

CHAPTER 121

AN ACT concerning employer trip reduction programs, amending and supplementing various sections of the statutory law and repealing sections 1 and 2, sections 5 through 7, sections 9 through 13, and section 15 of P.L.1992, c.32.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.27:26A-4.1 Submission of revision of State Implementation Plan.

1. As authorized by Section 182(d)(1) of the Clean Air Act as amended by Pub.L.104-70, the Commissioner of Environmental Protection shall submit a revision of the State Implementation Plan submitted to the Environmental Protection Agency pursuant to the Clean Air Act removing provisions of the State Implementation Plan requiring employers to reduce work-related vehicle trips and miles traveled by employees.

C.27:26A-4.2 Compliance with Clean Air Act; rules, regulations; report.

2. In order to facilitate compliance with Section 182(d)(1) of the Clean Air Act as amended by Pub.L. 104-70, requiring that the State of New Jersey achieve emission reductions equivalent to those that would have been achieved with the provisions of the State Implementation Plan which are to be removed pursuant to this 1996 amendatory and supplementary act requiring employers to reduce work-related vehicle trips and miles traveled by employees, and to take steps to continue the congestion reduction measures as provided in P.L.1992, c.32 (C.27:26A-1 et seq.):

a. The Commissioner of Transportation, in consultation with the Commissioner of Environmental Protection, is authorized to adopt rules and regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), continuing the Travel Demand Management Program established pursuant to section 5 of P.L.1992, c.32 (C.27:26A-5) but only to the extent authorized by this 1996 amendatory and supplementary act. The program shall continue the studies and transportation control measures provided in section 4 of P.L.1992, c.32 (C.27:26A-4) and in lieu of the mandatory compliance plans required by section 5 of P.L.1992, c.32 (C.27:26A-5), repealed by this 1996 amendatory and supplementary act, the program shall establish a voluntary employer trip reduction program. The regulations may continue or revise the definitions and other provisions contained in the regulations establishing the mandatory employer trip reduction program, N.J.A.C. 16:50-1.1, as appropriate for a voluntary program.

b. The Commissioner of Environmental Protection shall report to the Legislature not later than 180 days after the effective date of this 1996 amendatory and supplementary act, as to what measures the commissioner proposes to recommend to ensure the State's compliance with the Clean Air Act, in light of the statutory provisions repealed by this 1996 amendatory and supplementary act, accompanying the report with drafts of any legislative bills which the commissioner proposes for consideration by the Legislature if, in the commissioner's opinion, any such bills are required for this purpose.

C.27:26A-4.3 Registration as participant in voluntary employer trip reduction program.

3. In order to certify to the Director of the Division of Taxation, in the Department of the Treasury, eligibility for the tax benefits provided under section 1 of P.L.1993, c.150 (C.27:26A-15) and section 1 of P.L.1993, c.108 (C.54A:6-23), the Commissioner of Transportation shall adopt regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), establishing the procedure by which an employer may register with the Department of Transportation as a participant in a voluntary employer trip

reduction program and the criteria to be met by that employer trip reduction program using alternative means of commuting to receive certification for providing commuter transportation benefits.

C.27:26A-4.4 Transfer of balances in "Travel Demand Management Program Account."

4. All balances remaining in the "Travel Demand Management Program Account" created pursuant to section 9 of P.L.1992, c.32 (C.27:26A-9) are hereby transferred to the Department of Transportation for use by the department to effectuate the purposes of this 1996 amendatory and supplementary act, including, but not limited to, grants to transportation management associations (TMA's).

5. Section 3 of P.L.1992, c.32 (C.27:26A-3) is amended to read as follows:

C.27:26A-3 Definitions relative to travel demand management.

3. As used in this amendatory and supplementary act:

"Alternative means of commuting" means travel between a person's place of residence and place of employment or termini near those places, other than in a motor vehicle occupied by one person. Alternative means of commuting include, but are not limited to, public transportation, car pools, van pools, bus pools, ferries, bicycling, telecommuting and walking, which may be used in conjunction with such strategies as flextime, staggered work hours, compressed work weeks and like measures.

"Clean Air Act" means the federal Clean Air Act, as amended by Pub. L. 101-549 (42 U.S.C. s. 7401 et seq.) and as subsequently amended or supplemented.

"Commissioner" means the Commissioner of Transportation.

"Commuter transportation benefit" means the cost to employers of providing benefits to an employee for utilizing an alternative means of commuting and the cost of providing services and facilities which would encourage or facilitate use by employees of alternative means of commuting. The benefit shall include the costs of parking by employees at park-and-ride lots.

"Department" means the New Jersey Department of Transportation.

"Employee" means an employee hired or employed by the employer and who reports to the employer's work location, as specified by regulation of the department.

"Employer" means any person, partnership, association, corporation, trust, legal representative or any organized group of persons which hires or employs employees and shall also include all public and quasi-public employers, including without limitation the United States and any of its governmental instrumentalities, the State of New Jersey and its instrumentalities and subdivisions, and all State and bi-State authorities, corporations, commissions, boards and like bodies.

"Program" means the Travel Demand Management Program established pursuant to section 5 of P.L.1992, c.32 (C.27:26A-5) and continued pursuant to P.L.1996, c.121 (C.27:26A-4.1 et al.).

"Transportation management association" or "TMA" means a nonprofit corporation approved by the department as coordinating transportation services, including but not limited to public transportation, van pools, car pools, bicycling and pedestrian modes, as well as strategies such as flex time, staggered work hours, and compressed work weeks, for corporations, employees, developers, individuals and other groups.

"Travel demand management" or "TDM" means a system of actions whose purpose is to alleviate traffic-related problems through improved management of vehicle trip demand. These actions, which are primarily directed at commuter

travel, are structured to reduce the dependence on and use of single occupancy vehicles, or to alter the timing of travel to other, less congested time periods or both.

6. Section 1 of P.L.1993, c.150 (C.27:26A-15) is amended to read as follows:

C.27:26A-15 Tax credit for providing commuter transportation benefits.

1. a. An employer that is a taxpayer subject to the provisions of the Corporation Business Tax Act (1945), P.L.1945, c.162 (C.54:10A-1 et seq.), the "Financial Business Tax Law (1946)," P.L.1946, c.174 (C.54:10B-1 et seq.), "The Savings Institution Tax Act," P.L.1973, c.31 (C.54:10D-1 et seq.), the tax imposed on marine insurance companies pursuant to R.S.54:16-1 et seq., the tax imposed on fire insurance companies pursuant to R.S.54:17-4 et al., the tax imposed on insurers generally, pursuant to P.L.1945, c.132 (C.54:18A-1 et seq.), the public utility franchise tax, public utilities gross receipts tax and public utility excise tax imposed pursuant to P.L.1940, c.4, and P.L.1940, c.5 (C.54:30A-16 et seq. and C.54:30A-49 et seq.), or that is a taxpayer in respect of a distributive share of partnership income under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., which provides commuter transportation benefits as defined in section 3 of P.L.1992, c.32 (C.27:26A-3) shall be allowed a credit against that tax equal to 5% of the cost of commuter transportation benefits for the accounting or privilege period, beginning on or after January 1, 1994 and ending not later than January 1, 1995 subject to the limitations of subsection b. of this section. For accounting or privilege periods beginning on or after January 1, 1995, but ending not later than December 31, 2007, the credit allowed under this section shall be 10% of the cost of commuter transportation benefits for the relevant accounting or privilege period, as appropriate, subject to the limitations of subsection b. of this section. Notwithstanding the provisions of this section to the contrary, a taxpayer which filed a certified compliance plan with the Department of Transportation required by section 5 of P.L.1992, c.32 (C.27:26A-5) on or before May 31, 1996, shall be allowed a credit against that tax equal to 15% of the cost of commuter transportation benefits for the accounting or privilege periods ending on and after July 31, 1996 but ending not later than June 30, 1997, for the relevant accounting or privilege period, as appropriate, subject to the limitations of subsection b. of this section. In the case of a taxpayer receiving partnership income, an offset against that income subject to the limitations in paragraph (5) of subsection b. of this section shall be considered the credit.

b. (1) The credit granted a taxpayer for an accounting or privilege period shall not exceed the per employee limit multiplied by the number of employees participating in alternative means of commuting at the work location. The per employee limit shall be \$36 for the accounting or privilege periods beginning on and after January 1, 1994 but before January 1, 1995, \$72 for the accounting or privilege period beginning on or after January 1, 1995 but before January 1, 1997 and \$100 for those periods thereafter. Notwithstanding the provisions of this section to the contrary, the per employee limit for a taxpayer which filed a certified compliance plan with the Department of Transportation required by section 5 of P.L.1992, c.32 (C.27:26A-5) on or before the plan submittal date

established by the department and which was filed on or before May 31, 1996, shall be \$150 for the accounting or privilege periods ending on or after July 31, 1996 but ending not later than June 30, 1997. For those periods beginning on or after January 1, 1995, the Director of the Division of Taxation, in the Department of the Treasury, shall adjust the limit, rounded down to the nearest dollar, in proportion to the change in the average consumer price index for all urban consumers in the New York and Northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of Labor, from calendar year 1994 to the calendar year ending immediately before the appropriate period.

(2) The taxpayer may only claim a credit for providing commuter transportation benefits based upon a direct expenditure made after the taxpayer has registered with the Department of Transportation and the taxpayer's employer trip reduction program has been certified for providing commuter transportation benefits by the Department of Transportation as prescribed in section 3 of P.L.1996, c.121 (C.27:26A-4.3). Notwithstanding any provisions of P.L.1996, c.121 (C.27:26A-4.1 et al.) to the contrary, the tax credit eligibility and reporting requirements found at N.J.A.C.16:50-15 shall remain in effect until such time as the Department of Transportation adopts new regulations pursuant to section 3 of P.L.1996, c.121 (C.27:26A-4.3).

(3) The amount of the credit allowed under this section for an accounting or privilege period shall not exceed 50% of the tax liability which would be otherwise due for any one of the taxes enumerated in subsection a. of this section after first applying the credits, if any, allowed under any other law and shall not reduce the amount of tax liability to less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5), section 3 of P.L.1946, c.174 (C.54:10B-3) or section 3 of P.L.1973, c.31 (C.54:10D-3), as may be applicable.

(4) A taxpayer having liability for more than one of the taxes enumerated in subsection a. of this section for an accounting or privilege period shall allocate the credit amount available for that period to the liabilities for that period in the proportion that each liability bears to the total of the liabilities for that period, and each apportioned amount of credit shall be applied to only one amount of liability.

(5) A partnership shall not be allowed a credit under this section directly. A partnership shall be entitled to reduce total partnership income distributed to the partners and subject to tax under subsection k. of N.J.S.54A:5-1 by the lesser of 71.5 percent of the amount of commuter transportation benefits provided pursuant to law or \$515 for each employee receiving such benefits. For accounting and privilege periods beginning on or after January 1, 1995, but ending no later than December 31, 2007, the reduction to partnership income allowed under this section shall be the lesser of 143 percent of the cost of commuter transportation benefits provided or \$1,030 for each employee receiving such benefits for the relevant accounting or privilege period, as appropriate, subject to the limitations of subsection b. of this section.

c. Each employee who receives money towards commuter transportation benefits from the employee's employer as an advance, a reimbursement, or both, shall furnish suitable proof to the employer, in the form of receipts, ticket stubs or the like, that the employee utilized monies provided by the employer for an alternative means of commuting, as defined pursuant to section 3 of P.L.1992, c.32 (C.27:26A-3).

d. For the purposes of verifying eligibility for the credit, the Commissioner of Transportation shall certify to the Director of the Division of Taxation a list of those employers which have registered with the department and have a certified voluntary employer trip reduction program. An employer trip reduction program of an employer who is a member of a TMA shall be considered certified by the department. "A member of a TMA" shall be defined in regulations promulgated

by the department pursuant to section 3 of P.L.1996, c.121 (C.27:26A-4.3). The list shall be provided to the Director of the Division of Taxation within 90 days of registration.

e. The taxpayer shall file with the department a schedule of the expenditures for which the taxpayer has claimed a credit pursuant to this section on any tax return filed with the Director of the Division of Taxation, in such form and pursuant to such rules as shall be prescribed by the commissioner in consultation with the Director of the Division of Taxation.

7. Section 1 of P.L.1993, c.108 (C.54A:6-23) is amended to read as follows:

C.54A:6-23 Commuter transportation benefits not considered gross income.

1. a. For the purposes of the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., "gross income" shall not include employer provided commuter transportation benefits as defined pursuant to section 3 of P.L.1992, c.32 (C.27:26A-3), up to and including the limit per taxable year per employee pursuant to subsection b. of this section. Should an employee receive commuter transportation benefits in excess of those limits in a taxable year, only the amount in excess of those limits shall be included in gross income. If an employee receives money towards commuter transportation benefits from the employee's employer, as an advance, a reimbursement, or both, the employee shall furnish suitable proof to the employer in the form of receipts, ticket stubs or the like that the employee used the employer provided money for alternative means of commuting as defined pursuant to section 3 of P.L.1992, c.32 (C.27:26A-3).

b. The limit per taxable year per employee shall be \$720 for the taxable years beginning on and after January 1, 1993 but before January 1, 1997. The limit per taxable year per employee shall be \$1,000 for the taxable years beginning on and after January 1, 1997. For taxable years beginning on or after January 1, 1994, the director shall adjust the limit, rounded down to the nearest \$5, in proportion to the change in the average consumer price index for all urban consumers in the New York and Northeastern New Jersey and the Philadelphia areas, as reported by the United States Department of Labor, from calendar year 1993 to the calendar year ending immediately before the taxable year.

c. The exclusion provided by subsection a. of this section shall not apply to any commuter transportation benefit unless such benefit is provided in addition to and not in lieu of any compensation otherwise payable to the employee.

Repealer.

8. The following are repealed: P.L.1992, c.32, ss. 1-2, 5-7, 9-13, and 15 (C.27:26A-1 through 27:26A-2, 27:26A-5 through 27:26A-7, 27:26A-9 through 27:26A-13, and 27:26A-14).

9. This act shall take effect immediately.

Approved November 1, 1996.