

1068

2015-2016 Regular Sessions

I N A S S E M B L Y

January 8, 2015

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

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-B of the tax law is amended by adding a new
2 subdivision 49 to read as follows:
3 49. 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
19 ANY CORPORATION OTHER THAN THE CORPORATION ACTUALLY QUALIFYING FOR THE
20 CREDITS.
21 (B) CARRYOVER. CREDIT MAY BE CARRIED FORWARD FOR THE FIVE SUCCESSIVE
22 YEARS IF THE AMOUNT ALLOWABLE AS CREDIT EXCEEDS INCOME TAX LIABILITY IN

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

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1 A TAX YEAR; HOWEVER, THEREAFTER, IF THE AMOUNT ALLOWABLE AS A CREDIT
2 EXCEEDS THE TAX LIABILITY, THE AMOUNT OF EXCESS SHALL NOT BE REFUNDABLE
3 OR CARRIED FORWARD TO ANY OTHER TAXABLE YEAR.

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

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

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

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

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

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

54 (C) ELIGIBLE FACILITY. AN ELIGIBLE FACILITY MUST HAVE AN AVERAGE
55 DAILY ENROLLMENT FOR THE TAXABLE YEAR OF NO LESS THAN SIX PERSONS SIXTY
56 YEARS OF AGE OR OLDER AND BE LICENSED OR CERTIFIED ACCORDING TO THE

1 APPLICABLE LAW OR REGULATIONS; OR MUST SERVE FIVE OR FEWER PERSONS AGE
2 SIXTY OR OLDER IN A FAMILY CHILD CARE/ELDER CARE HOME APPROVED BY THE
3 OFFICE OF CHILDREN AND FAMILY SERVICES FOR PARTICIPATION IN THE UNITED
4 STATES DEPARTMENT OF AGRICULTURE CHILD AND ADULT NUTRITION PROGRAM; OR
5 MUST SERVE ADULT RELATIVES OF EMPLOYEES IN EITHER A COMMUNITY-BASED
6 ELDER CARE FACILITY OR A FACILITY AT THE EMPLOYMENT SITE; OR MUST SERVE
7 ADULT DEPENDENTS HAVING PHYSICAL, EMOTIONAL, OR MENTAL DISABILITIES IN
8 EITHER A COMMUNITY-BASED FACILITY OR A FACILITY AT THE EMPLOYMENT SITE.

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

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

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

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

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

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

1 (XLI) DEPENDENT ELDERLY CARE
2 CREDIT UNDER PARAGRAPH ONE OF
3 SUBSECTION (V)
4

AMOUNT OF CREDIT FOR
EMPLOYEE ELDERLY DEPENDENT CARE
UNDER SUBDIVISION FORTY-NINE
OF SECTION TWO HUNDRED TEN-B

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