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, Economic 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 Assembly, do enact as follows:

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

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

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

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eight and paragraph forty-three of subsection (c) of section six hundred twelve of the tax law, unless such amounts are withdrawn and expended for a purpose other than a qualifying purpose.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

LBD00218-01-1

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

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

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

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

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

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

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

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

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

utilization of this program. Such rules and regulations shall be completed within 180 days after the effective date of this act.

§ 6. This act shall take effect immediately.