

# STATE OF NEW YORK

5078

2021-2022 Regular Sessions

## IN SENATE

February 23, 2021

Introduced by Sen. PARKER -- 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 job creation tax credits

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

1 Section 1. This act shall be known and may be cited as the "job  
2 creation tax credit act".

3 § 2. Section 210-B of the tax law is amended by adding a new subdivi-  
4 sion 55 to read as follows:

5 55. Job creation tax credit. (a) As used in this subdivision, the  
6 following terms shall have the following meanings: (1) "Full-time  
7 employee" means an individual who is employed for consideration for at  
8 least thirty-five hours a week, or who renders any other standard of  
9 service generally accepted by custom or specified by contract as full-  
10 time employment.

11 (2) "New employee" means a full-time employee first employed by a  
12 taxpayer in the project that is the subject of the tax credit authorized  
13 under this subdivision in the taxable year in which the taxpayer seeks  
14 the credit. "New employee" also may include an employee rehired or  
15 called back from lay-off to work in a new facility or on a new product  
16 or service established or produced by the taxpayer during the taxable  
17 year in which the credit is sought. "New employee" shall not include any  
18 employee of the taxpayer who was previously employed in this state by a  
19 related member of the taxpayer and whose employment was shifted to the  
20 taxpayer during the taxable year in which the credit is sought. In addi-  
21 tion, "new employee" shall not include a child, grandchild, parent, or  
22 spouse, other than a spouse who is legally separated from the individ-  
23 ual, or any individual who is an employee of the taxpayer and who has a  
24 direct or indirect ownership interest of at least five percent in the  
25 profits, capital, or value of the taxpayer. Ownership interest shall be

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

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1 determined in accordance with section fifteen hundred sixty-three of the  
2 Internal Revenue Code and regulations prescribed thereunder.

3 (3) "New income tax revenue" means the total amount withheld under  
4 this chapter by the taxpayer during the taxable year from the compen-  
5 sation of new employees for the taxes levied under this chapter.

6 (4) "Related member" has the same meaning as provided in this chapter.

7 (b) The job creation tax credit authorized under this subdivision  
8 shall be for the purpose of fostering job creation in this state. Such a  
9 grant shall take the form of a refundable credit allowed against the tax  
10 imposed under this chapter. The credit shall be claimed after the allow-  
11 ance of all other credits provided by this chapter. The amount of the  
12 credit shall equal the new income tax revenue for the taxable year  
13 multiplied by fifty percent.

14 (c) In order to qualify for the credit the taxpayer must submit to the  
15 department of economic development in the taxable year for which credit  
16 is sought a form provided by such department in which the taxpayer  
17 states the following:

18 (1) The taxpayer's project will create new jobs in this state;

19 (2) The taxpayer's project is economically sound and will benefit the  
20 people of this state by increasing opportunities for employment and  
21 strengthening the economy of this state;

22 (3) Receiving the tax credit is a major factor in the taxpayer's deci-  
23 sion to go forward with the project;

24 (4) A detailed description of the project that is the subject of the  
25 agreement;

26 (5) The term of the tax credit which shall not exceed ten years, and  
27 the first taxable year for which the credit may be claimed;

28 (6) That the taxpayer shall maintain operations at the project  
29 location for at least twice the number of years as the term of the tax  
30 credit;

31 (7) That fifty percent of the new income tax revenue will be allowed  
32 as the amount of the credit for each taxable year;

33 (8) A specific method for determining how many new employees are  
34 employed during a taxable year;

35 (9) That the taxpayer annually shall report to the commissioner of  
36 economic development the number of new employees, the new income tax  
37 revenue withheld in connection with the new employees and any other  
38 information the commissioner of economic development needs to perform  
39 his or her duties under this subdivision; and

40 (10) That the commissioner of economic development shall annually  
41 verify the amounts reported pursuant to subparagraph nine of this para-  
42 graph, and after doing so shall issue a certificate to the taxpayer  
43 stating that the amounts have been verified.

44 (d) A taxpayer claiming a credit under this section shall submit to  
45 the commissioner a copy of the commissioner of economic development's  
46 certificate of verification, as provided in subparagraph nine of para-  
47 graph (c) of this subdivision for the taxable year.

48 (e) The commissioner of economic development, after consultation with  
49 the commissioner shall adopt such rules and regulations as are necessary  
50 to implement this subdivision.

51 (f) For the purposes of this subdivision a taxpayer may include a  
52 partnership, a corporation that has made an election under subchapter S  
53 of chapter one of subtitle A of the Internal Revenue Code, or any other  
54 business entity through which income flows as a distributive share to  
55 its owners. A credit received under this subdivision by a partnership,  
56 S-corporation, or other such business entity shall be apportioned among

1 the persons to whom the income or profit of the partnership, S-corpora-  
2 tion, or other entity is distributed, in the same proportions as those  
3 in which the income or profit is distributed.

4 (g) If the commissioner of economic development determines that a  
5 taxpayer who has received a credit under this subdivision is not comply-  
6 ing with the requirement of subparagraph nine of paragraph (c) of this  
7 subdivision, he or she shall notify the commissioner of the noncompli-  
8 ance. After receiving such a notice, and after giving the taxpayer an  
9 opportunity to explain the noncompliance, the commissioner may make an  
10 assessment against the taxpayer under this chapter for an amount not  
11 exceeding the sum of any previously allowed credits under this subdivi-  
12 sion.

13 (h) On or before the thirty-first day of March of each year, the  
14 commissioner of economic development shall submit a report to the gover-  
15 nor, the temporary president of the senate, the speaker of the assembly  
16 and the minority leaders of the senate and assembly on the tax credit  
17 program provided for in this subdivision. The report shall include  
18 information on the number of taxpayers receiving tax credits pursuant to  
19 this subdivision during the preceding calendar year, a description of  
20 the projects that are the subject of the credit, and an update on the  
21 status of projects for which credits were allowed during the preceding  
22 calendar year.

23 During the first year of the tax credit program, the commissioner of  
24 economic development in conjunction with the director of budget shall  
25 conduct an evaluation of such program. The evaluation shall include  
26 assessments of the effectiveness of the program in creating new jobs in  
27 this state and of the revenue impact of the program. Such report may  
28 also include a review of the practices and experiences of other states  
29 with similar programs. The department of economic development shall  
30 submit a report on the evaluation to the governor, the temporary presi-  
31 dent of the senate, the speaker of the assembly and the minority leaders  
32 of the senate and assembly on or before January first, two thousand  
33 twenty-four.

34 § 3. Section 606 of the tax law is amended by adding a new subsection  
35 (kkk) to read as follows:

36 (kkk) Job creation tax credit. (1) As used in this subsection, the  
37 following terms shall have the following meanings:

38 (A) "Full-time employee" means an individual who is employed for  
39 consideration for at least thirty-five hours a week, or who renders any  
40 other standard of service generally accepted by custom or specified by  
41 contract as full-time employment.

42 (B) "New employee" means a full-time employee first employed by a  
43 taxpayer in the project that is the subject of the tax credit authorized  
44 under this subsection in the taxable year in which the taxpayer seeks  
45 the credit. "New employee" also may include an employee rehired or  
46 called back from lay-off to work in a new facility or on a new product  
47 or service established or produced by the taxpayer during the taxable  
48 year in which the credit is sought. "New employee" shall not include any  
49 employee of the taxpayer who was previously employed in this state by a  
50 related member of the taxpayer and whose employment was shifted to the  
51 taxpayer during the taxable year in which the credit is sought. In addi-  
52 tion, "new employee" shall not include a child, grandchild, parent, or  
53 spouse, other than a spouse who is legally separated from the individ-  
54 ual, or any individual who is an employee of the taxpayer and who has a  
55 direct or indirect ownership interest of at least five percent in the  
56 profits, capital, or value of the taxpayer. Ownership interest shall be

1 determined in accordance with section fifteen hundred sixty-three of the  
2 Internal Revenue Code and regulations prescribed thereunder.

3 (C) "New income tax revenue" means the total amount withheld under  
4 this chapter by the taxpayer during the taxable year from the compen-  
5 sation of new employees for the tax levies under this chapter.

6 (D) "Related member" has the same meaning as provided in this chapter.

7 (2) The job creation tax credit authorized under this subsection shall  
8 be for the purpose of fostering job creation in this state. Such a  
9 grant shall take the form of a refundable credit allowed against the tax  
10 imposed under this chapter. The credit shall be claimed after the allow-  
11 ance of all other credits provided by this chapter. The amount of the  
12 credit shall equal the new income tax revenue for the taxable year  
13 multiplied by fifty percent.

14 (3) In order to qualify for the credit the taxpayer must submit to the  
15 department of economic development in the taxable year for which credit  
16 is sought a form provided by such department in which the taxpayer  
17 states the following:

18 (A) The taxpayer's project will create new jobs in this state;

19 (B) The taxpayer's project is economically sound and will benefit the  
20 people of this state by increasing opportunities for employment and  
21 strengthening the economy of this state;

22 (C) Receiving the tax credit is a major factor in the taxpayer's deci-  
23 sion to go forward with the project;

24 (D) A detailed description of the project that is the subject of the  
25 agreement;

26 (E) The term of the tax credit which shall not exceed ten years, and  
27 the first taxable year for which the credit may be claimed;

28 (F) That the taxpayer shall maintain operations at the project  
29 location for at least twice the number of years as the term of the tax  
30 credit;

31 (G) That fifty percent of the new income tax revenue will be allowed  
32 as the amount of the credit for each taxable year;

33 (H) A specific method for determining how many new employees are  
34 employed during a taxable year;

35 (I) That the taxpayer annually shall report to the commissioner of  
36 economic development the number of new employees, the new income tax  
37 revenue withheld in connection with the new employees and any other  
38 information the commissioner of economic development needs to perform  
39 his or her duties under this subsection; and

40 (J) That the commissioner of economic development shall annually veri-  
41 fy the amounts reported pursuant to subparagraph (I) of this paragraph,  
42 and after doing so shall issue a certificate to the taxpayer stating  
43 that the amounts have been verified.

44 (4) A taxpayer claiming a credit under this subsection shall submit to  
45 the commissioner a copy of the commissioner of economic development's  
46 certificate of verification as provided in subparagraph (I) of paragraph  
47 three of this subsection for the taxable year.

48 (5) The commissioner of economic development, after consultation with  
49 the commissioner shall adopt such rules and regulations as are necessary  
50 to implement this subsection.

51 (6) For the purposes of this subsection a taxpayer may include a part-  
52 nership, a corporation that has made an election under subchapter S of  
53 chapter one of subtitle A of the Internal Revenue Code, or any other  
54 business entity through which income flows as a distributive share to  
55 its owners. A credit received under this subsection by a partnership,  
56 S-corporation, or other such business entity shall be apportioned among

1 the persons to whom the income or profit of the partnership, S-corpora-  
2 tion, or other entity is distributed, in the same proportions as those  
3 in which the income or profit is distributed.

4 (7) If the commissioner of economic development determines that a  
5 taxpayer who has received a credit under this subsection is not comply-  
6 ing with the requirement of subparagraph (I) of paragraph three of this  
7 subsection, he or she shall notify the commissioner of the noncompli-  
8 ance. After receiving such a notice, and after giving the taxpayer an  
9 opportunity to explain the noncompliance, the commissioner may make an  
10 assessment against the taxpayer under this chapter for an amount not  
11 exceeding the sum of any previously allowed credits under this  
12 subsection.

13 (8) On or before the thirty-first day of March of each year, the  
14 commissioner of economic development shall submit a report to the gover-  
15 nor, the temporary president of the senate, the speaker of the assembly  
16 and the minority leaders of the senate and assembly on the tax credit  
17 program provided for in this subsection. The report shall include infor-  
18 mation on the number of taxpayers receiving tax credits pursuant to this  
19 subsection during the preceding calendar year, a description of the  
20 projects that are the subject of the credit, and an update on the status  
21 of projects for which credits were allowed during the preceding calendar  
22 year.

23 During the first year of the tax credit program, the commissioner of  
24 economic development in conjunction with the director of budget shall  
25 conduct an evaluation of such program. The evaluation shall include  
26 assessments of the effectiveness of the program in creating new jobs in  
27 this state and of the revenue impact of the program. Such report may  
28 also include a review of the practices and experiences of other states  
29 with similar programs. The department of economic development shall  
30 submit a report on the evaluation to the governor, the temporary presi-  
31 dent of the senate, the speaker of the assembly and the minority leaders  
32 of the senate and assembly on or before January first, two thousand  
33 twenty-four.

34 § 4. This act shall take effect immediately and shall apply to taxable  
35 years commencing on and after April 1, 2021.