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

3951

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. OPPENHEIMER -- 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 providing credits against the tax imposed upon employers providing certain day care services to the children of its employees

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

Section 1. Section 210 of the tax law is amended by adding a new subdivision 41 to read as follows:

41. EMPLOYER DAY CARE CREDIT. (A) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE TO THE EXTENT OF TWENTY PERCENT OF THE EXPENSES INCURRED DURING A TAXABLE YEAR BY THE TAXPAYER IN MAKING AVAILABLE DAY CARE SERVICES TO THE CHILDREN AND WARDS OF EMPLOYEES AND IN TRAINING PERSONS EMPLOYED BY THE TAXPAYER OR BY A THIRD PARTY PROVIDER RENDERING SUCH SERVICES. A TAXPAYER MAY MAKE SUCH SERVICES AVAILABLE AS FOLLOWS:

(1) PURSUANT TO A WRITTEN CONTRACT WITH A THIRD PARTY PROVIDER;

(2) BY REIMBURSING AN EMPLOYEE FOR EXPENSES INCURRED BY THE EMPLOYEE FOR SUCH SERVICES; OR

(3) BY PROVIDING ON-SITE OR NEAR-SITE DAY CARE SERVICES.

IN NO EVENT SHALL THE AMOUNT OF SUCH CREDIT EXCEED THE AMOUNT OF TAX OTHERWISE DUE PURSUANT TO THIS ARTICLE FOR ANY TAXABLE YEAR.

(B) (1) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER WHO UNFAIRLY DISCRIMINATES AGAINST ANY EMPLOYEE ON THE BASIS OF RACE, CREED, RELIGION, SEX, NATIONAL ORIGIN, AGE, DISABILITY, OR MARITAL STATUS IN MAKING AVAILABLE DAY CARE SERVICES.

(2) A TAXPAYER MAY GIVE A PREFERENCE TO CHILDREN OR WARDS OF EMPLOYEES FOR WHOM OBTAINING OR MAINTAINING GAINFUL EMPLOYMENT IS CONTINGENT UPON THE AVAILABILITY OF DAY CARE SERVICES FOR SUCH CHILDREN OR WARDS, IN PROVIDING SERVICES QUALIFYING FOR A CREDIT HEREUNDER.

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

LBD05488-01-9

(C) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER UNLESS THE FACILITY OR PROGRAM RENDERING DAY CARE SERVICES IS LICENSED BY AND SUBJECT TO THE REGULATIONS OF THE DEPARTMENT OF FAMILY ASSISTANCE OR THE HUMAN RESOURCES ADMINISTRATION GOVERNING DAY CARE FACILITIES IN NEW YORK CITY.

(D) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER IF THE FACILITY OR PROGRAM RENDERING DAY CARE SERVICES ADMITS, DURING REGULAR SCHOOL HOURS, CHILDREN WHO ARE SUBJECT TO THE PROVISIONS OF THE EDUCATION LAW WITH REGARD TO COMPULSORY SCHOOL ATTENDANCE.

S 2. Section 1456 of the tax law is amended by adding a new subsection (u) to read as follows:

(U) EMPLOYER DAY CARE CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE TO THE EXTENT OF TWENTY PERCENT OF THE EXPENSES INCURRED DURING THE TAXABLE YEAR BY THE TAXPAYER IN MAKING AVAILABLE DAY CARE SERVICES TO THE CHILDREN AND WARDS OF EMPLOYEES AND IN TRAINING PERSONS EMPLOYED BY THE TAXPAYER OR BY A THIRD PARTY PROVIDER RENDERING SUCH SERVICES. A TAXPAYER MAY MAKE SUCH SERVICES AVAILABLE AS FOLLOWS:

(A) PURSUANT TO A WRITTEN CONTRACT WITH A THIRD PARTY PROVIDER;

(B) BY REIMBURSING AN EMPLOYEE FOR EXPENSES INCURRED BY THE EMPLOYEE FOR SUCH SERVICES; OR

(C) BY PROVIDING ON-SITE OR NEAR-SITE DAY CARE SERVICES.

IN NO EVENT SHALL THE AMOUNT OF SUCH CREDIT EXCEED THE AMOUNT OF TAX OTHERWISE DUE PURSUANT TO THIS ARTICLE FOR ANY TAXABLE YEAR.

(2) (A) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER WHO UNFAIRLY DISCRIMINATES AGAINST ANY EMPLOYEE ON THE BASIS OF RACE, CREED, RELIGION, SEX, NATIONAL ORIGIN, AGE, DISABILITY OR MARITAL STATUS IN MAKING AVAILABLE DAY CARE SERVICES.

(B) A TAXPAYER MAY GIVE A PREFERENCE TO CHILDREN OR WARDS OF EMPLOYEES FOR WHOM OBTAINING OR MAINTAINING GAINFUL EMPLOYMENT IS CONTINGENT UPON THE AVAILABILITY OF DAY CARE SERVICES FOR SUCH CHILDREN OR WARDS, IN PROVIDING SERVICES QUALIFYING FOR A CREDIT HEREUNDER.

(3) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER UNLESS THE FACILITY OR PROGRAM RENDERING DAY CARE SERVICES IS LICENSED BY AND SUBJECT TO THE REGULATIONS OF THE DEPARTMENT OF FAMILY ASSISTANCE OR THE HUMAN RESOURCES ADMINISTRATION GOVERNING DAY CARE FACILITIES IN NEW YORK CITY.

(4) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER IF THE FACILITY OR PROGRAM RENDERING DAY CARE SERVICES ADMITS, DURING REGULAR SCHOOL HOURS, CHILDREN WHO ARE SUBJECT TO THE PROVISIONS OF THE EDUCATION LAW WITH REGARD TO COMPULSORY SCHOOL ATTENDANCE.

S 3. Section 1511 of the tax law is amended by adding a new subdivision (y) to read as follows:

(Y) EMPLOYER DAY CARE CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTICLE TO THE EXTENT OF TWENTY PERCENT OF THE EXPENSES INCURRED DURING THE TAXABLE YEAR BY THE TAXPAYER IN MAKING AVAILABLE DAY CARE SERVICES TO THE CHILDREN AND WARDS OF EMPLOYEES AND IN TRAINING PERSONS EMPLOYED BY THE TAXPAYER OR BY A THIRD PARTY PROVIDER RENDERING SUCH SERVICES. A TAXPAYER MAY MAKE SUCH SERVICES AVAILABLE AS FOLLOWS:

(A) PURSUANT TO A WRITTEN CONTRACT WITH A THIRD PARTY PROVIDER;

(B) BY REIMBURSING AN EMPLOYEE FOR EXPENSES INCURRED BY THE EMPLOYEE FOR SUCH SERVICES; OR

(C) BY PROVIDING ON-SITE OR NEAR-SITE DAY CARE SERVICES.

IN NO EVENT SHALL THE AMOUNT OF SUCH CREDIT EXCEED THE AMOUNT OF TAX OTHERWISE DUE PURSUANT TO THIS ARTICLE FOR ANY TAXABLE YEAR.

(2) (A) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER WHO UNFAIRLY DISCRIMINATES AGAINST ANY EMPLOYEE ON THE BASIS OF RACE, CREED, RELI-

GION, SEX, NATIONAL ORIGIN, AGE, DISABILITY OR MARITAL STATUS IN MAKING AVAILABLE DAY CARE SERVICES.

(B) A TAXPAYER MAY GIVE A PREFERENCE TO CHILDREN OR WARDS OF DAY CARE DEPENDENT EMPLOYEES FOR WHOM OBTAINING OR MAINTAINING GAINFUL EMPLOYMENT IS CONTINGENT UPON THE AVAILABILITY OF DAY CARE SERVICES FOR SUCH CHILDREN OR WARDS, IN PROVIDING SERVICES QUALIFYING FOR A CREDIT HEREUNDER.

(3) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER UNLESS THE FACILITY OR PROGRAM RENDERING DAY CARE SERVICES IS LICENSED BY AND SUBJECT TO THE REGULATIONS OF THE DEPARTMENT OF FAMILY ASSISTANCE OR THE HUMAN RESOURCES ADMINISTRATION GOVERNING DAY CARE FACILITIES IN NEW YORK CITY.

(4) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER IF THE FACILITY OR PROGRAM RENDERING DAY CARE SERVICES ADMITS, DURING REGULAR SCHOOL HOURS, CHILDREN WHO ARE SUBJECT TO THE PROVISIONS OF THE EDUCATION LAW WITH REGARD TO COMPULSORY SCHOOL ATTENDANCE.

S 4. Section 606 of the tax law is amended by adding a new subsection (qq) to read as follows:

(QQ) EMPLOYER DAY CARE CREDIT. (1) A TAXPAYER SHALL BE ALLOWED A CREDIT AGAINST THE TAX IMPOSED BY SECTION SIX HUNDRED ONE OF THIS ARTICLE TO THE EXTENT OF TWENTY PERCENT OF EXPENSES INCURRED DURING THE TAXABLE YEAR BY THE TAXPAYER IN MAKING AVAILABLE DAY CARE SERVICES TO THE CHILDREN AND WARDS OF EMPLOYEES AND IN TRAINING PERSONS EMPLOYED BY THE TAXPAYER OR BY A THIRD PARTY PROVIDER RENDERING SUCH SERVICES. A TAXPAYER MAY MAKE SUCH SERVICES AVAILABLE AS FOLLOWS:

(A) PURSUANT TO A WRITTEN CONTRACT WITH A THIRD PARTY PROVIDER;

(B) BY REIMBURSING AN EMPLOYEE FOR EXPENSES INCURRED BY THE EMPLOYEE FOR SUCH SERVICES; OR

(C) BY PROVIDING ON-SITE OR NEAR-SITE DAY CARE SERVICES.

IN NO EVENT SHALL THE AMOUNT OF SUCH CREDIT EXCEED THE AMOUNT OF TAX OTHERWISE DUE PURSUANT TO THIS ARTICLE FOR ANY TAXABLE YEAR.

(2) (A) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER WHO UNFAIRLY DISCRIMINATES AGAINST ANY EMPLOYEE ON THE BASIS OF RACE, CREED, RELIGION, SEX, NATIONAL ORIGIN, AGE, DISABILITY OR MARITAL STATUS IN MAKING AVAILABLE DAY CARE SERVICES.

(B) A TAXPAYER MAY GIVE A PREFERENCE TO CHILDREN OR WARDS OF EMPLOYEES FOR WHOM OBTAINING OR MAINTAINING GAINFUL EMPLOYMENT IS CONTINGENT UPON THE AVAILABILITY OF DAY CARE SERVICES FOR SUCH CHILDREN OR WARDS, IN PROVIDING SERVICES QUALIFYING FOR A CREDIT HEREUNDER.

(3) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER UNLESS THE FACILITY OR PROGRAM RENDERING DAY CARE SERVICES IS LICENSED BY AND SUBJECT TO THE REGULATIONS OF THE DEPARTMENT OF FAMILY ASSISTANCE OR THE HUMAN RESOURCES ADMINISTRATION GOVERNING DAY CARE FACILITIES IN NEW YORK CITY.

(4) NO SUCH CREDIT SHALL BE ALLOWED TO A TAXPAYER IF THE FACILITY OR PROGRAM RENDERING DAY CARE SERVICES ADMITS, DURING REGULAR SCHOOL HOURS, CHILDREN WHO ARE SUBJECT TO THE PROVISIONS OF THE EDUCATION LAW WITH REGARD TO COMPULSORY SCHOOL ATTENDANCE.

S 5. This act shall take effect immediately and shall apply to taxable years commencing on and after January 1, 2010.