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:

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

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

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

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

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

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

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

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

(v) who will be working for the qualified employer in a full-time or part-time position that pays wages that are equivalent to the wages paid for similar jobs, with appropriate adjustments for experience and training, 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

employer has not otherwise reduced its workforce by involuntary terminations with the intention of filling the vacancy by creating a new hire.

(c) A qualified employer shall be entitled to a tax credit equal to (1) seven hundred fifty dollars per month for up to six months for each qualified employee the employer employs in a full-time job or three hundred seventy-five dollars per month for up to six months for each qualified employee the employer employs in a part-time job of at least twenty hours per week, (2) fifteen hundred dollars for each qualified employee who is employed for at least an additional six consecutive months by the qualified employer in a full-time job or seven hundred fifty dollars for each qualified employee who is employed for at least an additional six consecutive months by the qualified employer in a part-time job of at least twenty hours per week, and (3) an additional fifteen hundred dollars for each qualified employee who is employed for at least an additional year after the completion of the time periods and satisfaction of the conditions set forth in paragraphs one and two of this subdivision by the qualified employer in a full-time job or seven hundred fifty dollars for each qualified employee who is employed for at least an additional year after the completion of the time periods and satisfaction of the conditions set forth in paragraphs one and two of this subdivision by the qualified employer in a part-time job of at least twenty hours per week. The tax credits shall be claimed by the qualified employer as specified in subdivision fifty-five of section two hundred ten-B and subsection (kkk) of section six hundred six of the tax law.

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

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

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

(e) If, after reviewing the application submitted by an employer, the commissioner determines that such employer is eligible to participate in

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

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

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

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

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

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

(iv) A unique certificate number identifying the annual final certificate of tax credit.

(g) In determining the amount of credit for purposes of the annual final certificate of tax credit, the portion of the credit described in paragraph one of subdivision (c) of this section shall be allowed for the calendar year in which the wages are paid to the qualified employee, the portion of the credit described in paragraph two of subdivision (c) of this section shall be allowed for the calendar year in which the additional six consecutive month period ends, and the portion of the credit described in paragraph three of subdivision (c) of this section shall be allowed for the calendar year in which the additional year of consecutive employment ends after the completion of the time periods and satisfaction of the conditions set forth in paragraphs one and two of subdivision (c) of this section. 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.

(h) The commissioner shall establish guidelines and criteria that specify requirements for employers to participate in the program including criteria for certifying qualified employees, and issuing the preliminary certificate of eligibility and annual final certificate of tax credit. Such requirements may include the types of industries that the employers are engaged in. The commissioner may give preference to

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

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

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

55. COVID-19 recovery local employment program tax credit. (a) 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. 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 subdivision, the term "qualified employee" shall have the same meaning as set forth in subdivision (b) of section twenty-five-d of the labor law.

(b) The credit allowed under this subdivision for any taxable year may not reduce the tax due for that year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the tax to that amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, 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 one thousand eighty-six of this chapter. Provided, however, no interest will be paid thereon.

(c) 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 or a partner in a partnership, only the amount of credit earned by the entity and not the amount of credit claimed by the taxpayer may be released.

§ 3. Section 606 of the tax law is amended by adding a new subsection (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:

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

§ 5. This act shall take effect immediately.