

# STATE OF NEW YORK

10483

## IN ASSEMBLY

May 22, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Stern) --  
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 and emergency production savings accounts

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

1 Section 1. The tax law is amended by adding a new section 45 to read  
2 as follows:

3 § 45. Small business savings accounts. (a) General. (1) The commis-  
4 sioner shall establish a program to administer small business savings  
5 accounts under this section.

6 (2) The commissioner shall establish minimum standards for small busi-  
7 ness savings accounts and shall establish accounts, or enter into agree-  
8 ments that meet these standards to administer such accounts. In estab-  
9 lishing such standards and making such agreements the commissioner  
10 shall, to the extent practicable, seek to minimize fees, minimize risk  
11 of loss of principal, and ensure a range of investment risk options  
12 available to account beneficiaries. Any eligible small business may  
13 establish a small business savings account with respect to such business  
14 under terms which meet the requirements of this section.

15 (b) Definition. For the purposes of this section, the term "small  
16 business savings account" means a tax preferred savings account which is  
17 designated at the time of establishment of the plan as a small business  
18 savings account. Such designation shall be made in such manner as the  
19 commissioner may by regulation prescribe.

20 (c) Contributions. (1) There shall be allowed as a deduction an amount  
21 equal to the contributions to a small business savings account for the  
22 taxable year.

23 (2) The aggregate amount of contributions for any taxable year to all  
24 small business savings accounts maintained for the benefit of an eligi-  
25 ble small business shall not exceed an amount equal to ten percent of  
26 the gross profits of the business for the preceding taxable year.

27 (d) Distributions. (1) Any qualified distribution from a small busi-  
28 ness savings account shall not be includible in gross income.

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

LBD16173-01-0

1     (2) Any amounts distributed out of a small business savings account  
2 that are not qualified distributions shall be included in gross income  
3 for the taxable year of the distribution.

4     (3) For purposes of this section:

5     (A) The term "qualified distribution" means any amount:

6     (i) distributed from a small business savings account during a speci-  
7 fied period of economic hardship; and

8     (ii) the distribution of which is certified by the taxpayer as part of  
9 a plan which provides for the reinvestment of such distribution for the  
10 funding of worker hiring or financial stabilization for the purposes of  
11 job retention or creation.

12     (B) The term "specified period of economic hardship" means:

13     (i) any one-year period beginning immediately after the end of any two  
14 consecutive quarters during which the annual rate of real gross domestic  
15 product (as determined by the Bureau of Economic Analysis of the Depart-  
16 ment of Commerce) decreases, or

17     (ii) any period, in no event shorter than one year, specified by the  
18 commissioner for purposes of this section.

19     (C) The commissioner may specify a period under clause (ii) of subpara-  
20 graph (B) of this paragraph with respect to a specified area in the  
21 case of an area determined by the governor to warrant assistance from  
22 the Federal Government under the Robert T. Stafford Disaster Relief and  
23 Emergency Assistance Act.

24     (D) The commissioner shall, for each specified period of economic  
25 hardship establish a distribution limitation for qualified distributions  
26 from eligible small business accounts with respect to such period. The  
27 aggregate qualified distributions for any such period from all accounts  
28 with respect to an eligible small business shall not exceed such limita-  
29 tion.

30     (E) Any distribution not used in the manner certified under subpara-  
31 graph (A) of this paragraph shall be treated as a distribution other  
32 than a qualified distribution in the taxable year of such distribution.

33     (F) Any amount contributed to a small business savings account (and  
34 any earnings attributable thereto), once distributed, shall not be  
35 treated as a qualified distribution unless such distribution is made not  
36 later than eight years after the date of such contribution. For purposes  
37 of this subparagraph, amounts (and the earnings attributable thereto)  
38 shall be treated as distributed on a first-in first-out basis.

39     (e) Eligible small business. For purposes of this section:

40     (1) The term "eligible small business" means, with respect to any  
41 calendar year, any person if the annual average number of full-time  
42 employees employed by such person during the preceding calendar year was  
43 fifty or fewer. For purposes of this paragraph, a preceding calendar  
44 year may be taken into account only if the person was in existence  
45 throughout the year.

46     (2)(A) The term "full-time employee" means, with respect to any year,  
47 an employee who is employed on average at least forty hours of service  
48 per week.

49     (B) The commissioner shall prescribe such regulations, rules, and  
50 guidance as may be necessary to determine the hours of service of an  
51 employee, including rules for the application of this subdivision to  
52 employees who are not compensated on an hourly basis.

53     (f) Effect of pledging account as security. If, during any taxable  
54 year of the eligible small business for whose benefit an account is  
55 established, the account or any portion thereof is pledged as security

1 for a loan, the portion so pledged shall be treated as distributed in a  
2 distribution other than a qualified distribution.

3 § 2. Section 209 of the tax law is amended by adding a new subdivision  
4 13 to read as follows:

5 13. For any taxable year beginning on or after January first, two  
6 thousand twenty, any eligible small business, as such term is defined  
7 pursuant to section forty-five of this chapter, shall be exempt from all  
8 taxes imposed pursuant to this article for any contribution to and qual-  
9 ified distribution from a small business savings account established  
10 pursuant to section forty-five of this chapter, subject to the limits  
11 set forth in such section. If a taxpayer files for and receives an  
12 exemption from the tax imposed under this section pursuant to the  
13 provisions of this subdivision and the funds withdrawn, or any portion  
14 thereof, are not expended for a qualifying purpose as set forth in  
15 section forty-five of this chapter, then the amount of such exemption  
16 claimed by the taxpayer shall be added back to tax in the next succeed-  
17 ing taxable year or in the year in which the exemption is disallowed.

18 § 3. Subsection (c) of section 612 of the tax law is amended by adding  
19 a new paragraph 43 to read as follows:

20 (43) Any qualified contribution to and any qualified distribution from  
21 a small business savings account established pursuant to section forty-  
22 five of this chapter. If a taxpayer files for and receives an exemption  
23 from the tax imposed under this section pursuant to the provisions of  
24 this paragraph and are not a qualifying contribution or distribution as  
25 set forth in section forty-five of this chapter, then the amount of any  
26 such exemption claimed by the taxpayer shall be added back to tax in the  
27 next succeeding taxable year.

28 § 4. The tax law is amended by adding a new section 46 to read as  
29 follows:

30 § 46. Emergency production savings accounts. (a) General. (1) The  
31 commissioner shall establish a program to administer emergency  
32 production savings accounts under this section.

33 (2) The commissioner shall establish minimum standards for emergency  
34 production savings accounts and shall establish accounts, or enter into  
35 agreements that meet these standards to administer such accounts. In  
36 establishing such standards and making such agreements the commissioner  
37 shall, to the extent practicable, seek to minimize fees, minimize risk  
38 of loss of principal, and ensure a range of investment risk options  
39 available to account beneficiaries. Any business may establish an emer-  
40 gency production savings account with respect to such business under  
41 terms which meet the requirements of this section.

42 (b) Definition. For the purposes of this section, the term "emergency  
43 production savings account" means a tax preferred savings account which  
44 is designated at the time of establishment of the plan as an emergency  
45 production savings account. Such designation shall be made in such  
46 manner as the commissioner may by regulation prescribe.

47 (c) Contributions. (1) There shall be allowed as a deduction an amount  
48 equal to the contributions to an emergency production savings account  
49 for the taxable year.

50 (2) The aggregate amount of contributions for any taxable year to all  
51 emergency production savings accounts maintained for the benefit of a  
52 business shall not exceed an amount equal to ten percent of the gross  
53 profits of the business for the preceding taxable year.

54 (d) Distributions. (1) Any qualified distribution from an emergency  
55 production savings account shall not be includible in gross income.

(2) Any amounts distributed out of an emergency production savings account that are not qualified distributions shall be included in gross income for the taxable year of the distribution.

(3) For purposes of this section:

(A) The term "qualified distribution" means any amount:

(i) distributed from an emergency production savings account during a specified period of a declared emergency or disaster; and

(ii) the distribution of which is certified by the taxpayer as part of a plan which provides for the reinvestment or expenditure of such distribution for the purpose of allowing a business or enterprise to produce essential products or provide essential services during a period of a state declared emergency or disaster through modification or retrofitting of existing facilities, or development of additional resources or facilities needed to produce essential products or services.

(B) Essential products or services shall be as determined by the division of homeland security and emergency services.

(C) The commissioner may specify a period with respect to a specified area in the case of an area determined by the governor to warrant assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(D) The commissioner shall, for each specified period of declared emergency or disaster establish a distribution limitation for qualified distributions from eligible emergency production savings accounts with respect to such period. The aggregate qualified distributions for any such period from all accounts with respect to a business shall not exceed such limitation.

(E) Any distribution not used in the manner certified under subparagraph (A) of this paragraph shall be treated as a distribution other than a qualified distribution in the taxable year of such distribution.

(F) Any amount contributed to an emergency production savings account (and any earnings attributable thereto), once distributed, shall not be treated as a qualified distribution unless such distribution is made not later than eight years after the date of such contribution. For purposes of this subparagraph, amounts (and the earnings attributable thereto) shall be treated as distributed on a first-in first-out basis.

(e) Effect of pledging account as security. If, during any taxable year of the taxpayer for whose benefit an account is established, the account or any portion thereof is pledged as security for a loan, the portion so pledged shall be treated as distributed in a distribution other than a qualified distribution.

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

14. For any taxable year beginning on or after January first, two thousand twenty, any taxpayer shall be exempt from all taxes imposed pursuant to this article for any contribution to and qualified distribution from an emergency production savings account established pursuant to section forty-six of this chapter, subject to the limits set forth in such section. If a taxpayer files for and receives an exemption from the tax imposed under this section pursuant to the provisions of this subdivision and the funds withdrawn, or any portion thereof, are not expended for a qualifying purpose as set forth in section forty-six of this chapter, then the amount of such exemption claimed by the taxpayer shall be added back to tax in the next succeeding taxable year or in the year in which the exemption is disallowed.

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

1     (44) Any qualified contribution to and any qualified distribution from  
2     an emergency production savings account established pursuant to section  
3     forty-six of this chapter. If a taxpayer files for and receives an  
4     exemption from the tax imposed under this section pursuant to the  
5     provisions of this paragraph and are not a qualifying contribution or  
6     distribution as set forth in section forty-six of this chapter, then the  
7     amount of any such exemption claimed by the taxpayer shall be added back  
8     to tax in the next succeeding taxable year.

9     § 7. This act shall take effect immediately and shall apply to taxable  
10  years beginning on and after such effective date.