

STATE OF NEW YORK

9262

IN ASSEMBLY

February 22, 2024

Introduced by M. of A. PRETLOW -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a MWBE subcontractor tax credit

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

1 Section 1. Section 210-B of the tax law is amended by adding a new
2 subdivision 60 to read as follows:

3 60. MWBE subcontractor tax credit. (a) Allowance of credit. For tax-
4 able years beginning on or after January first, two thousand twenty-five,
5 an eligible taxpayer shall be allowed a credit, to be computed as
6 provided in this subdivision, against the tax imposed by this article,
7 for awarding a professional services, trades, or supplier subcontract to
8 a qualified subcontractor in furtherance of a state contract. The
9 taxpayer may claim the credit in the year in which payment is made by
10 the eligible taxpayer to the qualified subcontractor for the performance
11 of such subcontract. If the taxpayer claims the credit allowed under
12 this section, the taxpayer may not use the awarding of a subcontract to
13 a qualified subcontractor that is the basis for this credit in the basis
14 of any other credit allowed under this article.

15 (b) Definitions. (i) The term "qualified subcontractor" shall mean a
16 minority or woman-owned business enterprise certified pursuant to arti-
17 cle fifteen-A of the executive law.

18 (ii) The term "eligible taxpayer" shall mean a contractor that awards
19 a subcontract to a qualifying subcontractor in furtherance of a state
20 contract.

21 (iii) The term "state contract" shall mean a contract for the purchase
22 by the state of goods, property, or services or for the construction of
23 any building or structure for the state, which contract is executed by
24 any department, board, bureau, commission, or agency of the state, or by
25 any officer, official, employee, or agent thereof.

26 (c) Contractor prohibition. A contractor shall not discharge a
27 contract with a subcontractor and hire a qualifying subcontractor solely
28 for the purpose of qualifying for this credit.

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

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1 (d) Amount of credit. The amount of credit shall be thirty-five
2 percent of the total amount of payments made by the eligible taxpayer to
3 a qualifying subcontractor in the taxable year in which such credit is
4 claimed.

5 (e) Carryovers. The credit allowed under this subdivision for any
6 taxable year shall not reduce the tax due for such year to less than the
7 amount prescribed in paragraph (d) of subdivision one of section two
8 hundred ten of this article. However, if the amount of credit allowable
9 under this subdivision for any taxable year reduces the tax to such
10 amount or if the taxpayer otherwise pays tax based on the fixed dollar
11 minimum amount, any amount of credit not deductible in such taxable year
12 may be carried over to the following three years and may be deducted
13 from the taxpayer's tax for such year or years.

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

17 (li) MWBE subcontractor tax Amount of credit under subdivision
18 credit under subsection (ppp) sixty of section two hundred ten-B

19 § 3. Section 606 of the tax law is amended by adding a new subsection
20 (ppp) to read as follows:

21 (ppp) MWBE subcontractor tax credit. (1) Allowance of credit. For
22 taxable years beginning on or after January first, two thousand twenty-
23 five, an eligible taxpayer shall be allowed a credit, to be computed as
24 provided in this section, against the tax imposed by this article, for
25 awarding a professional services, trades, or supplier subcontract to a
26 qualified subcontractor in furtherance of a state contract. The taxpayer
27 may claim the credit in the year in which payment is made by the eligi-
28 ble taxpayer to the qualified subcontractor for the performance of such
29 subcontract. If the taxpayer claims the credit allowed under this
30 subsection, the taxpayer may not use the awarding of a subcontract to a
31 qualified subcontractor that is the basis for this credit in the basis
32 of any other credit allowed under this article.

33 (2) Definitions. (A) The term "qualified subcontractor" shall mean a
34 minority or woman-owned business enterprise certified pursuant to arti-
35 cle fifteen-A of the executive law.

36 (B) The term "eligible taxpayer" shall mean a contractor that awards a
37 subcontract to a qualifying subcontractor in furtherance of a state
38 contract.

39 (C) The term "state contract" shall mean a contract for the purchase
40 by the state of goods, property, or services or for the construction of
41 any building or structure for the state, which contract is executed by
42 any department, board, bureau, commission, or agency of the state, or by
43 any officer, official, employee, or agent thereof.

44 (3) Contractor prohibition. A contractor shall not discharge a
45 contract with a subcontractor and hire a qualifying subcontractor solely
46 for the purpose of qualifying for this credit.

47 (4) Amount of credit. The amount of credit shall be thirty-five
48 percent of the total amount of payments made by the eligible taxpayer to
49 a qualifying subcontractor in the taxable year in which such credit is
50 claimed.

51 (5) Application of credit. If the amount of the credit allowable under
52 this subsection for any taxable year exceeds the taxpayer's tax for such
53 year, the excess shall be treated as an overpayment of tax to be credit-
54 ed or refunded as provided in section six hundred eighty-six of this
55 article, provided, however, that no interest shall be paid thereon.

56 § 4. This act shall take effect immediately.