

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-98
(3)C Corporation Tax
(1)I Income Tax
March 24, 1998

Credit for Employment of Persons with Disabilities

On June 25, 1997, Governor George E. Pataki signed Chapter 142 of the Laws of 1997 into law. This chapter amended the New York State Tax Law to provide a tax credit to employers who employ individuals with disabilities. For tax years beginning on or after January 1, 1998, a tax credit of up to \$2,100 per employee is available. The following taxpayers are eligible for the credit:

- Corporations taxable under Article 9 (only under sections 183, 184, 185, or 186);
- Corporations taxable under Article 9-A;
- Banking corporations taxable under Article 32;
- Insurance corporations taxable under Article 33; and
- Individuals, estates, and trusts taxable under Article 22 (the personal income tax).

Corporations and individuals described above who are partners in a partnership (including members of an LLC, if that LLC is treated as a partnership for federal tax purposes), shareholders of a New York S corporation, or beneficiaries of an estate or trust are also eligible for the credit.

A taxpayer is allowed the credit for employing a qualified employee within New York State. A "qualified employee" is an employee who:

- qualifies as a "vocational rehabilitation referral" for purposes of the federal work opportunity credit (Internal Revenue Code § 51);¹
- has worked for the employer on a full-time basis for at least 180 days or 400 hours;² and
- is certified by the New York State Education Department's Office of Vocational and Educational Services for Individuals with Disabilities (VESID), or by the State of New York Office of Children and Family Services' Commission for the Blind and Visually Handicapped (CBVH):

(1) as a person with a disability that constitutes or results in a substantial handicap to employment; and

(2) who has completed or is receiving services under an individualized written rehabilitation plan approved by VESID or by CBVH.³

The New York credit amount is 35% of the eligible wages paid to a qualified employee. As long as the federal work opportunity credit for vocational rehabilitation referrals is operative, eligible wages for the New York credit are the first \$6,000 of “qualified second-year wages.” If the federal credit lapses, eligible wages for the New York credit are the first \$6,000 of “qualified first-year wages.”

The New York credit is available for employees who begin work for a taxpayer on or after January 1, 1997. The federal credit is currently operative and applies to employees who begin work on or before June 30, 1998. Accordingly, the New York credit for employees who begin work between January 1, 1997 and June 30, 1998 is based on their qualified second-year wages. For employees who begin work after June 30, 1998, and assuming the federal credit is not extended, the New York credit will be based on their qualified first-year wages. If the federal credit is extended so that these employees are eligible for the federal credit, the New York credit will be based on their qualified second-year wages. If the federal credit is extended but with a lapse in coverage so that these employees are not eligible for the federal credit, the New York credit will be based on their qualified first-year wages.

For corporate taxpayers, the credit cannot reduce the tax to less than the following statutory minimum taxes:

- the minimum tax of \$75 under Article 9, section 183; or
- the minimum tax of \$10 under Article 9, section 185; or
- the minimum tax of \$125 under Article 9, section 186; or
- the fixed dollar minimum tax computed under Article 9-A; or
- the fixed minimum tax of \$250 under Article 32; or
- the minimum tax of \$250 under Article 33.

The credit is not allowed against the metropolitan transportation business tax surcharge (MTA surcharge) under Articles 9, 9-A, 32, or 33.

For personal income taxpayers, the credit is only allowed against the regular (tax table/tax rate schedule) tax. It is not allowed against the minimum income tax or the separate tax on lump-sum distributions.

This credit is not refundable, but any amount of credit not used in the current tax year may be carried over for an unlimited number of years.

Note: For federal tax purposes, a taxpayer cannot deduct that portion of wages and salaries paid during the year that equals the amount of the federal work opportunity credit for vocational rehabilitation referrals (section 280C of the Internal Revenue Code). Articles 9-A and 32 taxpayers may reduce federal taxable income in computing entire net income by the amount of wages not deducted for federal tax purposes. In addition, Article 22 personal income tax taxpayers may reduce federal adjusted gross income in computing New York adjusted gross income by the amount of wages not deducted for federal tax purposes. Further, unlike the Internal Revenue Code, the New York Tax Law does not require a reduction in the deduction for the portion of wages and salaries that qualify for the state credit (i.e., the taxpayer receives both a deduction and a credit for the wages).

Definitions

Qualified first-year wages are wages paid or incurred by the taxpayer during the taxable year to a qualified employee for services rendered during the one-year period beginning with the day the employee begins work for the taxpayer. If the qualified employee did not work for the taxpayer for a full year, the one-year period begins with the date the employee began work for the taxpayer and ends on the last date of employment with the taxpayer.

Qualified second-year wages are wages paid or incurred by the taxpayer during the taxable year to a qualified employee for services rendered during the one-year period beginning one year after the employee begins work for the taxpayer. If the qualified employee did not work for the taxpayer for a full year after the first year, the one-year period begins with the date one year after the employee began work for the taxpayer and ends on the last date of employment with the taxpayer.

Full-time basis means a job consisting of at least 35 hours per week, or two or more jobs which together constitute the equivalent of a job of at least 35 hours per week.

Example

Taxpayer A is claiming the tax credit for calendar years 1998 and 1999. All of its employees are qualified employees. All wages paid or incurred during calendar years 1998 and 1999 were for services rendered on a full-time basis during calendar years 1998 and 1999, respectively. No wages paid or incurred during either calendar year were for services rendered during another year. This example assumes the federal work opportunity credit for vocational rehabilitation referrals ended on June 30, 1998.

The employee file of Taxpayer A for calendar year 1998 shows the following:

A Qualified employee	B Dates of employment	C One-year period for qualified first-year wages beg. date-end date	D One-year period for qualified second-year wages beg. date-end date	E Wages paid during 1998 for services rendered during one-year period shown in column C or D
#1	1/1/97-present		1/1/98-12/31/98	\$12,000
#2	7/1/97-9/30/98 (left employment)		7/1/98-9/30/98	\$3,000
#3	6/1/98-present		6/1/99-5/31/00	
#4	7/1/98-12/31/98 (left employment)	7/1/98-12/31/98		\$5,000
#5	7/1/98-12/31/98 (left employment)	7/1/98-12/31/98		\$8,000
#6	10/1/98-present	10/1/98-9/30/99		\$4,000

Employees #1, #2, and #3 were hired on or after January 1, 1997, and before the expiration (June 30, 1998) of the federal work opportunity credit for vocational rehabilitation referrals. Therefore, for calendar year 1998, Taxpayer A may claim the tax credit for employees #1 and #2, computed on the first \$6,000 of qualified second-year wages paid to each employee during 1998, for the one-year period shown in column D. The amount of the credit for employee #1 is \$2,100 ($\$6,000 \times 35\%$) and for employee #2 it is \$1,050 ($\$3,000 \times 35\%$).

Employee #3 had no qualified second-year wages for calendar year 1998. Therefore, no tax credit for this employee is available for calendar year 1998.

Employees #4, #5, and #6 were hired after the expiration (June 30, 1998) of the federal work opportunity credit for vocational rehabilitation referrals. Therefore, for calendar year 1998, Taxpayer A may claim the tax credit for employees #4, #5, and #6, computed on the first \$6,000 of qualified first-year wages paid to each employee during 1998, for the one-year period shown in column C. The amount of the credit for employee #4 is \$1,750 ($\$5,000 \times 35\%$), for employee #5 it is \$2,100 ($\$6,000 \times 35\%$), and for employee #6 it is \$1,400 ($\$4,000 \times 35\%$).

The employee file of Taxpayer A for calendar year 1999 shows the following:

A Qualified employee	B Dates of employment	C One-year period for qualified first-year wages beg. date-end date	D One-year period for qualified second-year wages beg. date-end date	E Wages paid during 1999 for services rendered during one-year period shown in column C or D
#3	6/1/98-present		6/1/99-5/31/00	\$7,000
#6	10/1/98-present	10/1/98-9/30/99		\$9,000

During calendar year 1999, the taxpayer paid employee #3 \$14,000. Of this amount, \$7,000 was paid for services rendered during the portion of the one-year period beginning one year after employee #3 began work for the taxpayer that falls within calendar year 1999 (6/1/99-12/31/99). Therefore, for calendar year 1999, Taxpayer A may claim the tax credit for employee #3, computed on the first \$6,000 of qualified second-year wages paid during 1999, for the one-year period shown in column D. The amount of the credit for employee #3 is \$2,100 (\$6,000 x 35%).

For calendar year 1998, Taxpayer A claimed the tax credit for employee #6 on the first \$4,000 of qualified first-year wages paid during 1998. Therefore, for calendar year 1999, Taxpayer A may claim the tax credit for employee #6, computed on the first \$2,000 in wages paid during 1999, for the one-year period shown in column C. The amount of the credit for employee #6 is \$700 (\$2,000 x 35%)

Endnotes

¹ The provisions of Internal Revenue Code, sections 51 and 52 (as these sections applied on October 1, 1996), that apply to the federal work opportunity credit for vocational rehabilitation referrals, apply to the New York credit to the extent the federal credit provisions are consistent with the state credit provisions. In the event of a conflict, the state credit provisions shall control.

² Note that the Taxpayer Relief Act of 1997 (P.L. 105-34) changed the work requirement for employees so that for purposes of the federal credit an employee qualifies for the credit if he or she works for at least 120 hours. The New York credit does not incorporate this change.

³ In cooperation with these agencies, the New York State Department of Labor's Economic Development Services Unit currently administers the certification program. For information about the certification process, call 1 800 472-8612 (NYS only) or 518 457-6823.