

2170--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

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:

1 Section 1. Section 210 of the tax law is amended by adding a new
2 subdivision 48 to read as follows:
3 48. EMPLOYEE ELDERLY DEPENDENT CARE CREDIT. (A) ALLOWANCE OF CREDIT.
4 THERE SHALL BE ALLOWED AS A CREDIT AGAINST THE TAX IMPOSED BY THIS ARTI-
5 CLE FOR THE AMOUNT, NOT TO EXCEED ONE THOUSAND DOLLARS FOR EACH EMPLOYEE
6 DEPENDENT FOR WHICH ADULT DAY CARE SERVICES ARE PROVIDED, ACTUALLY
7 EXPENDED BY THE TAXPAYER PROVIDING OR PAYING ANOTHER TO PROVIDE DEPEND-
8 ENT CARE FOR THE TAXPAYER'S EMPLOYEES' DEPENDENTS DURING THE EMPLOYEES'
9 WORK HOURS, WHICH CARE MUST BE PROVIDED IN AN ELIGIBLE FACILITY, AS
10 DESCRIBED IN PARAGRAPH (C) OF THIS SUBDIVISION. CREDIT IS APPLIED TO
11 THE COST OF ANY CONTRACT EXECUTED BY THE TAXPAYER FOR ANOTHER PROVIDER
12 OF SERVICES TO PROVIDE DEPENDENT CARE; OR, IF THE TAXPAYER ELECTS TO
13 PROVIDE DEPENDENT CARE ITSELF, TO EXPENSES INCURRED FOR: DEPENDENT CARE
14 STAFF, LEARNING AND RECREATIONAL MATERIALS AND EQUIPMENT, AND THE
15 CONSTRUCTION AND MAINTENANCE OF A FACILITY. THIS COST IS NET OF ANY
16 REIMBURSEMENT. THE CREDIT SHALL NOT BE ALLOWED FOR ANY EXPENSES WHICH
17 ARE PAID BY AN EMPLOYEE AND SERVE AS THE BASIS FOR A PERSONAL INCOME TAX
18 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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1 ANY CORPORATION OTHER THAN THE CORPORATION ACTUALLY QUALIFYING FOR THE
2 CREDITS.

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

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

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

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

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

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

53 (B) CARRYOVER. CREDIT MAY BE CARRIED FORWARD FOR THE FIVE SUCCESSIVE
54 YEARS IF THE AMOUNT ALLOWABLE AS CREDIT EXCEEDS INCOME TAX LIABILITY IN
55 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.

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

4 (XXXVII) DEPENDENT ELDERLY CARE	AMOUNT OF CREDIT FOR
5 CREDIT UNDER PARAGRAPH ONE OF	EMPLOYEE ELDERLY DEPENDENT CARE
6 SUBSECTION (U)	UNDER SUBDIVISION FORTY-EIGHT
7	OF SECTION TWO HUNDRED TEN

8 S 4. This act shall take effect on the first of January next succeed-
9 ing the date on which it shall have become a law and shall apply to
10 taxable years commencing on and after such effective date; provided,
11 however, that, effective immediately, the commissioners of taxation and
12 finance, and children and family services are authorized and directed to
13 promulgate any rules and regulations, and take any other measures neces-
14 sary to implement the provisions of this act on its effective date.