

613--A

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to providing employers a tax credit for senior dependent care provided to employees and providing taxpayers with a credit for their own payments for such care

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 210 of the tax law is amended by adding a new
2 subdivision 43 to read as follows:
3 43. (A) THERE SHALL BE ALLOWED AS A CREDIT AGAINST THE TAX IMPOSED BY
4 THIS ARTICLE FOR ANY TAXABLE YEAR AN AMOUNT NOT IN EXCESS OF ONE THOU-
5 SAND DOLLARS, FOR EACH ADULT CARE RECIPIENT, OF THE AMOUNT ACTUALLY
6 EXPENDED BY ANY EMPLOYER PROVIDING OR PAYING ANOTHER TO PROVIDE DEPEND-
7 ENT CARE FOR EMPLOYEES DURING THE EMPLOYEES' WORK HOURS, WHICH CARE MUST
8 BE PROVIDED IN AN ELIGIBLE FACILITY, AS DESCRIBED IN PARAGRAPH (C) OF
9 THIS SUBDIVISION. CREDIT IS APPLIED TO THE COST OF ANY CONTRACT
10 EXECUTED BY THE EMPLOYER FOR ANOTHER PROVIDER OF SERVICES TO PROVIDE
11 DEPENDENT CARE; OR, IF THE EMPLOYER ELECTS TO PROVIDE DEPENDENT CARE
12 ITSELF, TO EXPENSES INCURRED FOR: DEPENDENT CARE STAFF, LEARNING AND
13 RECREATIONAL MATERIALS AND EQUIPMENT, AND THE CONSTRUCTION AND MAINTE-
14 NANCE OF A FACILITY. THIS COST IS NET OF ANY REIMBURSEMENT. THE CREDIT
15 SHALL NOT BE ALLOWED FOR ANY EXPENSES WHICH ARE PAID BY AN EMPLOYEE AND
16 SERVE AS THE BASIS FOR A PERSONAL INCOME TAX CREDIT. THE CREDITS ALLOWED
17 UNDER THIS SUBDIVISION SHALL NOT BE USED BY ANY CORPORATION OTHER THAN
18 THE CORPORATION ACTUALLY QUALIFYING FOR THE CREDITS.
19 (B) CREDIT MAY BE CARRIED FORWARD FOR THE FIVE SUCCESSIVE YEARS IF THE
20 AMOUNT ALLOWABLE AS CREDIT EXCEEDS INCOME TAX LIABILITY IN A TAX YEAR;
21 HOWEVER, THEREAFTER, IF THE AMOUNT ALLOWABLE AS A CREDIT EXCEEDS THE TAX

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 LIABILITY, THE AMOUNT OF EXCESS SHALL NOT BE REFUNDABLE OR CARRIED
2 FORWARD TO ANY OTHER TAXABLE YEAR.

3 (C) AN ELIGIBLE FACILITY MUST HAVE AN AVERAGE DAILY ENROLLMENT FOR THE
4 TAXABLE YEAR OF NO LESS THAN SIX PERSONS SIXTY YEARS OF AGE OR OLDER AND
5 BE LICENSED OR CERTIFIED ACCORDING TO THE APPLICABLE LAW OR REGULATIONS;
6 OR MUST SERVE FIVE OR FEWER PERSONS AGE SIXTY OR OLDER IN A FAMILY CHILD
7 CARE/ELDER CARE HOME APPROVED BY THE OFFICE OF CHILDREN AND FAMILY
8 SERVICES FOR PARTICIPATION IN THE UNITED STATES DEPARTMENT OF AGRICUL-
9 TURE CHILD AND ADULT NUTRITION PROGRAM; OR MUST SERVE ADULT RELATIVES OF
10 EMPLOYEES IN EITHER A COMMUNITY-BASED ELDER CARE FACILITY OR A FACILITY
11 AT THE EMPLOYMENT SITE; OR MUST SERVE ADULT DEPENDENTS HAVING PHYSICAL,
12 EMOTIONAL, OR MENTAL DISABILITIES IN EITHER A COMMUNITY-BASED FACILITY
13 OR A FACILITY AT THE EMPLOYMENT SITE.

14 (D) EMPLOYERS SHALL BE CERTIFIED AS ELIGIBLE FOR THE TAX CREDIT BY THE
15 OFFICE OF CHILDREN AND FAMILY SERVICES FOR PROGRAMS SERVING ELDERLY
16 ADULTS AND BY THE COMMISSIONER FOR PROGRAMS SERVING OTHER ADULT DEPEN-
17 DENTS.

18 (E) IN ADDITION TO THE CREDIT ALLOWED PURSUANT TO PARAGRAPH (A) OF
19 THIS SUBDIVISION, THERE SHALL BE ALLOWED AN ADDITIONAL CREDIT, SUBJECT
20 TO THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVISION, FOR ADDITIONAL
21 ELIGIBLE EXPENSES ASSUMED OR INCURRED BY THE EMPLOYER WHICH INCREASE THE
22 QUALITY, AVAILABILITY, AND AFFORDABILITY OF DEPENDENT CARE IN THE COMMU-
23 NITY USED BY EMPLOYEES DURING THE EMPLOYEES' WORK HOURS. THE COMMIS-
24 SIONER SHALL PROMULGATE RULES AND REGULATIONS DEFINING THE ELIGIBILITY
25 OF EXPENSES AND THE AMOUNT OF THE CREDIT ALLOWABLE THEREFOR. THE COMMIS-
26 SIONER SHALL FURTHER PROVIDE AN ADDITIONAL CREDIT FOR ADMINISTRATIVE
27 COSTS INCURRED IN COMPLYING WITH THE FOREGOING PROVISIONS.

28 S 2. Section 606 of the tax law is amended by adding a new subsection
29 (ss) to read as follows:

30 (SS) DEPENDENT ELDERLY CARE CREDIT. (1) (A) A TAXPAYER SHALL BE
31 ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE IN AN AMOUNT
32 NOT IN EXCESS OF ONE THOUSAND DOLLARS, FOR EACH ADULT DAY CARE RECIPI-
33 ENT, OF THE AMOUNT ACTUALLY EXPENDED BY AN EMPLOYER PROVIDING OR PAYING
34 ANOTHER TO PROVIDE DEPENDENT CARE FOR EMPLOYEES DURING THE EMPLOYEES'
35 WORK HOURS, WHICH CARE MUST BE PROVIDED IN AN ELIGIBLE FACILITY, AS
36 DESCRIBED IN SUBPARAGRAPH (C) OF THIS PARAGRAPH. CREDIT IS APPLIED TO
37 THE COST OF ANY CONTRACT EXECUTED BY THE EMPLOYER FOR ANOTHER ENTITY TO
38 PROVIDE DEPENDENT CARE; OR, IF THE EMPLOYER ELECTS TO PROVIDE DEPENDENT
39 CARE ITSELF, TO EXPENSES INCURRED FOR: DEPENDENT CARE STAFF, LEARNING
40 AND RECREATIONAL MATERIALS AND EQUIPMENT, AND THE CONSTRUCTION AND MAIN-
41 TENANCE OF A FACILITY. THIS COST IS NET OF ANY REIMBURSEMENT. THE CRED-
42 IT SHALL NOT BE ALLOWED FOR ANY EXPENSES WHICH ARE PAID BY EMPLOYEES AND
43 SERVE AS THE BASIS FOR A PERSONAL INCOME TAX CREDIT. THE CREDITS ALLOWED
44 UNDER THIS PARAGRAPH SHALL NOT BE USED BY ANY EMPLOYER OTHER THAN THE
45 EMPLOYER ACTUALLY QUALIFYING FOR THE CREDITS.

46 (B) CREDIT MAY BE CARRIED FORWARD FOR THE FIVE SUCCESSIVE YEARS IF THE
47 AMOUNT ALLOWABLE AS CREDIT EXCEEDS INCOME TAX LIABILITY IN A TAX YEAR;
48 HOWEVER, THEREAFTER, IF THE AMOUNT ALLOWABLE AS A CREDIT EXCEEDS THE TAX
49 LIABILITY, THE AMOUNT OF EXCESS SHALL NOT BE REFUNDABLE OR CARRIED
50 FORWARD TO ANY OTHER TAXABLE YEAR.

51 (C) AN ELIGIBLE FACILITY MUST HAVE AN AVERAGE DAILY ENROLLMENT FOR THE
52 TAXABLE YEAR OF NO LESS THAN SIX PERSONS SIXTY YEARS OF AGE OR OLDER AND
53 BE LICENSED OR CERTIFIED ACCORDING TO THE APPLICABLE LAW OR REGULATIONS;
54 OR MUST SERVE FIVE OR FEWER PERSONS AGE SIXTY OR OLDER IN A FAMILY CHILD
55 CARE/ELDER CARE HOME APPROVED BY THE OFFICE OF CHILDREN AND FAMILY
56 SERVICES FOR PARTICIPATION IN THE UNITED STATES DEPARTMENT OF AGRICUL-

1 TURE CHILD AND ADULT NUTRITION PROGRAM; OR MUST SERVE ADULT RELATIVES OF
2 EMPLOYEES IN EITHER A COMMUNITY-BASED ELDER CARE FACILITY OR A FACILITY
3 AT THE EMPLOYMENT SITE; OR MUST SERVE ADULT DEPENDENTS HAVING PHYSICAL,
4 EMOTIONAL, OR MENTAL DISABILITIES IN EITHER A COMMUNITY-BASED FACILITY
5 OR A FACILITY AT THE EMPLOYMENT SITE.

6 (D) EMPLOYERS SHALL BE CERTIFIED AS ELIGIBLE FOR THE TAX CREDIT BY THE
7 OFFICE OF CHILDREN AND FAMILY SERVICES FOR PROGRAMS SERVING ELDERLY
8 ADULTS AND BY THE COMMISSIONER FOR PROGRAMS SERVING OTHER ADULT DEPEN-
9 DENTS.

10 (E) IN ADDITION TO THE CREDIT ALLOWED PURSUANT TO SUBPARAGRAPH (A) OF
11 THIS PARAGRAPH, THERE SHALL BE ALLOWED AN ADDITIONAL CREDIT, SUBJECT TO
12 THE PROVISIONS OF SUBPARAGRAPH (B) OF THIS PARAGRAPH, FOR ADDITIONAL
13 ELIGIBLE EXPENSES ASSUMED OR INCURRED BY THE EMPLOYER WHICH INCREASE THE
14 QUALITY, AVAILABILITY, AND AFFORDABILITY OF DEPENDENT CARE IN THE COMMU-
15 NITY USED BY EMPLOYEES DURING THE EMPLOYEES' WORK HOURS. THE COMMIS-
16 SIONER SHALL PROMULGATE RULES AND REGULATIONS DEFINING THE ELIGIBILITY
17 OF EXPENSES AND THE AMOUNT OF THE CREDIT ALLOWABLE THEREFOR. THE
18 COMMISSIONER SHALL FURTHER PROVIDE AN ADDITIONAL CREDIT FOR ADMINISTRA-
19 TIVE COSTS INCURRED IN COMPLYING WITH THE FOREGOING PROVISIONS.

20 (2) (A) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED
21 BY THIS ARTICLE IN AN AMOUNT NOT IN EXCESS OF ONE THOUSAND DOLLARS, FOR
22 EACH ADULT DAY CARE RECIPIENT, OF THE AMOUNT ACTUALLY EXPENDED BY THE
23 TAXPAYER AS PAYMENT TO AN ELIGIBLE FACILITY FOR PROVIDING DEPENDENT CARE
24 DURING THE TAXPAYER'S WORK HOURS, WHICH CARE MUST BE PROVIDED IN AN
25 ELIGIBLE FACILITY, AS DESCRIBED IN SUBPARAGRAPH (C) OF THIS PARAGRAPH.
26 THIS COST IS NET OF ANY REIMBURSEMENT. THE CREDIT SHALL NOT BE ALLOWED
27 FOR ANY EXPENSES WHICH ARE PAID BY AN EMPLOYER AND SERVE AS THE BASIS
28 FOR A TAX CREDIT FOR SUCH EMPLOYER. THE CREDITS ALLOWED UNDER THIS
29 PARAGRAPH SHALL NOT BE USED BY ANY TAXPAYER OTHER THAN THE TAXPAYER
30 ACTUALLY QUALIFYING FOR THE CREDITS.

31 (B) CREDIT MAY BE CARRIED FORWARD FOR THE FIVE SUCCESSIVE YEARS IF THE
32 AMOUNT ALLOWABLE AS CREDIT EXCEEDS INCOME TAX LIABILITY IN A TAX YEAR;
33 HOWEVER, THEREAFTER, IF THE AMOUNT ALLOWABLE AS A CREDIT EXCEEDS THE TAX
34 LIABILITY, THE AMOUNT OF EXCESS SHALL NOT BE REFUNDABLE OR CARRIED
35 FORWARD TO ANY OTHER TAXABLE YEAR.

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37 TAXABLE YEAR OF NO LESS THAN SIX PERSONS SIXTY YEARS OF AGE OR OLDER AND
38 BE LICENSED OR CERTIFIED ACCORDING TO THE APPLICABLE LAW OR REGULATIONS;
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42 TURE CHILD AND ADULT NUTRITION PROGRAM; OR MUST SERVE ADULT RELATIVES OF
43 EMPLOYEES IN EITHER A COMMUNITY-BASED ELDER CARE FACILITY OR A FACILITY
44 AT THE EMPLOYMENT SITE; OR MUST SERVE ADULT DEPENDENTS HAVING PHYSICAL,
45 EMOTIONAL, OR MENTAL DISABILITIES IN EITHER A COMMUNITY-BASED FACILITY
46 OR A FACILITY AT THE EMPLOYMENT SITE.

47 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
48 of the tax law is amended by adding a new clause (xxxii) to read as
49 follows:

50 (XXXII) DEPENDENT ELDERLY CARE
51 CREDIT UNDER SUBSECTION (SS)

AMOUNT OF CREDIT FOR
DEPENDENT ELDERLY CARE
UNDER SUBDIVISION FORTY-THREE
OF SECTION TWO HUNDRED TEN

1 S 4. The commissioners of taxation and finance and children and family
2 services shall promulgate any and all rules and regulations and take any
3 other measures necessary to implement this act on its effective date.
4 S 5. This act shall take effect on January first next succeeding the
5 date on which it shall have become a law and shall apply to taxable
6 years commencing on and after such effective date.