

# STATE OF NEW YORK

4824--A

2021-2022 Regular Sessions

## IN ASSEMBLY

February 8, 2021

Introduced by M. of A. STERN, THIELE, ENGLEBRIGHT, SILLITTI, DARLING, GRIFFIN, SEAWRIGHT, GUNTHER, JACOBSON, WOERNER, GALLAGHER, COLTON, NOLAN, DeSTEFANO, GANDOLFO, MONTESANO, RA, ASHBY, BUTTENSCHON, BRABENEC, SIMPSON, ANGELINO, LUNSFORD -- Multi-Sponsored by -- M. of A. BLANKENBUSH, B. MILLER, TAGUE -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "savings accounts for a variable economy (SAVE) for small businesses  
3 act".

4 § 2. The tax law is amended by adding a new section 45 to read as  
5 follows:

6 § 45. Small business savings accounts. (a) General. (1) The commis-  
7 sioner shall establish a program to administer small business savings  
8 accounts under this section.

9 (2) The commissioner shall establish minimum standards for small busi-  
10 ness savings accounts and shall establish accounts, or enter into agree-  
11 ments that meet these standards to administer such accounts. In estab-  
12 lishing such standards and making such agreements the commissioner  
13 shall, to the extent practicable, seek to minimize fees, minimize risk  
14 of loss of principal, and ensure a range of investment risk options  
15 available to account beneficiaries. Any eligible small business may  
16 establish a small business savings account with respect to such business  
17 under terms which meet the requirements of this section.

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

LBD00712-04-1

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

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

9 (2) The aggregate amount of contributions for any taxable year to all  
10 small business savings accounts maintained for the benefit of an eligi-  
11 ble small business shall not exceed an amount equal to ten percent of  
12 the gross profits of the business for the preceding taxable year.

13 (d) Distributions. (1) Any qualified distribution from a small busi-  
14 ness savings account shall not be includible in gross income.

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

18 (3) For purposes of this section:

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

20 (i) distributed from a small business savings account during a speci-  
21 fied period of economic hardship; and

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

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

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

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

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

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

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

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

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

54 (1) The term "eligible small business" means, with respect to any  
55 calendar year, any person if the annual average number of full-time  
56 employees employed by such person during the preceding calendar year was

1 twenty-five or fewer and such person has an annual net income of less  
2 than two hundred fifty thousand dollars. For purposes of this paragraph,  
3 a preceding calendar year may be taken into account only if the person  
4 was in existence throughout the year.

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

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

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

17 (g) Annual report. The commissioner shall prepare and deliver an annu-  
18 al report on the efficacy of small business savings accounts to the  
19 temporary president of the senate and the speaker of the assembly. Such  
20 report shall include, but not be limited to, an evaluation as to whether  
21 small business savings accounts contribute to financial stabilization of  
22 the small business during times of economic hardship, job retention or  
23 creation.

24 § 3. Section 209 of the tax law is amended by adding a new subdivision  
25 13 to read as follows:

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

39 § 4. Subsection (c) of section 612 of the tax law is amended by adding  
40 a new paragraph 46 to read as follows:

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

49 § 5. This act shall take effect immediately and shall apply to taxable  
50 years beginning after such date.