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

3595

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

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

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:

Section 1. Short title. This act shall be known and may be cited as the "Disabled Child Care Act".

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

(QQ) DISABLED CHILD CARE CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED UNDER SECTION SIX HUNDRED ONE OF THIS PART EQUAL TO TWENTY PERCENT OF QUALIFIED CARE EXPENSES IN AN AMOUNT EQUAL TO OR LESS THAN TWO THOUSAND FOUR HUNDRED DOLLARS FOR THE TAXABLE YEAR THAT ARE PAID BY THE TAXPAYER FOR THE CARE OF A QUALIFYING DISABLED CHILD. A TAXPAYER WITH QUALIFIED CARE EXPENSES PURSUANT TO THE PRECEDING SENTENCE WHICH ARE EQUAL TO OR IN EXCESS OF TWO HUNDRED FORTY DOLLARS FOR ANY TAXABLE YEAR SHALL RECEIVE AN ADDITIONAL SEVENTY-FIVE DOLLAR CREDIT AGAINST THE TAX IMPOSED UNDER SECTION SIX HUNDRED ONE OF THIS PART. IF THE CREDIT OR CREDITS PROVIDED PURSUANT TO THIS SECTION EXCEED THE TAX FOR SUCH TAXABLE YEAR, THE TAXPAYER MAY RECEIVE, AND THE COMPTROLLER, SUBJECT TO A CERTIFICATE OF THE COMMISSIONER, SHALL PAY AS AN OVERPAYMENT, WITHOUT INTEREST, ANY EXCESS BETWEEN SUCH TAX AS SO REDUCED AND THE AMOUNT OF THE CREDITOR CREDITS. IF A TAXPAYER IS NOT REQUIRED TO FILE A RETURN PURSUANT TO SECTION SIX HUNDRED ONE OF THIS PART, A TAXPAYER MAY NEVERTHELESS RECEIVE AND THE COMPTROLLER, SUBJECT TO A CERTIFICATE OF THE COMMISSIONER, SHALL PAY AS AN OVERPAYMENT THE FULL AMOUNT OF THE CREDIT OR CREDITS, WITHOUT INTEREST.

(2) AS USED IN THIS SUBSECTION:

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

LBD01688-01-9

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

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

(C) "QUALIFIED CARE EXPENSES" ARE PAYMENTS MADE BY THE TAXPAYER FOR GOODS AND SERVICES NECESSARY TO ALLOW THE QUALIFYING DISABLED CHILD TO BE MAINTAINED IN THE TAXPAYER'S RESIDENCE WHICH GOODS AND SERVICES ARE: (I) PROVIDED TO OR FOR THE BENEFIT OF THE QUALIFYING DISABLED CHILD OR TO ASSIST THE TAXPAYER IN CARING FOR THE QUALIFYING DISABLED CHILD; AND (II) NOT COMPENSATED FOR BY INSURANCE OR FEDERAL OR STATE PROGRAMS. SUCH EXPENSES INCLUDE, BUT ARE NOT LIMITED TO, HOME HEALTH AGENCY SERVICES, DAY CARE, PERSONAL CARE ATTENDANT SERVICES, RESPITE CARE, HEALTH CARE EQUIPMENT AND SUPPLIES, HOME MODIFICATION, OR ANY SERVICES NECESSARY TO PROVIDE HELP IN TWO OR MORE ACTIVITIES IN DAILY LIVING, OR FOR THE PROVISION OF ASSISTIVE DEVICES.

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

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

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

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.