SYNOPSIS
   Provides tax credits to restaurant owners to offset increase in State minimum wage rate.

CURRENT VERSION OF TEXT
   As introduced.
AN ACT providing tax credits to restaurant owners to offset increase in the State minimum wage rate, supplementing P.L.1945, c.162 (C.54:10A-1 et seq.) and Title 54A of the New Jersey Statutes.

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

1. a. A taxpayer that is a restaurant owner shall be allowed a credit against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), for a privilege period in an amount equal to:
   (1) the minimum wage rate required to be paid to an employee of the restaurant pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4), following the enactment of P.L.2019, c.32, multiplied by the number of hours worked by the employee during the privilege period; minus (2) that minimum wage rate required to be paid prior to the enactment of P.L.2019, c.32, including any periodic adjustments to the minimum wage rate otherwise required by law prior to the enactment of P.L.2019, c.32, multiplied by the number of hours worked by the employee during the privilege period. In the case of an employee who customarily and regularly receives gratuities or tips, the credit shall be $3.00 multiplied by the number of hours worked by the employee during the privilege period.

   Employees that are employed for deliveries shall not be counted in the calculation of the credit.

   b. The credit allowed pursuant to this section shall not exceed $12,500 for each employee included in the calculation prescribed by this section.

   c. If the number of employees employed by the restaurant during a privilege period for which this credit is claimed is greater than the number of employees employed by the restaurant on the day prior to the enactment of P.L.2019, c.32, the credit allowed pursuant to this section shall be calculated based on the number of employees employed on the day prior to the enactment of P.L.2019, c.32. If the number of employees employed by the restaurant during a privilege period for which a credit is claimed is less than the number of employees employed by the restaurant on the day prior to the enactment of P.L.2019, c.32, the credit shall be calculated based on the number of employees employed by the restaurant during the privilege period for which this credit is claimed.

   d. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law shall be as prescribed by the director. The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, together with any other credits allowed by law shall not reduce the tax liability to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5).
e. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period for which a tax credit pursuant to this section is allowed.

f. A taxpayer shall apply in a form and manner to be determined by the director for the tax credit provided pursuant to this section.

g. The credit allowed pursuant to this section shall only be available to a taxpayer for the ten privilege periods that commence immediately following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill).

h. A taxpayer shall be allowed to claim a credit pursuant to this section for no more than three restaurant locations. The credit allowed pursuant to this section shall only be available to a taxpayer with five or fewer restaurants.

i. As used in this section:

"Restaurant” means an establishment in which the principal business is the sale of food for consumption on or off the premises.

“Restaurant owner” means an individual or entity that holds title to, or has a right of ownership in, a restaurant.

2. a. A taxpayer that is a restaurant owner shall be allowed a credit against the tax otherwise due under the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq., for a taxable year in an amount equal to the difference of: (1) the minimum wage rate required to be paid to an employee of the restaurant pursuant to section 5 of P.L.1966, c.113 (C.34:11-56a4), following the enactment of P.L.2019, c.32, multiplied by the number of hours worked by the employee during the taxable year; minus (2) that minimum wage rate required to be paid prior to the enactment of P.L.2019, c.32, including any periodic adjustments to the minimum wage rate otherwise required by law prior to the enactment of P.L.2019, c.32, multiplied by the number of hours worked by the employee during the taxable year. In the case of an employee who customarily and regularly receives gratuities or tips, the credit shall be $3.00 multiplied by the number of hours worked by the employee during the taxable year. Employees that are employed for deliveries shall not be counted in the calculation of the credit.

b. The credit allowed pursuant to this section shall not exceed $12,500 for each employee included in the calculation prescribed by this section.

c. If the number of employees employed by the restaurant during a taxable year for which a credit is claimed is greater than the number of employees employed by the restaurant on the day prior to the enactment of P.L.2019, c.32, the credit allowed
pursuant to this section shall be calculated based on the number of employees employed by the restaurant on the day prior to the enactment of P.L.2019, c.32. If the number of employees employed by the restaurant during a taxable year for which a credit is claimed is less than the number of employees employed by the restaurant on the day prior to the enactment of P.L.2019, c.32, the credit shall be calculated based on the number of employees employed by the restaurant during the taxable year for which a credit is claimed.

d. The order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law shall be as prescribed by the director.

e. No tax credit shall be allowed pursuant to this section for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the taxable year, for which a tax credit authorized pursuant to this section is allowed.

f. (1) A business entity that is classified as a partnership for federal income tax purposes shall not be allowed a tax credit pursuant to this section directly, but the amount of tax credit of a taxpayer in respect to distributive share of entity income, shall be determined by allocating to the taxpayer that proportion of the tax credit acquired by the entity that is equal to the taxpayer’s share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the taxpayer’s taxable year.

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

g. A taxpayer shall apply in a form and manner to be determined by the director for the tax credit provided pursuant to this section.

h. The credit allowed pursuant to this section shall only be available to a taxpayer for the ten taxable years that commence immediately following the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill).

i. A taxpayer shall be allowed to claim a credit pursuant to this section for no more than three restaurant locations. The credit allowed pursuant to this section shall only be available to a taxpayer with five or fewer restaurants.

j. As used in this section:
"Restaurant" means an establishment in which the principal business is the sale of food for consumption on or off the premises. “Restaurant owner” means an individual or entity that holds title to, or has a right of ownership in, a restaurant.

3. This act shall take effect immediately and apply to privilege periods and taxable years beginning on or after January 1 next following the date of enactment.

STATEMENT

This bill allows corporation business tax (CBT) credits and gross income tax (GIT) credits for restaurant owners to offset the increased State minimum wage. The bill provides a tax credit equal to: (1) the minimum wage rate required to be paid to an employee multiplied by the number of hours worked by an employee during a tax year; minus (2) the minimum wage rate required to be paid on the day prior to the enactment of the 2019 changes to the minimum wage law, factoring in any otherwise required adjustments to the minimum wage rate, such as for inflation. In the case of an employee who customarily and regularly receives gratuities or tips, the credit will be $3.00 multiplied by the number of hours worked by the employee during. Employees that are employed for deliveries will not be counted in the calculation of the credit.

The bill restricts the number of employees that can be used in calculating the tax credit amount, caps the credit amount at $12,500 for each employee included in the calculation of the credit, and limits the credit’s availability to the 10 years immediately following the effective date of the bill. A taxpayer will be allowed to claim a credit for no more than three restaurant locations, and the credit will only be available to a taxpayer with five or fewer restaurants.