STATE OF NEW YORK

1200--B

2025-2026 Regular Sessions

IN ASSEMBLY

January 9, 2025

Introduced by M. of A. GONZALEZ-ROJAS, RAMOS, ANDERSON, BICHOTTE HERMELYN, BORES, K. BROWN, BURDICK, R. CARROLL, CLARK, COLTON, CRUZ, CUNNINGHAM, DAVILA, DeSTEFANO, FALL, FORREST, GALLAGHER, GIBBS, GLICK, HEVESI, JACKSON, KELLES, KIM, LEE, LEVENBERG, MEEKS, MITAYNES, OTIS, RAGA, REYES, RIVERA, ROSENTHAL, ROZIC, SEAWRIGHT, SHIMSKY, SHRESTHA, SIMON, SIMONE, STERN, STIRPE, WEPRIN, VALDEZ, ROMERO, BURROUGHS, SCHIAVONI, COOK, LAVINE, HOOKS -- read once and referred to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Labor in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to providing for minimum wage requirements for miscellaneous industry workers; and to amend the tax law, in relation to establishing the one fair wage reimbursement credit

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

Section 1. Section 196-d of the labor law, as added by chapter 1007 of the laws of 1968, is amended to read as follows:

§ 196-d. Gratuities. No employer or [~~his~~] *their* agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee. This provision shall not apply to the checking of hats, coats or other apparel. Nothing in this subdivision shall be construed as affecting the allowances from the minimum wage for gratuities in the amount determined in accordance with the provisions of article nineteen of this chapter nor as affecting practices in connection with banquets and other special functions where a fixed percentage of the patron's bill is added for gratuities which are

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

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distributed to employees, nor to the sharing of tips by a [~~waiter~~] **server, if the employer takes a credit for gratuities as permitted by subdivision two of section six hundred fifty-two of this chapter** with a [~~busboy~~] **busser** or similar employee**, or, if the employer does not take a credit for gratuities as permitted by subdivision two of section six hundred fifty-two of this chapter, with any other non-managerial and non-supervisory employees**.

§ 2. Section 651 of the labor law is amended by adding a new subdivision 10 to read as follows:

10. "Miscellaneous industry worker" means any employee covered by the minimum wage order for miscellaneous industries and occupations pursuant to the provisions of 12 NYCRR part 142, including, but not limited to, car wash attendants, nail salon workers, tow truck drivers, dog groomers, wedding planners, tour guides, valet parking attendants, hairdressers, aestheticians, golf and tennis instructors, and door-persons.

§ 3. Subdivisions 2 and 4 of section 652 of the labor law, as amended by section 3 of part S of chapter 56 of the laws of 2023, are amended to read as follows:

2. Existing wage orders. The minimum wage orders in effect on the effective date of this act shall remain in full force and effect, except as modified in accordance with the provisions of this article; provided, however, that the minimum wage order for farm workers codified at part one hundred ninety of title twelve of the New York code of rules and regulations in effect on January first, two thousand twenty shall be deemed to be a wage order established and adopted under this article and shall remain in full force and effect except as modified in accordance with the provisions of this article or article nineteen-A of this chapter.

Such minimum wage orders shall be modified by the commissioner to increase all monetary amounts specified therein in the same proportion as the increase in the hourly minimum wage as provided in subdivisions one, one-a, and one-b of this section, including the amounts specified in such minimum wage orders as allowances for gratuities, and when furnished by the employer to its employees, for meals, lodging, apparel and other such items, services and facilities**, except that the hourly cash wage for food service workers, service employees and miscellaneous industry workers who receive tips shall not be less than the cash wage as provided in subdivision four of this section, and the maximum credit for tips in minimum wage orders shall be modified so that such credit, when combined with such cash wage, is equal to the minimum wage, and the hourly cash wage for miscellaneous industry workers shall not be less than the cash wage as provided in subdivision four of this section**. All amounts so modified shall be rounded off to the nearest five cents. The modified orders shall be promulgated by the commissioner without a public hearing, and without reference to a wage board, and shall become effective on the effective date of such increases in the minimum wage except as otherwise provided in this subdivision, notwithstanding any other provision of this article.

4. [~~Notwithstanding subdivisions one, one-a, one-b, and two of this section, the wage for an employee who is a food service worker receiving tips shall be a cash wage of at least two-thirds of the minimum wage rates set forth in subdivision one of this section, rounded to the nearest five cents or seven dollars and fifty cents, whichever is higher, provided that the tips of such an employee, when added to such cash wage, are equal to or exceed the minimum wage in effect pursuant to subdivisions one, one-a, and one-b of this section and provided further~~

~~that no other cash wage is established pursuant to section six hundred fifty-three of this article~~] (a) Notwithstanding subdivisions one and two of this section and section six hundred fifty-three of this article, the wage for an employee who is a food service worker or service employee receiving tips and paid pursuant to the provisions of 12 NYCRR part 146 shall be, for each hour worked in the city of New York, a cash wage of not less than:

$12.77 per hour on and after January 1, 2027;

$14.88 per hour on and after January 1, 2028;

$17.00 per hour on and after January 1, 2029, and beginning on January first, two thousand thirty, a cash wage rate established by the commissioner annually, indexed to inflation as described in subdivision one-b of this section.

(b) Notwithstanding subdivisions one and two of this section and section six hundred fifty-three of this article, the wage for an employee who is a food service worker or service employee receiving tips and paid pursuant to the provisions of 12 NYCRR part 146 shall be, for each hour worked in the counties of Nassau, Suffolk and Westchester, a cash wage of not less than:

$12.77 per hour on and after January 1, 2027;

$14.88 per hour on and after January 1, 2028;

$17.00 per hour on and after January 1, 2029, and beginning on January first, two thousand thirty, a cash wage rate established by the commissioner annually, indexed to inflation as described in subdivision one-b of this section.

(c) Notwithstanding subdivisions one and two of this section and section six hundred fifty-three of this article, the wage for an employee who is a food service worker or service employee receiving tips and paid pursuant to the provisions of 12 NYCRR part 146 shall be, for each hour worked outside the city of New York and the counties of Nassau, Suffolk and Westchester, a cash wage of not less than:

$11.50 per hour on and after January 1, 2027;

$13.00 per hour on and after January 1, 2028;

$14.50 per hour on and after January 1, 2029;

$16.00 per hour on and after January 1, 2030, and beginning on January first, two thousand thirty-one, a cash wage rate established by the commissioner annually, indexed to inflation as described in subdivision one-b of this section.

(d) Notwithstanding subdivisions one and two of this section, the wage for an employee who is a miscellaneous industry worker receiving tips and paid pursuant to the provisions of 12 NYCRR part 142 shall be for each hour worked in the city of New York, a cash wage of not less than the cash wage rate as described in paragraph (a) of subdivision one-a of this section.

(e) Notwithstanding subdivisions one and two of this section, the wage for an employee who is a miscellaneous industry worker receiving tips and paid pursuant to the provisions of 12 NYCRR part 142 shall be for each hour worked in the counties of Nassau, Suffolk and Westchester, a cash wage of not less than the cash wage rate as described in paragraph (b) of subdivision one-a of this section.

(f) Notwithstanding subdivisions one and two of this section, the wage for an employee who is a miscellaneous industry worker receiving tips and paid pursuant to the provisions of 12 NYCRR part 142 shall be for each hour worked outside the city of New York and the counties of Nassau, Suffolk and Westchester, a cash wage of not less than the cash wage rate as described in paragraph (c) of subdivision one-a of this section.

§ 4. Subdivision 2 of section 653 of the labor law, as added by chapter 14 of the laws of 2000, is amended to read as follows:

(2) The commissioner shall, within six months after enactment of any change in the statutory minimum wage set forth in subdivision one of section six hundred fifty-two of this article, appoint a wage board to inquire and report and recommend any changes to wage orders governing wages payable to food service workers. Such wage board shall be established consistent with the provisions of subdivision one of section six hundred fifty-five of this article, except the representatives of the employees shall be selected upon the nomination of the state American Federation of Labor/Congress of Industrial Organizations; and provided, further, that the representatives of the employers shall be selected upon the nomination of the New York State Business Council. [~~Any wage order authorizing a lesser wage than the previously and statutorily mandated minimum wage for such employees shall be reviewed by the wage board to ascertain at what level such wage order is sufficient to provide adequate maintenance and to protect the health and livelihood of employees subject to such a wage order after a statutory increase in the mandated minimum wage~~] Notwithstanding section six hundred fifty-five of this article, a wage order under this subdivision shall not authorize a lesser wage than the previously and statutorily mandated minimum wage for such employees.

§ 5. The tax law is amended by adding a new section 50 to read as follows:

§ 50. One fair wage reimbursement credit. (a) Allowance of credit. A taxpayer subject to tax under article nine-A, twenty-two, or thirty-three of this chapter who is an eligible employer, as defined in subdivision (b) of this section, shall be allowed a credit against such tax to be computed as provided in subdivision (d) of this section.

(b) Definitions. As used in this section:

(1) "Eligible employer" means an employer who is required to pay wages at the rates established pursuant to subdivision four of section six hundred fifty-two of the labor law.

(2) "Eligible employee" means an employee whose wages are set pursuant to subdivision four of section six hundred fifty-two of the labor law, and for whom the employer maintains records of hours worked at such wage rate.

(3) "Qualified hours" means the total number of hours worked by eligible employees during the taxable year for which such employees were paid at the applicable minimum cash wage rate established pursuant to subdivision four of section six hundred fifty-two of the labor law.

(4) "Certificate of advance payment" means a certificate issued pursuant to subdivision three of this section.

(c) Advance payment of credit. (1) An eligible employer may apply to the commissioner for an advance payment of the credit for the portion of the taxable year beginning January first and ending July thirty-first.

(2) The commissioner, in consultation with the commissioner of labor, shall issue a certificate of advance payment to eligible employers. Such certificate shall include a certificate number and the maximum advance amount for which the employer is eligible.

(3) Any advance payment received by a taxpayer who is subsequently determined not to be eligible for the credit shall be added back to the taxpayer's tax for such taxable year.

(4) The commissioner shall establish application procedures, documentation standards, and timelines for issuance of advance payments.

(d) Amount of credit. (1) For taxable years beginning on or after January first, two thousand twenty-seven, the credit shall be equal to the product of the taxpayer's qualified hours and the applicable dollar amount specified in subparagraphs (i) through (v) of paragraph two of this subdivision.

(2) The applicable dollar amounts shall be:

(i) one dollar and fifty cents for taxable years beginning on or after January first, two thousand twenty-seven and before January first, two thousand twenty-eight;

(ii) one dollar and thirty cents for taxable years beginning on or after January first, two thousand twenty-eight and before January first, two thousand twenty-nine;

(iii) one dollar and twenty cents for taxable years beginning on or after January first, two thousand twenty-nine and before January first, two thousand thirty;

(iv) one dollar and ten cents for taxable years beginning on or after January first, two thousand thirty and before January first, two thousand thirty-one; and

(v) one dollar for taxable years beginning on or after January first, two thousand thirty-one and before January first, two thousand thirty-two.

(3) If the federal minimum wage is increased above eighty-five percent of the minimum wage rate as defined in subdivision four of section six hundred fifty-two of the labor law, the dollar amounts in this subdivision shall be reduced to the difference between the minimum wage rate as defined in subdivision four of section six hundred fifty-two of the labor law and the federal minimum wage. Such reduction shall take effect on the date that employers are required to pay such federal minimum wage.

(e) S-corporation treatment. A New York S-corporation shall compute the credit allowed by this section, but may not apply such credit against the tax imposed on the corporation. Instead, the S-corporation shall pass the credit through to its shareholders in proportion to their pro rata shares, to be applied against the tax imposed by article twenty-two of this chapter.

(f) Recordkeeping and required attachment. A taxpayer claiming the credit under this section shall file, in such form as the commissioner may prescribe, a schedule listing each eligible employee, including: (1) the employee's name or identifying number; (2) location where the employee performed work; (3) total qualified hours for the taxable year; and (4) the wage rate at which such hours were paid. Failure to file the required schedule shall result in the denial of the credit.

(g) Restrictions. (1) The credit allowed under this section may not reduce the tax due for any taxable year to less than the fixed dollar minimum tax under article nine-A of this chapter or the minimum tax under article thirty-three of this chapter.

(2) The credit shall not be applied against the metropolitan transportation business tax surcharge.

(3) No employer may claim the credit for any employee for whom the employer claims another credit under this chapter, unless expressly permitted by the commissioner.

(h) Refundability. If the amount of credit allowable under this section exceeds the taxpayer's tax for such year, the excess shall be treated as an overpayment to be refunded or credited to the succeeding taxable year; provided, however, no interest shall be paid thereon.

(i) Regulations. The commissioner shall promulgate rules and regulations necessary to implement the provisions of this section, including procedures for verification, documentation, advance payments, and the method of determining qualified hours.

(j) Cross-references. For application of the credit provided for in this section, see the following provisions of this chapter:

(1) article 9-A: section 210-B, subdivision 63;

(2) article 22: section 606, subsections (i) and (uuu);

(3) article 33: section 1511, subdivision (ff).

§ 6. Section 210-B of the tax law is amended by adding a new subdivision 63 to read as follows:

63. One fair wage reimbursement credit. (a) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section fifty of this chapter, against the tax imposed by this article.

(b) Application of credit. The credit allowed under this subdivision for any taxable year may not reduce the tax due for such year to less than the amount prescribed in paragraph (d) of subdivision one of section two hundred ten of this article. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the tax to such amount or if the taxpayer otherwise pays tax based on the fixed dollar minimum amount, any amount of credit thus not deductible in such taxable year will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

§ 7. Subparagraph (B) of paragraph 1 of subdivision (i) of section 606 of the tax law is amended by adding a new clause (liii) to read as follows:

(liii) One fair wage reimbursement credit under subsection (uuu)	Amount of credit under subdivision sixty-three of section two hundred ten-B

§ 8. Section 606 of the tax law is amended by adding a new subsection (uuu) to read as follows:

(uuu) One fair wage reimbursement credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section fifty of this chapter, against the tax imposed by this article.

(2) Application of credit. If the amount of the credit allowed under this subsection for any taxable year exceeds the taxpayer's tax for such year, the excess will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section six hundred eighty-six of this article, provided, however, that no interest will be paid thereon.

§ 9. Section 1511 of the tax law is amended by adding a new subdivision (ff) to read as follows:

(ff) One fair wage reimbursement credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section fifty of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subdivision shall not reduce the tax due for such year to be less than the minimum fixed by paragraph four of subdivision (a) of section fifteen hundred two or section fifteen hundred two-a of this article, whichever is

<u>**applicable. However, if the amount of the credit allowed under this subdivision for any taxable year reduces the taxpayer's tax to such amount, any amount of credit thus not deductible will be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.**</u>

§ 10. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this act, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this act directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid clause, sentence, paragraph, subdivision, section or part of this act had not been included herein.

§ 11. This act shall take effect immediately and shall apply to taxable years beginning on and after January 1, 2027.