

2263

2013-2014 Regular Sessions

I N S E N A T E

January 15, 2013

Introduced by Sens. KLEIN, MAZIARZ -- 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 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 46 to read as follows:
3 46. EMPLOYEE ELDERLY DEPENDENT CARE CREDIT. (A) ALLOWANCE OF CREDIT.
4 THERE SHALL BE ALLOWED AS A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE FOR THE AMOUNT, NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH EMPLOYEE
5 DEPENDENT FOR WHICH ADULT DAY CARE SERVICES ARE PROVIDED, ACTUALLY
6 EXPENDED BY THE TAXPAYER PROVIDING OR PAYING ANOTHER TO PROVIDE DEPENDENT
7 CARE FOR THE TAXPAYER'S EMPLOYEES' DEPENDENTS DURING THE EMPLOYEES'
8 WORK HOURS, WHICH CARE MUST BE PROVIDED IN AN ELIGIBLE FACILITY, AS
9 DESCRIBED IN PARAGRAPH (C) OF THIS SUBDIVISION. CREDIT IS APPLIED TO
10 THE COST OF ANY CONTRACT EXECUTED BY THE TAXPAYER FOR ANOTHER PROVIDER
11 OF SERVICES TO PROVIDE DEPENDENT CARE; OR, IF THE TAXPAYER ELECTS TO
12 PROVIDE DEPENDENT CARE ITSELF, TO EXPENSES INCURRED FOR: DEPENDENT CARE
13 STAFF, LEARNING AND RECREATIONAL MATERIALS AND EQUIPMENT, AND THE
14 CONSTRUCTION AND MAINTENANCE OF A FACILITY. THIS COST IS NET OF ANY
15 REIMBURSEMENT. THE CREDIT SHALL NOT BE ALLOWED FOR ANY EXPENSES WHICH
16 ARE PAID BY AN EMPLOYEE AND SERVE AS THE BASIS FOR A PERSONAL INCOME TAX
17 CREDIT. THE CREDITS ALLOWED UNDER THIS SUBDIVISION SHALL NOT BE USED BY
18 ANY CORPORATION OTHER THAN THE CORPORATION ACTUALLY QUALIFYING FOR THE
19 CREDITS.
20

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

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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 DAILY
7 ENROLLMENT FOR THE TAXABLE YEAR OF NO LESS THAN SIX PERSONS SIXTY YEARS
8 OF AGE OR OLDER AND BE LICENSED OR CERTIFIED ACCORDING TO THE APPLICABLE
9 LAW OR REGULATIONS; OR MUST SERVE FIVE OR FEWER PERSONS AGE SIXTY OR
10 OLDER IN A FAMILY CHILD CARE/ELDER CARE HOME APPROVED BY THE OFFICE OF
11 CHILDREN AND FAMILY SERVICES FOR PARTICIPATION IN THE UNITED STATES
12 DEPARTMENT OF AGRICULTURE CHILD AND ADULT NUTRITION PROGRAM; OR MUST
13 SERVE ADULT RELATIVES OF EMPLOYEES IN EITHER A COMMUNITY-BASED ELDER
14 CARE FACILITY OR A FACILITY AT THE EMPLOYMENT SITE; OR MUST SERVE ADULT
15 DEPENDENTS HAVING PHYSICAL, EMOTIONAL, OR MENTAL DISABILITIES IN EITHER
16 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 PARAGRAPH (A) OF THIS SUBDIVISION, THERE SHALL BE ALLOWED AN ADDITIONAL
23 CREDIT, SUBJECT TO THE PROVISIONS OF PARAGRAPH (B) OF THIS SUBDIVISION,
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 S 2. Section 606 of the tax law is amended by adding a new subsection
33 (vv) to read as follows:

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

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

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

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

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

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

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

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

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

4 (XXXV) DEPENDENT ELDERLY CARE
5 CREDIT UNDER PARAGRAPH ONE OF
6 SUBSECTION (VV)

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

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