

# STATE OF NEW YORK

S. 5545

A. 7475

2019-2020 Regular Sessions

## SENATE - ASSEMBLY

May 6, 2019

IN SENATE -- Introduced by Sen. ADDABBO -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

IN ASSEMBLY -- Introduced by M. of A. CUSICK, LUPARDO, BLANKENBUSH, COLTON, WEPRIN, STERN, WALSH -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law and the labor law, in relation to establishing a small business tax credit for the employment of disabled persons; and providing for the repeal of such provisions upon expiration thereof

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

1 Section 1. Section 210-B of the tax law is amended by adding a new  
2 subdivision 54 to read as follows:

3 54. Small business tax credit; disabled persons. (a) General. A  
4 taxpayer who has one hundred employees or less, shall be allowed a cred-  
5 it, to be computed as provided in this subdivision, against the tax  
6 imposed by this article for each disabled person hired during a taxable  
7 year, provided that such disabled person is employed for thirty-five  
8 hours or more per week, remains in the employ of such taxpayer for six  
9 months or more and the employer submits verification that the claimed  
10 employees meet the statutory definition of "disabled person" pursuant to  
11 paragraph (d) of this subdivision.

12 (b) Amount of credit. A credit authorized by this section shall equal  
13 five thousand dollars per hired disabled person but shall not exceed  
14 twenty-five thousand dollars.

15 (c) Carryovers. The credit allowed under this subdivision for any  
16 taxable year shall not reduce the tax due for such year to less than the  
17 amount prescribed in paragraph (d) of subdivision one of section two  
18 hundred ten of this article. However, if the amount of credit allowable

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

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1 under this subdivision for any taxable year reduces the tax to such  
 2 amount or if the taxpayer otherwise pays tax based on the fixed dollar  
 3 minimum amount, any amount of credit not deductible in such taxable year  
 4 may be carried over to the following three years and may be deducted  
 5 from the taxpayer's tax for such year or years.

6 (d) Definitions. As used in this subdivision, the term "disabled  
 7 person" shall mean a resident of the state who has any physical, mental  
 8 or medical impairment resulting from anatomical, physiological, genetic  
 9 or neurological conditions which prevents the exercise of a normal bodi-  
 10 ly function or is demonstrable by medically accepted clinical or labora-  
 11 tory diagnostic techniques.

12 (e) Aggregate amount. The aggregate amount of tax credits allowed  
 13 pursuant to the authority of this subdivision and subsection (kkk) of  
 14 section six hundred six of this chapter shall be five million dollars  
 15 each year. Such aggregate amounts of credits shall be allocated by the  
 16 commissioner. If the total amount of allocated credits applied for in  
 17 any particular year exceeds the aggregate amount of tax credits allowed  
 18 for such year under this section, such excess shall be treated as having  
 19 been applied for on the first day of the subsequent year.

20 (f) Claim of credit. A taxpayer shall not be allowed to claim this  
 21 credit to the extent the basis of the calculation of this credit has  
 22 been claimed for another tax credit under this chapter.

23 § 2. Subparagraph (B) of paragraph 1 of subsection (i) of section 606  
 24 of the tax law is amended by adding a new clause (xlv) to read as  
 25 follows:

26 <u>(xlv) Small business tax credit;</u>	<u>Amount of credit under</u>
27 <u>disabled persons under</u>	<u>subdivision fifty-four</u>
28 <u>subsection (kkk)</u>	<u>of section two hundred</u>
29	<u>ten-B</u>

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

32 (kkk) Small business tax credit; disabled persons. (1) General. A  
 33 taxpayer who has one hundred employees or less, shall be allowed a cred-  
 34 it, to be computed as provided in this subsection, against the tax  
 35 imposed by this article for each disabled person hired during a taxable  
 36 year, provided that such disabled person is employed for thirty-five  
 37 hours or more per week, remains in the employ of such taxpayer for six  
 38 months or more and the employer submits verification that the claimed  
 39 employees have met the statutory definition of "disabled person" pursu-  
 40 ant to paragraph four of this subsection.

41 (2) Amount of credit. A credit authorized by this section shall equal  
 42 five thousand dollars per hired disabled person but shall not exceed  
 43 twenty-five thousand dollars.

44 (3) Carryovers. The credit allowed under this subdivision for any  
 45 taxable year shall not reduce the tax due for such year to less than the  
 46 amount prescribed in paragraph (d) of subdivision one of section two  
 47 hundred ten of this article. However, if the amount of credit allowable  
 48 under this subdivision for any taxable year reduces the tax to such  
 49 amount or if the taxpayer otherwise pays tax based on the fixed dollar  
 50 minimum amount, any amount of credit not deductible in such taxable year  
 51 may be carried over to the following three years and may be deducted  
 52 from the taxpayer's tax for such year or years.

53 (4) Definitions. As used in this subsection, the term "disabled  
 54 person" shall mean a resident of the state who has any physical, mental  
 55 or medical impairment resulting from anatomical, physiological, genetic  
 56 or neurological conditions which prevents the exercise of a normal bodi-

1 ly function or is demonstrable by medically accepted clinical or labora-  
2 tory diagnostic techniques.

3 (5) Aggregate amount. The aggregate amount of tax credits allowed  
4 pursuant to the authority of this subsection and subdivision fifty-four  
5 of section two hundred ten-B of this chapter shall be five million  
6 dollars each year. Such aggregate amounts of credits shall be allocated  
7 by the commissioner. If the total amount of allocated credits applied  
8 for in any particular year exceeds the aggregate amount of tax credits  
9 allowed for such year under this section, such excess shall be treated  
10 as having been applied for on the first day of the subsequent year.

11 (6) Claim of credit. A taxpayer shall not be allowed to claim this  
12 credit to the extent the basis of the calculation of this credit has  
13 been claimed for another tax credit under this chapter.

14 § 4. The labor law is amended by adding a new section 25-d to read as  
15 follows:

16 § 25-d. Power to administer the small business tax credit for disabled  
17 persons tax credit program. (a) The commissioner is authorized to estab-  
18 lish and administer the small business tax credit for disabled persons  
19 to provide tax incentives to small business employers for employing  
20 individuals with disabilities. The commissioner is authorized to allo-  
21 cate up to five million dollars of tax credits annually.

22 (b) Definitions. (1) The term "qualified employer" means an employer  
23 that has been certified by the commissioner to participate in the small  
24 business tax credit for disabled persons tax credit program and that  
25 employs one or more qualified employees.

26 (2) The term "qualified employee" means an individual:

27 (i) who has any physical, mental or medical impairment resulting from  
28 anatomical, physiological, genetic or neurological conditions which  
29 prevents the exercise of a normal bodily function or is demonstrable by  
30 medically accepted clinical or laboratory diagnostic techniques;

31 (ii) who has worked for the qualified employer in a full-time or part-  
32 time position that pays wages that are equivalent to the wages paid for  
33 similar jobs, with appropriate adjustments for experience and training,  
34 and for which no other employee has been terminated, or where the  
35 employer has not otherwise reduced its workforce by involuntary termi-  
36 nations with the intention of filling the vacancy by creating a new  
37 hire;

38 (iii) who has not worked for an entity related to the qualified  
39 employer in the past twenty-four months; and

40 (iv) is employed in New York at a location in New York state.

41 (c) A qualified employer shall be entitled to a tax credit. The tax  
42 credits shall be claimed by the qualified employer as specified in  
43 subdivision fifty-four of section two hundred ten-B and subsection (kkk)  
44 of section six hundred six of the tax law.

45 (d) To participate in the small business tax credit for disabled  
46 persons tax credit program, an employer must submit an application (in a  
47 form prescribed by the commissioner) to the commissioner. The commis-  
48 sioner shall establish guidelines that specify requirements for employ-  
49 ers to participate in the program including criteria for certifying  
50 qualified employees. Any regulations that the commissioner determines  
51 are necessary may be adopted on an emergency basis notwithstanding  
52 anything to the contrary in section two hundred two of the state admin-  
53 istrative procedure act. Such requirements may include the types of  
54 industries that the employers are engaged in.

55 (e) If, after reviewing the application submitted by an employer, the  
56 commissioner determines that such employer is eligible to participate in

1 the small business tax credit for disabled persons tax credit program,  
2 the commissioner shall issue the employer a preliminary certificate of  
3 eligibility that establishes the employer as a qualified employer. The  
4 certificate of eligibility shall specify the maximum amount of small  
5 business tax credit for disabled persons that the employer will be  
6 allowed to claim. At the end of the taxable year, a qualified employer  
7 must obtain a final certificate of eligibility from the commissioner to  
8 file with a return claiming the credit. The final certificate must  
9 contain the certificate's taxable year to which the credit applies, the  
10 maximum amount of the credit allowed, the qualified employer's name and  
11 employer identification number, the employer's business address where  
12 the claimed employees were employed, the social security numbers of  
13 claimed employees and their hire and termination dates, verification  
14 that the claimed employees have met the statutory definition of "quali-  
15 fied employee", and each employee's total hours worked each quarter,  
16 hourly wage, and full-time or part-time status.

17 § 5. This act shall take effect immediately and shall apply to taxable  
18 years beginning on or after January 1, 2020 and shall expire and be  
19 deemed repealed December 31, 2025.