STATE OF NEW YORK

5227--A

2023-2024 Regular Sessions

IN SENATE

February 27, 2023

Introduced by Sens. KENNEDY, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, in relation to design professional overhead audit recovery

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

Section 1. The executive law is amended by adding a new section 170-g to read as follows:

§ 170-g. Design professional overhead audit recovery. 1. As used in this section, the following terms shall have the following meanings:

(a) "Design professional" means any corporation, limited liability company, partnership or other business entity legally authorized to practice any of the professions regulated by articles one hundred forty-five, one hundred forty-seven and one hundred forty-eight of the education law.

(b) "State agency" shall mean (i) any state department, (ii) any division, board, commission or bureau of any state department, (iii) the state university of New York and the city university of New York, including all their constituent units, or (iv) a board, a majority of whose members are appointed by the governor or who serve by virtue of being state officers or employees as defined in subparagraph (i), (ii) or (iii) of paragraph (i) of subdivision one of section seventy-three of the public officers law.

(c) "State authority" means a public authority or public benefit corporation created by or existing under the laws of the state, with one or more of its members appointed by the governor or who serve as members by virtue of holding a civil office of the state, other than an interstate or international authority or public benefit corporation, including subsidiaries of such public authority or public benefit corporation.

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

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(d) "Paycheck protection program loan" means any loan authorized or issued pursuant to Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act.

2. No state agency or state authority shall demand any credit, recoupment, rate adjustment or any other payment from a design professional on the basis of such design professional having received forgiveness on a paycheck protection act loan. Any state agency or state authority that pursuant to the application of any audit rule or requirement including but not limited to the federal acquisition regulation collects, recoups, or claws back any money from a design professional on the basis of their having received a paycheck protection program shall credit such design professional in an amount no less than the amount recovered no later than one hundred eighty days from any such collection, recoupment or claw back. Notwithstanding any other provision of law, such credit shall be deemed loan forgiveness and shall not be used in any tax, overhead or indirect labor cost calculation by any state agency or state authority.

3. No state agency or state authority shall demand any credit, recoupment, rate adjustment or any other payment from a design professional on the basis of such design professional having received an employee retention tax credit in the years two thousand twenty or two thousand twenty-one. Any state agency or state authority that pursuant to the application of any audit rule or requirement including but not limited to the federal acquisition regulation collects, recoups or claws back any money from a design professional on the basis of their having received an employee retention tax credit in the years two thousand twenty or two thousand twenty-one shall credit such design professional in an amount recovered no later than one hundred eighty days from any such collection, recoupment or claw back. Notwithstanding any other provision of law, amounts received through an employee retention tax credit shall not be used in any tax, direct technical labor, direct non-salary cost, overhead or indirect labor cost calculation by any state agency or state authority.

§ 2. This act shall take effect immediately.