

**SENATE, No. 3759**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

INTRODUCED MAY 11, 2021

**Sponsored by:**

**Senator VIN GOPAL**

**District 11 (Monmouth)**

**Senator NICHOLAS P. SCUTARI**

**District 22 (Middlesex, Somerset and Union)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



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

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. a. For privilege periods ending in 2020 and 2021, a taxpayer  
9 that is a qualified small employer shall be allowed a credit against  
10 the tax imposed pursuant to section 5 of P.L.1945, c.162  
11 (C.54:10A-5), in an amount equal to 10 percent of wages paid by  
12 the qualified small employer to a qualified employee; provided,  
13 however, that the amount of the credit shall equal 20 percent of  
14 wages paid to a qualified employee if the qualified small employer  
15 is located in a COVID-impact county.

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

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

35 d. Notwithstanding any provision of the "Administrative  
36 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the  
37 contrary, the director is authorized to adopt, immediately upon  
38 filing with the Office of Administrative Law, rules and regulations  
39 that the director deems necessary to implement the provisions of  
40 this section, which rules and regulations shall be effective for a  
41 period not to exceed 18 months following the date of filing and may  
42 thereafter be amended, adopted, or readopted by the director in  
43 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1  
44 et seq.).

45 e. As used in this section:

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

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

3 "Qualified employee" means an employee who is employed by a  
4 qualified small employer and who is compensated in wages on an  
5 hourly basis by the qualified small employer, which wages are up to  
6 120 percent of the minimum hourly wage in effect pursuant to  
7 either:

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

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

11 "Qualified small employer" means a business entity, including  
12 all entities related by common ownership or control, that is  
13 independently owned and operated, has a North American Industry  
14 Classification System code of 44, 45, 62, 71, 72, or 81, and had an  
15 average weekly number of full-time employees of not more than  
16 100 employees during the privilege period.

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

24

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

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

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

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

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

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

17 e. 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 is authorized to adopt, immediately upon  
20 filing with the Office of Administrative Law, rules and regulations  
21 that the director deems necessary to implement the provisions of  
22 this section, which rules and regulations shall be effective for a  
23 period not to exceed 18 months following the date of filing and may  
24 thereafter be amended, adopted, or readopted by the director in  
25 accordance with the requirements of P.L.1968, c.410 (C.52:14B-1  
26 et seq.).

27 f. As used in this section:

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

33 "Qualified employee" means an employee who is employed by a  
34 qualified small employer and who is compensated in wages on an  
35 hourly basis by the qualified small employer, which wages are up to  
36 120 percent of the minimum hourly wage in effect pursuant to  
37 either:

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

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

41 "Qualified small employer" means a business entity, including  
42 all entities related by common ownership or control, that is  
43 independently owned and operated, has a North American Industry  
44 Classification System code of 44, 45, 62, 71, 72, or 81, and had an  
45 average weekly number of full-time employees of not more than  
46 100 employees during the taxable year.

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

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

6

7 3. This act shall take effect immediately.

8

9

10

#### STATEMENT

11

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

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

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