

4822

2011-2012 Regular Sessions

I N S E N A T E

April 27, 2011

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 enacting 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 (tt) to read as follows:
5 (TT) 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* (underscored) is new; matter in brackets [] is old law to be omitted.

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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, RESPIRE 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 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.