

[First Reprint]

SENATE, No. 2347

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED APRIL 9, 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: 6/3/2021)

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

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

8
9 1. a. There is established the Employment and Business-Related
10 Tax Deferral Assistance Program to be administered by the New
11 Jersey Economic Development Authority. The purpose of the program
12 shall be to provide financial relief to New Jersey small businesses
13 facing economic hardship due to the outbreak of the coronavirus
14 disease 2019 (COVID-19). To effectuate this purpose, the authority
15 shall review and approve applications of eligible small businesses
16 seeking financial relief, make and enter into agreements that allow
17 eligible small businesses to defer the payment and remittance of
18 certain employment- and business-related taxes imposed and collected
19 on behalf of the State, and monitor and evaluate the effectiveness of
20 the program.

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

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

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

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

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

43 (5) is in good standing with the Department of Labor and
44 Workforce Development and is not delinquent or deficient with
45 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:

¹Assembly AAP committee amendments adopted May 18, 2021.

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

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

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

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

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

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

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

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

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

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

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

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

37
38 2. a. Notwithstanding the provisions of any other law to the
39 contrary, a small business that has made and entered into an agreement
40 with the New Jersey Economic Development Authority in accordance
41 with the program established by section 1 of P.L. , c. (C.)
42 (pending before the Legislature as this bill) may elect to defer, in
43 whole or in part, the payment or remittance of the applicable
44 employment and business-related taxes that the small business is
45 required to impose and collect on behalf of the State during the
46 business’s tax deferment period.

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

13 c. A participating small business shall be required to pay or remit
14 50 percent of the applicable employment and business-related taxes
15 that the small business has imposed and collected but elected to defer
16 during the tax deferment period not later than June 30, ¹~~2021~~ 2022¹.
17 The small business shall be required to pay or remit the balance of any
18 deferred employment and business-related taxes that have not been
19 paid or remitted not later than June 30, ¹~~2022~~ 2023¹.

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

31
32 3. For purposes of this act:

33 “Applicable employment and business-related taxes” means:

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

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

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

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

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

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

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

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

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

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

9 "Tax deferment period" means the period beginning on or after the
10 first day of the first month next following the date the participating
11 small business makes and enters into an agreement with the New
12 Jersey Economic Development Authority in accordance with the
13 program established by section 1 of P.L. , c. (C.) (pending
14 before the Legislature as this bill) and ending before January 1,
15 ¹[2021] 2022¹.

16
17 4. Notwithstanding any provision of the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
19 contrary, the Director of the Division of Taxation in the Department
20 of the Treasury and the Director of the Division of Unemployment
21 and Temporary Disability Insurance in the Department of Labor and
22 Workforce Development may, in consultation with the authority,
23 adopt immediately upon filing with the Office of Administrative
24 Law such rules and regulations as the director determines to be
25 necessary and appropriate to effectuate the purposes of sections 2
26 to 3 of this act, which rules and regulations shall be effective for a
27 period not to exceed 360 days following the date of filing and may
28 thereafter be amended, adopted, or readopted by the director in
29 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1
30 et seq.).

31

32 5. This act shall take effect immediately.