

613--B

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 -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law, in relation to establishing business franchise and personal income tax credits for employers which provide care for the elderly dependents of their employees during work hours and establishing a personal income tax credit for the provision of care to the elderly dependent of a taxpayer during work hours

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 45 to read as follows:
3 45. EMPLOYEE ELDERLY DEPENDENT CARE CREDIT. (A) ALLOWANCE OF CREDIT.
4 THERE SHALL BE ALLOWED AS A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTI-
5 CLE FOR THE AMOUNT, NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH EMPLOYEE
6 DEPENDENT FOR WHICH ADULT DAY CARE SERVICES ARE PROVIDED, ACTUALLY
7 EXPENDED BY THE TAXPAYER PROVIDING OR PAYING ANOTHER TO PROVIDE DEPEND-
8 ENT CARE FOR THE TAXPAYER'S EMPLOYEES' DEPENDENTS DURING THE EMPLOYEES'
9 WORK HOURS, WHICH CARE MUST BE PROVIDED IN AN ELIGIBLE FACILITY, AS
10 DESCRIBED IN PARAGRAPH (C) OF THIS SUBDIVISION. CREDIT IS APPLIED TO
11 THE COST OF ANY CONTRACT EXECUTED BY THE TAXPAYER FOR ANOTHER PROVIDER
12 OF SERVICES TO PROVIDE DEPENDENT CARE; OR, IF THE TAXPAYER ELECTS TO
13 PROVIDE DEPENDENT CARE ITSELF, TO EXPENSES INCURRED FOR: DEPENDENT CARE
14 STAFF, LEARNING AND RECREATIONAL MATERIALS AND EQUIPMENT, AND THE
15 CONSTRUCTION AND MAINTENANCE OF A FACILITY. THIS COST IS NET OF ANY

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

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1 REIMBURSEMENT. THE CREDIT SHALL NOT BE ALLOWED FOR ANY EXPENSES WHICH
2 ARE PAID BY AN EMPLOYEE AND SERVE AS THE BASIS FOR A PERSONAL INCOME TAX
3 CREDIT. THE CREDITS ALLOWED UNDER THIS SUBDIVISION SHALL NOT BE USED BY
4 ANY CORPORATION OTHER THAN THE CORPORATION ACTUALLY QUALIFYING FOR THE
5 CREDITS.

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

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

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

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

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

39 (UU) DEPENDENT ELDERLY CARE CREDIT. (1) EMPLOYER. (A) ALLOWANCE OF
40 CREDIT. A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY
41 THIS ARTICLE FOR THE AMOUNT, NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH
42 EMPLOYEE DEPENDENT FOR WHICH ADULT DAY CARE SERVICES ARE PROVIDED, ACTU-
43 ALLY EXPENDED BY THE TAXPAYER PROVIDING OR PAYING ANOTHER TO PROVIDE
44 DEPENDENT CARE FOR THE TAXPAYER'S EMPLOYEES' DEPENDENTS DURING THE
45 EMPLOYEES' WORK HOURS, WHICH CARE MUST BE PROVIDED IN AN ELIGIBLE FACIL-
46 ITY, AS DESCRIBED IN SUBPARAGRAPH (C) OF THIS PARAGRAPH. CREDIT IS
47 APPLIED TO THE COST OF ANY CONTRACT EXECUTED BY THE TAXPAYER FOR ANOTHER
48 ENTITY TO PROVIDE DEPENDENT CARE; OR, IF THE TAXPAYER ELECTS TO PROVIDE
49 DEPENDENT CARE ITSELF, TO EXPENSES INCURRED FOR: DEPENDENT CARE STAFF,
50 LEARNING AND RECREATIONAL MATERIALS AND EQUIPMENT, AND THE CONSTRUCTION
51 AND MAINTENANCE OF A FACILITY. THIS COST IS NET OF ANY REIMBURSEMENT.
52 THE CREDIT SHALL NOT BE ALLOWED FOR ANY EXPENSES WHICH ARE PAID BY
53 EMPLOYEES AND SERVE AS THE BASIS FOR A PERSONAL INCOME TAX CREDIT. THE
54 CREDITS ALLOWED UNDER THIS PARAGRAPH SHALL NOT BE USED BY ANY EMPLOYER
55 OTHER THAN THE EMPLOYER ACTUALLY QUALIFYING FOR THE CREDITS.

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

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

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

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

32 (2) INDIVIDUAL. (A) ALLOWANCE OF CREDIT. A TAXPAYER SHALL BE ALLOWED
33 A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE AMOUNT, NOT TO
34 EXCEED ONE THOUSAND DOLLARS FOR EACH ELDERLY DEPENDENT OF THE TAXPAYER
35 FOR WHICH ADULT DAY CARE SERVICES ARE PROVIDED, ACTUALLY EXPENDED BY THE
36 TAXPAYER AS PAYMENT TO AN ELIGIBLE FACILITY FOR PROVIDING DEPENDENT CARE
37 DURING THE TAXPAYER'S WORK HOURS, WHICH CARE MUST BE PROVIDED IN AN
38 ELIGIBLE FACILITY, AS DESCRIBED IN SUBPARAGRAPH (C) OF THIS PARAGRAPH.
39 THIS COST IS NET OF ANY REIMBURSEMENT. THE CREDIT SHALL NOT BE ALLOWED
40 FOR ANY EXPENSES WHICH ARE PAID BY AN EMPLOYER OF THE TAXPAYER AND SERVE
41 AS THE BASIS FOR A TAX CREDIT FOR SUCH EMPLOYER. THE CREDITS ALLOWED
42 UNDER THIS PARAGRAPH SHALL NOT BE USED BY ANY TAXPAYER OTHER THAN THE
43 TAXPAYER ACTUALLY QUALIFYING FOR THE CREDITS.

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

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

1 ELDER CARE FACILITY OR A FACILITY AT THE EMPLOYMENT SITE; OR MUST SERVE
2 ADULT DEPENDENTS HAVING PHYSICAL, EMOTIONAL, OR MENTAL DISABILITIES IN
3 EITHER A COMMUNITY-BASED FACILITY OR A FACILITY AT THE EMPLOYMENT SITE.
4 S 3. Subparagraph (B) of paragraph 1 of subsection (i) of section 606
5 of the tax law is amended by adding a new clause (xxxiv) to read as
6 follows:

7 (XXXIV) DEPENDENT ELDERLY CARE	AMOUNT OF CREDIT FOR
8 CREDIT UNDER PARAGRAPH ONE OF	EMPLOYEE ELDERLY DEPENDENT CARE
9 SUBSECTION (UU)	UNDER SUBDIVISION FORTY-FIVE
10	OF SECTION TWO HUNDRED TEN

11 S 4. This act shall take effect on the first of January next succeed-
12 ing the date on which it shall have become a law and shall apply to
13 taxable years commencing on and after such effective date; provided,
14 however, that, effective immediately, the commissioners of taxation and
15 finance, and children and family services are authorized and directed to
16 promulgate any rules and regulations, and take any other measures neces-
17 sary to implement the provisions of this act on its effective date.