STATE OF NEW YORK

3960--A

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

(d) Definitions. As used in this subdivision, the term "disabled person" shall mean a resident of the state who has any physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.

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

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

§ 2. 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) Small business tax credit; disabled persons under subsection (nnn)	Amount of credit under subdivision fifty-five of section two hundred ten-B

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

(nnn) Small business tax credit; disabled persons. (1) General. A taxpayer who has one hundred employees or less, shall be allowed a credit, to be computed as provided in this subsection, 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 have met the statutory definition of "disabled person" pursuant to paragraph four of this subsection.

(2) 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.

(3) 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 chapter. However, if the amount of credit allowable under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit not deductible in such taxable year may be carried over to the following three years and may be deducted from the taxpayer's tax for such year or years.

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

ly function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.

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

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

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

§ 25-d. Power to administer the small business tax credit for disabled persons tax credit program. (a) The commissioner is authorized to establish and administer the small business tax credit for disabled persons to provide tax incentives to small business employers for employing individuals with disabilities. The commissioner is authorized to allocate up to five million dollars of tax credits annually.

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

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

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

(ii) who has worked 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 employer has not otherwise reduced its workforce by involuntary terminations with the intention of filling the vacancy by creating a new hire;

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

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

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

(d) To participate in the small business tax credit for disabled persons tax credit program, an employer must submit an application (in a form prescribed by the commissioner) to the commissioner. The commissioner shall establish guidelines 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.

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

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

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