

# 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:

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

3 § 170-g. Design professional overhead audit recovery. 1. As used in  
4 this section, the following terms shall have the following meanings:

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

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

18 (c) "State authority" means a public authority or public benefit  
19 corporation created by or existing under the laws of the state, with one  
20 or more of its members appointed by the governor or who serve as members  
21 by virtue of holding a civil office of the state, other than an inter-  
22 state or international authority or public benefit corporation, includ-  
23 ing 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.

LBD04721-02-3

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

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

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

33 § 2. This act shall take effect immediately.