STATE OF NEW YORK

2830

2021-2022 Regular Sessions

IN SENATE

January 25, 2021

Introduced by Sens. RAMOS, GOUNARDES, HOYLMAN, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

AN ACT to amend the tax law, in relation to establishing the NYC under 3 act

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

Section 1. This act shall be known and may be cited as the "NYC under 3 act".

§ 2. The tax law is amended by adding a new article 24-A to read as follows:

ARTICLE 24-A

NYC UNDER 3 ACT

§ 860. Definitions. For the purposes of this article:

(a) Employer. Employer means an employer required by section six hundred seventy-one of this chapter to deduct and withhold tax from wages, that has a payroll expense in excess of six hundred twenty-five thousand dollars in any calendar quarter; other than:

(1) any agency or instrumentality of the United States;

(2) the United Nations;

(3) an interstate agency or public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada; or

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

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(4) (i) any non-profit early childhood services provider which receives funding from the federal or state government, or any municipal, state or federal agency, or political subdivision.

(ii) As used in this section, the term "early childhood services" shall mean services which include, but are not limited to, registered, certified or licensed care in family day care homes; group family day care homes; school-age child care programs; head start programs; day care centers; child care which may be provided without a permit, certificate or registration in accordance with this statute; early childhood education programs approved by the state education department; and care provided in a children's camp as defined in section fourteen hundred of the public health law.

(b) Payroll expense. Payroll expense means wages and compensation as defined in sections 3121 and 3231 of the internal revenue code (without regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all covered employees.

(c) Covered employee. Covered employee means an employee who is employed in a city with a population of one million or more.

§ 861. Imposition of tax and rate. For the purpose of providing an additional stable and reliable dedicated funding source to address child care affordability, accessibility, and quality for families with children under three years of age in a city with a population of one million or more, a tax is hereby imposed on employers and individuals as follows: For employers who engage in business in a city with a population of one million or more, the tax is imposed at a rate of (a) fifteen hundredths (.15) percent of the payroll expense for employers with payroll expense in excess of six hundred twenty-five thousand dollars and not more than one million two hundred fifty thousand dollars per calendar quarter, (b) eighteen hundredths (.18) percent of the payroll expense for employers with payroll expense in excess of one million two hundred fifty thousand dollars and not more than two million five hundred thousand dollars per calendar quarter, and (c) twenty-two hundredths (.22) percent of the payroll expense for employers with payroll expense in excess of two million five hundred thousand dollars per calendar quarter. If the employer is a professional employer organization, as defined in section nine hundred sixteen of the labor law, the employer's tax shall be calculated by determining the payroll expense attributable to each client who has entered into a professional employer agreement with such organization and the payroll expense attributable to such organization itself, multiplying each of those payroll expense amounts by the applicable rate set forth in this paragraph and adding those products together.

§ 862. Pass through of tax prohibited. An employer cannot deduct from the wages or compensation of an employee any amount that represents all or any portion of the tax imposed on the employer under this article.

§ 863. Exemption override. (a) Except as provided in subsection (b) of this section, any exemption from tax specified in any other New York state law will not apply to the tax imposed by this article.

(b) If a tax-free NY area approved pursuant to the provisions of article twenty-one of the economic development law is located within a city with a population of one million or more, the payroll expense in such tax-free NY area of any employer that is located in such area and accepted into the START-UP NY program shall be exempt from the tax imposed under this article.

§ 864. Payment of tax. Employers with payroll expense. The tax imposed on the payroll expense of employers under section eight hundred sixtyone of this article must be paid at the same time the employer is required to remit payments under section six hundred seventy-four of this chapter; provided however, that employers subject to the provisions in section nine of this chapter must pay the tax on the payroll expense at the same time as the withholding tax remitted under the electronic payment reporting system and the electronic funds transfer system authorized by section nine of this chapter.

§ 865. Deposit and disposition of revenue. (a) The taxes, interest, and penalties imposed by this article and collected or received by the commissioner shall be deposited daily with such responsible banks, banking houses or trust companies, as may be designated by the comptroller of the city of New York, to the credit of such comptroller in trust for the city of New York. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller of the city of New York. The comptroller of the city of New York shall require adequate security from all such depositories. Of the total revenue collected or received under this article, the comptroller of the city of New York shall retain such amount as the commissioner may determine to be necessary for refunds under this article. The comptroller of the city of New York is authorized and directed to deduct from the amounts it receives under this article, before deposit into the trust accounts designated by such comptroller, a reasonable amount necessary to effectuate refunds of the department to reimburse the department for the costs incurred to administer, collect and distribute the taxes imposed by this article.

(b) After reserving such amount for such refunds and deducting such amounts for such costs, as provided for in subsection (a) of this section, the commissioner shall certify to the comptroller of the city of New York the amount of all revenues so received during the prior month as a result of the taxes, interest and penalties so imposed. The amount of revenues so certified shall be paid over by the fifteenth and the final business day of each succeeding month from such account without appropriation into the general fund of the city of New York.

§ 866. Procedural provisions. (a) General. All provisions of article twenty-two of this chapter shall apply to the provisions of this article in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article. Notwithstanding the preceding sentence, no credit against tax in article twenty-two of this chapter can be used to offset the tax due under this article.

(b) Combined filings. Notwithstanding any other provisions of this article:

(1) The commissioner may require the filing of a combined return which may also include any of the returns required to be filed by a taxpayer pursuant to the provisions of section six hundred fifty-one of this chapter and which may be required to be filed by such taxpayer pursuant to any local law enacted pursuant to the authority of article thirty, thirty-A or thirty-B of this chapter.

(2) Where a combined return is required, and with respect to the payment of estimated tax, the commissioner may also require the payment to it of a single amount which shall equal the total of the amounts (total taxes less any credits or refunds) which would have been required to be paid with the returns or in payment of estimated tax pursuant to the provisions of this article, the provisions of article twenty-two of

this chapter, and the provisions of local laws enacted under the authority of article thirty, thirty-A or thirty-B of this chapter.

(3) Notwithstanding any other law to the contrary, the commissioner may require that all filings of forms or returns under this article shall be filed electronically and all payments of tax must be paid electronically.

§ 867. Enforcement with other taxes. (a) Joint assessment. If there is assessed a tax under this article and there is also assessed a tax against the same taxpayer pursuant to article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter, and payment of a single amount is required under the provisions of this article, such payment shall be deemed to have been made with respect to the taxes so assessed in proportion to the amounts of such taxes due, including tax, penalties, interest and additions to tax.

(b) Joint action. If the commissioner takes action under such article twenty-two or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter with respect to the enforcement and collection of the tax or taxes assessed under such articles, the commissioner shall, whenever possible and necessary, accompany such action with a similar action under similar enforcement and collection provisions of the tax imposed by this article.

(c) Apportionment of moneys collected by joint action. Any moneys collected as a result of such joint action shall be deemed to have been collected in proportion to the amounts due, including tax, penalties, interest and additions to tax, under article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter and the tax imposed by this article.

(d) Joint deficiency action. Whenever the commissioner takes any action with respect to a deficiency of income tax under article twenty-two of this chapter or under a local law enacted pursuant to the authority of article thirty, thirty-A, or thirty-B of this chapter, other than the action set forth in subsection (a) of this section, the commissioner may in his or her discretion accompany such action with a similar action under this article.

§ 3. This act shall take effect immediately.