

STATE OF NEW YORK

3653

2021-2022 Regular Sessions

IN ASSEMBLY

January 28, 2021

Introduced by M. of A. RODRIGUEZ -- Multi-Sponsored by -- M. of A. COOK
-- read once and referred to the Committee on Labor

AN ACT to amend the labor law and 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 labor law is amended by adding a new article 34 to read
2 as follows:

ARTICLE 34

TRANSPORTATION BENEFITS PROGRAM

Section 960. Definitions.

961. Transportation benefits program.

962. Administration and enforcement.

963. Severability.

3 § 960. Definitions. As used in this article, the following terms shall
4 have the following meanings:

5 1. "Covered employee" shall mean any person who performed an average
6 of at least ten hours of work per week for compensation for the same
7 employer within the previous calendar month.

8 2. "Covered employer" shall mean an employer for which an average of
9 twenty or more persons per week perform work for compensation. In deter-
10 mining the number of persons performing work for an employer during a
11 given week, all persons performing work for compensation on a full-time,
12 part-time or temporary basis shall be counted, including persons made
13 available to work through the services of a temporary services or staff-
14 ing agency or similar entity. A covered employer shall not include any
15 governmental entity.

16 3. "Transit pass" shall mean any pass, token, fare card, voucher or
17 similar item entitling a person to transportation on public transit
18 within the meaning of subclause (A) of clause five of paragraph (f) of
19 the law.

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

22 LBD03047-01-1

1 section one hundred thirty-two of title twenty-six of the United States
2 code.

3 4. "Vanpool" shall mean a commuter highway vehicle within the meaning
4 of subclause (B) of clause five of paragraph (f) of section one hundred
5 thirty-two of title twenty-six of the United States code.

6 § 961. Transportation benefits program. All covered employers shall
7 provide at least one of the following transportation benefit programs to
8 covered employees:

9 1. a pre-tax election program, consistent with paragraph (f) of
10 section one hundred thirty-two of title twenty-six of the United States
11 code, allowing employees to elect to exclude from taxable wages and
12 compensation, employee commuting costs incurred for transit passes or
13 vanpool charges, excluding parking, up to the maximum level allowed
14 pursuant to clause two of paragraph (f) of section one hundred thirty-
15 two of title twenty-six of the United States code;

16 2. an employer paid benefit program whereby the employer supplies a
17 transit pass for a public transit system of the employer's choosing upon
18 request by each covered employee or reimbursement for equivalent vanpool
19 charges equal in value to the purchase price of the appropriate benefit;
20 or

21 3. employer provided transit furnished by the employer at no cost to
22 the covered employee in a vanpool or bus, or similar multi-passenger
23 vehicle operated by or for the employer.

24 § 962. Administration and enforcement. 1. The duly authorized officer
25 having predominant jurisdiction over transportation issues in the muni-
26 cipality in which a transportation benefits program is administered
27 shall promulgate such rules and regulations as necessary to implement
28 the provisions of this article. Such rules and regulations shall, to the
29 extent consistent with this article, conform to internal revenue service
30 regulations under paragraph (f) of section one hundred thirty-two of
31 title twenty-six of the United States code.

32 2. Such officer shall maintain an education and advice program to
33 assist covered employers with meeting the requirements of section nine
34 hundred sixty-one of this article.

35 3. Any covered employer who fails to offer at least one transportation
36 benefit program to covered employees, in the manner required by section
37 nine hundred sixty-one of this article, shall be liable to the munici-
38 pality in which such program is administered for a civil penalty not to
39 exceed one hundred dollars for the first violation, two hundred dollars
40 for the second violation within the same year, and five hundred dollars
41 for each additional violation within the same year. Penalties collected
42 under this subdivision shall be used to fund implementation and enforce-
43 ment of such program.

44 § 963. Severability. If any provision of this article shall be
45 adjudged to be unconstitutional or invalid, such judgment shall not
46 affect, impair or invalidate the remainder thereof, but shall be
47 confined in its operation to the provision directly involved in the
48 controversy in which such judgment shall have been rendered.

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

51 (43) For taxable years beginning after December thirty-first, two
52 thousand twenty-two the amount of qualified transportation fringe bene-
53 fits included in federal adjusted gross income, to the extent that such
54 qualified transportation fringe benefits would have been excluded from
55 gross income pursuant to paragraph five of subsection (a) of section one
56 hundred thirty-two of the internal revenue code had the flush sentence

1 of paragraph two of subsection (f) of section one hundred thirty-two of
2 the internal revenue code that was in effect on December thirty-first,
3 two thousand twenty-two continued in effect after December thirty-first,
4 two thousand twenty-one; provided, however, that if subparagraph (A) of
5 paragraph two of subsection (f) of section one hundred thirty-two of the
6 internal revenue code is amended so that for any month the dollar amount
7 in effect under such subparagraph (A) is greater than the dollar amount
8 in effect under subparagraph (B) of paragraph two of subsection (f) of
9 section one hundred thirty-two of the internal revenue code for the same
10 month, the flush sentence of paragraph two that was in effect on Decem-
11 ber thirty-first, two thousand twenty-two shall be deemed to provide
12 that the dollar amount in effect for subparagraph (B) shall be applied
13 as if the dollar amount therein were the same as the dollar amount in
14 effect for such month under subparagraph (A). Notwithstanding the fore-
15 going, if, pursuant to this paragraph, the amount that would be in
16 effect for any month under subparagraph (A) or (B) of paragraph two of
17 subsection (f) of section one hundred thirty-two of the internal revenue
18 code is less than one hundred seventy-five dollars, subparagraphs (A)
19 and (B) shall be applied as if the dollar amount in effect for such
20 month under such subparagraphs was one hundred seventy-five dollars.

21 § 3. This act shall take effect immediately, provided, however, that
22 section one of this act shall take effect on the one hundred twentieth
23 day after it shall have become a law; provided, further, that section
24 two of this act shall apply to taxable years beginning on and after
25 January 1, 2023. Effective immediately, the addition, amendment and/or
26 repeal of any rule or regulation necessary for the implementation of
27 section one of this act on its effective date are authorized to be made
28 and completed on or before such effective date.