SENATE, No. 718

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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SYNOPSIS

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

CURRENT VERSION OF TEXT

As reported by the Senate Labor Committee with technical review.

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

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

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

"Commissioner" means the Commissioner of Labor and Workforce Development.

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

"Tax year" means the calendar year or fiscal year in which a taxpayer's gross income tax or corporation business tax liability is due and payable.

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

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

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

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

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

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

(b) if the number of hours worked during the tax year by an employee under the age of 18 employed by the employer is greater than the number of hours worked by the employee under the age of 18 by the employer during the last preceding calendar year, then the preliminary amount of the tax credit shall be calculated in two parts and the sum of the two parts shall be the preliminary amount of the tax credit. In the first part of the calculation, regarding the hours worked during the tax year which are equal to the number of hours worked during the last preceding calendar year, the preliminary amount of the tax credit shall be calculated in the same manner as the credit is calculated in subparagraph (a) of this paragraph. In the second part of the calculation, regarding the hours worked during the tax year which are in addition to the number of hours worked during the last preceding calendar year, the preliminary amount of the tax credit for each additional hour shall be calculated in the same manner as the credit is calculated in subparagraph (a) of this paragraph, except that it shall be presumed that the additional number of hours worked by the employee under the age of 18 would have been paid at the minimum wage rate in effect during the last preceding calendar year (as adjusted pursuant to subparagraph

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. Beginning the year next following the year in which P.L.2019, c.32 (C.34:11-56a39 et al.) takes effect and every two years thereafter, the commissioner shall prepare a report concerning the award of tax credits under P.L. , c. (C.) (pending before the Legislature as this bill), and 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. Each biennial report required under this subsection shall include the names and locations of, and the amount of tax credits allowed to, each employer allowed a tax credit under P.L. , c. (C.) (pending before the Legislature as this bill).

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

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

c. The director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed under section 5 of P.L.1945, c.162 (C.54:10A-5). 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, together with any other credits allowed by law, 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).

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

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

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

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

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

A taxpayer that is a New Jersey S corporation shall not be allowed the tax credit directly under N.J.S.54A:1-1 et seq., but the amount of 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 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.

6. This act shall take effect immediately.