

SENATE, No. 2347

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED APRIL 9, 2020

Sponsored by:

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District 3 (Cumberland, Gloucester and Salem)

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District 14 (Mercer and Middlesex)

Senator THOMAS H. KEAN, JR.

District 21 (Morris, Somerset and Union)

Co-Sponsored by:

**Senators Bateman, Brown, Cardinale, Oroho, Pennacchio, Singer, Testa
and Sacco**

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 introduced.



(Sponsorship Updated As Of: 4/13/2020)

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

21 b. The authority shall establish an application process that
22 allows small businesses facing economic hardship due to the
23 COVID-19 outbreak to make and file an application for
24 participation in the program. The authority shall not accept an
25 application submitted after July 31, 2020. The authority shall
26 review each application and shall approve a small business for
27 participation in the program if it demonstrates to the satisfaction of
28 the authority that the small 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
34 of the four calendar quarters immediately preceding the calendar
35 quarter in which an application is made;

36 (4) is facing economic hardship due to the COVID-19 outbreak,
37 as 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
39 percent drop in revenue, has been materially impacted by
40 employees who cannot work due to the outbreak, or has a supply
41 chain that has materially been disrupted and therefore slowed
42 business-level 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.

46 The authority shall notify each small business that it has
47 approved for participation in the program and shall provide each

1 business that is not approved a written explanation of the reason the
2 business's application was denied.

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

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

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

24 (3) a requirement that each person having ownership interest of
25 10 percent or more in the business agree to be personally liable for
26 any applicable employment and business-related taxes imposed and
27 collected by the small business during the tax deferral period and
28 for any penalties and interest that may be imposed and required to
29 be paid for failure to pay or remit the deferred tax in accordance
30 with the scheduled payment plan after the tax deferment period has
31 ended;

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

40 (5) a method for the business to report on a monthly basis during
41 the tax deferment period the number of full time equivalent
42 employees employed by the business, the revenues derived from
43 business activities conducted by the business, and the amount of
44 applicable employment and business-related taxes that the small
45 business has imposed and collected but elected to defer paying or
46 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
3 such 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
7 by 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
10 Treasury and the Director of the Division of Unemployment and
11 Temporary Disability Insurance in the Department of Labor and
12 Workforce Development.

13 d. The authority shall prepare and publish an annual report to
14 monitor and evaluate the implementation of the program. The
15 annual report shall include information concerning: the number of
16 small businesses facing economic hardship due to the COVID-19
17 public health emergency that applied for participation in the
18 program; the number of businesses that were approved and that
19 made and entered into an agreement with the authority; the amount
20 of applicable employment and business-related taxes that were
21 deferred by participating small businesses; and, for calendar years
22 occurring after the tax deferment period has ended, the amount of
23 deferred taxes and any penalties and interest that have been paid or
24 remitted by participating businesses. The authority shall annually
25 submit the report to the Governor, and, pursuant to section 2 of
26 P.L.1991, c.164 (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
29 contrary, the authority may adopt immediately upon filing with the
30 Office of Administrative Law such rules and regulations as the
31 authority determines to be necessary and appropriate to effectuate
32 the purposes of this section, which rules and regulations shall be
33 effective for a period not to exceed 360 days following the date of
34 filing and may thereafter be amended, adopted, or readopted by the
35 authority in accordance with the requirements of P.L.1968, c.410
36 (C.52:14B-1 et 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
40 agreement with the New Jersey Economic Development Authority
41 in accordance with the program established by section 1 of P.L. ,
42 c. (C.) (pending before the Legislature as this bill) may elect
43 to defer, in whole or in part, the payment or remittance of the
44 applicable employment and business-related taxes that the small
45 business is required to impose and collect on behalf of the State
46 during the business’s tax deferment period.

47 b. A participating small business shall be treated as having paid
48 or remitted the applicable employment and business-related taxes

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

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

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

30

31 3. For purposes of this act:

32 "Applicable employment and business-related taxes" means:

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

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

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

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

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

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

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

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

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

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

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

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

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31 5. This act shall take effect immediately.

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STATEMENT

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36 This bill establishes the Employment and Business-Related Tax
37 Deferral Assistance Program (program), to be administered by the
38 New Jersey Economic Development Authority (EDA), to provide
39 financial relief to New Jersey small businesses suffering economic
40 hardship due to the outbreak of the coronavirus disease 2019
41 (COVID-19).

42 The bill requires the EDA to review and approve applications of
43 eligible small businesses seeking financial relief, make and enter
44 into agreements that allow eligible small businesses to defer
45 payment and remittance of certain employment and business-related
46 taxes imposed and collected on behalf of the State, and monitor and
47 evaluate the effectiveness of the program. Under the program,
48 small businesses are to be allowed to defer payments and

1 remittances including those regularly collected pursuant to the sales
2 and use tax, the motor fuels tax, the petroleum products gross
3 receipts tax, the gross income tax, workers' compensation
4 contributions, unemployment compensation contributions,
5 temporary disability leave benefits contributions, and family
6 temporary disability leave contributions.

7 The EDA is required to enter into an agreement with each small
8 business that it has approved for participation in the program. The
9 agreement is required to include: a detailed description of the
10 applicable taxes that the small business is permitted to defer, the
11 period of deferral, and the repayment or remittance schedule; a
12 requirement that small business owners agree to be personally liable
13 for any applicable taxes and for any penalties and interest for failure
14 to pay or remit the deferred tax; requirements related to the
15 retention and rehiring of employees by the small business; and
16 reporting, audit, and termination requirements. Under the bill, a
17 small business is also required to file timely all returns, reports, and
18 other statements or information. The bill requires the EDA to
19 transmit a copy of each agreement to the Director of the Division of
20 Taxation in the Department of the Treasury and the Director of the
21 Division of Unemployment and Temporary Disability Insurance in
22 the Department of Labor and Workforce Development.

23 The EDA is required to prepare and publish an annual report to
24 monitor and evaluate the implementation of the program and submit
25 the report to the Governor and the Legislature. The bill allows the
26 EDA, the Director of the Division of Taxation in the Department of
27 the Treasury, and the Director of the Division of Unemployment
28 and Temporary Disability Insurance in the Department of Labor and
29 Workforce Development to adopt rules and regulations immediately
30 upon filing with the Office of Administrative Law.