S T A T E O F N E W Y O R K

613

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

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:

Section 1. Section 210 of the tax law is amended by adding a new subdivision 43 to read as follows:

43. (A) THERE SHALL BE ALLOWED AS A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR ANY TAXABLE YEAR AN AMOUNT NOT IN EXCESS OF ONE THOUSAND DOLLARS, FOR EACH ADULT CARE RECIPIENT, OF THE AMOUNT ACTUALLY EXPENDED BY ANY EMPLOYER PROVIDING OR PAYING ANOTHER TO PROVIDE DEPENDENT CARE FOR EMPLOYEES DURING THE EMPLOYEES' WORK HOURS, WHICH CARE MUST BE PROVIDED IN AN ELIGIBLE FACILITY, AS DESCRIBED IN PARAGRAPH (C) OF THIS SUBDIVISION. CREDIT IS APPLIED TO THE COST OF ANY CONTRACT EXECUTED BY THE EMPLOYER FOR ANOTHER PROVIDER OF SERVICES TO PROVIDE DEPENDENT CARE; OR, IF THE EMPLOYER ELECTS TO PROVIDE DEPENDENT CARE ITSELF, TO EXPENSES INCURRED FOR: DEPENDENT CARE STAFF, LEARNING AND RECREATIONAL MATERIALS AND EQUIPMENT, AND THE CONSTRUCTION AND MAINTENANCE OF A FACILITY. THIS COST IS NET OF ANY REIMBURSEMENT. THE CREDIT SHALL NOT BE ALLOWED FOR ANY EXPENSES WHICH ARE PAID BY AN EMPLOYEE AND SERVE AS THE BASIS FOR A PERSONAL INCOME TAX CREDIT. THE CREDITS ALLOWED UNDER THIS SUBDIVISION SHALL NOT BE USED BY ANY CORPORATION OTHER THAN THE CORPORATION ACTUALLY QUALIFYING FOR THE CREDITS.

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

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

(D) EMPLOYERS SHALL BE CERTIFIED AS ELIGIBLE FOR THE TAX CREDIT BY THE OFFICE OF CHILDREN AND FAMILY SERVICES FOR PROGRAMS SERVING ELDERLY ADULTS AND BY THE COMMISSIONER FOR PROGRAMS SERVING OTHER ADULT DEPENDENTS.

(E) IN ADDITION TO THE CREDIT ALLOWED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION, THERE SHALL BE ALLOWED AN ADDITIONAL CREDIT, SUBJECT TO THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVISION, FOR ADDITIONAL ELIGIBLE EXPENSES ASSUMED OR INCURRED BY THE EMPLOYER WHICH INCREASE THE QUALITY, AVAILABILITY, AND AFFORDABILITY OF DEPENDENT CARE IN THE COMMUNITY USED BY EMPLOYEES DURING THE EMPLOYEES' WORK HOURS. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS DEFINING THE ELIGIBILITY OF EXPENSES AND THE AMOUNT OF THE CREDIT ALLOWABLE THEREFOR. THE COMMISSIONER SHALL FURTHER PROVIDE AN ADDITIONAL CREDIT FOR ADMINISTRATIVE COSTS INCURRED IN COMPLYING WITH THE FOREGOING PROVISIONS.

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

(SS) DEPENDENT ELDERLY CARE CREDIT. (1) (A) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE IN AN AMOUNT NOT IN EXCESS OF ONE THOUSAND DOLLARS, FOR EACH ADULT DAY CARE RECIPIENT, OF THE AMOUNT ACTUALLY EXPENDED BY AN EMPLOYER PROVIDING OR PAYING ANOTHER TO PROVIDE DEPENDENT CARE FOR EMPLOYEES DURING THE EMPLOYEES' WORK HOURS, WHICH CARE MUST BE PROVIDED IN AN ELIGIBLE FACILITY, AS DESCRIBED IN SUBPARAGRAPH (C) OF THIS PARAGRAPH. CREDIT IS APPLIED TO THE COST OF ANY CONTRACT EXECUTED BY THE EMPLOYER FOR ANOTHER ENTITY TO PROVIDE DEPENDENT CARE; OR, IF THE EMPLOYER ELECTS TO PROVIDE DEPENDENT CARE ITSELF, TO EXPENSES INCURRED FOR: DEPENDENT CARE STAFF, LEARNING AND RECREATIONAL MATERIALS AND EQUIPMENT, AND THE CONSTRUCTION AND MAINTENANCE OF A FACILITY. THIS COST IS NET OF ANY REIMBURSEMENT. THE CREDIT SHALL NOT BE ALLOWED FOR ANY EXPENSES WHICH ARE PAID BY EMPLOYEES AND SERVE AS THE BASIS FOR A PERSONAL INCOME TAX CREDIT. THE CREDITS ALLOWED UNDER THIS PARAGRAPH SHALL NOT BE USED BY ANY EMPLOYER OTHER THAN THE EMPLOYER ACTUALLY QUALIFYING FOR THE CREDITS.

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

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

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

(D) EMPLOYERS SHALL BE CERTIFIED AS ELIGIBLE FOR THE TAX CREDIT BY THE OFFICE OF CHILDREN AND FAMILY SERVICES FOR PROGRAMS SERVING ELDERLY ADULTS AND BY THE COMMISSIONER FOR PROGRAMS SERVING OTHER ADULT DEPENDENTS.

(E) IN ADDITION TO THE CREDIT ALLOWED PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH, THERE SHALL BE ALLOWED AN ADDITIONAL CREDIT, SUBJECT TO THE PROVISIONS OF SUBPARAGRAPH (B) OF THIS PARAGRAPH, FOR ADDITIONAL ELIGIBLE EXPENSES ASSUMED OR INCURRED BY THE EMPLOYER WHICH INCREASE THE QUALITY, AVAILABILITY, AND AFFORDABILITY OF DEPENDENT CARE IN THE COMMUNITY USED BY EMPLOYEES DURING THE EMPLOYEES' WORK HOURS. THE COMMISSIONER SHALL PROMULGATE RULES AND REGULATIONS DEFINING THE ELIGIBILITY OF EXPENSES AND THE AMOUNT OF THE CREDIT ALLOWABLE THEREFOR. THE COMMISSIONER SHALL FURTHER PROVIDE AN ADDITIONAL CREDIT FOR ADMINISTRATIVE COSTS INCURRED IN COMPLYING WITH THE FOREGOING PROVISIONS.

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

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

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

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

(XXXII) DEPENDENT ELDERLY CARE CREDIT UNDER SUBSECTION (SS)	AMOUNT OF CREDIT FOR DEPENDENT ELDERLY CARE UNDER SUBDIVISION FORTY-THREE OF SECTION TWO HUNDRED TEN

S 4. This act shall take effect on January first next succeeding the date on which it shall have become a law and shall apply to taxable years commencing on and after such effective date; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.