STATE OF NEW YORK

7332--A

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

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 and deposit profits into a small business tax-deferred savings account.

3. The monies in such tax-deferred savings accounts may be deposited or withdrawn tax free when they are expended for expansion of such small business for the purpose of creating or preserving full time jobs.

4. For the purposes of this act, a qualifying purpose shall include small business taxpayer expenditures that result in the creation or retention of full-time jobs. In addition, working capital used for other activities, deemed appropriate by the department, which will improve the competitiveness and productivity of a small business and results in the creation or retention of full-time jobs shall be considered a qualifying business expenditure. Qualifying small business taxpayer expenditures for the purpose of this section shall include, but not be limited to,

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

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new construction, renovation or leasehold improvements, and the acquisition of land, buildings, machinery and equipment.

5. The monies on deposit in such tax-deferred savings accounts may not exceed more than five thousand dollars in any taxable year.

6. On or before April first, and annually thereafter, the department, in consultation with the department of taxation and finance, shall report on the number of small business taxpayers utilizing this program, the average aggregate amount on deposit, the qualifying expenses claimed, any qualifying expenses deemed inappropriate and any other such data deemed necessary and appropriate by the department.

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

13. For any taxable year beginning on or after January first, two thousand twenty-one, any small business, as such term is defined pursuant to section one hundred thirty-eight-a of the economic development law, shall be exempt from all state income taxes imposed pursuant to this article for any deposit or withdrawal from a small business tax-deferred savings account established pursuant to section one hundred thirty-eight-a of the economic development law and used for the expansion of such small business for the purpose of creating or preserving full time jobs. If a small business taxpayer files for and receives an exemption from the state income tax imposed under this section pursuant to the provisions of this subdivision and the funds deposited or withdrawn, or any portion thereof, are not expended for a qualifying purpose as set forth in section one hundred thirty-eight-a of the economic development law, then the amount of such exemption claimed by the small business taxpayer shall be added back to the amount of state income liability tax in the next succeeding taxable year or in the year in which the exemption is disallowed.

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

(43) Any deposit or withdrawal from a small business tax-deferred savings account established pursuant to section one hundred thirty-eight-a of the economic development law and used for the expansion of such small business for the purpose of creating or preserving full time jobs. If a small business taxpayer files for and receives an exemption from the state income tax imposed under this section pursuant to the provisions of this paragraph and the funds deposited or withdrawn, or any portion thereof, are not expended for a qualifying purpose as set forth in section one hundred thirty-eight-a of the economic development law, then the amount of such exemption claimed by the small business taxpayer shall be added back to state income tax in the next succeeding taxable year or in the year in which the exemption is disallowed.

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

§ 5. Rules and regulations. The department of taxation and finance in consultation with the department of economic development, is hereby authorized to promulgate rules and regulations in accordance with the state administrative procedure act that are necessary to fulfill the purposes of this act. Such regulations shall include but not be limited to deadlines for establishing a small business tax deferred savings account, standard procedures and forms to be utilized in the program, and any other such regulations deemed necessary to promote the full utilization of this program. Such rules and regulations shall be completed within 180 days after the effective date of this act.

§ 6. This act shall take effect immediately.