

# STATE OF NEW YORK

90

2017-2018 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor

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:

### ARTICLE 33

#### TRANSPORTATION BENEFITS PROGRAM

##### Section 960. Definitions.

6 961. Transportation benefits program.

7 962. Administration and enforcement.

8 963. Severability.

9 § 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.

22 3. "Transit pass" shall mean any pass, token, fare card, voucher or  
23 similar item entitling a person to transportation on public transit  
24 within the meaning of subclause (A) of clause five of paragraph (f) of

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

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1 section one hundred thirty-two of title twenty-six of the United States  
2 code.

3 4. "Vanpool" shall mean a commuter highway vehicle within the meaning  
4 of subclause (B) of clause five of paragraph (f) of section one hundred  
5 thirty-two of title twenty-six of the United States code.

6 § 961. Transportation benefits program. All covered employers shall  
7 provide at least one of the following transportation benefit programs to  
8 covered employees:

9 1. a pre-tax election program, consistent with paragraph (f) of  
10 section one hundred thirty-two of title twenty-six of the United States  
11 code, allowing employees to elect to exclude from taxable wages and  
12 compensation, employee commuting costs incurred for transit passes or  
13 vanpool charges, excluding parking, up to the maximum level allowed  
14 pursuant to clause two of paragraph (f) of section one hundred thirty-  
15 two of title twenty-six of the United States code;

16 2. an employer paid benefit program whereby the employer supplies a  
17 transit pass for a public transit system of the employer's choosing upon  
18 request by each covered employee or reimbursement for equivalent vanpool  
19 charges equal in value to the purchase price of the appropriate benefit;  
20 or

21 3. employer provided transit furnished by the employer at no cost to  
22 the covered employee in a vanpool or bus, or similar multi-passenger  
23 vehicle operated by or for the employer.

24 § 962. Administration and enforcement. 1. The duly authorized officer  
25 having predominant jurisdiction over transportation issues in the muni-  
26 cipality in which a transportation benefits program is administered  
27 shall promulgate such rules and regulations as necessary to implement  
28 the provisions of this article. Such rules and regulations shall, to the  
29 extent consistent with this article, conform to internal revenue service  
30 regulations under paragraph (f) of section one hundred thirty-two of  
31 title twenty-six of the United States code.

32 2. Such officer shall maintain an education and advice program to  
33 assist covered employers with meeting the requirements of section nine  
34 hundred sixty-one of this article.

35 3. Any covered employer who fails to offer at least one transportation  
36 benefit program to covered employees, in the manner required by section  
37 nine hundred sixty-one of this article, shall be liable to the munici-  
38 pality in which such program is administered for a civil penalty not to  
39 exceed one hundred dollars for the first violation, two hundred dollars  
40 for the second violation within the same year, and five hundred dollars  
41 for each additional violation within the same year. Penalties collected  
42 under this subdivision shall be used to fund implementation and enforce-  
43 ment of such program.

44 § 963. Severability. If any provision of this article shall be  
45 adjudged to be unconstitutional or invalid, such judgment shall not  
46 affect, impair or invalidate the remainder thereof, but shall be  
47 confined in its operation to the provision directly involved in the  
48 controversy in which such judgment shall have been rendered.

49 § 2. Subsection (c) of section 612 of the tax law is amended by adding  
50 a new paragraph 42 to read as follows:

51 (42) For taxable years beginning after December thirty-first, two  
52 thousand eighteen the amount of qualified transportation fringe benefits  
53 included in federal adjusted gross income, to the extent that such qual-  
54 ified transportation fringe benefits would have been excluded from gross  
55 income pursuant to paragraph five of subsection (a) of section one  
56 hundred thirty-two of the internal revenue code had the flush sentence

1 of paragraph two of subsection (f) of section one hundred thirty-two of  
2 the internal revenue code that was in effect on December thirty-first,  
3 two thousand eighteen continued in effect after December thirty-first,  
4 two thousand seventeen; provided, however, that if subparagraph (A) of  
5 paragraph two of subsection (f) of section one hundred thirty-two of the  
6 internal revenue code is amended so that for any month the dollar amount  
7 in effect under such subparagraph (A) is greater than the dollar amount  
8 in effect under subparagraph (B) of paragraph two of subsection (f) of  
9 section one hundred thirty-two of the internal revenue code for the same  
10 month, the flush sentence of paragraph two that was in effect on Decem-  
11 ber thirty-first, two thousand eighteen shall be deemed to provide that  
12 the dollar amount in effect for subparagraph (B) shall be applied as if  
13 the dollar amount therein were the same as the dollar amount in effect  
14 for such month under subparagraph (A). Notwithstanding the foregoing,  
15 if, pursuant to this paragraph, the amount that would be in effect for  
16 any month under subparagraph (A) or (B) of paragraph two of subsection  
17 (f) of section one hundred thirty-two of the internal revenue code is  
18 less than one hundred seventy-five dollars, subparagraphs (A) and (B)  
19 shall be applied as if the dollar amount in effect for such month under  
20 such subparagraphs was one hundred seventy-five dollars.

21 § 3. This act shall take effect immediately, provided, however, that  
22 section one of this act shall take effect on the one hundred twentieth  
23 day after it shall have become a law; provided, further, that effective  
24 immediately, the addition, amendment and/or repeal of any rule or regu-  
25 lation necessary for the implementation of section one of this act on  
26 its effective date is authorized and directed to be made and completed  
27 on or before such effective date; provided, further, that section two of  
28 this act shall apply to taxable years beginning on and after January 1,  
29 2019.