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2019-2020 Regular Sessions

IN SENATE

(Prefiled)

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Introduced by Sen. KENNEDY -- read twice and ordered printed, and when printed to be committed to the Committee on Commerce, Economic Development and Small Business

AN ACT to amend the economic development law and the tax law, in relation to establishing the capital investment jobs retention program

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

1 Section 1. The economic development law is amended by adding a new
2 article 23 to read as follows:

ARTICLE 23

CAPITAL INVESTMENT JOBS RETENTION PROGRAM

Section 450. Short title.

451. Definitions.

452. Eligibility criteria.

453. Application and approval process.

454. Capital investment jobs retention program credit.

455. Powers and duties of the commissioner.

456. Maintenance of records.

457. Reporting.

458. Cap on tax credit.

459. Penalties.

15 § 450. Short title. This article shall be known and may be cited as
16 the "capital investment jobs retention program".

17 § 451. Definitions. For the purposes of this article:

18 1. "Agriculture" means both agricultural production (establishments
19 performing the complete farm or ranch operation, such as farm owner-op-
20 erators, tenant farm operators, and sharecroppers) and agricultural
21 support (establishments that perform one or more activities associated
22 with farm operation, such as soil preparation, planting, harvesting, and
23 management, on a contract or fee basis).

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

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1 2. "Back office operations" means a business function that may include
2 one or more of the following activities: customer service, information
3 technology and data processing, human resources, accounting and related
4 administrative functions.

5 3. "Certificate of eligibility" means the document issued by the
6 department to an applicant that has completed an application to be
7 admitted into the capital investment jobs retention program and has been
8 accepted into the program by the department. Possession of a certificate
9 of eligibility does not by itself guarantee the eligibility to claim the
10 tax credit.

11 4. "Certificate of tax credit" means the document issued to a partic-
12 ipant by the department, after the department has verified that the
13 participant has met all applicable eligibility criteria in this article.
14 The certificate shall be issued annually if such criteria are satisfied
15 and shall specify the exact amount of each tax credit under this article
16 that a participant may claim, pursuant to section four hundred fifty-
17 four of this article, and shall specify the taxable year in which such
18 credit may be claimed.

19 5. "Distribution center" means a large scale facility involving proc-
20 essing, repackaging and/or movement of finished or semi-finished goods
21 to retail locations across a multi-state area.

22 6. "Financial services data centers" or "financial services customer
23 back office operations" means operations that manage the data or
24 accounts of existing customers or provide product or service information
25 and support to customers of financial services companies, including
26 banks, other lenders, securities and commodities brokers and dealers,
27 investment banks, portfolio managers, trust offices, and insurance
28 companies.

29 7. "Impacted jobs" means jobs existing at a business enterprise at a
30 location or locations within the county declared an emergency by the
31 governor on the day immediately preceding the day on which the event
32 leading to the emergency declaration by the governor occurred.

33 8. "Manufacturing" means the process of working raw materials into
34 products suitable for use or which gives new shapes, new quality or new
35 combinations to matter which has already gone through some artificial
36 process by the use of machinery, tools, appliances, or other similar
37 equipment. "Manufacturing" does not include an operation that involves
38 only the assembly of components, provided, however, the assembly of
39 motor vehicles or other high value-added products shall be considered
40 manufacturing.

41 9. "Participant" means a business entity that:

42 (a) has completed an application prescribed by the department to be
43 admitted into the program;

44 (b) has been issued a certificate of eligibility by the department;

45 (c) has demonstrated that it meets the eligibility criteria in section
46 four hundred fifty-two and subdivision two of section four hundred
47 fifty-three of this article; and

48 (d) has been certified as a participant by the commissioner.

49 10. "Preliminary schedule of benefits" means the maximum aggregate
50 amount of the tax credit that a participant in the empire state jobs
51 retention program is eligible to receive pursuant to this article. The
52 schedule shall indicate the annual amount of the credit a participant
53 may claim in each of its ten years of eligibility. The preliminary sche-
54 dule of benefits shall be issued by the department when the department
55 approves the application for admission into the program. The commission-

er may amend that schedule, provided that the commissioner complies with the credit caps in section three hundred fifty-nine of this chapter.

11. "Project site" means a single location from which operations are conducted and manufacturers may designate multiple locations consisting of one or more integrated buildings or structures within a fifteen-mile radius as one project site.

12. "Related person" means a related person pursuant to subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code.

13. "Scientific research and development" means conducting research and experimental development in the physical, engineering, and life sciences, including but not limited to agriculture, electronics, environmental, biology, botany, biotechnology, computers, chemistry, food, fisheries, forests, geology, health, mathematics, medicine, oceanography, pharmacy, physics, veterinary, and other allied subjects. For the purposes of this article, scientific research and development does not include medical or veterinary laboratory testing facilities.

14. "Software development" means the creation of coded computer instructions and includes new media as defined by the commissioner in regulations.

§ 452. Eligibility criteria. 1. To be a participant in the capital investment jobs retention program, a business entity shall:

(a) operate in New York state predominantly:

(i) as a financial services data center or a financial services back office operation;

(ii) in manufacturing;

(iii) in software development and new media;

(iv) in scientific research and development;

(v) in agriculture;

(vi) in the creation or expansion of back office operations in the state; or

(vii) in a distribution center.

(b) invest at least fifty million dollars in fixed assets for manufacturing operations or twenty million in fixed assets for significant corporate administrative functions at the project site. Such investment shall be completed within the three consecutive calendar years preceding the taxable year in which such participant first claims the tax credit set forth in this article. In calculating such investment, the participant may not include:

(i) payments made for the acquisition of personal property through operating leases,

(ii) payments made to related members, including, but not limited to related entities, component members, or persons to or from whom there is attribution of stock ownership,

(iii) elected consolidated taxpayers, or

(iv) persons treated as single taxpayers known as combined taxpayers.

(c) agree to maintain operations at the project site for at least the greater of:

(i) the term of the tax credit plus three years, or

(ii) seven years.

(d) demonstrate to the commissioner that:

(i) it is economically sound and possesses the financial capability to complete the required capital investment, and

(ii) the tax credit provided for in this article is a major factor in its determination to begin, continue and complete the capital investment project.

1 (e) provide the commissioner with a letter of support from the local
2 community in which the project is located.

3 2. When determining whether an applicant is operating predominantly in
4 one of the industries listed in subdivision one of this section, the
5 commissioner shall examine the nature of the business activity at the
6 location for the proposed project and will make eligibility determi-
7 nations based on such activity.

8 3. For the purposes of this article, in order to participate in the
9 capital investment jobs retention program, a business entity operating
10 in one of the strategic industries listed in subdivision one of this
11 section:

12 (a) shall employ at least two hundred full-time equivalent jobs at the
13 project site during the time for which the tax credit is granted, and

14 (b) shall continue to employ at least two hundred full-time equivalent
15 employees for the duration of the agreement entered into with the empire
16 state development corporation; provided, however, that the business
17 entity shall not include full-time equivalent positions whose existence
18 are predicated upon the assistance offered by the tax credit.

19 4. An intrastate relocation project, a not-for-profit business entity,
20 a business entity whose primary function is the provision of services
21 including personal services, business services, or the provision of
22 utilities, a business entity engaged predominantly in the retail or
23 entertainment industry, or a company engaged in the generation or
24 distribution of electricity, the distribution of natural gas, or the
25 production of steam associated with the generation of electricity are
26 not eligible to receive the tax credit described in this article.

27 5. A business entity must be in compliance with all worker protection
28 and environmental laws and regulations. In addition, a business entity
29 may not owe past due state taxes. In addition, a business entity must
30 not owe local property taxes for any year prior to the year in which it
31 applies to participate in the capital investment jobs retention program.

32 § 453. Application and approval process. 1. A business enterprise
33 shall submit a completed application as prescribed by the commissioner.
34 Such completed application shall be submitted to the commissioner within
35 one hundred eighty days of the enactment of this article.

36 2. As part of such application, each business enterprise shall:

37 (a) agree to allow the department of taxation and finance to share its
38 tax information with the department. However, any information shared as
39 a result of this agreement shall not be available for disclosure or
40 inspection under the state freedom of information law.

41 (b) agree to allow the department of labor to share its tax and
42 employer information with the department. However, any information
43 shared as a result of this agreement shall not be available for disclo-
44 sure or inspection under the state freedom of information law.

45 (c) allow the department and its agents access to any and all books
46 and records the department may require to monitor compliance.

47 (d) agree to be permanently disqualified for empire zone tax benefits
48 at any location or locations that qualify for capital investment jobs
49 retention program benefits if admitted into the capital investment jobs
50 retention program.

51 (e) provide the following information to the department upon request:

52 (i) a plan outlining the schedule for meeting the jobs retention
53 requirements as set forth in subdivision three of section four hundred
54 fifty-two of this article. Such plan must include details on jobs titles
55 and expected salaries;

1 (ii) the prior three years of federal and state income or franchise
2 tax returns, unemployment insurance quarterly returns, real property tax
3 bills and audited financial statements; and

4 (iii) the employer identification or social security numbers for all
5 related persons to the applicant, including those of any members of a
6 limited liability company or partners in a partnership.

7 (f) provide a clear and detailed presentation of all related persons
8 to the applicant to assure the department that jobs are not being shift-
9 ed within the state.

10 (g) certify, under penalty of perjury, that it is in substantial
11 compliance with all environmental, worker protection, and local, state,
12 and federal tax laws.

13 3. After reviewing a business enterprise's completed application and
14 determining that the business enterprise will meet the conditions set
15 forth in subdivision three of section four hundred fifty-two of this
16 article, the department may admit the applicant into the program and
17 provide the applicant with a certificate of eligibility and a prelimi-
18 nary schedule of benefits by year based on the applicant's projections
19 as set forth in its application. This preliminary schedule of benefits
20 delineates the maximum possible benefits an applicant may receive.

21 4. In order to become a participant in the program, an applicant shall
22 submit evidence that it satisfies the eligibility criteria specified in
23 section four hundred fifty-two of this article and subdivision two of
24 this section in such form as the commissioner may prescribe. After
25 reviewing such evidence and finding it sufficient, the department shall
26 certify the applicant as a participant and issue to that participant a
27 certificate of tax credit for one taxable year. To receive a certificate
28 of tax credit for subsequent taxable years, the participant must submit
29 to the department a performance report demonstrating that the partic-
30 ipant continues to satisfy the eligibility criteria specified in section
31 four hundred fifty-two of this article and subdivision two of this
32 section.

33 5. A participant may claim tax benefits commencing in the first taxa-
34 ble year that the business enterprise receives a certificate of tax
35 credit or the first taxable year listed on its preliminary schedule of
36 benefits, whichever is later. A participant may claim such benefits for
37 the next nine consecutive taxable years, provided that the participant
38 demonstrates to the department that it continues to satisfy the eligi-
39 bility criteria specified in section four hundred fifty-two of this
40 article and subdivision two of this section in each of those taxable
41 years.

42 § 454. Capital investment jobs retention program credit. 1. A partic-
43 ipant in the capital investment jobs retention program shall be eligible
44 to claim a credit for the impacted jobs. The amount of such credit shall
45 be equal to seventy-five percent of the New York state income taxes
46 withheld from eligible full-time employees.

47 2. The tax credit established in this section shall be refundable as
48 provided in the tax law. If a participant fails to satisfy the eligibil-
49 ity criteria in any one year, it will lose the ability to claim credit
50 for that year. The event of such failure shall not extend the original
51 ten-year eligibility period.

52 3. (a) The business enterprise shall be allowed to claim the credit as
53 prescribed in section forty-four of the tax law; provided, however, a
54 business enterprise shall not be allowed to claim the credit prior to
55 tax year two thousand twenty-one.

1 (b) Any individual that is a member or employee of a participant may
2 claim the pro rata share of the credit earned by such participant.

3 4. A participant may be eligible for benefits under this article as
4 well as article seventeen of this chapter, provided the participant can
5 only receive benefits pursuant to subdivision two of section three
6 hundred fifty-five of this chapter for costs in excess of costs recov-
7 ered by insurance.

8 § 455. Powers and duties of the commissioner. 1. The commissioner
9 shall promulgate regulations establishing an application process and
10 eligibility criteria, that will be applied consistent with the purposes
11 of this article, so as not to exceed the annual cap on tax credits set
12 forth in section three hundred fifty-nine of this chapter which,
13 notwithstanding any provisions to the contrary in the state administra-
14 tive procedure act, may be adopted on an emergency basis. Such regu-
15 lations shall include, but not be limited to, criteria for determining
16 whether a business entity is economically sound and possesses the finan-
17 cial capability to complete the required capital investment and whether
18 the tax credit provided for in this article is a major factor in the
19 determination of such business entity to begin, continue and complete
20 the capital investment project.

21 2. The commissioner shall, in consultation with the department of
22 taxation and finance, develop a certificate of tax credit that shall be
23 issued by the commissioner to participants. Participants may be required
24 by the commissioner of taxation and finance to include the certificate
25 of tax credit with their tax return to receive any tax benefits under
26 this article.

27 3. The commissioner shall solely determine the eligibility of any
28 applicant applying for entry into the program and shall remove any
29 participant from the program for failing to meet any of the requirements
30 set forth in subdivision two of section four hundred fifty-three of this
31 article, or for failing to meet the job retention requirements set forth
32 in subdivision three of section four hundred fifty-two of this article,
33 or for failing to meet the requirements of subdivision five of section
34 four hundred fifty-two of this article.

35 § 456. Maintenance of records. Each participant shall keep all rele-
36 vant records for the duration of its program participation plus three
37 years.

38 § 457. Reporting. 1. (a) In order to receive a tax credit certificate
39 and to maintain eligibility for this tax credit program, the taxpayer
40 must submit an annual report to the department of taxation and finance
41 by March first of the year following any year for which the tax credit
42 is claimed, the first report of which is due March first of the year
43 following the calendar year in which the investment is completed and the
44 tax credit begins.

45 (b) Such report shall contain the number of eligible full-time equiv-
46 alent employees and the amount of income tax withheld from those employ-
47 ees, and the amounts paid towards the completion of the capital invest-
48 ment. Once this is verified by the commissioner of taxation and finance,
49 the commissioner will issue a tax credit certificate to the taxpayer.

50 (c) The participant must then submit the tax credit certificate with
51 the applicable state tax return. If the tax credit is greater than the
52 state tax liability, the unused portion may be carried forward up to
53 three years.

54 (d) Failure to submit a complete and timely annual report will result
55 in the assessment of a five hundred dollar late fee for each ensuing
56 calendar month the report remains incomplete or unfiled.

(e) Once the active term of the tax credit ends, a post-term period, length to be determined by the empire state development corporation, will require annual reporting requirements to certify that substantial operations remain at the project site.

2. Each participant must submit a performance report annually, in such form as the commissioner may require, within thirty days of the end of their taxable year.

3. The commissioner shall prepare on a quarterly basis a program report for posting on the department's website. The first report will be due June thirtieth, two thousand twenty-two, and every three months thereafter. Such report shall include, but not be limited to, the following: number of applicants; number of participants approved; names of participants; total amount of benefits certified; benefits received per participant; total number of retained jobs; and such other information as the commissioner determines.

§ 458. Cap on tax credit. 1. The total amount of tax credits listed on certificates of tax credit issued by the commissioner for any taxable year may not exceed the following amounts:

(a) For 2021, eighteen million dollars.

(b) For 2022, twenty-three million dollars.

(c) For 2023, twenty-eight million dollars.

(d) For 2024, thirty-three million dollars.

2. For each individual project, the empire state development corporation shall approve a schedule for the maximum amount of credits to be issued in a calendar year.

§ 459. Penalties. 1. If a participant fails to maintain the job levels required in subdivision three of section four hundred fifty-two of this article, or in any other way fails to comply with the terms, the empire state development corporation may terminate or reduce the benefits, or may ask for a one hundred percent refund of assistance received.

2. If the participant fails to comply with terms during the post-term reporting period, the empire state development corporation may require a refund of up to seventy-five percent of assistance received.

§ 2. The tax law is amended by adding a new section 44 to read as follows:

§ 44. Capital investment jobs retention program credit. (a) Allowance of credit. A taxpayer subject to tax under article nine-A, twenty-two or thirty-three of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (e) of this section. The amount of the credit, allowable for ten consecutive tax years, is equal to the amount determined pursuant to section four hundred fifty-four of the economic development law.

(b) Eligibility. To be eligible for the capital investment jobs retention credit, the taxpayer shall have been issued a certificate of tax credit by the department of economic development pursuant to subdivision four of section four hundred fifty-three of the economic development law, which certificate shall set forth the amount of the credit that may be claimed for the taxable year. A taxpayer may claim such credit for up to ten consecutive taxable years commencing in the first taxable year that the taxpayer receives a certificate of tax credit or the first taxable year listed on its preliminary schedule of benefits, whichever is later.

However, a taxpayer shall not be allowed to claim the credit prior to the tax year commencing on or after January first, two thousand twenty-one and before January first, two thousand twenty-two. The taxpayer shall be allowed to claim only the amount listed on the certificate of

1 tax credit for that taxable year. Such certificate, if required by the
2 commissioner, shall be attached to the taxpayer's return. No cost or
3 expense paid or incurred by the taxpayer which is included as part of
4 the calculation of this credit shall be the basis of any other tax cred-
5 it.

6 (c) Information sharing. (1) Notwithstanding any provision of this
7 chapter, employees and officers of the department of economic develop-
8 ment and the department shall be allowed and are directed to share and
9 exchange:

10 (A) information derived from tax returns or reports that is relevant
11 to a taxpayer's eligibility to participate in the capital investment
12 jobs retention program;

13 (B) information regarding the credit applied for, allowed or claimed
14 pursuant to this section and taxpayers who are applying for the credit
15 or who are claiming the credit; and

16 (C) information contained in or derived from credit claim forms
17 submitted to the department and applications for admission into the
18 capital investment jobs retention program.

19 Except as provided in paragraph two of this subdivision, all informa-
20 tion exchanged between the department of economic development and the
21 department shall not be subject to disclosure or inspection under the
22 state's freedom of information law.

23 (2) Notwithstanding any provision of this chapter, the commissioner or
24 the commissioner's designee is authorized to release the name of each
25 taxpayer claiming the credit and the amount of the credit earned by each
26 taxpayer. However, if the taxpayer claims a credit because the taxpayer
27 is a member of a limited liability company, a partner in a partnership
28 or a shareholder in a subchapter S corporation, only the name of a
29 limited liability company, partnership or subchapter S corporation
30 participating in the capital investment jobs retention program and the
31 amount of credit earned by that entity may be released.

32 (d) Credit recapture. If a certificate of eligibility or a certificate
33 of tax credit issued by the department of economic development under
34 article twenty-three of the economic development law is revoked by such
35 department, the amount of credit described in this section and claimed
36 by the taxpayer prior to that revocation shall be added back to tax in
37 the taxable year in which any such revocation becomes final.

38 (e) Cross-references. For application of the credit provided for in
39 this section, see the following provisions of this chapter:

40 (1) article 9-A: section 210-B, subdivision 53;

41 (2) article 22: section 606, subsection (jjj);

42 (3) article 33, section 1511, subdivision (dd).

43 § 3. Section 210-B of the tax law is amended by adding a new subdivi-
44 sion 53 to read as follows:

45 53. Capital investment jobs retention program credit. (a) Allowance of
46 credit. A taxpayer will be allowed a credit, to be computed as provided
47 in section forty-four of this chapter, against the taxes imposed by this
48 article.

49 (b) Application of credit. The credit allowed under this subdivision
50 for any taxable year will not reduce the tax due for such year to less
51 than the minimum tax fixed by this article. However, if the amount of
52 credit allowed under this subdivision for any taxable year reduces the
53 tax to such amount, any amount of credit thus not deductible in such
54 taxable year will be treated as an overpayment of tax to be credited or
55 refunded in accordance with the provisions of section one thousand
56 eighty-six of this chapter. Provided, however, the provisions of

1 subsection (c) of section one thousand eighty-eight of this chapter
2 notwithstanding, no interest will be paid thereon.

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

5 (jjj) Capital investment jobs program retention credit. (1) Allowance
6 of credit. A taxpayer shall be allowed a credit, to be computed as
7 provided in section forty-four of this chapter, against the tax imposed
8 by this article.

9 (2) Application of credit. If the amount of the credit allowed under
10 this subsection for any taxable year exceeds the taxpayer's tax for such
11 year, the excess will be treated as an overpayment of tax to be credited
12 or refunded in accordance with the provisions of section six hundred
13 eighty-six of this article, provided, however, that no interest will be
14 paid thereon.

15 § 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
16 of the tax law is amended by adding a new clause (xliv) to read as
17 follows:

| | |
|---|---|
| 18 <u>(xliv) Capital investment</u> | <u>Amount of credit under subdivision</u> |
| 19 <u>jobs retention program credit</u> | <u>fifty-three of section two hundred</u> |
| 20 | <u>ten-B</u> |

21 § 6. Section 1511 of the tax law is amended by adding a new subdivi-
22 sion (dd) to read as follows:

23 (dd) Capital investment jobs retention program credit. (1) Allowance
24 of credit. A taxpayer shall be allowed a credit, to be computed as
25 provided in section forty-four of this chapter, against the taxes
26 imposed by this article.

27 (2) Application of credit. The credit allowed under this subdivision
28 for any taxable year will not reduce the tax due for such year to less
29 than the minimum tax fixed by this article. However, if the amount of
30 credit allowed under this subdivision for any taxable year reduces the
31 tax to such amount, any amount of credit thus not deductible in such
32 taxable year will be treated as an overpayment of tax to be credited or
33 refunded in accordance with the provisions of section one thousand
34 eighty-six of this chapter. Provided, however, the provisions of
35 subsection (c) of section one thousand eighty-eight of this chapter
36 notwithstanding, no interest will be paid thereon.

37 § 7. This act shall take effect immediately; provided however that
38 sections two, three, four, five and six of this act shall apply to taxa-
39 ble years beginning on and after January 1, 2021.