

# STATE OF NEW YORK

22

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. KAPLAN, SANDERS -- read twice and ordered printed,  
and when printed to be committed to the Committee on Commerce, Econom-  
ic Development and Small Business

AN ACT to amend the economic development law and the tax law, in  
relation to authorizing the creation of small business tax-deferred  
savings accounts

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

1 Section 1. The economic development law is amended by adding a new  
2 section 138-a to read as follows:

3 § 138-a. Small business tax-deferred savings accounts. 1. A "small  
4 business taxpayer" or "small business" shall have the same meaning as  
5 defined in section one hundred thirty-one of this article and shall meet  
6 the requirements of paragraph (f) of subdivision one of section two  
7 hundred ten of the tax law.

8 2. Any small business shall be authorized to establish with any finan-  
9 cial organization a small business tax-deferred savings account and to  
10 make deposits into and withdrawals from such account. For purposes of  
11 this section, "financial organization" shall mean an organization  
12 authorized to do business in the state of New York and (a) which is  
13 licensed or chartered by the department of financial services, (b) is  
14 chartered by an agency of the federal government, or (c) is subject to  
15 the jurisdiction and regulation of the securities and exchange commis-  
16 sion of the federal government.

17 3. The amount deposited into such tax-deferred savings accounts and  
18 any interest earned on such deposits shall be subject to the provisions  
19 of subparagraph twenty-one of paragraph (a) of subdivision nine of  
20 section two hundred eight and paragraph forty-three of subsection (c) of  
21 section six hundred twelve of the tax law, unless such amounts are with-  
22 drawn and expended for a purpose other than a qualifying purpose.

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

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1     4. For the purposes of this act, a qualifying purpose shall include  
2 small business taxpayer expenditures (a) for tangible personal property  
3 or other tangible property, including but not limited to buildings  
4 and structural components of buildings, that are principally used in the  
5 ordinary course of the taxpayer's trade or business and (b) other  
6 expenditures deemed appropriate by the department, which will improve  
7 the competitiveness and productivity of a small business and results in  
8 the creation or retention of full-time jobs.

9     5. The monies deposited into such tax-deferred savings accounts during  
10 any taxable year may not exceed five thousand dollars.

11     6. On or before April first, two thousand twenty-three and annually  
12 thereafter, the department, in consultation with the department of taxa-  
13 tion and finance, shall report on the number of small business taxpayers  
14 utilizing this program, the aggregate amount deposited for which a tax  
15 credit was claimed, the average aggregate amount on deposit in small  
16 business savings accounts, the amount of qualifying and non-qualifying  
17 withdrawals, and any other such data deemed necessary and appropriate by  
18 the department.

19     § 2. Paragraph (a) of subdivision 9 of section 208 of the tax law is  
20 amended by adding a new subparagraph 21 to read as follows:

21     (21) any amount deposited into a small business tax-deferred savings  
22 account created pursuant to section one hundred thirty-eight-a of the  
23 economic development law, and any interest earned on such deposits,  
24 provided that any amount withdrawn for a non-qualifying purpose shall be  
25 included in the entire net income for the tax year in which the with-  
26 drawal was made.

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

29     (43) any amount deposited into a small business tax-deferred savings  
30 account created pursuant to section one hundred thirty-eight-a of the  
31 economic development law, and any interest earned on such deposits,  
32 provided that any amount withdrawn for a non-qualifying purpose shall be  
33 included in the entire net income for the tax year in which the with-  
34 drawal was made.

35     § 4. The department of taxation and finance, in consultation with the  
36 department of economic development, shall review and analyze all statis-  
37 tical data available for such purposes of determining the economic and  
38 revenue impact associated with this act. Such data shall be included in  
39 an annual report that shall also include, but not be limited to, the  
40 number of small business taxpayers utilizing this program, the average  
41 aggregate amount on deposit, the qualifying expenses claimed, any quali-  
42 fying expenses deemed inappropriate and any other such data deemed  
43 necessary and appropriate by the department. Such annual report shall be  
44 posted on the websites of the department of taxation and finance and the  
45 department of economic development, and transmitted to the governor, the  
46 temporary president of the senate, the senate minority leader, the  
47 speaker of the assembly and the assembly minority leader.

48     § 5. Rules and regulations. The department of taxation and finance in  
49 consultation with the department of economic development, is hereby  
50 authorized to promulgate rules and regulations in accordance with the  
51 state administrative procedure act that are necessary to fulfill the  
52 purposes of this act. Such regulations shall include but not be limited  
53 to deadlines for establishing a small business tax deferred savings  
54 account, standard procedures and forms to be utilized in the program,  
55 and any other such regulations deemed necessary to promote the full

1 utilization of this program. Such rules and regulations shall be  
2 completed within 180 days after the effective date of this act.  
3 § 6. This act shall take effect immediately.