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:

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

§ 188. Adjustment of earnings of incarcerated individuals; unjust conviction. 1. (a) Any incarcerated individual who is employed pursuant to the provisions of this article shall be entitled to a retroactive adjustment in their rate of compensation where such incarcerated individual is subsequently (i) pardoned upon the grounds of innocence of the crime or crimes for which such incarcerated individual was sentenced and which are the grounds for the fine, restitution or reparation; or (ii) such incarcerated individual's judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either such incarcerated individual was found not guilty at the new trial or such defendant was not retried and the accusatory instrument dismissed; provided that the judgment of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (1) paragraph (a), (b), (c), (e) or (g) of subdivision one of section 440.10 of the criminal procedure law; or (2) subdivision one (where based upon grounds set forth in clause one of this subparagraph), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (3) comparable provisions of the former code of criminal procedure or subsequent law; or (4) the statute, or application thereof, on which the accusatory instrument was based violated the 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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(b) Such compensation adjustment shall be the greater of:

(i) the current minimum wage of the state;

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

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

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

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

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

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

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

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