

ASSEMBLY, No. 3521

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Provides tax credits to certain employers of employees less than 18 years old.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** providing tax credits to certain employers of employees
2 less than 18 years old and supplementing P.L.1966, c.113
3 (C.34:11-56a et seq.), P.L.1945, c.162 (C.54:10A-1 et seq.) and
4 Title 54A of the New Jersey Statutes.

5
6 **BE IT ENACTED** *by the Senate and General Assembly of the State*
7 *of New Jersey:*

8
9 1. As used in P.L. , c. (C.) (pending before the
10 Legislature as this bill):

11 “Commissioner” means the Commissioner of Labor and
12 Workforce Development.

13 “Employer” means any nongovernmental business entity
14 including, but not limited to, a nonprofit organization, a
15 corporation, S corporation, limited liability company, partnership,
16 limited partnership, and sole proprietorship, and shall include all
17 entities related by common ownership or control.

18 “Tax year” means the calendar year or fiscal year in which a
19 taxpayer’s gross income tax or corporation business tax liability is
20 due and payable.

21
22 2. a. There is established in the Department of Labor and
23 Workforce Development a program, administered by the
24 commissioner, to provide tax credits to employers of employees
25 under the age of 18. The purpose of the program is to provide tax
26 credits to employers of employees under the age of 18 to help to
27 offset the cost to the employer of any wage increases for those
28 employees caused by the enactment of P.L.2019, c.32 (C.34:11-
29 56a39 et al.), including the cost to the employer of corresponding
30 increases in payroll taxes that employer paid on those workers’
31 wages.

32 b. Prior to January 1, 2025, an employer of employees under
33 the age of 18 subject to the provisions of P.L 1966, c.113 (C.34:11-
34 56a et seq.), including the provisions of any fair minimum wage
35 order or regulation promulgated pursuant to that act, may apply to
36 the commissioner for an award of tax credits under this section. A
37 tax credit allowed pursuant to this section shall be in the amount
38 provided in subsections d. and e. of this section against the
39 corporation business tax imposed pursuant to section 5 of P.L.1945,
40 c.162 (C.54:10A-5) or the gross income tax imposed pursuant to the
41 “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
42 whichever of the two taxes is applicable to the employer.

43 c. Prior to January 1, 2028, an employer of employees under
44 the age of 18 subject to the provisions of P.L 1966, c.113 (C.34:11-
45 56a et seq.), including the provisions of any fair minimum wage
46 order or regulation promulgated pursuant to that act, may apply to
47 the commissioner for an award of tax credits under this section. A
48 tax credit allowed pursuant to this section shall be in the amount

1 provided in subsections d. and e. of this section against the
2 corporation business tax imposed pursuant to section 5 of P.L.1945,
3 c.162 (C.54:10A-5) or the gross income tax imposed pursuant to the
4 “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq.,
5 whichever of the two taxes is applicable to the employer.

6 d. (1) The final amount of the tax credit provided to an
7 employer for employees under the age of 18 employed by the
8 employer during a tax year shall be a preliminary amount of the tax
9 credit, which is the amount by which the wages and payroll taxes
10 which the employer is required to pay each employee under the age
11 of 18 the employer employs pursuant to P.L.2019, c.32 (C.34:11-
12 56a39 et al.) during the tax year exceeds the amount that the
13 employer actually paid for the employee under the age of 18 in
14 wages and payroll taxes in the last preceding calendar year (as
15 adjusted pursuant to subparagraph (c) of this paragraph), provided
16 that:

17 (a) if the number of hours worked during the tax year by an
18 employee under the age of 18 employed by the employer is equal to
19 the number of hours the employee under the age of 18 worked for
20 the employer during the last preceding calendar year, then the
21 preliminary amount of the tax credit for each of the hours worked
22 shall be in the amount that remains after the amount actually paid
23 for the employee under the age of 18 in wages and payroll taxes
24 during the last preceding calendar year (as adjusted pursuant to
25 subparagraph (c) of this paragraph) is subtracted from the amount
26 which is required to be paid for the employee under the age of 18 in
27 payroll taxes and in wages pursuant to the minimum wage rate
28 which applies to the tax year;

29 (b) if the number of hours worked during the tax year by an
30 employee under the age of 18 employed by the employer is greater
31 than the number of hours worked by the employee under the age of
32 18 by the employer during the last preceding calendar year, then the
33 preliminary amount of the tax credit shall be calculated in two parts
34 and the sum of the two parts shall be the preliminary amount of the
35 tax credit. In the first part of the calculation, regarding the hours
36 worked during the tax year which are equal to the number of hours
37 worked during the last preceding calendar year, the preliminary
38 amount of the tax credit shall be calculated in the same manner as
39 the credit is calculated in subparagraph (a) of this paragraph. In the
40 second part of the calculation, regarding the hours worked during
41 the tax year which are in addition to the number of hours worked
42 during the last preceding calendar year, the preliminary amount of
43 the tax credit for each additional hour shall be calculated in the
44 same manner as the credit is calculated in subparagraph (a) of this
45 paragraph, except that it shall be presumed that the additional
46 number of hours worked by the employee under the age of 18
47 would have been paid at the minimum wage rate in effect during the
48 last preceding calendar year (as adjusted pursuant to subparagraph

1 (c) of this paragraph), and the preliminary amount of the tax credit
2 for each of those hours of work shall be calculated by subtracting
3 that presumed rate from the actual minimum wage rate for the tax
4 year; and

5 (c) In making any of the calculations in this paragraph, the
6 actual rate of pay paid to an employee under the age of 18 in the
7 preceding calendar year shall be increased by whichever is the
8 larger of:

9 (i) the increase in the State minimum wage that would have
10 occurred, for the applicable tax year, if P.L.2019, c.32 (C.34:11-
11 56a39 et al.) had not been enacted; or

12 (ii) any increase in the federal minimum hourly wage rate set for
13 the applicable tax year pursuant to section 6(a)(1) of the federal
14 "Fair Labor Standards Act of 1938" (29 U.S.C. s.206(a)(1)).

15 (2) If the number of hours worked during the tax year by an
16 employee under the age of 18 employed by the employer is less
17 than the number of hours worked during the last preceding calendar
18 year, then the employer shall not be eligible for a tax credit under
19 this section for that tax year for that employee under the age of 18.

20 e. An employer may qualify for a tax credit pursuant to
21 P.L. , c. (C.) (pending before the Legislature as this bill)
22 in a taxable year or privilege period beginning on or after January 1,
23 2019. An employer who qualifies for a tax credit pursuant to this
24 section with respect to hours worked during a tax year may use the
25 tax credit when determining the employer's estimated tax for the
26 purpose of making installment payments of the tax during that tax
27 year. The commissioner shall, upon request, provide assistance to
28 the employer in estimating the likely amount of the tax credit to
29 assist the employer in determining the amount of the tax credit and
30 the installment payments of the tax during a tax year. For tax years
31 2019 and 2020, the Director of the Division of Taxation may waive
32 in part, or entirely, penalties for underpayment of taxes in
33 connection with installment payments to the extent that the director
34 finds that the underpayment occurred because of a good faith error
35 of the employer in calculating the amount of the credit. Any
36 misclassification of an employee by an employer who knowingly, in
37 applying for the tax credit, falsely represents an employee as an
38 employee under the age of 18 shall be regarded as a violation of the
39 applicable State tax law and shall be subject to three times the
40 amount of penalties otherwise provided in that law for violations of
41 the law and, for that violation, the penalty shall not be waived,
42 including during tax years 2019 and 2020.

43 f. An employer shall not be eligible for a tax credit pursuant to
44 P.L. , c. (C.) (pending before the Legislature as this bill) if
45 the commissioner determines that the employer reduced the wages
46 that the employer paid to any employee under the age of 18
47 employed by the employer to be eligible for a tax credit under

1 P.L. , c. (C.) (pending before the Legislature as this bill)
2 in a future year.

3 g. The combined value of all tax credits approved annually by
4 the commissioner pursuant to this section shall not exceed
5 \$10,000,000 in a calendar year. The commissioner shall annually
6 review and report to the Legislature in accordance with section 2 of
7 P.L.1991, c.164 (C.52:14-19.1) on the sufficiency of the tax credit
8 cap authorized pursuant to this subsection and have any
9 recommendations with respect thereto to the Legislature.

10

11 3. a. Notwithstanding any provision of the "Administrative
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
13 contrary, the commissioner, in consultation with the State
14 Treasurer, may adopt, upon filing with the Office of Administrative
15 Law, such regulations that the commissioner deems necessary to
16 implement the provisions of P.L. , c. (C.) (pending before
17 the Legislature as this bill), which regulations shall be effective for
18 a period not to exceed 180 days from the date of the filing. The
19 commissioner shall thereafter amend, adopt, or readopt the
20 regulations in accordance with the requirements of P.L.1968, c.410
21 (C.52:14B-1 et seq.). The regulations adopted by the commissioner
22 shall include the following:

23 (1) standards and procedures for determining which employees
24 are employees under the age of 18 and are subject to increases in
25 the minimum wage for the purpose of determining the eligibility of
26 employers for tax credits;

27 (2) any additions to, or modifications of, wage record-keeping
28 requirements needed to calculate the amounts of tax credits
29 pursuant to P.L. , c. (C.) (pending before the Legislature
30 as this bill);

31 (3) continuing to provide the calculation, for each year, of what
32 the minimum wage would have been under section 5 of P.L.1966
33 (C.34:11-56a4) and paragraph 23 of Article I of the New Jersey
34 Constitution if P.L.2019, c.32 (C.34:11-56a39 et al.) was not
35 enacted; and

36 (4) a method for employers to submit certificates of credit to the
37 Division of Taxation pursuant to sections 4 and 5 of
38 P.L. , c. (C.) (pending before the Legislature as this bill).

39 b. Beginning the year next following the year in which
40 P.L.2019, c.32 (C.34:11-56a39 et al.) takes effect and every two
41 years thereafter, the commissioner shall prepare a report concerning
42 the award of tax credits under P.L. , c. (C.) (pending
43 before the Legislature as this bill), and submit the report to the
44 Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
45 19.1), to the Legislature. Each biennial report required under this
46 subsection shall include the names and locations of, and the amount
47 of tax credits allowed to, each employer allowed a tax credit under
48 P.L. , c. (C.) (pending before the Legislature as this bill).

1 4. a. The Director of the Division of Taxation in the
2 Department of the Treasury shall allow an employer a credit against
3 the corporation business tax imposed pursuant to section 5 of
4 P.L.1945, c.162 (C.54:10A-5) in the amount certified by the
5 Commissioner of Labor and Workforce Development as the
6 taxpayer's tax credit amount pursuant to section 2 of
7 P.L. , c. (C.) (pending before the Legislature as this bill).
8 To claim the tax credit amount for a privilege period, the taxpayer
9 shall submit to the director the certificate of credit issued for that
10 privilege period by the commissioner pursuant to section 2 of
11 P.L. , c. (C.) (pending before the Legislature as this bill).

12 b. An employer shall apply the credit awarded against the
13 employer's liability under section 5 of P.L.1945, c.162 (C.54:10A-
14 5) for the privilege period during which the director allows the
15 employer a tax credit pursuant to this section. An employer shall
16 not carry forward an unused credit.

17 c. The director shall prescribe the order of priority of the
18 application of the credit allowed under this section and any other
19 credits allowed by law against the tax imposed under section 5 of
20 P.L.1945, c.162 (C.54:10A-5). The amount of the credit applied
21 under this section against the tax imposed pursuant to section 5 of
22 P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with
23 any other credits allowed by law, shall not reduce the tax liability to
24 an amount less than the statutory minimum provided in subsection
25 (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).

26

27 5. a. The Director of the Division of Taxation in the
28 Department of the Treasury shall allow an employer a credit against
29 the gross income tax imposed pursuant to the "New Jersey Gross
30 Income Tax Act" N.J.S.54A:1-1 et seq. in the amount certified by
31 the Commissioner of Labor and Workforce Development as the
32 taxpayer's tax credit amount pursuant to section 2 of
33 P.L. , c. (C.) (pending before the Legislature as this bill).
34 To claim the tax credit amount for a taxable year, the taxpayer shall
35 submit to the director the certificate of credit issued for that taxable
36 year by the commissioner pursuant to section 2 of
37 P.L. , c. (C.) (pending before the Legislature as this bill).

38 b. An employer shall apply the credit awarded against the
39 employer's liability under the "New Jersey Gross Income Tax Act"
40 N.J.S.54A:1-1 et seq. for the taxable year during which the director
41 allows the employer a tax credit pursuant to P.L. , c. (C.)
42 (pending before the Legislature as this bill). An employer shall not
43 carry forward an unused credit.

44 c. The director shall prescribe the order of priority of the
45 application of the credit allowed under this section and any other
46 credits allowed by law against the tax imposed under the "New
47 Jersey Gross Income Tax Act" N.J.S.54A:1-1 et seq. The amount
48 of the credit applied under this section against the tax imposed

1 pursuant to the “New Jersey Gross Income Tax Act” N.J.S.54A:1-1
2 et seq. for a taxable year, together with any other credits allowed by
3 law, shall not reduce the tax liability to an amount less than zero.
4 No tax credit shall be allowed pursuant to this section for any wages
5 and payroll taxes included in the calculation of any other tax credit
6 granted pursuant to a claim made on a tax return filed with the
7 director for a period of time that coincides with the taxable year for
8 which a tax credit authorized pursuant to this section is allowed.

9 d. A business entity that is classified as a partnership for
10 federal income tax purposes shall not be allowed the tax credit
11 directly under N.J.S.54A:1-1 et seq., but the amount of credit of the
12 taxpayer in respect of a distributive share of partnership income
13 shall be determined by allocating to the taxpayer that proportion of
14 the credit acquired by the partnership that is equal to the taxpayer’s
15 share, whether or not distributed, of the total distributive income or
16 gain of the partnership for its taxable year ending within or with the
17 taxpayer’s taxable year.

18 A taxpayer that is a New Jersey S corporation shall not be
19 allowed the tax credit directly under N.J.S.54A:1-1 et seq., but the
20 amount of credit of a taxpayer in respect of a pro rata share of S
21 corporation income shall be determined by allocating to the
22 taxpayer that proportion of the credit acquired by the New Jersey S
23 corporation that is equal to the taxpayer’s share, whether or not
24 distributed, of the total pro rata share of S corporation income of the
25 New Jersey S corporation for its privilege period ending within or
26 with the taxpayer’s taxable year.

27
28 6. This act shall take effect immediately.
29
30

31 STATEMENT 32

33 This bill establishes a program administered by the
34 Commissioner of Labor and Workforce Development to provide tax
35 credits to employers who employ employees less than 18 years old
36 who are subject to the State minimum wage to offset the cost to the
37 employer of any increases in the wages and payroll taxes of those
38 employees caused by the enactment of P.L.2019, c.32 (C.34:11-
39 56a39 et al.). Under the program, an employer is eligible for a
40 refundable tax credit against the corporation business tax or the
41 gross income tax, as applicable, for the cost to the employer of
42 those increases.