STATE OF NEW YORK

5332

2019-2020 Regular Sessions

IN ASSEMBLY

February 8, 2019

Introduced by M. of A. KOLB -- read once and referred to the Committee on Economic Development

AN ACT to amend the economic development law, in relation to establishing an incentive program for manufacturers that maintain or increase employment; and to amend the tax law, in relation to establishing wage tax credit incentives for manufacturing firms enrolled in the program (Part A); and to amend the tax law, in relation to increasing the real property tax credit for manufacturers (Part B)

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

Section 1. Short title. This act shall be known and may be cited as the "manufacturing preservation and enhancement act".

§ 2. Legislative findings and intent. The legislature finds and determines that historically, manufacturing firms have helped to build our state. Today, manufacturing jobs are an essential part of the state's economy. Accordingly, the state should offer programs that foster growth in this important sector of the state economy. The purpose of this legislation is to establish a tax incentive program that would provide tax credits to manufacturing firms that create new jobs in the manufacturing sector over a specified period of time.

§ 3. This act enacts into law major components of legislation providing for the creation of the manufacturing preservation and enhancement act and increasing the real property tax credit for manufacturers. Each component is wholly contained within a Part identified as Parts A and B. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained with a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section five of this act sets forth the general effective date of this act.

PART A

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

LBD06096-01-9

Section 1. The economic development law is amended by adding a new article 15 to read as follows:

ARTICLE 15

MANUFACTURING PRESERVATION AND ENHANCEMENT ACT

Section 270. Definitions.

271. Manufacturing preservation and enhancement program.

272. Special provisions relating to certified manufacturers.

273. Reporting.

§ 270. Definitions. As used in this article, the following words and terms shall have the following meanings unless the content shall indicate another or different meaning or intent:

1. "Program" shall mean the manufacturing preservation and enhancement program established pursuant to this article.

2. "Manufacturing firm" shall mean an enterprise, including corporate entities, partnerships and sole proprietors, engaged in the business of production of goods and products from raw materials.

3. "Benchmark" shall mean a specific number of eligible new jobs created in the state pursuant to the program.

4. "MEI" shall mean the manufacturing enhancement incentive program.

§ 271. Manufacturing preservation and enhancement program. 1. There is hereby created a manufacturing preservation and enhancement program within the department to provide technical and financial assistance in the form of tax incentives to manufacturing firms that meet specified benchmarks in job creation as established by the commissioner.

2. The commissioner shall determine eligibility requirements for participation in the program, provided, however, that such requirements shall include the following:

(a) An applicant to the program may not participate in the program if designated as a certified business located in an empire zone created pursuant to article eighteen-B of the general municipal law; and

(b) An applicant that has previously participated in the program may not reapply for participation in the program unless it can document that at the time of its reapplication for participation, it has maintained a level of employment at least as great as the highest level required during its previous participation in the program.

3. Applications for participation in the MEI shall be submitted by each manufacturing firm seeking to participate in the program, and shall be in the form and contain such information, exhibits and supporting data as the commissioner may prescribe. No applications for participation shall be accepted after December thirty-first, two thousand twenty-seven.

4. Manufacturing firms interested in participating in the MEI shall submit an application to the program. The commissioner shall review all applications for participation in the program for eligibility and shall register eligible applicants. The commissioner shall provide each registered applicant with benchmarks in job creation that must be achieved by the registered applicant over the following one year. Such benchmarks shall be consistent with regulations to be prescribed by the commissioner. Annually, each registered applicant shall submit to the commissioner a registration statement, together with such information, exhibits and supporting data as the commissioner may require. Upon submission of the second annual registration statement, the commissioner shall review the registered applicant's file for eligibility for the tax incentives. If the registered applicant has met the required benchmarks in job creation, the commissioner shall provide a certificate, valid for the succeeding five tax years, certifying that the registered applicant is

eligible for tax credits pursuant to this article. The MEI certificate shall include a description of the property eligible for the property tax benefit and shall specify the employment level and total amount of employee gross salary eligible for the wage credit.

§ 272. Special provisions relating to certified manufacturers. During the five-year certification period, certified manufacturing firms shall be eligible to receive the following tax credits:

1. An MEI wage tax credit, which shall be computed pursuant to section eight hundred sixty-one of the tax law; and

2. An MEI energy tax credit, which shall be computed pursuant to section eight hundred sixty-two of the tax law.

§ 273. Reporting. The commissioner shall, on or before September first, two thousand twenty, and annually thereafter, submit a report to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate and the minority leader of the assembly on the operation and accomplishments of the program provided for pursuant to this article.

§ 2. The tax law is amended by adding a new article 24-A to read as follows:

ARTICLE 24-A
MANUFACTURING PRESERVATION AND ENHANCEMENT ACT

Section 861. MEI wage tax credit.
862. MEI energy tax credit.

§ 861. MEI wage tax credit. (a) Allowance of credit. A taxpayer receiving an MEI certificate that has been issued pursuant to article fifteen of the economic development law, and that or who is subject to taxes under article nine-A or article twenty-two of this chapter, shall be allowed a credit against the taxes assessed under article nine-A or article twenty-two of this chapter during the tax years that the certificate is valid. The credit shall be computed pursuant to the provisions of subsection (c) of this section.

(b) Definitions. The term "eligible wages" shall mean the total amount of employee gross salary eligible for the wage tax credit, as such amount is specified in the MEI certificate issued pursuant to article fifteen of the economic development law.

(c) Computation of wage tax credit. (1) During the first tax year of the five-year period for which a valid MEI certificate has been issued pursuant to article fifteen of the economic development law, provided the taxpayer has maintained the employment and eligible wage requirements specified by the MEI as defined in article fifteen of the economic development law, the taxpayer shall be allowed a credit of one and one-half percent of the total amount of the eligible wages actually paid by the taxpayer. If the taxpayer increases employment during this tax year, and exceeds the level of employment required by the MEI as defined in article fifteen of the economic development law, hiring and maintaining additional employees and paying additional wages over and above the eligible wages amount, the taxpayer shall be allowed an additional credit of two and one-half percent of the total amount by which the wages actually paid as a result of the increased level of employment exceed the eligible wages.

(2) During the second tax year of the five-year period for which a valid MEI certificate has been issued pursuant to article fifteen of the economic development law, provided the taxpayer has maintained the employment and eligible wage requirements specified by the MEI as defined in article fifteen of the economic development law, the taxpayer shall be allowed a credit of one and one-half percent of the total

amount of the eligible wages actually paid by the taxpayer; however, if the taxpayer increased employment in the preceding tax year and claimed the two and one-half percent credit for employment and payment of wages in excess of the MEI requirements pursuant to article fifteen of the economic development law, the taxpayer shall be allowed a credit of one and one-half percent of the total amount of the eligible wages actually paid by the taxpayer during the preceding tax year, provided the taxpayer has maintained the increased employment and salary levels. If the taxpayer again increases employment, hiring and maintaining additional employees and paying additional wages over and above the previous tax year's amount, the taxpayer shall be allowed an additional credit of two and one-half percent of the total amount by which the wages actually paid as a result of the increased level of employment exceed the wages subject to the one and one-half percent credit.

§ 862. MEI energy tax credit. (a) Allowance of credit. A taxpayer receiving an MEI certificate has been issued pursuant to article fifteen of the economic development law, and that or who is subject to taxes under article nine-A or article twenty-two of this chapter, shall be allowed a credit against the taxes assessed under article nine-A or article twenty-two of this chapter during the tax years that the certificate is valid. The credit shall be computed pursuant to the provisions of subsection (c) of this section.

(b) Definition. The term "eligible energy costs" shall mean the amounts paid by the taxpayer for electricity, natural gas, or any other energy product or service which the taxpayer has used in the operation of a MEI certified manufacturing firm facility pursuant to article fifteen of the economic development law.

(c) Computation of energy credit. (1) If the taxpayer has paid eligible energy costs during the first tax year of the five-year period for which a valid MEI certificate has been issued pursuant to article fifteen of the economic development law, provided the taxpayer has maintained the employment and eligible wages requirements specified by the MEI as defined in article fifteen of the economic development law, the taxpayer shall be allowed an energy credit of twenty-five dollars per employee required by the MEI as defined in article fifteen of the economic development law. If the taxpayer increases employment during this tax year, and exceeds the level of employment required by the MEI as defined in article fifteen of the economic development law, hiring and maintaining additional employees and paying additional wages over and above the eligible wages amount, the taxpayer shall be allowed an additional energy credit of fifty dollars per each additional employee. The energy tax credit shall not exceed the amount of eligible energy costs actually paid by the taxpayer.

(2) If the taxpayer has paid eligible energy costs during the second tax year of the five-year period for which a valid MEI certificate has been issued pursuant to article fifteen of the economic development law, provided the taxpayer has maintained the employment and eligible wage requirements specified by the MEI as defined in article fifteen of the economic development law, the taxpayer shall be allowed an energy credit of twenty-five dollars per employee required by the MEI as defined in article fifteen of the economic development law; however, if the taxpayer increased employment during the preceding tax year and claimed the additional energy tax credit of fifty dollars per additional employee, the taxpayer shall be allowed a credit of twenty-five dollars per employee up to the number of employees claimed in the previous tax year, provided the taxpayer has maintained the increased employment and wage

levels. If the taxpayer again increases employment, hiring additional employees and paying additional wages over and above the previous tax year's amounts, the taxpayer shall be allowed an additional credit of fifty dollars for each additional employee hired during the second year. The energy tax credit shall not exceed the amount of eligible energy costs actually paid by the taxpayer.

§ 3. Section 210-B of the tax law is amended by adding two new subdivisions 53 and 54 to read as follows:

53. MEI wage tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit against the tax imposed by this article, to be computed as provided in section eight hundred sixty-one of this chapter, against the tax imposed by this article.

(b) Carryovers. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article; provided, however, if the amount of this credit allowable under this section for any taxable year reduces tax to such amount, any amount of the credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

54. MEI energy tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit against the tax imposed by this article, to be computed as provided in section eight hundred sixty-two of this chapter, against the tax imposed by this article.

(b) Carryovers. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article; provided, however, if the amount of this credit allowable under this section for any taxable year reduces tax to such amount, any amount of the credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

§ 4. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding two new clauses (xliv) and (xlv) to read as follows:

(xliv) MEI wage tax credit under subsection (jjj)	Amount of MEI wage tax credit under subdivision fifty three of section two hundred ten-B
(xlv) MEI energy tax credit under subsection (kkk)	Amount of MEI energy tax credit under subdivision fifty-four of section two hundred ten-B

§ 5. Section 606 of the tax law is amended by adding two new subsections (jjj) and (kkk) to read as follows:

(jjj) MEI wage tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section eight hundred sixty-one of this chapter, against the tax imposed by this article.

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

(kkk) MEI energy tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section eight hundred sixty-two of this chapter, against the tax imposed by this article.

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

§ 6. This act shall take effect on the one hundred eightieth day after it shall have become a law and shall apply to taxable years beginning on or after January 1, 2020 and before January 1, 2027; provided, however, that the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made on or before such date.

PART B

Section 1. Paragraph (a) of subdivision 43 of section 210-B of the tax law, as added by section 17 of part A of chapter 59 of the laws of 2014, is amended to read as follows:

(a) A qualified New York manufacturer, as defined in subparagraph (vi) of paragraph (a) of subdivision one of section two hundred ten of this article, will be allowed a credit equal to [~~twenty~~] fifty percent of the real property tax it paid during the taxable year for real property owned by such manufacturer in New York which was principally used during the taxable year for manufacturing to the extent not deducted in determining entire net income. This credit will not be allowed if the real property taxes that are the basis for this credit are included in the calculation of another credit claimed by the taxpayer.

§ 2. Paragraph 1 of subsection (xx) of section 606 of the tax law, as amended by section 8 of part I of chapter 59 of the laws of 2015, is amended to read as follows:

(1) A qualified New York manufacturer will be allowed a credit equal to [~~twenty~~] fifty percent of the real property tax it paid during the taxable year for real property owned by such manufacturer in New York which was principally used during the taxable year for manufacturing to the extent not deducted in computing New York adjusted gross income. This credit will not be allowed if the real property taxes that are the basis for this credit are included in the calculation of another credit claimed by the taxpayer.

§ 3. This act shall take effect immediately and shall apply to tax years beginning on or after January 1, 2020.

§ 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This act shall take effect immediately, provided, however, that the applicable effective date of Part A and Part B of this act shall be as specifically set forth in the last section of such Parts.