STATE OF NEW YORK

4721

2021-2022 Regular Sessions

IN ASSEMBLY

February 5, 2021

Introduced by M. of A. STERN -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing small business savings accounts and emergency production savings accounts

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

Section 1. The tax law is amended by adding a new section 45 to read as follows:

§ 45. Small business savings accounts. (a) General. (1) The commissioner shall establish a program to administer small business savings accounts under this section.

(2) The commissioner shall establish minimum standards for small business savings accounts and shall establish accounts, or enter into agreements that meet these standards to administer such accounts. In establishing such standards and making such agreements the commissioner shall, to the extent practicable, seek to minimize fees, minimize risk of loss of principal, and ensure a range of investment risk options available to account beneficiaries. Any eligible small business may establish a small business savings account with respect to such business under terms which meet the requirements of this section.

(b) Definition. For the purposes of this section, the term "small business savings account" means a tax preferred savings account which is designated at the time of establishment of the plan as a small business savings account. Such designation shall be made in such manner as the commissioner may by regulation prescribe.

(c) Contributions. (1) There shall be allowed as a deduction an amount equal to the contributions to a small business savings account for the taxable year.

(2) The aggregate amount of contributions for any taxable year to all small business savings accounts maintained for the benefit of an eligi-

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

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ble small business shall not exceed an amount equal to ten percent of the gross profits of the business for the preceding taxable year.

(d) Distributions. (1) Any qualified distribution from a small business savings account shall not be includible in gross income.

(2) Any amounts distributed out of a small business savings account that are not qualified distributions shall be included in gross income for the taxable year of the distribution.

(3) For purposes of this section:

(A) The term "qualified distribution" means any amount:

(i) distributed from a small business savings account during a specified period of economic hardship; and

(ii) the distribution of which is certified by the taxpayer as part of a plan which provides for the reinvestment of such distribution for the funding of worker hiring or financial stabilization for the purposes of job retention or creation.

(B) The term "specified period of economic hardship" means:

(i) any one-year period beginning immediately after the end of any two consecutive quarters during which the annual rate of real gross domestic product (as determined by the Bureau of Economic Analysis of the Department of Commerce) decreases, or

(ii) any period, in no event shorter than one year, specified by the commissioner for purposes of this section.

(C) The commissioner may specify a period under clause (ii) of subparagraph (B) of this paragraph with respect to a specified area in the case of an area determined by the governor to warrant assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(D) The commissioner shall, for each specified period of economic hardship establish a distribution limitation for qualified distributions from eligible small business accounts with respect to such period. The aggregate qualified distributions for any such period from all accounts with respect to an eligible small business shall not exceed such limitation.

(E) Any distribution not used in the manner certified under subparagraph (A) of this paragraph shall be treated as a distribution other than a qualified distribution in the taxable year of such distribution.

(F) Any amount contributed to a small business savings account (and any earnings attributable thereto), once distributed, shall not be treated as a qualified distribution unless such distribution is made not later than eight years after the date of such contribution. For purposes of this subparagraph, amounts (and the earnings attributable thereto) shall be treated as distributed on a first-in first-out basis.

(e) Eligible small business. For purposes of this section:

(1) The term "eligible small business" means, with respect to any calendar year, any person if the annual average number of full-time employees employed by such person during the preceding calendar year was fifty or fewer. For purposes of this paragraph, a preceding calendar year may be taken into account only if the person was in existence throughout the year.

(2)(A) The term "full-time employee" means, with respect to any year, an employee who is employed on average at least forty hours of service per week.

(B) The commissioner shall prescribe such regulations, rules, and guidance as may be necessary to determine the hours of service of an employee, including rules for the application of this subdivision to employees who are not compensated on an hourly basis.

(f) Effect of pledging account as security. If, during any taxable year of the eligible small business for whose benefit an account is established, the account or any portion thereof is pledged as security for a loan, the portion so pledged shall be treated as distributed in a distribution other than a qualified distribution.

§ 2. Section 209 of the tax law is amended by adding a new subdivision 13 to read as follows:

13. For any taxable year beginning on or after January first, two thousand twenty-one, any eligible small business, as such term is defined pursuant to section forty-five of this chapter, shall be exempt from all taxes imposed pursuant to this article for any contribution to and qualified distribution from a small business savings account established pursuant to section forty-five of this chapter, subject to the limits set forth in such section. If a taxpayer files for and receives an exemption from the tax imposed under this section pursuant to the provisions of this subdivision and the funds withdrawn, or any portion thereof, are not expended for a qualifying purpose as set forth in section forty-five of this chapter, then the amount of such exemption claimed by the taxpayer shall be added back to tax in the next succeeding taxable year or in the year in which the exemption is disallowed.

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

(43) Any qualified contribution to and any qualified distribution from a small business savings account established pursuant to section forty-five of this chapter. If a taxpayer files for and receives an exemption from the tax imposed under this section pursuant to the provisions of this paragraph and are not a qualifying contribution or distribution as set forth in section forty-five of this chapter, then the amount of any such exemption claimed by the taxpayer shall be added back to tax in the next succeeding taxable year.

§ 4. The tax law is amended by adding a new section 46 to read as follows:

§ 46. Emergency production savings accounts. (a) General. (1) The commissioner shall establish a program to administer emergency production savings accounts under this section.

(2) The commissioner shall establish minimum standards for emergency production savings accounts and shall establish accounts, or enter into agreements that meet these standards to administer such accounts. In establishing such standards and making such agreements the commissioner shall, to the extent practicable, seek to minimize fees, minimize risk of loss of principal, and ensure a range of investment risk options available to account beneficiaries. Any business may establish an emergency production savings account with respect to such business under terms which meet the requirements of this section.

(b) Definition. For the purposes of this section, the term "emergency production savings account" means a tax preferred savings account which is designated at the time of establishment of the plan as an emergency production savings account. Such designation shall be made in such manner as the commissioner may by regulation prescribe.

(c) Contributions. (1) There shall be allowed as a deduction an amount equal to the contributions to an emergency production savings account for the taxable year.

(2) The aggregate amount of contributions for any taxable year to all emergency production savings accounts maintained for the benefit of a business shall not exceed an amount equal to ten percent of the gross profits of the business for the preceding taxable year.

(d) Distributions. (1) Any qualified distribution from an emergency production savings account shall not be includible in gross income.

(2) Any amounts distributed out of an emergency production savings account that are not qualified distributions shall be included in gross income for the taxable year of the distribution.

(3) For purposes of this section:

(A) The term "qualified distribution" means any amount:

(i) distributed from an emergency production savings account during a specified period of a declared emergency or disaster; and

(ii) the distribution of which is certified by the taxpayer as part of a plan which provides for the reinvestment or expenditure of such distribution for the purpose of allowing a business or enterprise to produce essential products or provide essential services during a period of a state declared emergency or disaster through modification or retro-fitting of existing facilities, or development of additional resources or facilities needed to produce essential products or services.

(B) Essential products or services shall be as determined by the division of homeland security and emergency services.

(C) The commissioner may specify a period with respect to a specified area in the case of an area determined by the governor to warrant assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(D) The commissioner shall, for each specified period of declared emergency or disaster establish a distribution limitation for qualified distributions from eligible emergency production savings accounts with respect to such period. The aggregate qualified distributions for any such period from all accounts with respect to a business shall not exceed such limitation.

(E) Any distribution not used in the manner certified under subparagraph (A) of this paragraph shall be treated as a distribution other than a qualified distribution in the taxable year of such distribution.

(F) Any amount contributed to an emergency production savings account (and any earnings attributable thereto), once distributed, shall not be treated as a qualified distribution unless such distribution is made not later than eight years after the date of such contribution. For purposes of this subparagraph, amounts (and the earnings attributable thereto) shall be treated as distributed on a first-in first-out basis.

(e) Effect of pledging account as security. If, during any taxable year of the taxpayer for whose benefit an account is established, the account or any portion thereof is pledged as security for a loan, the portion so pledged shall be treated as distributed in a distribution other than a qualified distribution.

§ 5. Section 209 of the tax law is amended by adding a new subdivision 14 to read as follows:

14. For any taxable year beginning on or after January first, two thousand twenty-one, any taxpayer shall be exempt from all taxes imposed pursuant to this article for any contribution to and qualified distribution from an emergency production savings account established pursuant to section forty-six of this chapter, subject to the limits set forth in such section. If a taxpayer files for and receives an exemption from the tax imposed under this section pursuant to the provisions of this subdivision and the funds withdrawn, or any portion thereof, are not expended for a qualifying purpose as set forth in section forty-six of this chapter, then the amount of such exemption claimed by the taxpayer shall be added back to tax in the next succeeding taxable year or in the year in which the exemption is disallowed.

§ 6. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) Any qualified contribution to and any qualified distribution from an emergency production savings account established pursuant to section forty-six of this chapter. If a taxpayer files for and receives an exemption from the tax imposed under this section pursuant to the provisions of this paragraph and are not a qualifying contribution or distribution as set forth in section forty-six of this chapter, then the amount of any such exemption claimed by the taxpayer shall be added back to tax in the next succeeding taxable year.

§ 7. This act shall take effect immediately and shall apply to taxable years beginning on and after such effective date.