

# ASSEMBLY, No. 4030

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 4, 2020

**Sponsored by:**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**Assemblywoman CAROL A. MURPHY**

**District 7 (Burlington)**

**Co-Sponsored by:**

**Assemblywoman Jimenez and Assemblyman Kennedy**

**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: 5/14/2020)**

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  
41 during 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  
42 P.L. , c. (C. ) (pending before the Legislature as this bill)  
43 may elect to defer, in whole or in part, the payment or remittance of  
44 the 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  
20 penalty and interest on the amount of any applicable employment  
21 and business-related taxes that are not paid or remitted in  
22 accordance with the payment plan established by subsection c. of  
23 this section. Penalty and interest shall be assessed by the director  
24 pursuant to R.S.54:49-3, unless otherwise provided in the law  
25 imposing such deferred employment or business-related tax.  
26 Interest shall accrue and be required to be paid by the participating  
27 business from the date that the applicable employment or business-  
28 related tax was originally due prior to the agreement with the  
29 authority to the date of actual payment or remittance.

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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  
13 P.L. , c. (C. ) (pending before the Legislature as this bill) and  
14 ending 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.