ASSEMBLY, No. 5735

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 17, 2021

Sponsored by:
Assemblyman VINCENT MAZZEO
District 2 (Atlantic)
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District 15 (Hunterdon and Mercer)
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District 35 (Bergen and Passaic)

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Assemblywoman Vainieri Huttle, Assemblymen Catalano and McGuckin

SYNOPSIS

Provides tax credits to qualified small employers in industries impacted by COVID-19 emergency.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 11/8/2021)

AN ACT providing tax credits to qualified small employers in industries impacted by the COVID-19 emergency, supplementing P.L.1945, c.162 and Title 54A of the New Jersey Statutes.

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

1. a. For privilege periods ending in 2020 and 2021, a taxpayer that is a qualified small employer shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), in an amount equal to 10 percent of wages paid by the qualified small employer to a qualified employee; provided, however, that the amount of the credit shall equal 20 percent of wages paid to a qualified employee if the qualified small employer is located in a COVID-impact county.

b. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period, when taken together with any other credits allowed against the tax imposed pursuant to section 5 of P.L.1945, c.162, shall not exceed 50 percent of the tax liability otherwise due and shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be determined by the director. The amount of the credit otherwise allowable under this section that cannot be applied for the privilege period due to the limitations of this subsection or under other provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.) may be carried over, if necessary, to the seven privilege periods following the privilege period for which the credit was allowed.

c. An application for the tax credit shall be submitted to the Division of Taxation in the Department of Treasury in a form and manner prescribed by the director.

d. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the director is authorized to adopt, immediately upon filing with the Office of Administrative Law, rules and regulations that the director deems necessary to implement the provisions of this section, which rules and regulations shall be effective for a period not to exceed 18 months 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.).

e. As used in this section:

"COVID-impact county" means a New Jersey county with an average monthly unemployment rate during the taxpayer's privilege period that is greater than or equal to the State's average monthly

unemployment rate based on data published by the United States Bureau of Labor Statistics.

"Qualified employee" means an employee who is employed by a qualified small employer and who is compensated in wages on an hourly basis by the qualified small employer, which wages are up to 120 percent of the minimum hourly wage in effect pursuant to either:

(1) the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.); or

(2) paragraph 23 of Article I of the New Jersey Constitution.

"Qualified small employer" means a business entity, including all entities related by common ownership or control, that is independently owned and operated, has a North American Industry Classification System code of 44, 45, 62, 71, 72, or 81, and had an average weekly number of full-time employees of not more than 100 employees during the privilege period.

"Wages" means direct monetary compensation for labor or services rendered by an employee, which amount is determined on an hourly basis, excluding any task, piece, or commission form of supplementary incentives and bonuses that are calculated independently of regular wages and paid in addition thereto, and which are with respect to employment on a full-time basis in the ordinary course of business.

2. a. For taxable years 2020 and 2021, a taxpayer that is a qualified small employer shall be allowed a credit against the tax otherwise due pursuant to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., in an amount equal to 10 percent of wages paid by the qualified small employer to a qualified employee; provided, however, that the amount of the credit shall equal 20 percent of wages paid to a qualified employee if the qualified small employer is located in a COVID-impact county.

b. The amount of the credits applied under this section for a taxable year, when taken together with any other credits allowed against the tax imposed pursuant to N.J.S.54A:1-1 et seq., shall not exceed 50 percent of the taxpayer’s liability otherwise due for the taxable year. The priority in which credits allowed pursuant to this section and any other credits shall be taken shall be determined by the director. The amount of the credit otherwise allowable under this section that cannot be applied for the taxable year due to the limitations of this subsection may be carried over, if necessary, to the seven taxable years following the taxable year for which the credit was allowed.

c. (1) A business entity that is classified as a partnership for federal income tax purposes shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect to distributive share of entity income, shall be determined by allocating to the taxpayer that proportion of the tax

credit acquired by the entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the taxpayer's taxable year.

(2) A New Jersey S Corporation shall not be allowed a tax credit pursuant to this section directly, but the amount of the tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer's taxable year.

d. An application for the tax credit shall be submitted to the Division of Taxation in the Department of Treasury in a form and manner prescribed by the director.

e. Notwithstanding any provision of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the director is authorized to adopt, immediately upon filing with the Office of Administrative Law, rules and regulations that the director deems necessary to implement the provisions of this section, which rules and regulations shall be effective for a period not to exceed 18 months 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.).

f. As used in this section:

"COVID-impact county" means a New Jersey county with an average monthly unemployment rate during the taxpayer's taxable year that is greater than or equal to the State's average monthly unemployment rate based on data published by the United States Bureau of Labor Statistics.

"Qualified employee" means an employee who is employed by a qualified small employer and who is compensated in wages on an hourly basis by the qualified small employer, which wages are up to 120 percent of the minimum hourly wage in effect pursuant to either:

(1) the "New Jersey State Wage and Hour Law," P.L.1966, c.113 (C.34:11-56a et seq.); or

(2) paragraph 23 of Article I of the New Jersey Constitution.

"Qualified small employer" means a business entity, including all entities related by common ownership or control, that is independently owned and operated, has a North American Industry Classification System code of 44, 45, 62, 71, 72, or 81, and had an average weekly number of full-time employees of not more than 100 employees during the taxable year.

"Wages" means direct monetary compensation for labor or services rendered by an employee, which amount is determined on

an hourly basis, excluding any task, piece, or commission form of supplementary incentives and bonuses that are calculated independently of regular wages and paid in addition thereto, and which are with respect to employment on a full-time basis in the ordinary course of business.

3. This act shall take effect immediately.

STATEMENT

The bill allows qualified small employers to receive a tax credit for wages paid to qualified employees. Under the bill, a qualified small employer is a business entity, including all entities related by common ownership or control, that is independently owned and operated, has a North American Industry Classification System (NAICS) code of 44, 45, 62, 71, 72, or 81, and had an average weekly number of full-time employees of not more than 100 employees during the taxable year. Those industries classified under the NAICS codes mentioned would be as follows: retail trade; health care and social assistance; arts, entertainment, and recreation; accommodation and food services; and other services (except public administration).

The credit would be equal to 10 percent of wages paid by the qualified small employer to a qualified employee; provided, however, that the amount of the credit would be equal to 20 percent of wages paid to a qualified employee if the qualified small employer is located in a COVID-impact county. A COVID-impact county is defined in the bill as a New Jersey county with an average monthly unemployment rate for the taxable year or privilege period that is greater than or equal to the State's average monthly unemployment rate for that period. The monthly average will be based on data published by the United States Bureau of Labor Statistics.

The credit would be available for taxable years beginning or privilege periods ending in 2020 and 2021.