

ASSEMBLY, No. 3613

STATE OF NEW JERSEY

222nd LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2026 SESSION

Sponsored by:

Assemblyman LOUIS D. GREENWALD
District 6 (Burlington and Camden)
Assemblyman WILLIAM F. MOEN, JR.
District 5 (Camden and Gloucester)
Assemblyman DAN HUTCHISON
District 4 (Atlantic, Camden and Gloucester)

SYNOPSIS

“Saving Our Diners and Protecting Our Past Act”; provides sales and use tax exemption and corporation business and gross income tax credits for historic diners and restaurants included on annual registry.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT providing tax incentives for certain historic eating
2 establishments, designated as the "Saving Our Diners and
3 Protecting Our Past Act," amending P.L.1966, c.30 (C.54:32B-1
4 et seq.), and supplementing various parts of the statutory law.
5

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

8

9 1. (New section) a. As used in this section:

10 "Diner" means a food establishment that: serves food and
11 beverages to customers primarily for on-site consumption at a booth,
12 table, or counter setting; engages primarily in the preparation and
13 serving of a wide variety of menu offerings, including, but not limited
14 to, hamburgers, salads, sandwiches, soups, breakfast items, entrees,
15 pastries, pies, and beverages. "Diner" shall only include food
16 establishments that are commonly known and regarded as diners, and
17 shall not include any café, delicatessen, tavern, bar, sandwich shop,
18 or other food establishment.

19 "Director" means the Director of the Division of Travel and
20 Tourism in the Department of State.

21 "Division" means the Division of Travel and Tourism in the
22 Department of State.

23 "Family member" means a sibling, grandparent, grandchild, child,
24 spouse, domestic partner, civil union partner, parent-in-law, or parent
25 of a covered individual, or any other individual related by blood to
26 the employee, and any other individual that the employee shows to
27 have a close association with the employee which is the equivalent
28 of a family relationship.

29 "Family-owned business entity" means a business entity that has
30 been solely owned and operated by one or more family members for
31 the entire period in which the business has been in operation.

32 "Historic diner" means a diner that:

33 (1) has been in continuous operation for at least 25 years,
34 including any period of time in which the establishment was required
35 to suspend dine-in services as a result of a public health emergency;

36 (2) qualifies as a small business concern within the meaning of
37 the federal "Small Business Act," 15 U.S.C. s.631 et seq.; and

38 (3) is in compliance with all applicable health, safety, and zoning
39 requirements.

40 "Historic diner and restaurant registry" means the registry
41 established and maintained by the director pursuant to this section.

42 "Historic restaurant" means a restaurant that:

43 (1) has been in continuous operation for at least 25 years,
44 including any period of time in which the establishment was required
45 to suspend dine-in services as a result of a public health emergency;

EXPLANATION – Matter enclosed in bold-faced brackets **thus in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 (2) qualifies as a small business concern within the meaning of
2 the federal "Small Business Act," 15 U.S.C. s.631 et seq.;

3 (3) is in compliance with all applicable health, safety, and zoning
4 requirements; and

5 (4) is a family-owned business entity.

6 "Restaurant" means a food establishment that operates in a fixed
7 location and in which the principal business is the sale of food and
8 beverages to customers for consumption on the premises.

9 b. The Director of the Division of Travel and Tourism in the
10 Department of State shall establish and maintain an annual historic
11 diner and restaurant registry listing all historic diners and historic
12 restaurants in the State. The historic diner and restaurant registry
13 shall include the location and history of each historic diner and
14 historic restaurant and any other information the director deems
15 necessary to increase awareness of historic diners and restaurants in
16 the State.

17 c. Within six months after the effective date of P.L. ,
18 c. (C.) (pending before the Legislature as this bill), and each
19 year thereafter, the director shall solicit applications from the
20 operators of historic diners and historic restaurants in the State for
21 inclusion on the annual historic diner and restaurant registry, which
22 applications shall include such information and documentation as the
23 director deems necessary to determine whether the diner or restaurant
24 qualifies as a historic diner or historic restaurant.

25 d. Within 12 months after the effective date of P.L. ,
26 c. (C.) (pending before the Legislature as this bill), and each
27 year thereafter, the director shall establish an annual historic diner
28 and restaurant registry, which shall include a listing of all historic
29 diners and historic restaurants for which an application submitted
30 pursuant to this section was approved by the director. Upon
31 establishing the annual historic diner and restaurant registry, the
32 director shall publish the registry on the official Internet website of
33 the Division of Travel and Tourism in the Department of State.

34 e. Upon approval of an application submitted pursuant to this
35 section, the director shall issue:

36 (1) a sales tax exemption certificate to the operator of the historic
37 diner or historic restaurant, which certificate shall authorize the
38 exemption of the sale of prepared food and beverages for on-site
39 consumption at the historic diner or historic restaurant from the sales
40 and use tax, as provided pursuant to section 3 of P.L.1966, c.30
41 (C.54:32B-3), for the 12-month period following the date of receipt
42 of the certificate. The director shall also transmit a copy of each sales
43 tax exemption certificate issued pursuant to this paragraph to the
44 Director of the Division of Taxation in the Department of the
45 Treasury; and

46 (2) a tax credit certificate to the operator of the historic diner or
47 historic restaurant, which tax credit certificate may be used for the
48 purposes of sections 3 and 4 of P.L. , c. (C.) (pending before

1 the Legislature as this bill) for the privilege period or taxable year in
2 which the certificate is issued. The director shall also transmit a copy
3 of each tax credit certificate issued pursuant to this paragraph to the
4 Director of the Division of Taxation in the Department of the
5 Treasury.

6

7 2. Section 3 of P.L.1966, c.30 (C.54:32B-3) is amended to read
8 as follows:

9 3. There is imposed and there shall be paid a tax of 7% on or
10 before December 31, 2016, 6.875% on and after January 1, 2017 but
11 before January 1, 2018, and 6.625% on and after January 1, 2018
12 upon:

13 (a) The receipts from every retail sale of tangible personal
14 property or a specified digital product for permanent use or less than
15 permanent use, and regardless of whether continued payment is
16 required, except as otherwise provided in P.L.1966, c.30 (C.54:32B-
17 1 et seq.).

18 (b) The receipts from every sale, except for resale, of the
19 following services:

20 (1) Producing, fabricating, processing, printing, or imprinting
21 tangible personal property or a specified digital product, performed
22 for a person who directly or indirectly furnishes the tangible personal
23 property or specified digital product, not purchased by the person for
24 resale, upon which these services are performed.

25 (2) Installing tangible personal property or a specified digital
26 product, or maintaining, servicing, repairing tangible personal
27 property or a specified digital product not held for sale in the regular
28 course of business, whether or not the services are performed directly
29 or by means of coin-operated equipment or by any other means, and
30 whether or not any tangible personal property or specified digital
31 product is transferred in conjunction therewith, except (i) such
32 services rendered by an individual who is engaged directly by a
33 private homeowner or lessee in or about his residence and who is not
34 in a regular trade or business offering his services to the public, (ii)
35 such services rendered with respect to personal property exempt from
36 taxation hereunder pursuant to section 13 of P.L.1980, c.105
37 (C.54:32B-8.1), (iii) (Deleted by amendment, P.L.1990, c.40), (iv)
38 any receipts from laundering, dry cleaning, tailoring, weaving, or
39 pressing clothing, and shoe repairing and shoeshining, and (v)
40 services rendered in installing property which, when installed, will
41 constitute an addition or capital improvement to real property,
42 property or land, other than landscaping services and other than
43 installing carpeting and other flooring, and other than sign
44 installation services.

45 (3) Storing all tangible personal property not held for sale in the
46 regular course of business; the rental of safe deposit boxes or similar
47 space; and the furnishing of space for storage of tangible personal

1 property by a person engaged in the business of furnishing space for
2 such storage.

3 "Space for storage" means secure areas, such as rooms, units,
4 compartments, or containers, whether accessible from outside or
5 from within a building, that are designated for the use of a customer
6 and wherein the customer has free access within reasonable business
7 hours, or upon reasonable notice to the furnisher of space for storage,
8 to store and retrieve property. Space for storage shall not include the
9 lease or rental of an entire building, such as a warehouse or airplane
10 hangar.

11 (4) Maintaining, servicing, or repairing real property, other than
12 a residential heating system unit serving not more than three families
13 living independently of each other and doing their cooking on the
14 premises, whether the services are performed in or outside of a
15 building, as distinguished from adding to or improving the real
16 property by a capital improvement, but excluding services rendered
17 by an individual who is not in a regular trade or business offering his
18 services to the public, and excluding garbage removal and sewer
19 services performed on a regular contractual basis for a term not less
20 than 30 days.

21 (5) Mail processing services for printed advertising material,
22 except for mail processing services in connection with distribution of
23 printed advertising material to out-of-State recipients.

24 (6) (Deleted by amendment, P.L.1995, c.184)

25 (7) Utility service provided to persons in this State, any right or
26 power over which is exercised in this State.

27 (8) Tanning services, including the application of a temporary tan
28 provided by any means.

29 (9) Massage, bodywork, or somatic services, except such services
30 provided pursuant to a doctor's prescription.

31 (10) Tattooing, including all permanent body art and permanent
32 cosmetic make-up applications, except such services provided
33 pursuant to a doctor's prescription in conjunction with reconstructive
34 breast surgery.

35 (11) Investigation and security services.

36 (12) Information services.

37 (13) (Deleted by amendment, P.L.2017, c.27)

38 (14) Telephone answering services.

39 (15) Radio subscription services.

40 Wages, salaries, and other compensation paid by an employer to
41 an employee for performing as an employee the services described in
42 this subsection are not receipts subject to the taxes imposed under
43 subsection (b) of this section.

44 Services otherwise taxable under paragraph (1) or (2) of
45 subsection (b) of this section are not subject to the taxes imposed
46 under this subsection, where the tangible personal property or
47 specified digital product upon which the services were performed is
48 delivered to the purchaser outside this State for use outside this State.

1 (c) (1) Receipts from the sale of prepared food in or by
2 restaurants, taverns, or other establishments in this State, or by
3 caterers, including in the amount of such receipts any cover,
4 minimum, entertainment, or other charge made to patrons or
5 customers, except for meals especially prepared for and delivered to
6 homebound elderly, age 60 or older, and to persons with disabilities,
7 or meals prepared and served at a group-sitting at a location outside
8 of the home to otherwise homebound elderly persons, age 60 or older,
9 and otherwise homebound persons with disabilities, as all or part of
10 any food service project funded in whole or in part by government or
11 as part of a private, nonprofit food service project available to all
12 such elderly or persons with disabilities residing within an area of
13 service designated by the private nonprofit organization; and

14 (2) Receipts from sales of food and beverages sold through
15 vending machines, at the wholesale price of such sale, which shall be
16 defined as 70% of the retail vending machine selling price, except
17 sales of milk, which shall not be taxed. Nothing herein contained
18 shall affect other sales through coin-operated vending machines
19 taxable pursuant to subsection (a) above or the exemption thereto
20 provided by section 21 of P.L.1980, c.105 (C.54:32B-8.9).

21 The tax imposed by subsection (c) of this section shall not apply
22 to food or drink which is sold to an airline for consumption while in
23 flight. The tax imposed by subsection (c) of this section shall not
apply to the sales of prepared food and beverages for on-site
consumption at a historic diner or historic restaurant occurring during
the 12-month period following the date of receipt of the sales tax
exemption certificate issued to the operator of the historic diner or
historic restaurant pursuant to subsection e. of section 1 of P.L. ,
c. (C.) (pending before the Legislature as this bill).

30 (3) For the purposes of this subsection:

31 "Food and beverages sold through vending machines" means food
32 and beverages dispensed from a machine or other mechanical device
33 that accepts payment; and

34 "Prepared food" means:

35 (i) A. food sold in a heated state or heated by the seller; or
36 B. two or more food ingredients mixed or combined by the seller
37 for sale as a single item, but not including food that is only cut,
38 repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry,
39 and foods containing these raw animal foods requiring cooking by
40 the consumer as recommended by the Food and Drug Administration
41 in Chapter 3, part 401.11 of its Food Code so as to prevent food borne
42 illnesses; or

43 C. food sold with eating utensils provided by the seller, including
44 plates, knives, forks, spoons, glasses, cups, napkins, or straws. A
45 plate does not include a container or packaging used to transport the
46 food;

47 provided however, that

1 (ii) "prepared food" does not include the following sold without
2 eating utensils:

3 A. food sold by a seller whose proper primary NAICS
4 classification is manufacturing in section 311, except subsector 3118
5 (bakeries);

6 B. food sold in an unheated state by weight or volume as a single
7 item; or

8 C. bakery items, including bread, rolls, buns, biscuits, bagels,
9 croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins,
10 bars, cookies, and tortillas.

11 "Historic diner" means a diner that is included on the historic diner
12 and restaurant registry established pursuant to section 1 of P.L. ,
13 c. (C.) (pending before the Legislature as this bill).

14 "Historic restaurant" means a restaurant that is included on the
15 historic diner and restaurant registry established pursuant to section
16 1 of P.L. , c. (C.) (pending before the Legislature as this
17 bill).

18 (d) The rent for every occupancy of a room or rooms in a hotel or
19 transient accommodation in this State, except that the tax shall not be
20 imposed upon a permanent resident.

21 (e) (1) Any admission charge to or for the use of any place of
22 amusement in the State, including charges for admission to race
23 tracks, baseball, football, basketball or exhibitions, dramatic or
24 musical arts performances, motion picture theaters, except charges
25 for admission to boxing, wrestling, kick boxing, or combative sports
26 exhibitions, events, performances, or contests which charges are
27 taxed under any other law of this State or under section 20 of
28 P.L.1985, c.83 (C.5:2A-20), and, except charges to a patron for
29 admission to, or use of, facilities for sporting activities in which the
30 patron is to be a participant, such as bowling alleys and swimming
31 pools. For any person having the permanent use or possession of a
32 box or seat or lease or a license, other than a season ticket, for the
33 use of a box or seat at a place of amusement, the tax shall be upon
34 the amount for which a similar box or seat is sold for each
35 performance or exhibition at which the box or seat is used or reserved
36 by the holder, licensee, or lessee, and shall be paid by the holder,
37 licensee, or lessee.

38 (2) The amount paid as charge of a roof garden, cabaret, or other
39 similar place in this State, to the extent that a tax upon these charges
40 has not been paid pursuant to subsection (c) hereof.

41 (f) (1) The receipts from every sale, except for resale, of
42 intrastate, interstate, or international telecommunications services
43 and ancillary services sourced to this State in accordance with section
44 29 of P.L.2005, c.126 (C.54:32B-3.4).

45 (2) (Deleted by amendment, P.L.2008, c.123)

46 (g) (Deleted by amendment, P.L.2008, c.123)

47 (h) Charges in the nature of initiation fees, membership fees or
48 dues for access to or use of the property or facilities of a health and

1 fitness, athletic, sporting, or shopping club or organization in this
2 State, except for: (1) membership in a club or organization whose
3 members are predominantly age 18 or under; and (2) charges in the
4 nature of membership fees or dues for access to or use of the property
5 or facilities of a health and fitness, athletic, sporting, or shopping
6 club or organization that is exempt from taxation pursuant to
7 paragraph (1) of subsection (a) of section 9 of P.L.1966, c.30
8 (C.54:32B-9), or that is exempt from taxation pursuant to paragraph
9 (1) or (2) of subsection (b) of section 9 of P.L.1966, c.30 (C.54:32B-
10 9) and that has complied with subsection (d) of section 9 of P.L.1966,
11 c.30 (C.54:32B-9).

12 (i) The receipts from parking, storing, or garaging a motor
13 vehicle, excluding charges for the following: residential parking;
14 employee parking, when provided by an employer or at a facility
15 owned or operated by the employer; municipal parking, storing, or
16 garaging; receipts from charges or fees imposed pursuant to section
17 3 of P.L.1993, c.159 (C.5:12-173.3) or pursuant to an agreement
18 between the Casino Reinvestment Development Authority and a
19 casino operator in effect on the date of enactment of P.L.2007, c.105;
20 and receipts from parking, storing, or garaging a motor vehicle
21 subject to tax pursuant to any other law or ordinance.

22 For the purposes of this subsection, "municipal parking, storing,
23 or garaging" means any motor vehicle parking, storing, or garaging
24 provided by a municipality or county, or a parking authority thereof.
25 (cf: P.L.2022, c.97, s.2)

26

27 3. (New section) a. For privilege periods beginning on or after
28 January 1 of the year next following the effective date of
29 P.L. , c. (C.) (pending before the Legislature as this bill), a
30 taxpayer that operates a historic diner or historic restaurant shall be
31 allowed a credit against the tax due pursuant to section 5 of P.L.1945,
32 c.162 (C.54:10A-5) in an amount equal to 10 percent of the costs
33 incurred by the taxpayer during the privilege period for the purchase
34 of any eligible ingredients used in the preparation of foods or
35 beverages at the historic diner or historic restaurant. The value of the
36 credit allowed pursuant to this section shall not exceed \$25,000 per
37 taxpayer per privilege period.

38 b. The order of priority of the application of the credit allowed
39 pursuant to this section, and any other credits allowed by law against
40 the tax imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-
41 5), shall be as prescribed by the director. The amount of the credit
42 applied under this section against the tax imposed pursuant to section
43 5 of P.L.1945, c.162 (C.54:10A-5) for a privilege period, together
44 with any other credits allowed by law, shall not reduce the tax
45 liability to an amount lower than the statutory minimum provided in
46 subsection (e) of section 5 of P.L.1945, c.162 (C.54:10A-5). The
47 amount of the tax credit otherwise allowable under this section which
48 cannot be applied for the privilege period due to the limitations of

1 this subsection or under other provisions of P.L.1945, c.162
2 (C.54:10A-1 et seq.) may be carried forward, if necessary, to the
3 seven privilege periods following the privilege period for which the
4 tax credit was issued, after which the tax credit shall expire.

5 c. When filing a return that includes a claim for a tax credit
6 allowed pursuant to this section, a taxpayer shall include:

7 (1) such business records as may be required by the director
8 documenting the costs incurred by the taxpayer during the privilege
9 period for the purchase of any eligible ingredients used in the
10 preparation of foods or beverages at the historic diner or historic
11 restaurant; and

12 (2) a copy of the tax credit certificate issued by the Director of
13 the Division of Travel and Tourism in the Department of State
14 pursuant to subsection e. of section 1 of P.L. , c. (C.)
15 (pending before the Legislature as this bill).

16 d. (1) A taxpayer may apply to the director for a tax credit
17 transfer certificate in lieu of the taxpayer being allowed any amount
18 of tax credit against the tax liability of the taxpayer, as authorized
19 under this section. The tax credit transfer certificate, upon receipt
20 thereof by the taxpayer from the director, may be sold or assigned, in
21 full or in part, in the privilege period during which the taxpayer
22 receives the tax credit transfer certificate from the director, to another
23 person, who may apply the credit against a tax liability under the tax
24 pursuant to the "Corporation Business Tax Act (1945)," P.L.1945,
25 c.162 (C.54:10A-1 et seq.) or the "New Jersey Gross Income Tax
26 Act," N.J.S.54A:1-1 et seq. The certificate provided to the taxpayer
27 shall include a statement waiving the taxpayer's right to claim the
28 amount of the credit that the taxpayer has elected to sell or assign
29 against the tax for a tax liability. The tax credit certificate issued to
30 a taxpayer by the director shall be subject to any terms and conditions
31 that the director may prescribe; provided, however, that the holder of
32 a tax credit certificate may transfer all or part of the tax credit
33 amount, on or after the date of issuance of the tax credit transfer
34 certificate, for use by the transferee in the tax period for which it was
35 issued, in the tax period in which it was issued, or in any of the next
36 three successive tax periods.

37 (2) The tax credit certificate holder or transferee may first use the
38 credit against tax liabilities in the tax period in which it was issued
39 or a succeeding tax period, as authorized in this section, without the
40 need to amend the tax return for the tax period for which the credit
41 was issued, subject to the provisions of this subsection. A transferee
42 may carry forward an unused credit for use in any of the next five
43 successive tax periods, and the unused credit shall expire thereafter.

44 e. As used in this section:

45 "Director" means the Director of the Division of Taxation in the
46 Department of the Treasury.

47 "Eligible ingredients" means substances used in the preparation of
48 menu items at a historic diner or historic restaurant, whether in liquid,

1 concentrated, solid, frozen, dried, or dehydrated form, that are sold
2 for ingestion or chewing by humans and are consumed for their taste
3 or nutritional value. "Eligible ingredients" does not include alcoholic
4 beverages or tobacco.

5 "Historic diner" means a diner that is included on the historic diner
6 and restaurant registry established pursuant to section 1 of P.L. ,
7 c. (C.) (pending before the Legislature as this bill).

8 "Historic restaurant" means a restaurant that is included on the
9 historic diner and restaurant registry established pursuant to section
10 1 of P.L. , c. (C.) (pending before the Legislature as this
11 bill).

12

13 4. (New section) a. For taxable years beginning on or after
14 January 1 of the year next following the effective date of
15 P.L. , c. (C.) (pending before the Legislature as this bill), a
16 taxpayer that operates a historic diner or historic restaurant shall be
17 allowed a credit against the tax otherwise due for the taxable year
18 under the "New Jersey Gross Income Tax Act," N.J.S.A.54A:1-1 et
19 seq., in an amount equal to 10 percent of the costs incurred by the
20 taxpayer during the taxable year for the purchase of any eligible
21 ingredients used in the preparation of foods or beverages at the
22 historic diner or historic restaurant. The value of the credit allowed
23 pursuant to this section shall not exceed \$25,000 per taxpayer per
24 taxable year.

25 b. The order of priority of the application of the credit allowed
26 pursuant to this section and any other credits allowed against the tax
27 imposed pursuant to the "New Jersey Gross Income Tax Act,"
28 N.J.S.54A:1-1 et seq., for a taxable year shall be as prescribed by the
29 director. The amount of the credit applied under this section against
30 the New Jersey gross income tax imposed pursuant to N.J.S.54A:1-1
31 et seq. for a taxable year, when taken together with any other
32 payments, credits, deductions, and adjustments allowed by law, shall
33 not reduce a taxpayer's tax liability to an amount less than zero. The
34 amount of the tax credit otherwise allowable under this section which
35 cannot be applied for the taxable year due to the limitations of this
36 subsection, or any other provisions of N.J.S.54A:1-1 et seq., may be
37 carried forward, if necessary, to the seven taxable years following the
38 taxable year for which the tax credit was issued, after which the tax
39 credit shall expire.

40 c. When filing a return that includes a claim for a tax credit
41 allowed pursuant to this section, a taxpayer shall include:

42 (1) such business records as may be required by the director
43 documenting the costs incurred by the taxpayer during the taxable
44 year for the purchase of any eligible ingredients used in the
45 preparation of foods or beverages at the historic diner or historic
46 restaurant; and

47 (2) a copy of the tax credit certificate issued by the Director of
48 the Division of Travel and Tourism in the Department of State

1 pursuant to subsection e. of section 1 of P.L. , c. (C.)
2 (pending before the Legislature as this bill).

3 d. (1) A taxpayer may apply to the director for a tax credit
4 transfer certificate in lieu of the taxpayer being allowed any amount
5 of tax credit against the tax liability of the taxpayer, as authorized
6 under this section. The tax credit transfer certificate, upon receipt
7 thereof by the taxpayer from the director, may be sold or assigned, in
8 full or in part, in the taxable year during which the taxpayer receives
9 the tax credit transfer certificate from the director, to another person,
10 who may apply the credit against a tax liability under the tax pursuant
11 to the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., or
12 the "Corporation Business Tax Act (1945)," P.L.1945, c.162
13 (C.54:10A-1 et seq.). The certificate provided to the taxpayer shall
14 include a statement waiving the taxpayer's right to claim the amount
15 of the credit that the taxpayer has elected to sell or assign against the
16 tax for a tax liability. The tax credit certificate issued to a taxpayer
17 by the director shall be subject to any terms and conditions that the
18 director may prescribe; provided, however, that the holder of a tax
19 credit certificate may transfer all or part of the tax credit amount, on
20 or after the date of issuance of the tax credit transfer certificate, for
21 use by the transferee in the tax period for which it was issued, in the
22 tax period in which it was issued, or in any of the next three
23 successive tax periods.

24 (2) The tax credit certificate holder or transferee may first use the
25 credit against tax liabilities in the tax period in which it was issued
26 or a succeeding tax period, as authorized in this section, without the
27 need to amend the tax return for the tax period for which the credit
28 was issued, subject to the provisions of this subsection. A transferee
29 may carry forward an unused credit for use in any of the next five
30 successive tax periods, and the unused credit shall expire thereafter.

31 e. As used in this section:

32 "Director" means the Director of the Division of Taxation in the
33 Department of the Treasury.

34 "Eligible ingredients" means substances used in the preparation of
35 menu items at a historic diner or historic restaurant, whether in liquid,
36 concentrated, solid, frozen, dried, or dehydrated form, that are sold
37 for ingestion or chewing by humans and are consumed for their taste
38 or nutritional value. "Eligible ingredients" does not include alcoholic
39 beverages or tobacco.

40 "Historic diner" means a diner that is included on the historic diner
41 and restaurant registry established pursuant to section 1 of P.L. ,
42 c. (C.) (pending before the Legislature as this bill).

43 "Historic restaurant" means a restaurant that is included on the
44 historic diner and restaurant registry established pursuant to section
45 1 of P.L. , c. (C.) (pending before the Legislature as this
46 bill).

1 5. This act shall take effect immediately, and sections 3 and 4
2 shall apply to privilege periods and taxable years beginning on or
3 after January 1 of the year next following the date of enactment.

4

5

STATEMENT

7

8 The bill, designated as the “Saving Our Diners and Protecting Our
9 Past Act,” provides certain tax benefits to historic diners and historic
10 restaurants throughout the State.

Specifically, the bill requires the Division of Travel and Tourism in the Department of State to establish an annual historic diner and restaurant registry to certify the historic diners and historic restaurants that have been in continuous operation in the State for at least 25 years. Any historic diner or historic restaurant included on the annual registry would be entitled to: (1) a sales and use tax exemption for the sales of prepared foods and beverages for on premises consumption at the historic diner or historic restaurant; and (2) a corporation business tax or gross income tax credit for a portion of the costs incurred for the purchase of eligible ingredients used in the preparation of foods and beverages at the historic diner or historic restaurant.

23

24 *Historic Diner and Restaurant Registry*

Under the bill, the Director of the Division of Travel and Tourism in the Department of State is required to solicit applications from the operators of historic diners and historic restaurants throughout the State for inclusion on an annual historic diner and restaurant registry. Operators of these establishments would be required to include any information and documentation deemed necessary by the director to determine whether the diner or restaurant qualifies as a historic diner or historic restaurant.

33 As defined in the bill, a “historic diner” means a food
34 establishment that: (1) serves food and beverages to customers
35 primarily for on-site consumption at a booth, table, or counter setting;
36 (2) engages primarily in the preparation and serving of a wide variety
37 of menu offerings, including, but not limited to, hamburgers, salads,
38 sandwiches, soups, breakfast items, entrees, pastries, pies, and
39 beverages; (3) qualifies as a small business concern within the
40 meaning of the federal “Small Business Act,” 15 U.S.C. s.631 et seq.;
41 and (4) has been in continuous operation for at least 25 years,
42 including any period of time in which the establishment was required
43 to suspend dine-in services as a result of a public health emergency.
44 The bill further clarifies that a “historic diner” may only include food
45 establishments that are commonly known and regarded as diners, and
46 shall not include any café, delicatessen, tavern, bar, sandwich shop,
47 or other food establishment.

1 The bill also defines a “historic restaurant” to mean any food
2 establishment that: (1) operates in a fixed location, in which the
3 principal business is the sale of food and beverages to customers for
4 consumption on the premises; (2) has been solely owned and operated
5 by one or more family members for the entire period in which the
6 business has been in operation; (3) qualifies as a small business
7 concern within the meaning of the federal “Small Business Act,” 15
8 U.S.C. s.631 et seq.; (4) is in compliance with all applicable health,
9 safety, and zoning requirements; and (5) has been in continuous
10 operation for at least 25 years, including any period of time in which
11 the establishment was required to suspend dine-in services as a result
12 of a public health emergency.

13

14 *Sales Tax Exemption for Retail Sales at Historic Diners and*
15 *Restaurants*

16 Under current law, the sales of prepared foods and beverages by
17 most food establishments within the State, including diners and
18 restaurants, are subject to the sales and use tax. These transactions
19 are subject to the sales and use tax regardless of whether the food or
20 beverage is sold for consumption on or off premises. The bill would
21 exempt the sales of prepared foods and beverages made at historic
22 diners and historic restaurants for on-premises consumption from the
23 sales and use tax as a means of supporting these establishments at a
24 time when they are facing economic uncertainty. Specifically, this
25 exemption would apply during the 12-month period following the
26 receipt of a sales tax exemption certificate by the operator of the
27 historic diner or restaurant from the Director of the Division of Travel
28 and Tourism in the Department of State, which certificate is to be
29 issued upon the determination that the diner or restaurant has been
30 approved for inclusion on the annual historic diner and restaurant
31 registry.

32

33 *Corporation Business Tax and Gross Income Tax Credits for Eligible*
34 *Ingredients*

35 Under the bill, the operator of a historic diner or historic restaurant
36 that has been included on the annual historic diner and restaurant
37 registry may claim a corporation business tax or gross income tax
38 credit, as applicable, for a portion of the costs incurred for eligible
39 ingredients used in the preparation of foods and beverages.

40 The amount of the tax credit would be equal to 10 percent of the
41 costs incurred by the taxpayer during the taxable period for the
42 purchase of eligible ingredients used in the preparation of foods or
43 beverages at the historic diner or historic restaurant, up to \$25,000
44 per year. The bill defines “eligible ingredients” to mean substances
45 used in the preparation of menu items at a historic diner or historic
46 restaurant, whether in liquid, concentrated, solid, frozen, dried, or
47 dehydrated form, that are sold for ingestion or chewing by humans

1 and are consumed for their taste or nutritional value, not including
2 alcoholic beverages or tobacco.

3 Under the bill, the operator of a historic diner or historic restaurant
4 would be required to include business records documenting the costs
5 incurred for the purchase of eligible food and food ingredients with
6 their tax return when claiming the tax credit. These business records,
7 together with a tax credit certificate issued by the Director of the
8 Division of Travel and Tourism in the Department of State, would be
9 submitted to the Director of the Division of Taxation in addition to
10 any other information the director may require.