STATE OF NEW YORK

5403

2021-2022 Regular Sessions

IN SENATE

March 4, 2021

Introduced by Sen. OBERACKER -- 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 establishing the small business pandemic job retention tax credit

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 article 23 to read as follows:

ARTICLE 23

SMALL BUSINESS PANDEMIC JOB RETENTION TAX CREDIT PROGRAM

Section 450. Short title.

451. Statement of legislative findings and declaration.

452. Definitions.

453. Eligibility criteria.

454. Application and approval process.

455. Small business pandemic job retention tax credit.

456. Powers and duties of the commissioner.

457. Maintenance of records.

458. Reporting.

459. Cap on tax credit.

§ 450. Short title. This article shall be known and may be cited as the "small business pandemic job retention tax credit program act".

§ 451. Statement of legislative findings and declaration. It is hereby found and declared that New York state needs to provide assistance to small businesses who have suffered economic harm as a result of the COVID-19 pandemic. The small business pandemic job retention tax credit program is designed to provide relief to businesses who maintained staffing levels despite suffering significant loss of revenue due to the pandemic.

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

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§ 452. Definitions. For the purposes of this article:

1. "Average full-time employment" shall mean the average number of full-time equivalent positions employed by an eligible business entity during a given period.

2. "Average starting full-time employment" shall be calculated as the average number of full-time equivalent positions employed by a business entity in an eligible industry between January first, two thousand twenty, and March first, two thousand twenty.

3. "Average ending full-time employment" shall be calculated as the average number of full-time equivalent positions employed by a business entity in an eligible industry between April first, two thousand twenty-one, and December thirty-first, two thousand twenty-one.

4. "Certificate of tax credit" means the document issued to a business entity by the department after the department has verified that the business entity has met all applicable eligibility criteria in this article. The certificate shall specify the exact amount of the tax credit under this article that a business entity may claim, pursuant to section four hundred fifty-five of this article.

§ 453. Eligibility criteria. 1. To be eligible for a tax credit under the small business pandemic job retention tax credit program, a business entity must:

(a) be a small business as defined in section one hundred thirty-one of this chapter and have fewer than one hundred full-time job equivalents in New York state as of April first, two thousand twenty-one;

(b) operate a business location in New York state that charges admission and/or accepts payment for goods and/or services from in-person customers;

(c) have experienced economic harm as a result of the COVID-19 emergency as evidenced by a year-to-year decrease of at least forty percent in New York state between the second quarter of two thousand nineteen and the second quarter of two thousand twenty or the third quarter of two thousand nineteen and the third quarter of two thousand twenty for gross receipts; and

(d) have demonstrated a flat average level of employees, who have been paid wages at a rate equal to no less than seventy-five percent of their rate of pay during the time period described in subdivision two of section four hundred fifty-two of this article.

2. A business entity must be in substantial compliance with any emergency restrictions or public health orders impacting the industry sector or other laws and regulations as determined by the commissioner. In addition, a business entity may not owe past due state taxes or local property taxes unless the business entity is making payments and complying with an approved binding payment agreement entered into with the taxing authority.

§ 454. Application and approval process. 1. A business entity must submit a complete application as prescribed by the commissioner.

2. The commissioner shall establish procedures and a timeframe for business entities to submit applications. As part of the application, each business entity must:

(a) provide evidence in a form and manner prescribed by the commissioner of its business eligibility;

(b) agree to allow the department of taxation and finance to share the business entity's tax information with the department; provided, however, that any information shared as a result of the small business pandemic job retention tax credit program shall not be available for disclosure or inspection under the state freedom of information law;

(c) agree to allow the department of labor to share its tax and employer information with the department; provided, however, that any information shared as a result of the small business pandemic job retention tax credit program shall not be available for disclosure or inspection under the state freedom of information law;

(d) allow the department and its agents access to any and all books and records the department may require to monitor compliance;

(e) certify that it is in substantial compliance with all emergency orders or public health regulations currently required of such entity, and local and state tax laws; and

(f) agree to provide any additional information required by the department relevant to this article.

3. After reviewing a business entity's completed final application and determining that the business entity meets the eligibility criteria as set forth in this article, the department may issue to that business entity a certificate of tax credit. A business entity may claim the tax credit in the taxable year that includes December thirty-first, two thousand twenty-one.

§ 455. Small business pandemic job retention tax credit. 1. A business entity in the small business pandemic job retention tax credit program that meets the eligibility requirements of section four hundred fifty-three of this article may be eligible to claim a credit of up to ten thousand dollars.

2. A business entity, including a partnership, limited liability company and subchapter S corporation, may not receive in excess of ten thousand dollars in tax credits under this program.

3. The credit shall be allowed as provided in section forty-five, subdivision fifty-five of section two hundred ten-B and subsection (kkk) of section six hundred six of the tax law.

§ 456. Powers and duties of the commissioner. 1. The commissioner may promulgate regulations establishing an application process and eligibility criteria, that will be applied consistent with the purposes of this article, so as not to exceed the annual cap on tax credits set forth in section four hundred fifty-nine of this article which, notwithstanding any provisions to the contrary in the state administrative procedure act, may be adopted on an emergency basis.

2. The commissioner shall, in consultation with the department of taxation and finance, develop a certificate of tax credit that shall be issued by the commissioner to eligible businesses. Such certificate shall contain such information as required by the department of taxation and finance.

3. The commissioner shall solely determine the eligibility of any applicant applying for entry into the program and shall remove any business entity from the program for failing to meet any of the requirements set forth in section four hundred fifty-three of this article, or for failing to meet the requirements set forth in subdivision one of section four hundred fifty-four of this article.

§ 457. Maintenance of records. Each business entity participating in the program shall keep all relevant records for their duration of program participation for at least three years.

§ 458. Reporting. Each business entity participating in this program must submit a performance report to the department at a time prescribed in regulations by the commissioner.

§ 459. Cap on tax credit. The total amount of tax credits listed on certificates of tax credit issued by the commissioner pursuant to this article may not exceed one hundred million dollars.

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

§ 45. Small business pandemic job retention tax credit. (a) Allowance of credit. A taxpayer subject to tax under article nine-a or twenty-two of this chapter shall be allowed a credit against such tax, pursuant to the provisions referenced in subdivision (f) of this section. The amount of the credit is equal to the amount determined pursuant to section four hundred fifty-five of the economic development law. No cost or expense paid or incurred by the taxpayer which is included as part of the calculation of this credit shall be the basis of any other tax credit allowed under this chapter.

(b) Eligibility. To be eligible for the small business pandemic job retention tax credit, the taxpayer shall have been issued a certificate of tax credit by the department of economic development pursuant to subdivision three of section four hundred fifty-four of the economic development law, which certificate shall set forth the amount of the credit that may be claimed for the taxable year. The taxpayer shall be allowed to claim only the amount listed on the certificate of tax credit for that taxable year. A taxpayer that is a partner in a partnership, member of a limited liability company or shareholder in a subchapter S corporation that has received a certificate of tax credit shall be allowed its pro rata share of the credit earned by the partnership, limited liability company or subchapter S corporation.

(c) Tax return requirement. The taxpayer shall be required to attach to its tax return, in the form prescribed by the commissioner, proof of receipt of its certificate of tax credit issued by the commissioner of the department of economic development.

(d) Information sharing. Notwithstanding any provision of this chapter, employees of the department of economic development and the department shall be allowed and are directed to share and exchange:

(1) information derived from tax returns or reports that is relevant to a taxpayer's eligibility to participate in the small business pandemic job retention tax credit program;

(2) information regarding the credit applied for, allowed or claimed pursuant to this section and taxpayers that are applying for the credit or that are claiming the credit; and

(3) information contained in or derived from credit claim forms submitted to the department and applications for admission into the small business pandemic job retention tax credit program. Except as provided in paragraph two of this subdivision, all information exchanged between the department of economic development and the department shall not be subject to disclosure or inspection under the state's freedom of information law.

(e) Credit recapture. If a certificate of tax credit issued by the department of economic development under article twenty-four of the economic development law is revoked by such department, the amount of credit described in this section and claimed by the taxpayer prior to that revocation shall be added back to tax in the taxable year in which any such revocation becomes final.

(f) Cross references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9-A: section 210-B, subdivision 55;

(2) article 22: section 606, subsection (kkk).

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

55. Small business pandemic job retention tax credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-five of this chapter, against the taxes imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for the taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of credit allowed under this subdivision for the taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest will be paid thereon.

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

(kkk) Small business pandemic job retention tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section forty-five of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for the taxable year exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

§ 5. Subparagraph (B) of paragraph 1 of subsection (i) of section 606 of the tax law is amended by adding a new clause (xlvi) to read as follows:

(xlvi) Small business pandemic job retention tax credit	Amount of credit under subdivision fifty-five of section two hundred ten-B

§ 6. This act shall take effect immediately.