

510

2009-2010 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2009

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Introduced by Sen. LANZA -- 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 the Disabled Child Care Act

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

1     Section 1. Short title. This act shall be known and may be cited as  
2     the "Disabled Child Care Act".  
3     S 2. Section 606 of the tax law is amended by adding a new subsection  
4     (qq) to read as follows:  
5     (QQ) DISABLED CHILD CARE CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A  
6     CREDIT AGAINST THE TAX IMPOSED UNDER SECTION SIX HUNDRED ONE OF THIS  
7     PART EQUAL TO TWENTY PERCENT OF QUALIFIED CARE EXPENSES IN AN AMOUNT  
8     EQUAL TO OR LESS THAN TWO THOUSAND FOUR HUNDRED DOLLARS FOR THE TAXABLE  
9     YEAR THAT ARE PAID BY THE TAXPAYER FOR THE CARE OF A QUALIFYING DISABLED  
10    CHILD. A TAXPAYER WITH QUALIFIED CARE EXPENSES PURSUANT TO THE PRECED-  
11    ING SENTENCE WHICH ARE EQUAL TO OR IN EXCESS OF TWO HUNDRED FORTY  
12    DOLLARS FOR ANY TAXABLE YEAR SHALL RECEIVE AN ADDITIONAL SEVENTY-FIVE  
13    DOLLAR CREDIT AGAINST THE TAX IMPOSED UNDER SECTION SIX HUNDRED ONE OF  
14    THIS PART. IF THE CREDIT OR CREDITS PROVIDED PURSUANT TO THIS SECTION  
15    EXCEED THE TAX FOR SUCH TAXABLE YEAR, THE TAXPAYER MAY RECEIVE, AND THE  
16    COMPTROLLER, SUBJECT TO A CERTIFICATE OF THE COMMISSIONER, SHALL PAY AS  
17    AN OVERPAYMENT, WITHOUT INTEREST, ANY EXCESS BETWEEN SUCH TAX AS SO  
18    REDUCED AND THE AMOUNT OF THE CREDITOR CREDITS. IF A TAXPAYER IS NOT  
19    REQUIRED TO FILE A RETURN PURSUANT TO SECTION SIX HUNDRED ONE OF THIS  
20    PART, A TAXPAYER MAY NEVERTHELESS RECEIVE AND THE COMPTROLLER, SUBJECT  
21    TO A CERTIFICATE OF THE COMMISSIONER, SHALL PAY AS AN OVERPAYMENT THE  
22    FULL AMOUNT OF THE CREDIT OR CREDITS, WITHOUT INTEREST.  
23    (2) AS USED IN THIS SUBSECTION:

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

LBD01688-01-9

1 (A) "TAXPAYER" IS A RESIDENT INDIVIDUAL OF THIS STATE WHO IS REQUIRED  
2 OR CHOOSES TO FILE A RETURN UNDER THIS ARTICLE, BUT THE TERM DOES NOT  
3 INCLUDE A NONRESIDENT TAXPAYER OR A PART-YEAR RESIDENT TAXPAYER.

4 (B) "QUALIFYING DISABLED CHILD" IS A DISABLED CHILD OF THE TAXPAYER  
5 WITHIN THE THIRD DEGREE OF CONSANGUINITY WHO RESIDES WITH THE TAXPAYER  
6 AND WHO HAS AUTISM, AUTISM SPECTRUM DISORDER, DEVELOPMENTAL DISABILITIES  
7 AS DEFINED IN SUBDIVISION TWENTY-TWO OF SECTION 1.03 OF THE MENTAL  
8 HYGIENE LAW OR IS PHYSICALLY DISABLED.

9 (C) "QUALIFIED CARE EXPENSES" ARE PAYMENTS MADE BY THE TAXPAYER FOR  
10 GOODS AND SERVICES NECESSARY TO ALLOW THE QUALIFYING DISABLED CHILD TO  
11 BE MAINTAINED IN THE TAXPAYER'S RESIDENCE WHICH GOODS AND SERVICES ARE:

12 (I) PROVIDED TO OR FOR THE BENEFIT OF THE QUALIFYING DISABLED CHILD OR  
13 TO ASSIST THE TAXPAYER IN CARING FOR THE QUALIFYING DISABLED CHILD; AND  
14 (II) NOT COMPENSATED FOR BY INSURANCE OR FEDERAL OR STATE PROGRAMS. SUCH  
15 EXPENSES INCLUDE, BUT ARE NOT LIMITED TO, HOME HEALTH AGENCY SERVICES,  
16 DAY CARE, PERSONAL CARE ATTENDANT SERVICES, RESPITE CARE, HEALTH CARE  
17 EQUIPMENT AND SUPPLIES, HOME MODIFICATION, OR ANY SERVICES NECESSARY TO  
18 PROVIDE HELP IN TWO OR MORE ACTIVITIES IN DAILY LIVING, OR FOR THE  
19 PROVISION OF ASSISTIVE DEVICES.

20 (3) WHEN TWO OR MORE MEMBERS OF A HOUSEHOLD MEET THE QUALIFICATIONS  
21 FOR A CREDIT OR CREDITS PURSUANT TO THIS SUBSECTION, THE CREDIT OR CRED-  
22 ITS SHALL BE EQUALLY DIVIDED BETWEEN OR AMONG SUCH INDIVIDUALS UNLESS  
23 SUCH INDIVIDUALS FILE WITH THE COMMISSIONER A WRITTEN AGREEMENT SETTING  
24 FORTH A DIFFERENT DIVISION. WHERE A JOINT INCOME TAX RETURN HAS BEEN  
25 FILED PURSUANT TO THIS CHAPTER BY A TAXPAYER AND HIS OR HER SPOUSE (OR  
26 WHERE BOTH SPOUSES ARE TAXPAYERS AND HAVE FILED SUCH JOINT RETURN), WHO  
27 QUALIFY FOR SUCH CREDIT OR CREDITS, THE CREDIT OR CREDITS, OR THE  
28 PORTION THEREOF IF DIVIDED, TO WHICH THE HUSBAND AND WIFE ARE ENTITLED  
29 SHALL BE APPLIED AGAINST THE TAX OF BOTH SPOUSES AND ANY OVERPAYMENT  
30 SHALL BE MADE TO BOTH SPOUSES. WHERE ANY RETURN REQUIRED TO BE FILED  
31 PURSUANT TO THIS CHAPTER IS COMBINED WITH ANY RETURN OF TAX IMPOSED  
32 PURSUANT TO THE AUTHORITY OF THIS CHAPTER OR ANY OTHER LAW IF SUCH TAX  
33 IS ADMINISTERED BY THE COMMISSIONER, THE CREDIT OR CREDITS OR THE  
34 PORTION OF THEREOF IF DIVIDED, ALLOWED TO THE TAXPAYER MAY BE APPLIED BY  
35 THE COMMISSIONER TOWARD ANY LIABILITY FOR THE AFOREMENTIONED TAXES.

36 (4) NO CREDIT OR CREDITS OR PORTION THEREOF SHALL BE GRANTED UNDER  
37 THIS SUBSECTION WITH RESPECT TO CARE PROVIDED IN A RESIDENCE THAT IS  
38 WHOLLY EXEMPTED FROM REAL PROPERTY TAXATION OR TO AN INDIVIDUAL WHO IS  
39 NOT A RESIDENT INDIVIDUAL OF THE STATE FOR THE ENTIRE TAXABLE YEAR. THE  
40 RIGHT TO CLAIM A CREDIT OR CREDITS OR A PORTION THEREOF, WHERE SUCH  
41 CREDIT OR CREDITS HAVE BEEN DIVIDED UNDER THIS SUBSECTION, SHALL BE  
42 PERSONAL TO THE QUALIFIED TAXPAYER AND SHALL NOT SURVIVE HIS OR HER  
43 DEATH, BUT SUCH RIGHT MAY BE EXERCISED ON BEHALF OF A CLAIMANT BY HIS OR  
44 HER LEGAL GUARDIAN OR ATTORNEY IN FACT DURING HIS OR HER LIFETIME.

45 (5) THE COMMISSIONER MAY REQUIRE A TAXPAYER TO FURNISH AS SUPPORT OF  
46 HIS OR HER CLAIM FOR CREDIT UNDER THIS SUBSECTION RECEIPTS FOR QUALIFIED  
47 CARE EXPENSES OR OTHER SUCH PROOFS OF PAYMENT AS SHALL SATISFY THE  
48 COMMISSIONER.

49 S 3. This act shall take effect on the first of January next succeed-  
50 ing the date on which it shall have become a law.