, SPECIFIED BY THE
24 COMMISSIONER FOR PURPOSES OF THIS SECTION.

25 (C) THE COMMISSIONER MAY SPECIFY A PERIOD UNDER CLAUSE (II) OF SUBPAR-
26 AGRAPH (B) OF THIS PARAGRAPH WITH RESPECT TO A SPECIFIED AREA IN THE
27 CASE OF AN AREA DETERMINED BY THE GOVERNOR TO WARRANT ASSISTANCE FROM
28 THE FEDERAL GOVERNMENT UNDER THE ROBERT T. STAFFORD DISASTER RELIEF AND
29 EMERGENCY ASSISTANCE ACT.

30 (D) THE COMMISSIONER SHALL, FOR EACH SPECIFIED PERIOD OF ECONOMIC
31 HARDSHIP ESTABLISH A DISTRIBUTION LIMITATION FOR QUALIFIED DISTRIBUTIONS
32 FROM ELIGIBLE SMALL BUSINESS ACCOUNTS WITH RESPECT TO SUCH PERIOD. THE
33 AGGREGATE QUALIFIED DISTRIBUTIONS FOR ANY SUCH PERIOD FROM ALL ACCOUNTS
34 WITH RESPECT TO AN ELIGIBLE SMALL BUSINESS SHALL NOT EXCEED SUCH LIMITA-
35 TION.

36 (E) ANY DISTRIBUTION NOT USED IN THE MANNER CERTIFIED UNDER SUBPARA-
37 GRAPH (A) OF THIS PARAGRAPH SHALL BE TREATED AS A DISTRIBUTION OTHER
38 THAN A QUALIFIED DISTRIBUTION IN THE TAXABLE YEAR OF SUCH DISTRIBUTION.

39 (F) ANY AMOUNT CONTRIBUTED TO A SMALL BUSINESS SAVINGS ACCOUNT (AND
40 ANY EARNINGS ATTRIBUTABLE THERETO), ONCE DISTRIBUTED, SHALL NOT BE
41 TREATED AS A QUALIFIED DISTRIBUTION UNLESS SUCH DISTRIBUTION IS MADE NOT
42 LATER THAN EIGHT YEARS AFTER THE DATE OF SUCH CONTRIBUTION. FOR PURPOSES
43 OF THIS SUBPARAGRAPH, AMOUNTS (AND THE EARNINGS ATTRIBUTABLE THERETO)
44 SHALL BE TREATED AS DISTRIBUTED ON A FIRST-IN FIRST-OUT BASIS.

45 (E) ELIGIBLE SMALL BUSINESS. FOR PURPOSES OF THIS SECTION:

46 (1) THE TERM "ELIGIBLE SMALL BUSINESS" MEANS, WITH RESPECT TO ANY
47 CALENDAR YEAR, ANY PERSON IF THE ANNUAL AVERAGE NUMBER OF FULL-TIME
48 EMPLOYEES EMPLOYED BY SUCH PERSON DURING THE PRECEDING CALENDAR YEAR WAS
49 FIFTY OR FEWER. FOR PURPOSES OF THIS PARAGRAPH, A PRECEDING CALENDAR
50 YEAR MAY BE TAKEN INTO ACCOUNT ONLY IF THE PERSON WAS IN EXISTENCE
51 THROUGHOUT THE YEAR.

52 (2)(A) THE TERM "FULL-TIME EMPLOYEE" MEANS, WITH RESPECT TO ANY YEAR,
53 AN EMPLOYEE WHO IS EMPLOYED ON AVERAGE AT LEAST FORTY HOURS OF SERVICE
54 PER WEEK.

55 (B) THE COMMISSIONER SHALL PRESCRIBE SUCH REGULATIONS, RULES, AND
56 GUIDANCE AS MAY BE NECESSARY TO DETERMINE THE HOURS OF SERVICE OF AN

1 EMPLOYEE, INCLUDING RULES FOR THE APPLICATION OF THIS SUBDIVISION TO
2 EMPLOYEES WHO ARE NOT COMPENSATED ON AN HOURLY BASIS.

3 (F) EFFECT OF PLEDGING ACCOUNT AS SECURITY. IF, DURING ANY TAXABLE
4 YEAR OF THE ELIGIBLE SMALL BUSINESS FOR WHOSE BENEFIT AN ACCOUNT IS
5 ESTABLISHED, THE ACCOUNT OR ANY PORTION THEREOF IS PLEDGED AS SECURITY
6 FOR A LOAN, THE PORTION SO PLEDGED SHALL BE TREATED AS DISTRIBUTED IN A
7 DISTRIBUTION OTHER THAN A QUALIFIED DISTRIBUTION.

8 S 3. Section 209 of the tax law is amended by adding a new subdivision
9 13 to read as follows:

10 13. FOR ANY TAXABLE YEAR BEGINNING ON OR AFTER JANUARY FIRST, TWO
11 THOUSAND SIXTEEN, ANY ELIGIBLE SMALL BUSINESS, AS SUCH TERM IS DEFINED
12 PURSUANT TO SECTION FORTY-TWO OF THIS CHAPTER, SHALL BE EXEMPT FROM ALL
13 TAXES IMPOSED PURSUANT TO THIS ARTICLE FOR ANY CONTRIBUTION TO AND QUAL-
14 IFIED DISTRIBUTION FROM A SMALL BUSINESS SAVINGS ACCOUNT ESTABLISHED
15 PURSUANT TO SECTION FORTY-TWO OF THIS CHAPTER, SUBJECT TO THE LIMITS SET
16 FORTH IN SUCH SECTION. IF A TAXPAYER FILES FOR AND RECEIVES AN EXEMPTION
17 FROM THE TAX IMPOSED UNDER THIS SECTION PURSUANT TO THE PROVISIONS OF
18 THIS SUBDIVISION AND THE FUNDS WITHDRAWN, OR ANY PORTION THEREOF, ARE
19 NOT EXPENDED FOR A QUALIFYING PURPOSE AS SET FORTH IN SECTION FORTY-TWO
20 OF THIS CHAPTER, THEN THE AMOUNT OF SUCH EXEMPTION CLAIMED BY THE
21 TAXPAYER SHALL BE ADDED BACK TO TAX IN THE NEXT SUCCEEDING TAXABLE YEAR
22 OR IN THE YEAR IN WHICH THE EXEMPTION IS DISALLOWED.

23 S 4. Subsection (c) of section 612 of the tax law is amended by adding
24 a new paragraph 42 to read as follows:

25 (42) ANY QUALIFIED CONTRIBUTION TO AND ANY QUALIFIED DISTRIBUTION FROM
26 A SMALL BUSINESS SAVINGS ACCOUNT ESTABLISHED PURSUANT TO SECTION FORTY-
27 TWO OF THIS CHAPTER. IF A TAXPAYER FILES FOR AND RECEIVES AN EXEMPTION
28 FROM THE TAX IMPOSED UNDER THIS SECTION PURSUANT TO THE PROVISIONS OF
29 THIS PARAGRAPH AND ARE NOT A QUALIFYING CONTRIBUTION OR DISTRIBUTION AS
30 SET FORTH IN SECTION FORTY-TWO OF THIS CHAPTER, THEN THE AMOUNT OF ANY
31 SUCH EXEMPTION CLAIMED BY THE TAXPAYER SHALL BE ADDED BACK TO TAX IN THE
32 NEXT SUCCEEDING TAXABLE YEAR.

33 S 5. This act shall take effect immediately and shall apply to taxable
34 years beginning after such date.