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

4245--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 2, 2011

Introduced by M. of A. CYMBROWITZ -- read once and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. Section 210 of the tax law is amended by adding a new subdivision 45 to read as follows:

45. EMPLOYEE ELDERLY DEPENDENT CARE CREDIT. (A) ALLOWANCE OF CREDIT. 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 DEPENDENT FOR WHICH ADULT DAY CARE SERVICES ARE PROVIDED, ACTUALLY EXPENDED BY THE TAXPAYER PROVIDING OR PAYING ANOTHER TO PROVIDE DEPENDENT CARE FOR THE TAXPAYER'S EMPLOYEES' DEPENDENTS DURING THE EMPLOYEES' WORK HOURS, WHICH CARE MUST BE PROVIDED IN AN ELIGIBLE FACILITY, AS DESCRIBED IN PARAGRAPH (C) OF THIS SUBDIVISION. CREDIT IS APPLIED TO THE COST OF ANY CONTRACT EXECUTED BY THE TAXPAYER FOR ANOTHER PROVIDER OF SERVICES TO PROVIDE DEPENDENT CARE; OR, IF THE TAXPAYER ELECTS TO PROVIDE DEPENDENT CARE ITSELF, TO EXPENSES INCURRED FOR: DEPENDENT CARE STAFF, LEARNING AND RECREATIONAL MATERIALS AND EQUIPMENT, AND THE CONSTRUCTION AND MAINTENANCE OF A FACILITY. THIS COST IS NET OF ANY REIMBURSEMENT. THE CREDIT SHALL NOT BE ALLOWED FOR ANY EXPENSES WHICH ARE PAID BY AN EMPLOYEE AND SERVE AS THE BASIS FOR A PERSONAL INCOME TAX CREDIT. THE CREDITS ALLOWED UNDER THIS SUBDIVISION SHALL NOT BE USED BY

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

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ANY CORPORATION OTHER THAN THE CORPORATION ACTUALLY QUALIFYING FOR THE CREDITS.

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

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

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

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

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

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

(B) CARRYOVER. CREDIT MAY BE CARRIED FORWARD FOR THE FIVE SUCCESSIVE YEARS IF THE AMOUNT ALLOWABLE AS CREDIT EXCEEDS INCOME TAX LIABILITY IN A TAX YEAR; HOWEVER, THEREAFTER, IF THE AMOUNT ALLOWABLE AS A CREDIT

EXCEEDS THE TAX LIABILITY, THE AMOUNT OF EXCESS SHALL NOT BE REFUNDABLE OR CARRIED FORWARD TO ANY OTHER TAXABLE YEAR.

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

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

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

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

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

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

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

(XXXIV) DEPENDENT ELDERLY CARE CREDIT UNDER PARAGRAPH ONE OF SUBSECTION (UU)	AMOUNT OF CREDIT FOR EMPLOYEE ELDERLY DEPENDENT CARE UNDER SUBDIVISION FORTY-FIVE OF SECTION TWO HUNDRED TEN

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law and shall apply to taxable years commencing on and after such effective date; provided, however, that, effective immediately, the commissioners of taxation and finance, and children and family services are authorized and directed to promulgate any rules and regulations, and take any other measures necessary to implement the provisions of this act on its effective date.