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:

Section 1. The labor law is amended by adding a new article 34 to read as follows:

ARTICLE 34

TRANSPORTATION BENEFITS PROGRAM

Section 960. Definitions.
961. Transportation benefits program.
962. Administration and enforcement.
963. Severability.

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

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

2. "Covered employer" shall mean an employer for which an average of twenty or more persons per week perform work for compensation. In determining the number of persons performing work for an employer during a given week, all persons performing work for compensation on a full-time, part-time or temporary basis shall be counted, including persons made available to work through the services of a temporary services or staffing agency or similar entity. A covered employer shall not include any governmental entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of paragraph two of subsection (f) of section one hundred thirty-two of the internal revenue code that was in effect on December thirty-first, two thousand twenty-two continued in effect after December thirty-first, two thousand twenty-one; provided, however, that if subparagraph (A) of paragraph two of subsection (f) of section one hundred thirty-two of the internal revenue code is amended so that for any month the dollar amount in effect under such subparagraph (A) is greater than the dollar amount in effect under subparagraph (B) of paragraph two of subsection (f) of section one hundred thirty-two of the internal revenue code for the same month, the flush sentence of paragraph two that was in effect on December thirty-first, two thousand twenty-two shall be deemed to provide that the dollar amount in effect for subparagraph (B) shall be applied as if the dollar amount therein were the same as the dollar amount in effect for such month under subparagraph (A). Notwithstanding the foregoing, if, pursuant to this paragraph, the amount that would be in effect for any month under subparagraph (A) or (B) of paragraph two of subsection (f) of section one hundred thirty-two of the internal revenue code is less than one hundred seventy-five dollars, subparagraphs (A) and (B) shall be applied as if the dollar amount in effect for such month under such subparagraphs was one hundred seventy-five dollars.

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