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ASSEMBLY, No. 4030

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 4, 2020

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SYNOPSIS

Establishes Employment and Business-Related Tax Deferral Assistance Program in EDA to allow small businesses to defer the payment and remittance of certain employment and business-related taxes during COVID-19 public health emergency.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on May 18, 2021, with amendments.

(Sponsorship Updated As Of: 5/20/2021)

AN ACT establishing the Employment and Business-Related Tax Deferral Assistance Program to allow deferment of payment and remittance of certain employment and business-related taxes during the COVID-19 public health emergency.

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

1. a. There is established the Employment and Business-Related Tax Deferral Assistance Program to be administered by the New Jersey Economic Development Authority. The purpose of the program shall be to provide financial relief to New Jersey small businesses facing economic hardship due to the outbreak of the coronavirus disease 2019 (COVID-19). To effectuate this purpose, the authority shall review and approve applications of eligible small businesses seeking financial relief, make and enter into agreements that allow eligible small businesses to defer the payment and remittance of certain employment- and business-related taxes imposed and collected on behalf of the State, and monitor and evaluate the effectiveness of the program.

b. The authority shall establish an application process that allows small businesses facing economic hardship due to the COVID-19 outbreak to make and file an application for participation in the program. The authority shall not accept an application submitted after July 31, [1]**[**2020**]** 2021[1]. The authority shall review each application and shall approve a small business for participation in the program if it demonstrates to the satisfaction of the authority that the small business:

(1) is registered to do business in this State and has been in operation for one year or more;

(2) maintains its headquarters or conducts its principal business operations from a physical location within this State;

(3) had no more than 10 full-time-equivalent employees in each of the four calendar quarters immediately preceding the calendar quarter in which an application is made;

(4) is facing economic hardship due to the COVID-19 outbreak, as evidenced by the fact that the business has been temporarily shut down, has been required to reduce hours, has had at least a 20 percent drop in revenue, has been materially impacted by employees who cannot work due to the outbreak, or has a supply chain that has materially been disrupted and therefore slowed business-level production; and

(5) is in good standing with the Department of Labor and Workforce Development and is not delinquent or deficient with respect to the payment of a State tax.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
[1]Assembly AAP committee amendments adopted May 18, 2021.

The authority shall notify each small business that it has approved for participation in the program and shall provide each business that is not approved a written explanation of the reason the business's application was denied.

c. The authority shall make and enter into an agreement with each small business that it has approved for participation in the program. The agreement shall include:

(1) a detailed description of the applicable employment and business-related taxes that the small business may defer paying or remitting in accordance with section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), the period during which payment or remittance of the applicable employment and business-related taxes may be deferred, and the schedule, in compliance with subsection c. of section 2 of P.L. , c. (C.) (pending before the Legislature as this bill), the small business shall follow to pay or remit the applicable employment and business-related taxes after the tax deferment period has ended;

(2) a requirement that the small business continue to timely file all returns, reports, and other statements or information with the Director of the Division of Taxation in the Department of the Treasury and the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development as is required by law or regulation for the applicable employment and business-related taxes imposed and collected during the tax deferment period;

(3) a requirement that each person having ownership interest of 10 percent or more in the business agree to be personally liable for any applicable employment and business-related taxes imposed and collected by the small business during the tax deferral period and for any penalties and interest that may be imposed and required to be paid for failure to pay or remit the deferred tax in accordance with the scheduled payment plan after the tax deferment period has ended;

(4) a requirement that the chief executive officer of the business or other equivalent officer certify that the small business will make its best effort not to furlough or lay off any individuals from the time the agreement is entered into through the end of the tax deferment period and, if the business furloughed or laid off individuals as a result of economic hardship due to the COVID-19 outbreak prior to entering the agreement, the business will make a best effort to re-hire those individuals as soon as possible thereafter;

(5) a method for the business to report on a monthly basis during the tax deferment period the number of full time equivalent employees employed by the business, the revenues derived from business activities conducted by the business, and the amount of applicable employment and business-related taxes that the small business has imposed and collected but elected to defer paying or remitting;

(6) a provision permitting an audit of the books, accounts, and records of the small business by the authority at such time and in such manner as the authority determines to be necessary; and

(7) a provision establishing the conditions under which the agreement may be terminated and the deferred employment and business-related taxes, penalties, and interest may by the collected by the authority.

The authority shall transmit a copy of each agreement to the Director of the Division of Taxation in the Department of the Treasury and the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development.

d. The authority shall prepare and publish an annual report to monitor and evaluate the implementation of the program. The annual report shall include information concerning: the number of small businesses facing economic hardship due to the COVID-19 public health emergency that applied for participation in the program; the number of businesses that were approved and that made and entered into an agreement with the authority; the amount of applicable employment and business-related taxes that were deferred by participating small businesses; and, for calendar years occurring after the tax deferment period has ended, the amount of deferred taxes and any penalties and interest that have been paid or remitted by participating businesses. The authority shall annually submit the report to the Governor, and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature

e. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the authority may adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the authority determines to be necessary and appropriate to effectuate the purposes of this section, which rules and regulations shall be effective for a period not to exceed 360 days following the date of filing and may thereafter be amended, adopted, or readopted by the authority in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

2. a. Notwithstanding the provisions of any other law to the contrary, a small business that has made and entered into an agreement with the New Jersey Economic Development Authority in accordance with the program established by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) may elect to defer, in whole or in part, the payment or remittance of the applicable employment and business-related taxes that the small business is required to impose and collect on behalf of the State during the business's tax deferment period.

b. A participating small business shall be treated as having paid or remitted the applicable employment and business-related taxes that the business has imposed and collected but elected to defer during the tax deferment period without regard to this section, if the small business continues to timely file all returns, reports, and other statements or information with the Director of the Division of Taxation in the Department of the Treasury and the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development as is required by law or regulation for the applicable employment and business-related taxes and the small business pays or remits the deferred taxes in accordance with the payment plan established by subsection c. of this section.

c. A participating small business shall be required to pay or remit 50 percent of the applicable employment and business-related taxes that the small business has imposed and collected but elected to defer during the tax deferment period not later than June 30, **[1]**[2021]<u>2022</u>**[1]**. The small business shall be required to pay or remit the balance of any deferred employment and business-related taxes that have not been paid or remitted not later than June 30, **[1]**[2022]<u>2023</u>**[1]**.

d. A participating small business shall be required to pay penalty and interest on the amount of any applicable employment and business-related taxes that are not paid or remitted in accordance with the payment plan established by subsection c. of this section. Penalty and interest shall be assessed by the director pursuant to R.S.54:49-3, unless otherwise provided in the law imposing such deferred employment or business-related tax. Interest shall accrue and be required to be paid by the participating business from the date that the applicable employment or business-related tax was originally due prior to the agreement with the authority to the date of actual payment or remittance.

3. For purposes of this act:

"Applicable employment and business-related taxes" means:

(1) taxes imposed pursuant to the "Sales and Use Tax Act," P.L.1966, c.30 (C.54:32B-1 et seq.);

(2) taxes imposed pursuant to the "Motor Fuel Tax Act," P.L.2010, c.22 (C.54:39-101 et seq.);

(3) taxes imposed pursuant to the "Petroleum Products Gross Receipts Tax Act," P.L.1990, c.42 (C.54:15B-1 et seq.);

(4) taxes deducted and withheld from wages pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.;

(5) contributions required to be paid pursuant to the workers' compensation law, R.S.34:15-1 et seq.;

(6) contributions required to be paid pursuant to the New Jersey "unemployment compensation law," R.S.43:21-1 et seq.;

(7) contributions required to be paid pursuant to the "Temporary Disability Benefits Law," P.L.1948, c.110 (C.43:21-25 et al.); and

(8) contributions required to be paid pursuant to P.L.2008, c.17 (C.43:21-39.1 et al.)

"Authority" means the New Jersey Economic Development Authority created pursuant to section 4 of P.L.1974, c.80 (C.34:1B-4).

"COVID-19" means the coronavirus disease 2019 (COVID-19), caused by the SARS-CoV-2 virus, and identified in the concurrent declaration of the state of emergency and the public health emergency pursuant to of Executive Order No. 103 of 2020.

"Tax deferment period" means the period beginning on or after the first day of the first month next following the date the participating small business makes and enters into an agreement with the New Jersey Economic Development Authority in accordance with the program established by section 1 of P.L. , c. (C.) (pending before the Legislature as this bill) and ending before January 1, **[1]** **[**2021**]** 2022 **[1]**.

4. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Director of the Division of Taxation in the Department of the Treasury and the Director of the Division of Unemployment and Temporary Disability Insurance in the Department of Labor and Workforce Development may, in consultation with the authority, adopt immediately upon filing with the Office of Administrative Law such rules and regulations as the director determines to be necessary and appropriate to effectuate the purposes of sections 2 to 3 of this act, which rules and regulations shall be effective for a period not to exceed 360 days following the date of filing and may thereafter be amended, adopted, or readopted by the director in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

5. This act shall take effect immediately.