

STATE OF NEW YORK

6439

2021-2022 Regular Sessions

IN ASSEMBLY

March 17, 2021

Introduced by M. of A. MAGNARELLI -- read once and referred to the Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing a payroll tax for the purpose of child care for families with children under three years of age within certain counties; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The tax law is amended by adding a new article 24-A to read as follows:

ARTICLE 24-A

CENTRAL NEW YORK CHILD CARE PAYROLL TAX

Section 860. Definitions.

861. Imposition of tax and rate.

862. Pass through of tax prohibited.

863. Exemption override.

864. Payment of tax.

865. Deposit and disposition of revenue.

866. Procedural provisions.

867. Enforcement with other taxes.

§ 860. Definitions. For the purposes of this article:

(a) Employer. Employer means an employer required by section six hundred seventy-one of this chapter to deduct and withhold tax from wages that have a payroll expense in excess of six hundred twenty-five thousand dollars in any calendar quarter; other than:

(1) any agency or instrumentality of the United States;

(2) the United Nations;

(3) an interstate agency or public corporation created pursuant to an agreement or compact with another state or the Dominion of Canada; or

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

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1 (4) (i) any non-profit early childhood services provider which
2 receives funding from the federal or state government, or any municipal,
3 state or federal agency, or political subdivision.

4 (ii) as used in this section, the term "early childhood services"
5 shall mean services which include, but are not limited to, registered,
6 certified or licensed care in family day care homes; group family day
7 care homes; school-age child care programs; head start programs; day
8 care centers; child care which may be provided without a permit, certif-
9 icate or registration in accordance with this statute; early childhood
10 education programs approved by the state education department; and care
11 provided in a children's camp as defined in section fourteen hundred of
12 the public health law.

13 (b) Payroll expense. Payroll expense means wages and compensation as
14 defined in sections 3121 and 3231 of the internal revenue code (without
15 regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all
16 covered employees.

17 (c) Covered employee. Covered employee means an employee who is
18 employed in the counties of Onondaga, Madison, Cayuga, Cortland and
19 Oswego.

20 § 861. Imposition of tax and rate. For the purpose of providing an
21 additional stable and reliable dedicated funding source to address child
22 care affordability, accessibility, and quality for families with chil-
23 dren under three years of age, a tax is hereby imposed on employers who
24 engage in business in the counties of Onondaga, Madison, Cayuga, Cort-
25 land and Oswego and individuals as follows: The tax is imposed at a rate
26 of (a) fifteen hundredths (.15) percent of the payroll expense for
27 employers with payroll expense in excess of six hundred twenty-five
28 thousand dollars and not more than one million two hundred fifty thou-
29 sand dollars per calendar quarter, (b) eighteen hundredths (.18) percent
30 of the payroll expense for employers with payroll expense in excess of
31 one million two hundred fifty thousand dollars and not more than two
32 million five hundred thousand dollars per calendar quarter, and (c)
33 twenty-two hundredths (.22) percent of the payroll expense for employers
34 with payroll expense in excess of two million five hundred thousand
35 dollars per calendar quarter. If the employer is a professional employer
36 organization, as defined in section nine hundred sixteen of the labor
37 law, the employer's tax shall be calculated by determining the payroll
38 expense attributable to each client who has entered into a professional
39 employer agreement with such organization and the payroll expense
40 attributable to such organization itself, multiplying each of those
41 payroll expense amounts by the applicable rate set forth in this para-
42 graph and adding those products together.

43 § 862. Pass through of tax prohibited. An employer cannot deduct from
44 the wages or compensation of an employee any amount that represents all
45 or any portion of the tax imposed on the employer under this article.

46 § 863. Exemption override. (a) Except as provided in subsection (b) of
47 this section, any exemption from tax specified in any other state law
48 will not apply to the tax imposed by this article.

49 (b) For a tax-free NY area approved pursuant to the provisions of
50 article twenty-one of the economic development law, the payroll expense
51 in such tax-free NY area of any employer and accepted into the START-UP
52 NY program shall be exempt from the tax imposed under this article.

53 § 864. Payment of tax. Employers with payroll expense. The tax imposed
54 on the payroll expense of employers under section eight hundred sixty-
55 one of this article must be paid at the same time the employer is
56 required to remit payments under section six hundred seventy-four of

1 this chapter; provided however, that employers subject to the provisions
2 in section nine of this chapter must pay the tax on the payroll expense
3 at the same time as the withholding tax remitted under the electronic
4 payment reporting system and the electronic funds transfer system
5 authorized by section nine of this chapter.

6 § 865. Deposit and disposition of revenue. (a) The taxes, interest,
7 and penalties imposed by this article and collected or received by the
8 commissioner shall be deposited daily with such responsible banks, bank-
9 ing houses or trust companies, as may be designated by the comptroller,
10 to the credit of such comptroller in trust. Such deposits shall be kept
11 separate and apart from all other money in the possession of the comp-
12 trroller. The comptroller shall require adequate security from all such
13 depositories. Of the total revenue collected or received under this
14 article, the comptroller shall retain such amount as the commissioner
15 may determine to be necessary for refunds under this article. The comp-
16 trroller is authorized and directed to deduct from the amounts it
17 receives under this article, before deposit into the trust accounts
18 designated by such comptroller, a reasonable amount necessary to effec-
19 tuate refunds of the department to reimburse the department for the
20 costs incurred to administer, collect and distribute the taxes imposed
21 by this article.

22 (b) After reserving such amount for such refunds and deducting such
23 amounts for such costs, as provided for in subsection (a) of this
24 section, the commissioner shall certify to the comptroller the amount of
25 all revenues so received during the prior month as a result of the
26 taxes, interest and penalties so imposed. The amount of revenues so
27 certified shall be paid over by the fifteenth and the final business day
28 of each succeeding month from such account without appropriation into
29 the general fund.

30 § 866. Procedural provisions. (a) General. All provisions of article
31 twenty-two of this chapter shall apply to the provisions of this article
32 in the same manner and with the same force and effect as if the language
33 of article twenty-two of this chapter had been incorporated in full into
34 this article and had been specifically adjusted for and expressly
35 referred to the tax imposed by this article, except to the extent that
36 any provision is either inconsistent with a provision of this article or
37 is not relevant to this article. Notwithstanding the preceding
38 sentence, no credit against tax in article twenty-two of this chapter
39 can be used to offset the tax due under this article.

40 (b) Combined filings. Notwithstanding any other provisions of this
41 article:

42 (1) The commissioner may require the filing of a combined return which
43 may also include any of the returns required to be filed by a taxpayer
44 pursuant to the provisions of section six hundred fifty-one of this
45 chapter and which may be required to be filed by such taxpayer pursuant
46 to any local law enacted pursuant to the authority of article thirty,
47 thirty-A or thirty-B of this chapter.

48 (2) Where a combined return is required, and with respect to the
49 payment of estimated tax, the commissioner may also require the payment
50 to it of a single amount which shall equal the total of the amounts
51 (total taxes less any credits or refunds) which would have been required
52 to be paid with the returns or in payment of estimated tax pursuant to
53 the provisions of this article, the provisions of article twenty-two of
54 this chapter, and the provisions of local laws enacted under the author-
55 ity of article thirty, thirty-A or thirty-B of this chapter.

1 (3) Notwithstanding any other law to the contrary, the commissioner
2 may require that all filings of forms or returns under this article
3 shall be filed electronically and all payments of tax must be paid elec-
4 tronically.

5 § 867. Enforcement with other taxes. (a) Joint assessment. If there is
6 assessed a tax under this article and there is also assessed a tax
7 against the same taxpayer pursuant to article twenty-two of this chapter
8 or under a local law enacted pursuant to the authority of article thir-
9 ty, thirty-A, or thirty-B of this chapter, and payment of a single
10 amount is required under the provisions of this article, such payment
11 shall be deemed to have been made with respect to the taxes so assessed
12 in proportion to the amounts of such taxes due, including tax, penal-
13 ties, interest and additions to tax.

14 (b) Joint action. If the commissioner takes action under such article
15 twenty-two or under a local law enacted pursuant to the authority of
16 article thirty, thirty-A, or thirty-B of this chapter with respect to
17 the enforcement and collection of the tax or taxes assessed under such
18 articles, the commissioner shall, whenever possible and necessary,
19 accompany such action with a similar action under similar enforcement
20 and collection provisions of the tax imposed by this article.

21 (c) Apportionment of moneys collected by joint action. Any moneys
22 collected as a result of such joint action shall be deemed to have been
23 collected in proportion to the amounts due, including tax, penalties,
24 interest and additions to tax, under article twenty-two of this chapter
25 or under a local law enacted pursuant to the authority of article thir-
26 ty, thirty-A, or thirty-B of this chapter and the tax imposed by this
27 article.

28 (d) Joint deficiency action. Whenever the commissioner takes any
29 action with respect to a deficiency of income tax under article twenty-
30 two of this chapter or under a local law enacted pursuant to the author-
31 ity of article thirty, thirty-A, or thirty-B of this chapter, other than
32 the action set forth in subsection (a) of this section, the commissioner
33 may in his or her discretion accompany such action with a similar action
34 under this article.

35 § 2. This act shall take effect immediately, and shall expire and be
36 deemed repealed 5 years after such effective date.