

# STATE OF NEW YORK

2412

2019-2020 Regular Sessions

## IN SENATE

January 24, 2019

Introduced by Sen. KAPLAN -- 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 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:

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

3 § 138-a. Small business tax-deferred savings accounts. 1. A "small  
4 business taxpayer" or "small business" shall have the same meaning as  
5 defined in section one hundred thirty-one of this article and shall meet  
6 the requirements of paragraph (f) of subdivision one of section two  
7 hundred ten of the tax law.

8 2. Any small business shall be authorized to establish and deposit  
9 profits into a small business tax-deferred savings account.

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11 or withdrawn tax free when they are expended for expansion of such small  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

13 4. For the purposes of this act, a qualifying purpose shall include  
14 small business taxpayer expenditures that result in the creation or  
15 retention of full-time jobs. In addition, working capital used for other  
16 activities, deemed appropriate by the department, which will improve the  
17 competitiveness and productivity of a small business and results in the  
18 creation or retention of full-time jobs shall be considered a qualifying  
19 business expenditure. Qualifying small business taxpayer expenditures  
20 for the purpose of this section shall include, but not be limited to,  
21 new construction, renovation or leasehold improvements, and the acquisi-  
22 tion of land, buildings, machinery and equipment.

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

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

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

9 § 2. Section 209 of the tax law is amended by adding a new subdivision  
10 13 to read as follows:

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

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

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

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

55 § 5. Rules and regulations. The department of taxation and finance in  
56 consultation with the department of economic development, is hereby

1 authorized to promulgate rules and regulations in accordance with the  
2 state administrative procedure act that are necessary to fulfill the  
3 purposes of this act. Such regulations shall include but not be limited  
4 to deadlines for establishing a small business tax deferred savings  
5 account, standard procedures and forms to be utilized in the program,  
6 and any other such regulations deemed necessary to promote the full  
7 utilization of this program. Such rules and regulations shall be  
8 completed within 180 days after the effective date of this act.  
9 § 6. This act shall take effect immediately.