

SENATE, No. 268

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

SYNOPSIS

Provides alcoholic beverage tax credits to breweries for qualified capital expenses.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT alcoholic beverage tax credits to breweries for qualified
2 capital expenses, supplementing chapter 43 of Title 54 of the
3 Revised Statutes.

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

7
8 1. a. A taxpayer that is a brewer shall be allowed a credit
9 against the tax imposed pursuant to the "Alcoholic beverage tax
10 law," R.S.54:41-1 et seq., in an amount equal to the amount of
11 qualified capital expenses incurred by the brewer during the tax
12 year.

13 b. As used in this section:

14 "Brewed beverage" means beer, lager beer, ale, stout, porter, and
15 all similar fermented malt beverages having an alcoholic content of
16 one-half of one percent or more by volume.

17 "Brewer" means a properly licensed individual or business
18 engaged in the brewing or manufacturing of brewed beverages for
19 sale.

20 "Qualified capital expense" means amounts paid by a taxpayer
21 that is a brewer for the purchase of items of plant, machinery,
22 equipment, or any other item as approved by the director, for use by
23 the taxpayer within the State in the manufacture, sale, or both, of
24 brewed beverages. For purposes of this section, "qualified capital
25 expenses" includes, but shall not be limited to: (1) amounts actually
26 paid by the taxpayer; and (2) amounts promised to be paid under
27 firm purchase contracts actually executed during the tax year;
28 provided, however, that a taxpayer shall not claim a qualified
29 capital expense that was claimed by the taxpayer in a prior tax year.

30 "Tax year" means the aggregate reporting periods between
31 January 1st and December 31st of each calendar year, for which the
32 tax imposed pursuant to the "Alcoholic beverage tax law,"
33 R.S.54:41-1 et seq. is due.

34 c. (1) The total value of the grants of tax credits approved by
35 the director pursuant to this section that may be applied against tax
36 liabilities for a tax year shall not exceed an aggregate annual limit
37 of \$5,000,000.

38 (2) (a) The total amount of tax credits allowed for a taxpayer for
39 a tax year shall not exceed \$200,000.

40 (b) The amount of credit otherwise allowable pursuant to this
41 section that cannot be applied for the tax year against the tax
42 liability otherwise due for that tax year may be carried over, if
43 necessary, for the three tax years next following the tax year for
44 which the credit has been allowed.

45 d. Except as otherwise provided by section 2 of P.L. ,

46 c. (C.) (pending before the Legislature as this bill), the
47 director shall establish an application process and prescribe the

1 form, manner, and rules by and through which the taxpayer may
2 obtain credits pursuant to this section.

3 e. If the amount of tax credits applied for by taxpayers in a tax
4 year exceeds the aggregate annual limit imposed pursuant to this
5 section, then a taxpayer who has first applied for and has not been
6 allowed a tax credit amount for that reason shall be allowed, in the
7 order in which the applications have been submitted, that taxpayer's
8 approved amount of tax credits on the first day of the next succeeding
9 tax year in which tax credits are issued pursuant to this section and are
10 not in excess of the amounts of credits available.

11 f. The director shall annually prepare and file a report to the
12 Legislature, pursuant to section 2 of P.L.1991, c.164 (C.52:14-
13 19.1), that describes the employment, production, expenditures, and
14 tax credits authorized pursuant to this section.

15
16 2. a. A taxpayer shall not be permitted to take any credits
17 pursuant to section 1 of P.L. , c. (C.) (pending before the
18 Legislature as this bill) to reduce or offset a tax liability that is
19 incurred and required to be paid by the taxpayer unless the taxpayer
20 has obtained prior written authorization from the director pursuant
21 to this section.

22 b. The director shall establish an application process and
23 prescribe the form and manner through which a taxpayer may make
24 and file an application to obtain the director's written authorization
25 for the allowance of a credit. The application shall, at minimum,
26 require the taxpayer to include, in a form and manner as shall be
27 prescribed by the director:

28 (1) the nature, amounts, and dates of the qualifying capital
29 expenses made by the taxpayer;

30 (2) the number of employees employed by the taxpayer;

31 (3) the total production of brewed beverages produced by the
32 taxpayer in the current and prior tax year;

33 (4) the amount of capital expenses made by the taxpayer at each
34 location operated by the taxpayer or a parent corporation,
35 subsidiary, joint venture, or affiliate;

36 (5) any contracts for production held by the taxpayer with
37 another brewer; and

38 (6) an affirmation that the business for which the taxpayer is
39 seeking the director's written authorization for the allowance of a
40 credit is unrelated to the conduct or operation of any other business
41 that was, or is currently, conducted or operated by the taxpayer. If
42 the business and any other business that was, or is currently,
43 conducted or operated by the taxpayer are determined by the
44 director to be related by common ownership, the use of similar
45 business names, trademarks, or service marks, or the conduct of
46 similar business activities or operations, then the taxpayer shall
47 demonstrate that the business was not established or acquired for
48 the purpose of enjoying the benefit of the credit.

1 c. The director shall review each application made and filed by
2 a taxpayer pursuant to subsection b. of this section and make a
3 determination regarding the approval of an application seeking the
4 director's written authorization for the allowance of a credit within
5 90 calendar days of the date a completed application is received.

6 d. The director shall issue a written authorization for the
7 allowance of a credit to each taxpayer that made and filed a
8 complete application that has been reviewed and approved by the
9 director pursuant to subsection c. of this section within five
10 calendar days of the date the director's determination is made.
11 Each taxpayer issued a written authorization for the allowance of a
12 credit shall include a copy of the director's authorization when
13 filing a return that includes a claim for the credit allowed pursuant
14 to section 1 of P.L. , c. (C.) (pending before the
15 Legislature as this bill).

16 e. If the director fails to make a determination regarding the
17 approval of an application seeking the director's written
18 authorization for the allowance of a credit within 90 calendar days
19 of the date a complete application is received, or if the director fails
20 to issue a written authorization for the allowance of a credit within
21 five calendar days of the date the director's determination is made,
22 the application shall be deemed to have been approved and the
23 written authorization shall be deemed to have been issued by the
24 director. Each taxpayer that made and filed a complete application
25 pursuant to subsection b. of this section but fails to receive a
26 determination from the director within 90 calendar days of the date
27 a complete application is received, or fails to receive a written
28 authorization for the allowance of a credit within five calendar days
29 of the date the director's determination is made, shall include a
30 copy of the taxpayer's application when filing a return that includes
31 a claim for the credit pursuant to section 1 of P.L. , c. (C.)
32 (pending before the Legislature as this bill).

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34 3. Notwithstanding any provisions of the "Administrative
35 Procedure Act", P.L.1968, c.410 (C.52:14B-1 et seq.), the director
36 may adopt immediately upon filing with the Office of
37 Administrative Law, rules and regulations as the director
38 determines to be necessary to effectuate the purposes of P.L. ,
39 c. (C.) (pending before the Legislature as this bill), which
40 shall be effective for a period not to exceed 360 calendar days
41 following the effective date of P.L. , c. (C.) (pending
42 before the Legislature as this bill) and may thereafter be amended,
43 adopted, or readopted by the director pursuant to the requirements
44 of P.L.1968, c.410 (C.52:14B-1 et seq.).

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46 4. This act shall take effect immediately and apply to qualified
47 capital expenses incurred on or after the January 1st next following
48 the date of enactment.

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STATEMENT

This bill provides credits against the New Jersey alcoholic beverage tax to manufacturers of brewed beverages in the amount of qualified capital expenses paid by the brewer during the tax year.

The bill defines “brewer” to mean a properly licensed individual or business engaged in the brewing or manufacturing of beer, lager beer, ale, stout, porter, and all similar fermented malt beverages having an alcoholic content of one-half of one percent or more by volume. The term “qualified capital expense” means amounts paid by a brewer for the purchase of items of plant, machinery, equipment, or any other item as approved by the Director of the Division of Taxation in the Department of the Treasury (the “director”), for use by the taxpayer within the State in the manufacture, sale, or both, of brewed beverages.

The annual total value of the grants of tax credits approved by the director to be applied against an alcoholic beverage tax liability for a tax year is not to exceed an aggregate annual limit of \$5 million. Each individual taxpayer is allowed an annual total of up to \$200,000 in tax credits, which can be applied in a tax year or carried forward up to the next three tax years. However, if the amount of tax credits applied for and eligible to be approved in a given year exceeds the aggregate annual limit of \$5 million, then a taxpayer who has applied for but has not been allowed a tax credit amount because the annual limit has been reached is then allowed, in the order in which the applications have been submitted, their approved amount of tax credits on the first day of the next succeeding year in which tax credits are issued and are not in excess of the amount of credits available.

The director is to establish an application process and prescribe the form and manner through which a taxpayer may make and file an application to obtain the director’s written authorization for the allowance of a credit. A taxpayer may not receive any credits pursuant to this bill unless the taxpayer has first obtained such prior written authorization from the director. The application is required to include, at minimum, the following information: (1) the nature, amounts, and dates of the qualifying capital expenses made by the taxpayer; (2) the number of employees employed by the taxpayer; (3) the total production of brewed beverages produced by the taxpayer in the current and prior tax year; (4) the amount of capital expenses made by the taxpayer at each location operated by the taxpayer or a parent corporation, subsidiary, joint venture, or affiliate; (5) any contracts for production held by the taxpayer with another brewer; and (6) an affirmation that the business for which the taxpayer is seeking the director’s written authorization for the allowance of a credit is unrelated to the conduct or operation of any other business that was, or is currently, conducted or operated by the taxpayer. Finally, the director is required to prepare an annual

1 report, to be filed with the Legislature, that describes the
2 employment, production, expenditures, and tax credits authorized
3 pursuant to the program established by the bill. The credit program
4 applies to qualified capital expenses incurred by taxpayers on or
5 after the January 1st next following the date of enactment.