

STATE OF NEW YORK

2234

2021-2022 Regular Sessions

IN ASSEMBLY

January 14, 2021

Introduced by M. of A. STERN -- read once and referred to the Committee on Labor

AN ACT to amend the tax law, in relation to establishing a qualified transportation fringe benefits program

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

1 Section 1. The tax law is amended by adding a new section 45 to read
2 as follows:

3 § 45. Qualified transportation fringe benefits program. (a) As used in
4 this section, the following terms shall have the following meanings:

5 (1) "Qualified transportation fringe benefits" shall mean any of the
6 following provided by an employer to an employee:

7 (i) transportation in a commuter highway vehicle if such transporta-
8 tion is in connection with travel between the employee's residence and
9 place of employment;

10 (ii) any transit pass;

11 (iii) qualified parking; or

12 (iv) qualified bicycle commuting reimbursement.

13 (2) "Covered employee" shall mean any person who performed an average
14 of at least ten hours of work per week for compensation for the same
15 employer within the previous calendar month.

16 (3) "Covered employer" shall mean an employer for which an average of
17 twenty or more persons per week perform work for compensation. In deter-
18 mining the number of persons performing work for an employer during a
19 given week, all persons performing work for compensation on a full-time,
20 part-time or temporary basis shall be counted, including persons made
21 available to work through the services of a temporary services or staff-
22 ing agency or similar entity. A covered employer shall not include any
23 governmental entity.

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

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1 (4) "Transit pass" shall mean any pass, token, fare card, voucher or
2 similar item entitling a person to transportation, or transportation at
3 a reduced price, if such transportation is:

4 (i) on mass transit facilities, whether or not publicly owned; or
5 (ii) provided by any person in the business of transporting persons
6 for compensation or hire if such transportation is provided in a vehicle
7 meeting the requirements of subparagraph (i) of paragraph five of this
8 subdivision.

9 (5) "Commuter highway vehicle" shall mean any highway vehicle where:

10 (i) the seating capacity is at least six adults, not including the
11 driver; and

12 (ii) at least eighty percent of the mileage use can reasonably be
13 expected to be:

14 (A) for purposes of transporting employees in connection with travel
15 between their residences and their place of employment; and

16 (B) on trips during which the number of employees transported for such
17 purposes is at least one-half of the adult seating capacity of such
18 vehicle, not including the driver.

19 (6) "Qualified parking" means parking provided to an employee on or
20 near the business premises of the employer or on or near a location from
21 which the employee commutes to work by transportation described in para-
22 graph four of this subdivision, in a commuter highway vehicle, or by
23 carpool. Such term shall not include any parking on or near property
24 used by the employee for residential purposes.

25 (7) "Qualified bicycle commuting reimbursement" shall mean, with
26 respect to any calendar year, any employer reimbursement during the
27 fifteen month period beginning with the first day of such calendar year
28 for reasonable expenses incurred by the employee during such calendar
29 year for the purchase of a bicycle and bicycle improvements, repair, and
30 storage, if such bicycle is regularly used for travel between the
31 employee's residence and place of employment. There shall be an annual
32 limitation with respect to any employee for any calendar year, the prod-
33 uct of twenty dollars multiplied by the number of qualified bicycle
34 commuting months during such year.

35 (8) "Qualified bicycle commuting months" shall mean, with respect to
36 any employee, any month during which such employee:

37 (i) regularly uses the bicycle for a substantial portion of the travel
38 between the employee's residence and place of employment; and

39 (ii) does not receive any benefit described in subparagraph (i), (ii),
40 or (iii) of paragraph one of this subdivision.

41 (b) Covered employers may provide the following transportation benefit
42 programs to covered employees:

43 (1) a pre-tax election program allowing employees to elect to exclude
44 from taxable wages and compensation, employee commuting costs incurred
45 for transit passes, commuter highway vehicle charges, qualified parking,
46 and qualified bicycle commuting. The amount of qualified transportation
47 fringe benefits shall not exceed:

48 (i) the maximum dollar amount permitted under subsection (f) of
49 section one hundred thirty-two of the internal revenue code in case of
50 the aggregate of the benefits described in subparagraphs (i) and (ii) of
51 paragraph one of subdivision (a) of this section;

52 (ii) the maximum dollar amount permitted under subsection (f) of
53 section one hundred thirty-two of the internal revenue code in the case
54 of qualified parking; and

55 (iii) the applicable annual limitation in the case of any qualified
56 bicycle commuting reimbursement.

1 (2) the maximum dollar amount permitted under subsection (f) of
2 section one hundred thirty-two of the internal revenue code in the case
3 of an employer paid benefit program whereby the employer supplies a
4 transit pass for a public transit system of the employer's choosing upon
5 request by each covered employee or reimbursement for equivalent commu-
6 ter highway vehicle charges equal in value to the purchase price of the
7 appropriate benefit; or

8 (3) the maximum dollar amount permitted under subsection (f) of
9 section one hundred thirty-two of the internal revenue code in the case
10 of employer provided transit furnished by the employer at no cost to the
11 covered employee in a commuter highway vehicle or bus, or similar
12 multi-passenger vehicle operated by or for the employer.

13 (c) (1) The duly authorized officer having predominant jurisdiction
14 over transportation issues in the municipality in which a transportation
15 benefits program is administered shall promulgate such rules and regu-
16 lations as necessary to implement the provisions of this section.

17 (2) Such officer shall maintain an education and advice program to
18 assist covered employers with meeting the requirements of subdivision
19 (b) of this section.

20 § 2. Subsection (d) of section 615 of the tax law is amended by adding
21 a new paragraph 6 to read as follows:

22 (6) the full amount of expenses for any qualified transportation
23 fringe benefit provided to an employee of the taxpayer in accordance
24 with section forty-five of this chapter.

25 § 3. Paragraph (a) of subdivision 9 of section 208 of the tax law is
26 amended by adding a new subparagraph 21 to read as follows:

27 (21) The full amount of expenses for any qualified transportation
28 fringe benefit provided to an employee of the taxpayer in accordance
29 with section forty-five of this chapter.

30 § 4. This act shall take effect immediately, provided, however, that
31 section one of this act shall take effect on the one hundred twentieth
32 day after it shall have become a law; provided, further, that sections
33 two and three of this act shall apply to taxable years beginning on and
34 after January 1, 2022.