

# STATE OF NEW YORK

8358--A

## IN SENATE

May 19, 2020

Introduced by Sens. BAILEY, BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law and the tax law, in relation to establishing the COVID-19 recovery local employment tax credit program

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

1 Section 1. The labor law is amended by adding a new section 25-d to  
2 read as follows:

3 § 25-d. Power to administer the COVID-19 recovery local employment tax  
4 credit program. (a) The commissioner is authorized to establish and  
5 administer the COVID-19 recovery local employment tax credit program to  
6 provide tax incentives to employers for employing local employees in  
7 full-time or part-time positions in the two years following the conclu-  
8 sion of the state disaster emergency declared pursuant to executive  
9 order two hundred two. The commissioner is authorized to allocate up to  
10 forty million dollars of tax credits under this program.

11 (b) Definitions. (1) The term "qualified employer" means an employer  
12 that has been certified by the commissioner to participate in the  
13 COVID-19 recovery local employment tax credit program and that employs  
14 one or more qualified employees.

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

16 (i) resides within fifty miles from the qualified employer;

17 (ii) who resides in a city with a population of eighty thousand or  
18 more or a town with a population of fifty-five thousand or more;

19 (iii) who is low-income or at-risk, as such terms are defined by the  
20 commissioner;

21 (iv) who is unemployed prior to being hired by the qualified employer  
22 as a result of the outbreak of novel coronavirus, COVID-19; and

23 (v) who will be working for the qualified employer in a full-time or  
24 part-time position that pays wages that are equivalent to the wages paid  
25 for similar jobs, with appropriate adjustments for experience and train-  
26 ing, and for which no other employee has been terminated, or where the

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

LBD16233-07-0

1 employer has not otherwise reduced its workforce by involuntary termi-  
2 nations with the intention of filling the vacancy by creating a new  
3 hire.

4 (c) A qualified employer shall be entitled to a tax credit equal to  
5 (1) seven hundred fifty dollars per month for up to six months for each  
6 qualified employee the employer employs in a full-time job or three  
7 hundred seventy-five dollars per month for up to six months for each  
8 qualified employee the employer employs in a part-time job of at least  
9 twenty hours per week, (2) fifteen hundred dollars for each qualified  
10 employee who is employed for at least an additional six consecutive  
11 months by the qualified employer in a full-time job or seven hundred  
12 fifty dollars for each qualified employee who is employed for at least  
13 an additional six consecutive months by the qualified employer in a  
14 part-time job of at least twenty hours per week, and (3) an additional  
15 fifteen hundred dollars for each qualified employee who is employed for  
16 at least an additional year after the completion of the time periods and  
17 satisfaction of the conditions set forth in paragraphs one and two of  
18 this subdivision by the qualified employer in a full-time job or seven  
19 hundred fifty dollars for each qualified employee who is employed for at  
20 least an additional year after the completion of the time periods and  
21 satisfaction of the conditions set forth in paragraphs one and two of  
22 this subdivision by the qualified employer in a part-time job of at  
23 least twenty hours per week. The tax credits shall be claimed by the  
24 qualified employer as specified in subdivision fifty-five of section two  
25 hundred ten-B and subsection (kkk) of section six hundred six of the tax  
26 law.

27 (d) To participate in the COVID-19 recovery local employment tax cred-  
28 it program, an employer must submit an application (in a form prescribed  
29 by the commissioner) to the commissioner after January first, of the  
30 taxable year following the conclusion of the state disaster emergency  
31 declared pursuant to executive order two hundred two but no later than  
32 June first, of such year. The qualified employees shall start their  
33 employment on or after January first, of such year but no later than  
34 July first, of such year. The commissioner shall establish guidelines  
35 and criteria that specify requirements for employers to participate in  
36 the program including criteria for certifying qualified employees. Any  
37 regulations that the commissioner determines are necessary may be  
38 adopted on an emergency basis notwithstanding anything to the contrary  
39 in section two hundred two of the state administrative procedure act.  
40 Such requirements may include the types of industries that the employers  
41 are engaged in. The commissioner may give preference to employers that  
42 are engaged in demand occupations or industries, or in regional growth  
43 sectors, including those identified by the regional economic development  
44 councils, such as clean energy, healthcare, advanced manufacturing and  
45 conservation. In addition, the commissioner shall give preference to  
46 employers who offer advancement and employee benefit packages to the  
47 qualified individuals. As part of such application, an employer shall:

48 (1) agree to allow the department of taxation and finance to share its  
49 tax information with the commissioner. However, any information shared  
50 as a result of this agreement shall not be available for disclosure or  
51 inspection under the state freedom of information law, and

52 (2) allow the commissioner and his or her agents and the department of  
53 taxation and finance and its agents access to any and all books and  
54 records of employers the commissioner may require to monitor compliance.

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 program established under this section, the commissioner shall issue  
2 the employer a preliminary certificate of eligibility that establishes  
3 the employer as a qualified employer. The preliminary certificate of  
4 eligibility shall specify the maximum amount of tax credit that the  
5 employer may be allowed to claim and the program year under which it may  
6 be claimed. The maximum amount of tax credit the employer is allowed to  
7 claim shall be computed as prescribed in subdivision (c) of this  
8 section.

9 (f)(1) To receive an annual final certificate of tax credit, the qual-  
10 ified employer shall annually submit, on or before January thirty-first  
11 of the calendar year subsequent to the payment of wages paid to an  
12 eligible employee, a report to the commissioner, in a form prescribed by  
13 the commissioner. The report must demonstrate that the employer has  
14 satisfied all eligibility requirements and provided all the information  
15 necessary for the commissioner to compute an actual amount of credit  
16 allowed.

17 (2) After reviewing the report and finding it sufficient, the commis-  
18 sioner shall issue an annual final certificate of tax credit. Such  
19 certificate shall include, in addition to any other information the  
20 commissioner determines is necessary, the following information:

21 (i) The name and employer identification number of the qualified  
22 employer;

23 (ii) The program year for the corresponding credit award;

24 (iii) The actual amount of credit to which the qualified employer is  
25 entitled for that calendar year or the fiscal year in which the annual  
26 final certificate is issued, which actual amount cannot exceed the  
27 amount of credit listed on the preliminary certificate but may be less  
28 than such amount; and

29 (iv) A unique certificate number identifying the annual final certif-  
30 icate of tax credit.

31 (g) In determining the amount of credit for purposes of the annual  
32 final certificate of tax credit, the portion of the credit described in  
33 paragraph one of subdivision (c) of this section shall be allowed for  
34 the calendar year in which the wages are paid to the qualified employee,  
35 the portion of the credit described in paragraph two of subdivision (c)  
36 of this section shall be allowed for the calendar year in which the  
37 additional six consecutive month period ends, and the portion of the  
38 credit described in paragraph three of subdivision (c) of this section  
39 shall be allowed for the calendar year in which the additional year of  
40 consecutive employment ends after the completion of the time periods and  
41 satisfaction of the conditions set forth in paragraphs one and two of  
42 subdivision (c) of this section. If the qualified employer's taxable  
43 year is a calendar year, the employer shall be entitled to claim the  
44 credit as calculated on the annual final certificate of tax credit on  
45 the calendar year return for which the annual final certificate of tax  
46 credit was issued. If the qualified employer's taxable year is a fiscal  
47 year, the employer shall be entitled to claim the credit as calculated  
48 on the annual final certificate of tax credit on the return for the  
49 fiscal year that encompasses the date on which the annual final certif-  
50 icate of tax credit is issued.

51 (h) The commissioner shall establish guidelines and criteria that  
52 specify requirements for employers to participate in the program includ-  
53 ing criteria for certifying qualified employees, and issuing the prelim-  
54 inary certificate of eligibility and annual final certificate of tax  
55 credit. Such requirements may include the types of industries that the  
56 employers are engaged in. The commissioner may give preference to

1 employers that are engaged in demand occupations or industries, or in  
2 regional growth sectors, including but not limited to those identified  
3 by the regional economic development councils, such as clean energy,  
4 healthcare, advanced manufacturing and conservation. In addition, the  
5 commissioner shall give preference to employers who offer advancement  
6 and employee benefit packages to the qualified individuals.

7 (i) The commissioner shall annually publish a report. Such report must  
8 contain the names and addresses of any employer issued a preliminary  
9 certificate of eligibility under this section, the amount of COVID-19  
10 recovery local employment program tax credit allowed to the qualified  
11 employer as specified on an annual final certificate of tax credit and  
12 any other information as determined by the commissioner.

13 § 2. Section 210-B of the tax law is amended by adding a new subdivi-  
14 sion 55 to read as follows:

15 55. COVID-19 recovery local employment program tax credit. (a) A  
16 taxpayer that has been certified by the commissioner of labor as a qual-  
17 ified employer pursuant to section twenty-five-d of the labor law and  
18 received an annual final certificate of tax credit from such commission-  
19 er shall be allowed a credit against the tax imposed by this article  
20 equal to the amount listed on the annual final certificate of tax credit  
21 issued by the commissioner of labor pursuant to section twenty-five-d of  
22 the labor law. If the qualified employer's taxable year is a calendar  
23 year, the employer shall be entitled to claim the credit as calculated  
24 on the annual final certificate of tax credit on the calendar year  
25 return for which the annual final certificate of tax credit was issued.  
26 If the qualified employer's taxable year is a fiscal year, the employer  
27 shall be entitled to claim the credit as calculated on the annual final  
28 certificate of tax credit on the return for the fiscal year that encom-  
29 passes the date on which the annual final certificate of tax credit is  
30 issued. For the purposes of this subdivision, the term "qualified  
31 employee" shall have the same meaning as set forth in subdivision (b) of  
32 section twenty-five-d of the labor law.

33 (b) The credit allowed under this subdivision for any taxable year may  
34 not reduce the tax due for that year to less than the amount prescribed  
35 in paragraph (d) of subdivision one of section two hundred ten of this  
36 article. However, if the amount of the credit allowed under this subdivi-  
37 vision for any taxable year reduces the tax to that amount or if the  
38 taxpayer otherwise pays tax based on the fixed dollar minimum amount,  
39 any amount of credit not deductible in that taxable year will be treated  
40 as an overpayment of tax to be credited or refunded in accordance with  
41 the provisions of section one thousand eighty-six of this chapter.  
42 Provided, however, no interest will be paid thereon.

43 (c) The taxpayer shall be required to attach to its tax return its  
44 annual final certificate of tax credit issued by the commissioner of  
45 labor pursuant to section twenty-five-d of the labor law. In no event  
46 shall the taxpayer be allowed a credit greater than the amount of the  
47 credit listed on the annual final certificate of tax credit. Notwith-  
48 standing any provision of this chapter to the contrary, the commissioner  
49 and the commissioner's designees may release the names and addresses of  
50 any taxpayer claiming this credit and the amount of the credit earned by  
51 the taxpayer. Provided, however, if a taxpayer claims this credit  
52 because it is a member of a limited liability company or a partner in a  
53 partnership, only the amount of credit earned by the entity and not the  
54 amount of credit claimed by the taxpayer may be released.

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

(kkk) COVID-19 recovery local employment program tax credit. (1) A taxpayer that has been certified by the commissioner of labor as a qualified employer pursuant to section twenty-five-d of the labor law and received an annual final certificate of tax credit from such commissioner shall be allowed a credit against the tax imposed by this article equal to the amount listed on the annual final certificate of tax credit issued by the commissioner of labor pursuant to section twenty-five-d of the labor law. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in an S corporation that has received its annual final certificate of tax credit from the commissioner of labor as a qualified employer pursuant to section twenty-five-d of the labor law shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or S corporation. If the qualified employer's taxable year is a calendar year, the employer shall be entitled to claim the credit as calculated on the annual final certificate of tax credit on the calendar year return for which the annual final certificate of tax credit was issued. If the qualified employer's taxable year is a fiscal year, the employer shall be entitled to claim the credit as calculated on the annual final certificate of tax credit on the return for the fiscal year that encompasses the date on which the annual final certificate of tax credit is issued. For the purposes of this subsection, the term "qualified employee" shall have the same meaning as set forth in subdivision (b) of section twenty-five-d of the labor law.

(2) If the amount of the credit allowed under this subsection exceeds the taxpayer's tax for the taxable year, any amount of credit not deductible in that taxable year will 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, no interest will be paid thereon.

(3) The taxpayer shall be required to attach to its tax return its annual final certificate of tax credit issued by the commissioner of labor pursuant to section twenty-five-d of the labor law. In no event shall the taxpayer be allowed a credit greater than the amount of the credit listed on the annual final certificate of tax credit. Notwithstanding any provision of this chapter to the contrary, the commissioner and the commissioner's designees may release the names and addresses of any taxpayer claiming this credit and the amount of the credit earned by the taxpayer. Provided, however, if a taxpayer claims this credit because it is a member of a limited liability company, a partner in a partnership, or a shareholder in a subchapter S corporation, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

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

<u>(xlvi) COVID-19 recovery local</u>	<u>Amount of credit under</u>
<u>employment program</u>	<u>subdivision fifty-five of</u>
<u>tax credit</u>	<u>section two hundred ten-B</u>

§ 5. This act shall take effect immediately.