STATE OF NEW YORK

213

2017-2018 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 4, 2017

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

AN ACT to amend the tax law, in relation to job creation tax credits

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "job creation tax credit act of 2017".

§ 2. Section 210-B of the tax law is amended by adding a new subdivision 49 to read as follows:

49. Job creation tax credit. (a) As used in this subdivision, the following terms shall have the following meanings: (1) "Full-time employee" means an individual who is employed for consideration for at least thirty-five hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

(2) "New employee" means a full-time employee first employed by a taxpayer in the project that is the subject of the tax credit authorized under this subdivision in the taxable year in which the taxpayer seeks the credit. "New employee" also may include an employee rehired or called back from lay-off to work in a new facility or on a new product or service established or produced by the taxpayer during the taxable year in which the credit is sought. "New employee" shall not include any employee of the taxpayer who was previously employed in this state by a related member of the taxpayer and whose employment was shifted to the taxpayer during the taxable year in which the credit is sought. In addition, "new employee" shall not include a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, or any individual who is an employee of the taxpayer and who has a direct or indirect ownership interest of at least five percent in the profits, capital, or value of the taxpayer. Ownership interest shall be

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

LBD01474-01-7

determined in accordance with section fifteen hundred sixty-three of the Internal Revenue Code and regulations prescribed thereunder.

(3) "New income tax revenue" means the total amount withheld under this chapter by the taxpayer during the taxable year from the compensation of new employees for the taxes levied under this chapter.

(4) "Related member" has the same meaning as provided in this chapter.

(b) The job creation tax credit authorized under this subdivision shall be for the purpose of fostering job creation in this state. Such a grant shall take the form of a refundable credit allowed against the tax imposed under this chapter. The credit shall be claimed after the allowance of all other credits provided by this chapter. The amount of the credit shall equal the new income tax revenue for the taxable year multiplied by fifty percent.

(c) In order to qualify for the credit the taxpayer must submit to the department of economic development in the taxable year for which credit is sought a form provided by such department in which the taxpayer states the following:

(1) The taxpayer's project will create new jobs in this state;

(2) The taxpayer's project is economically sound and will benefit the people of this state by increasing opportunities for employment and strengthening the economy of this state;

(3) Receiving the tax credit is a major factor in the taxpayer's decision to go forward with the project;

(4) A detailed description of the project that is the subject of the agreement;

(5) The term of the tax credit which shall not exceed ten years, and the first taxable year for which the credit may be claimed;

(6) That the taxpayer shall maintain operations at the project location for at least twice the number of years as the term of the tax credit;

(7) That fifty percent of the new income tax revenue will be allowed as the amount of the credit for each taxable year;

(8) A specific method for determining how many new employees are employed during a taxable year;

(9) That the taxpayer annually shall report to the commissioner of economic development the number of new employees, the new income tax revenue withheld in connection with the new employees and any other information the commissioner of economic development needs to perform his or her duties under this subdivision; and

(10) That the commissioner of economic development shall annually verify the amounts reported pursuant to subparagraph nine of this paragraph, and after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(d) A taxpayer claiming a credit under this section shall submit to the commissioner a copy of the commissioner of economic development's certificate of verification, as provided in subparagraph nine of paragraph (c) of this subdivision for the taxable year.

(e) The commissioner of economic development, after consultation with the commissioner shall adopt such rules and regulations as are necessary to implement this subdivision.

(f) For the purposes of this subdivision a taxpayer may include a partnership, a corporation that has made an election under subchapter S of chapter one of subtitle A of the Internal Revenue Code, or any other business entity through which income flows as a distributive share to its owners. A credit received under this subdivision by a partnership, S-corporation, or other such business entity shall be apportioned among the persons to whom the income or profit of the partnership, S-corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed.

(g) If the commissioner of economic development determines that a taxpayer who has received a credit under this subdivision is not complying with the requirement of subparagraph nine of paragraph (c) of this subdivision, he or she shall notify the commissioner of the noncompliance. After receiving such a notice, and after giving the taxpayer an opportunity to explain the noncompliance, the commissioner may make an assessment against the taxpayer under this chapter for an amount not exceeding the sum of any previously allowed credits under this subdivision.

(h) On or before the thirty-first day of March of each year, the commissioner of economic development shall submit a report to the governor, the temporary president of the senate, the speaker of the assembly and the minority leaders of the senate and assembly on the tax credit program provided for in this subdivision. The report shall include information on the number of taxpayers receiving tax credits pursuant to this subdivision during the preceding calendar year, a description of the projects that are the subject of the credit, and an update on the status of projects for which credits were allowed during the preceding calendar year.

During the first year of the tax credit program, the commissioner of economic development in conjunction with the director of budget shall conduct an evaluation of such program. The evaluation shall include assessments of the effectiveness of the program in creating new jobs in this state and of the revenue impact of the program. Such report may also include a review of the practices and experiences of other states with similar programs. The department of economic development shall submit a report on the evaluation to the governor, the temporary president of the senate, the speaker of the assembly and the minority leaders of the senate and assembly on or before January first, two thousand twenty.

§ 3. Section 606 of the tax law is amended by adding a new subsection (ccc) to read as follows:

(ccc) Job creation tax credit. (1) As used in this subsection, the following terms shall have the following meanings:

(A) "Full-time employee" means an individual who is employed for consideration for at least thirty-five hours a week, or who renders any other standard of service generally accepted by custom or specified by contract as full-time employment.

(B) "New employee" means a full-time employee first employed by a taxpayer in the project that is the subject of the tax credit authorized under this subsection in the taxable year in which the taxpayer seeks the credit. "New employee" also may include an employee rehired or called back from lay-off to work in a new facility or on a new product or service established or produced by the taxpayer during the taxable year in which the credit is sought. "New employee" shall not include any employee of the taxpayer who was previously employed in this state by a related member of the taxpayer and whose employment was shifted to the taxpayer during the taxable year in which the credit is sought. In addition, "new employee" shall not include a child, grandchild, parent, or spouse, other than a spouse who is legally separated from the individual, or any individual who is an employee of the taxpayer and who has a direct or indirect ownership interest of at least five percent in the profits, capital, or value of the taxpayer. Ownership interest shall be determined in accordance with section fifteen hundred sixty-three of the Internal Revenue Code and regulations prescribed thereunder.

(C) "New income tax revenue" means the total amount withheld under this chapter by the taxpayer during the taxable year from the compensation of new employees for the tax levies under this chapter.

(D) "Related member" has the same meaning as provided in this chapter.

(2) The job creation tax credit authorized under this subsection shall be for the purpose of fostering job creation in this state. Such a grant shall take the form of a refundable credit allowed against the tax imposed under this chapter. The credit shall be claimed after the allowance of all other credits provided by this chapter. The amount of the credit shall equal the new income tax revenue for the taxable year multiplied by fifty percent.

(3) In order to qualify for the credit the taxpayer must submit to the department of economic development in the taxable year for which credit is sought a form provided by such department in which the taxpayer states the following:

(A) The taxpayer's project will create new jobs in this state;

(B) The taxpayer's project is economically sound and will benefit the people of this state by increasing opportunities for employment and strengthening the economy of this state;

(C) Receiving the tax credit is a major factor in the taxpayer's decision to go forward with the project;

(D) A detailed description of the project that is the subject of the agreement;

(E) The term of the tax credit which shall not exceed ten years, and the first taxable year for which the credit may be claimed;

(F) That the taxpayer shall maintain operations at the project location for at least twice the number of years as the term of the tax credit;

(G) That fifty percent of the new income tax revenue will be allowed as the amount of the credit for each taxable year;

(H) A specific method for determining how many new employees are employed during a taxable year;

(I) That the taxpayer annually shall report to the commissioner of economic development the number of new employees, the new income tax revenue withheld in connection with the new employees and any other information the commissioner of economic development needs to perform his or her duties under this subsection; and

(J) That the commissioner of economic development shall annually verify the amounts reported pursuant to subparagraph (I) of this paragraph, and after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.

(4) A taxpayer claiming a credit under this subsection shall submit to the commissioner a copy of the commissioner of economic development's certificate of verification as provided in subparagraph (I) of paragraph three of this subsection for the taxable year.

(5) The commissioner of economic development, after consultation with the commissioner shall adopt such rules and regulations as are necessary to implement this subsection.

(6) For the purposes of this subsection a taxpayer may include a partnership, a corporation that has made an election under subchapter S of chapter one of subtitle A of the Internal Revenue Code, or any other business entity through which income flows as a distributive share to its owners. A credit received under this subsection by a partnership, S-corporation, or other such business entity shall be apportioned among

the persons to whom the income or profit of the partnership, S-corporation, or other entity is distributed, in the same proportions as those in which the income or profit is distributed.

(7) If the commissioner of economic development determines that a taxpayer who has received a credit under this subsection is not complying with the requirement of subparagraph (I) of paragraph three of this subsection, he or she shall notify the commissioner of the noncompliance. After receiving such a notice, and after giving the taxpayer an opportunity to explain the noncompliance, the commissioner may make an assessment against the taxpayer under this chapter for an amount not exceeding the sum of any previously allowed credits under this subsection.

(8) On or before the thirty-first day of March of each year, the commissioner of economic development shall submit a report to the governor, the temporary president of the senate, the speaker of the assembly and the minority leaders of the senate and assembly on the tax credit program provided for in this subsection. The report shall include information on the number of taxpayers receiving tax credits pursuant to this subsection during the preceding calendar year, a description of the projects that are the subject of the credit, and an update on the status of projects for which credits were allowed during the preceding calendar year.

During the first year of the tax credit program, the commissioner of economic development in conjunction with the director of budget shall conduct an evaluation of such program. The evaluation shall include assessments of the effectiveness of the program in creating new jobs in this state and of the revenue impact of the program. Such report may also include a review of the practices and experiences of other states with similar programs. The department of economic development shall submit a report on the evaluation to the governor, the temporary president of the senate, the speaker of the assembly and the minority leaders of the senate and assembly on or before January first, two thousand twenty.

§ 4. This act shall take effect immediately and shall apply to taxable years commencing on and after April 1, 2017.