

# STATE OF NEW YORK

7332--B

2019-2020 Regular Sessions

## IN ASSEMBLY

April 24, 2019

Introduced by M. of A. STERN, LAVINE, ENGLEBRIGHT, THIELE, ABBATE, SIMON, D'URSO, CRUZ, DeSTEFANO, RA, BRABENEC, COLTON -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the economic development law and the tax law, in relation to authorizing the creation of small business tax-deferred savings accounts

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

Section 1. The economic development law is amended by adding a new section 138-a to read as follows:

§ 138-a. Small business tax-deferred savings accounts. 1. A "small business taxpayer" or "small business" shall have the same meaning as defined in section one hundred thirty-one of this article and shall meet the requirements of paragraph (f) of subdivision one of section two hundred ten of the tax law.

2. Any small business shall be authorized to establish with any financial organization a small business tax-deferred savings account and to make deposits into and withdrawals from such account. For purposes of this section, "financial organization" shall mean an organization authorized to do business in the state of New York and (a) which is licensed or chartered by the department of financial services, (b) is chartered by an agency of the federal government, or (c) is subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

3. The amount deposited into such tax-deferred savings accounts and any interest earned on such deposits shall be subject to the provisions

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

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1 of subparagraph twenty-one of paragraph (a) of subdivision nine of  
2 section two hundred eight and paragraph forty-three of subsection (c) of  
3 section six hundred twelve of the tax law, unless such amounts are with-  
4 drawn and expended for a purpose other than a qualifying purpose.

5 4. For the purposes of this act, a qualifying purpose shall include  
6 small business taxpayer expenditures (a) for tangible personal property  
7 or other tangible property, including but not limited to buildings  
8 and structural components of buildings, that are principally used in the  
9 ordinary course of the taxpayer's trade or business and (b) other  
10 expenditures deemed appropriate by the department, which will improve  
11 the competitiveness and productivity of a small business and results in  
12 the creation or retention of full-time jobs.

13 5. The monies deposited into such tax-deferred savings accounts during  
14 any taxable year may not exceed five thousand dollars.

15 6. On or before April first, two thousand twenty-two and annually  
16 thereafter, the department, in consultation with the department of taxa-  
17 tion and finance, shall report on the number of small business taxpayers  
18 utilizing this program, the aggregate amount deposited for which a tax  
19 credit was claimed, the average aggregate amount on deposit in small  
20 business savings accounts, the amount of qualifying and non-qualifying  
21 withdrawals, and any other such data deemed necessary and appropriate by  
22 the department.

23 § 2. Paragraph (a) of subdivision 9 of section 208 of the tax law is  
24 amended by adding a new subparagraph 21 to read as follows:

25 (21) any amount deposited into a small business tax-deferred savings  
26 account created pursuant to section one hundred thirty-eight-a of the  
27 economic development law, and any interest earned on such deposits,  
28 provided that any amount withdrawn for a non-qualifying purpose shall be  
29 included in the entire net income for the tax year in which the with-  
30 drawal was made.

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

33 (43) any amount deposited into a small business tax-deferred savings  
34 account created pursuant to section one hundred thirty-eight-a of the  
35 economic development law, and any interest earned on such deposits,  
36 provided that any amount withdrawn for a non-qualifying purpose shall be  
37 included in the entire net income for the tax year in which the with-  
38 drawal was made.

39 § 4. The department of taxation and finance, in consultation with the  
40 department of economic development, shall review and analyze all statis-  
41 tical data available for such purposes of determining the economic and  
42 revenue impact associated with this act. Such data shall be included in  
43 an annual report that shall also include, but not be limited to, the  
44 number of small business taxpayers utilizing this program, the average  
45 aggregate amount on deposit, the qualifying expenses claimed, any quali-  
46 fying expenses deemed inappropriate and any other such data deemed  
47 necessary and appropriate by the department. Such annual report shall be  
48 posted on the websites of the department of taxation and finance and the  
49 department of economic development, and transmitted to the governor, the  
50 temporary president of the senate, the senate minority leader, the  
51 speaker of the assembly and the assembly minority leader.

52 § 5. Rules and regulations. The department of taxation and finance in  
53 consultation with the department of economic development, is hereby  
54 authorized to promulgate rules and regulations in accordance with the  
55 state administrative procedure act that are necessary to fulfill the  
56 purposes of this act. Such regulations shall include but not be limited

1 to deadlines for establishing a small business tax deferred savings  
2 account, standard procedures and forms to be utilized in the program,  
3 and any other such regulations deemed necessary to promote the full  
4 utilization of this program. Such rules and regulations shall be  
5 completed within 180 days after the effective date of this act.  
6 § 6. This act shall take effect immediately.