

STATE OF NEW YORK

3960--A

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2021-2022 Regular Sessions

IN ASSEMBLY

January 29, 2021

Introduced by M. of A. CUSICK, LUPARDO, BLANKENBUSH, COLTON, WEPRIN, STERN, WALSH, HUNTER, BUTTENSCHON, OTIS, SANTABARBARA, REILLY, SEAWRIGHT, FALL, PALMESANO, STIRPE, MANKTELOW, GONZALEZ-ROJAS, JACOBSON, MEEKS, GRIFFIN, LAWLER, SAYEGH -- read once and referred to the Committee on Ways and Means -- ordered to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the tax law and the labor law, in relation to establishing a small business tax credit for the employment of disabled persons; and providing for the repeal of such provisions upon expiration thereof

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

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 55 to read as follows:

55. Small business tax credit; disabled persons. (a) General. A taxpayer who has one hundred employees or less, shall be allowed a credit, to be computed as provided in this subdivision, against the tax imposed by this article for each disabled person hired during a taxable year, provided that such disabled person is employed for thirty-five hours or more per week, remains in the employ of such taxpayer for six months or more and the employer submits verification that the claimed employees meet the statutory definition of "disabled person" pursuant to paragraph (d) of this subdivision.

(b) Amount of credit. A credit authorized by this section shall equal five thousand dollars per hired disabled person but shall not exceed twenty-five thousand dollars.

(c) Carryovers. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such 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 credit allowable under this subdivision for any taxable year reduces the tax to such

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

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1 amount or if the taxpayer otherwise pays tax based on the fixed dollar
2 minimum amount, any amount of credit not deductible in such taxable year
3 may be carried over to the following three years and may be deducted
4 from the taxpayer's tax for such year or years.

5 (d) Definitions. As used in this subdivision, the term "disabled
6 person" shall mean a resident of the state who has any physical, mental
7 or medical impairment resulting from anatomical, physiological, genetic
8 or neurological conditions which prevents the exercise of a normal bodi-
9 ly function or is demonstrable by medically accepted clinical or labora-
10 tory diagnostic techniques.

11 (e) Aggregate amount. The aggregate amount of tax credits allowed
12 pursuant to the authority of this subdivision and subsection (nnn) of
13 section six hundred six of this chapter shall be five million dollars
14 each year. Such aggregate amounts of credits shall be allocated by the
15 commissioner. If the total amount of allocated credits applied for in
16 any particular year exceeds the aggregate amount of tax credits allowed
17 for such year under this section, such excess shall be treated as having
18 been applied for on the first day of the subsequent year.

19 (f) Claim of credit. A taxpayer shall not be allowed to claim this
20 credit to the extent the basis of the calculation of this credit has
21 been claimed for another tax credit under this chapter.

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

25 <u>(xlvi) Small business tax credit;</u>	<u>Amount of credit under</u>
26 <u>disabled persons under</u>	<u>subdivision fifty-five</u>
27 <u>subsection (nnn)</u>	<u>of section two hundred</u>
28	<u>ten-B</u>

29 § 3. Section 606 of the tax law is amended by adding a new subsection
30 (nnn) to read as follows:

31 (nnn) Small business tax credit; disabled persons. (1) General. A
32 taxpayer who has one hundred employees or less, shall be allowed a cred-
33 it, to be computed as provided in this subsection, against the tax
34 imposed by this article for each disabled person hired during a taxable
35 year, provided that such disabled person is employed for thirty-five
36 hours or more per week, remains in the employ of such taxpayer for six
37 months or more and the employer submits verification that the claimed
38 employees have met the statutory definition of "disabled person" pursu-
39 ant to paragraph four of this subsection.

40 (2) Amount of credit. A credit authorized by this section shall equal
41 five thousand dollars per hired disabled person but shall not exceed
42 twenty-five thousand dollars.

43 (3) Carryovers. The credit allowed under this subdivision for any
44 taxable year shall not reduce the tax due for such year to less than the
45 amount prescribed in paragraph (d) of subdivision one of section two
46 hundred ten of this chapter. However, if the amount of credit allowable
47 under this subdivision for any taxable year reduces the tax to such
48 amount or if the taxpayer otherwise pays tax based on the fixed dollar
49 minimum amount, any amount of credit not deductible in such taxable year
50 may be carried over to the following three years and may be deducted
51 from the taxpayer's tax for such year or years.

52 (4) Definitions. As used in this subsection, the term "disabled
53 person" shall mean a resident of the state who has any physical, mental
54 or medical impairment resulting from anatomical, physiological, genetic
55 or neurological conditions which prevents the exercise of a normal bodi-

1 ly function or is demonstrable by medically accepted clinical or labora-
2 tory diagnostic techniques.

3 (5) Aggregate amount. The aggregate amount of tax credits allowed
4 pursuant to the authority of this subsection and subdivision fifty-five
5 of section two hundred ten-B of this chapter shall be five million
6 dollars each year. Such aggregate amounts of credits shall be allocated
7 by the commissioner. If the total amount of allocated credits applied
8 for in any particular year exceeds the aggregate amount of tax credits
9 allowed for such year under this section, such excess shall be treated
10 as having been applied for on the first day of the subsequent year.

11 (6) Claim of credit. A taxpayer shall not be allowed to claim this
12 credit to the extent the basis of the calculation of this credit has
13 been claimed for another tax credit under this chapter.

14 § 4. The labor law is amended by adding a new section 25-d to read as
15 follows:

16 § 25-d. Power to administer the small business tax credit for disabled
17 persons tax credit program. (a) The commissioner is authorized to estab-
18 lish and administer the small business tax credit for disabled persons
19 to provide tax incentives to small business employers for employing
20 individuals with disabilities. The commissioner is authorized to allo-
21 cate up to five million dollars of tax credits annually.

22 (b) Definitions. (1) The term "qualified employer" means an employer
23 that has been certified by the commissioner to participate in the small
24 business tax credit for disabled persons tax credit program and that
25 employs one or more qualified employees.

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

27 (i) who has any physical, mental or medical impairment resulting from
28 anatomical, physiological, genetic or neurological conditions which
29 prevents the exercise of a normal bodily function or is demonstrable by
30 medically accepted clinical or laboratory diagnostic techniques;

31 (ii) who has worked for the qualified employer in a full-time or part-
32 time position that pays wages that are equivalent to the wages paid for
33 similar jobs, with appropriate adjustments for experience and training,
34 and for which no other employee has been terminated, or where the
35 employer has not otherwise reduced its workforce by involuntary termi-
36 nations with the intention of filling the vacancy by creating a new
37 hire;

38 (iii) who has not worked for an entity related to the qualified
39 employer in the past twenty-four months; and

40 (iv) is employed in New York at a location in New York state.

41 (c) A qualified employer shall be entitled to a tax credit. The tax
42 credits shall be claimed by the qualified employer as specified in
43 subdivision fifty-five of section two hundred ten-B and subsection (nnn)
44 of section six hundred six of the tax law.

45 (d) To participate in the small business tax credit for disabled
46 persons tax credit program, an employer must submit an application (in a
47 form prescribed by the commissioner) to the commissioner. The commis-
48 sioner shall establish guidelines that specify requirements for employ-
49 ers to participate in the program including criteria for certifying
50 qualified employees. Any regulations that the commissioner determines
51 are necessary may be adopted on an emergency basis notwithstanding
52 anything to the contrary in section two hundred two of the state admin-
53 istrative procedure act. Such requirements may include the types of
54 industries that the employers are engaged in.

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 small business tax credit for disabled persons tax credit program,
2 the commissioner shall issue the employer a preliminary certificate of
3 eligibility that establishes the employer as a qualified employer. The
4 certificate of eligibility shall specify the maximum amount of small
5 business tax credit for disabled persons that the employer will be
6 allowed to claim. At the end of the taxable year, a qualified employer
7 must obtain a final certificate of eligibility from the commissioner to
8 file with a return claiming the credit. The final certificate must
9 contain the certificate's taxable year to which the credit applies, the
10 maximum amount of the credit allowed, the qualified employer's name and
11 employer identification number, the employer's business address where
12 the claimed employees were employed, the social security numbers of
13 claimed employees and their hire and termination dates, verification
14 that the claimed employees have met the statutory definition of "quali-
15 fied employee", and each employee's total hours worked each quarter,
16 hourly wage, and full-time or part-time status.

17 § 5. This act shall take effect immediately and shall apply to taxable
18 years beginning on or after January 1, 2023 and shall expire and be
19 deemed repealed December 31, 2028.