

STATE OF NEW YORK

5344

2023-2024 Regular Sessions

IN ASSEMBLY

March 7, 2023

Introduced by M. of A. CUNNINGHAM, DILAN, GIBBS -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the tax law, in relation to adjusting the earnings of formerly incarcerated individuals who were unjustly convicted

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

1 Section 1. The correction law is amended by adding a new section 188
2 to read as follows:

3 § 188. Adjustment of earnings of incarcerated individuals; unjust
4 conviction. 1. (a) Any incarcerated individual who is employed pursuant
5 to the provisions of this article shall be entitled to a retroactive
6 adjustment in their rate of compensation where such incarcerated indi-
7 vidual is subsequently (i) pardoned upon the grounds of innocence of the
8 crime or crimes for which such incarcerated individual was sentenced and
9 which are the grounds for the fine, restitution or reparation; or (ii)
10 such incarcerated individual's judgment of conviction was reversed or
11 vacated, and the accusatory instrument dismissed or, if a new trial was
12 ordered, either such incarcerated individual was found not guilty at the
13 new trial or such defendant was not retried and the accusatory instru-
14 ment dismissed; provided that the judgment of conviction was reversed or
15 vacated, and the accusatory instrument was dismissed, on any of the
16 following grounds: (1) paragraph (a), (b), (c), (e) or (g) of subdivi-
17 sion one of section 440.10 of the criminal procedure law; or (2) subdivi-
18 vision one (where based upon grounds set forth in clause one of this
19 subparagraph), two, three (where the count dismissed was the sole basis
20 for the imprisonment complained of) or five of section 470.20 of the
21 criminal procedure law; or (3) comparable provisions of the former code
22 of criminal procedure or subsequent law; or (4) the statute, or applica-
23 tion thereof, on which the accusatory instrument was based violated the
24 constitution of the United States or the state of New York.

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

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1 (b) Such compensation adjustment shall be the greater of:

2 (i) the current minimum wage of the state;

3 (ii) the current wage or industry standard wage of the trade or indus-
4 try that such incarcerated individual was actively employed in or
5 trained/certified to work in; or

6 (iii) the wage equivalent of the incarcerated individual's salary at
7 the time of conviction.

8 2. Within ninety days following the notice of adjudication for such
9 pardon, reversal or vacation pursuant to subparagraphs (i) and (ii) of
10 paragraph (a) of subdivision one of this section, the department shall
11 notify such formerly incarcerated individual of their right to receive a
12 compensation adjustment pursuant to the provisions of this section.

13 3. Within ninety days of providing notice pursuant to subdivision two
14 of this section, the department shall remit to such formerly incarcerat-
15 ed individual any moneys owed as adjusted compensation as well as an
16 accounting, including the method of accounting, for all such moneys.

17 4. Notwithstanding any provision of law to the contrary, any moneys
18 remitted to a formerly incarcerated individual pursuant to the
19 provisions of this section shall not diminish or impair any compensation
20 or award which may be available to such formerly incarcerated individual
21 pursuant to the provisions of section eight-b of the court of claims
22 act.

23 § 2. Subsection (i) of section 601 of the tax law is relettered
24 subsection (j) and a new subsection (i) is added to read as follows:

25 (i) Adjusted compensation of formerly incarcerated individuals.
26 Notwithstanding the provisions of subsections (a), (b), (c) and (d) of
27 this section and any other provision of this article, for taxable years
28 beginning after the effective date of this subsection, the income of an
29 individual received pursuant to the provisions of section one hundred
30 eighty-eight of the correction law shall be exempt from tax under this
31 article regardless of whether such income is subject to federal income
32 taxation.

33 § 3. This act shall take effect on the thirtieth day after it shall
34 have become a law.