

# STATE OF NEW YORK

4618--A

2017-2018 Regular Sessions

## IN SENATE

February 22, 2017

Introduced by Sen. HAMILTON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations -- reported favorably from said committee and committed to the Committee on Finance -- 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, personal income and insurance franchise tax credits for employer provided or sponsored child care

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The tax law is amended by adding a new section 44 to read  
2 as follows:

3 § 44. Employer provided or sponsored child care. (a) Definitions. For  
4 the purposes of this section, the following terms shall have the follow-  
5 ing meanings:

6 (1) "Cost of operation" means any reasonable direct operational costs  
7 incurred by an employer as a result of providing employer provided or  
8 employer sponsored child care facilities; provided, however, that such  
9 term shall exclude the cost of any property that is qualified child care  
10 property.

11 (2) "Employer" means a taxpayer who is an employer upon whom taxes are  
12 imposed pursuant to article nine-A, twenty-two or thirty-three of this  
13 chapter.

14 (3) "Employer provided" means child care offered on the premises of an  
15 employer.

16 (4) "Employer sponsored" means a contractual arrangement with a child  
17 care facility that is paid for by an employer.

18 (5) "Premises of the employer" means a workplace premises of an  
19 employer, within the state, providing the child care, or by one employer  
20 providing the child care in the event that the child care property is  
21 owned jointly or severally by such employer and one or more employers;

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

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1 provided, however, that if such workplace premises are impracticable or  
2 otherwise unsuitable for the on-site location of a child care facility,  
3 as determined by the office of children and family services, or in  
4 cities of one million or more, the city department of health and mental  
5 hygiene, such facility may be located within a reasonable distance of  
6 the premises of the employer.

7 (6) "Qualified child care property" includes, but is not limited to,  
8 amounts expended on land acquisition, improvements, buildings, and  
9 building improvements and furniture, fixtures, and equipment, and means  
10 all real property and tangible personal property purchased or acquired  
11 on or after January first, two thousand eighteen, or which property is  
12 first placed in service on or after January first, two thousand eigh-  
13 teen, for use exclusively in the construction, expansion, improvement or  
14 operation of an employer provided child care facility, but only if:

15 (A) the facility is licensed or commissioned by the office of children  
16 services pursuant to section three hundred ninety of the social services  
17 law, or in cities of one million or more, the city department of health  
18 and mental hygiene pursuant to article forty-seven of the health code of  
19 the city of New York.

20 (B) at least ninety-five percent of the children who use the facility  
21 are children of employees of:

22 (i) the employer and other employers in the event that the child care  
23 property is owned jointly or severally by the employer and one or more  
24 other employers; or

25 (ii) a corporation that is a member of the taxpayer's "affiliated  
26 group" within the meaning of section 1504(a) of the Internal Revenue  
27 Code.

28 (C) the employer has not previously claimed any tax credit for the  
29 cost of operation for such qualified child care property placed in  
30 service prior to taxable years beginning on or after January first, two  
31 thousand eighteen.

32 (b) Allowance of credit. A tax credit against the taxes imposed pursu-  
33 ant to articles nine-A, twenty-two and thirty-three of this chapter  
34 shall be granted to an employer who provides or sponsors child care for  
35 employees. Such tax credit shall be in an amount equal to ten percent of  
36 the cost of operation incurred by the employer, and such credit shall  
37 not exceed ten thousand dollars less any amounts paid by employees  
38 during the taxable year.

39 (c) Conditions and limitations. The tax credit allowed under subdivi-  
40 sion (b) of this section shall be subject to the following conditions  
41 and limitations:

42 (1) the employer shall certify to the department the names of the  
43 employees, the name of the child care provider, the number of children  
44 served by care subsidized via this tax credit, the number of children  
45 receiving care who are excluded from the tax credit pursuant to para-  
46 graph three of this subdivision, and such other information as may be  
47 required by the department to ensure that credits are granted only to  
48 employers who provide or sponsor approved child care in accordance with  
49 this section;

50 (2) only in the case of employer sponsored care, the average credit  
51 utilized per child shall not exceed the market rate per child estab-  
52 lished by the office of children and family services for the social  
53 services district within which child care is provided; and

54 (3) the employer shall not receive any tax credit for care provided to  
55 the children of any employee whose annual household income exceeds two  
56 hundred thousand dollars. The department shall establish rules and

1 accounting measures to ensure that any costs of care provided to employ-  
2 ees with annual household incomes exceeding two hundred thousand dollars  
3 are itemized by the employer and excluded from the tax credit provided  
4 to employers pursuant to this section.

5 (d) Election. In addition to the tax credit provided under subdivision  
6 (b) of this section, an employer shall be granted a credit against the  
7 tax for the taxable year in which the employer first places in service  
8 qualified child care property. The credit shall equal twenty percent of  
9 the cost of all qualified child care property purchased or acquired by  
10 the employer and first placed in service during a taxable year. Such  
11 credit shall not exceed twenty thousand dollars.

12 (e) Carryover. The tax credit allowed under subdivision (d) of this  
13 section shall be subject to the following conditions and limitations:

14 (1) any such credit claimed in any taxable year but not used in such  
15 taxable year may be carried forward for three years from the close of  
16 such taxable year. The sale, merger, acquisition or bankruptcy of any  
17 employer shall not create new eligibility for the credit in any succeed-  
18 ing taxpayer;

19 (2) in no event shall the amount of any such tax credit, including any  
20 carryover of such credit from a prior taxable year, exceed fifty percent  
21 of the employer's tax liability as determined without regard to any  
22 other credits; and

23 (3) for every year in which an employer claims such credit, the  
24 employer shall attach a schedule, whose form and structure shall be  
25 established by the department, to the employer's tax return setting  
26 forth the following information with respect to such tax credit:

27 (A) a description of the child care facility;

28 (B) the amount of qualified child care property acquired during the  
29 taxable year and the cost of such property;

30 (C) the amount of tax credit claimed for the taxable year;

31 (D) the amount of qualified child care property acquired in prior  
32 taxable years and the cost of such property;

33 (E) any tax credit utilized by the employer in prior taxable years;

34 (F) the amount of tax credit carried over from prior years;

35 (G) the amount of tax credit utilized by the employer in the current  
36 taxable year;

37 (H) the amount of tax credit to be carried forward to subsequent tax  
38 years; and

39 (I) a description of any recapture event occurring during the taxable  
40 year, a calculation of the resulting reduction in tax credits allowable  
41 for the recapture year and future taxable years, and a calculation of  
42 the resulting increase in tax for the recapture year.

43 (f) Recapture.

44 (1) If the taxpayer disposes of the qualified child care property, or  
45 if such property ceases to be a qualified child care property except  
46 for:

47 (A) any transfer by reason of death;

48 (B) any transfer between spouses or incident to divorce;

49 (C) any transaction to which section 381(a) of the internal revenue  
50 code applies;

51 (D) any change in the form of conducting the employer's trade or busi-  
52 ness so long as the property is retained by such trade or business as  
53 qualified child care property and the employer retains a substantial  
54 interest in such trade or business; or

55 (E) any accident or casualty, the taxpayer's tax imposed by this arti-  
56 cle for the taxable year in which such disposition or cessation occurs

1 shall be increased by the recapture portion of the credit allowed under  
2 paragraph two of this subdivision for all prior taxable years.

3 (2) For purposes of paragraph one of this subdivision, the recapture  
4 portion shall reduce the credit otherwise allowable under subdivision  
5 (d) of this section, but shall not, at any point, reduce the tax credit  
6 below zero. Any excess of the recapture amount shall result in an equiv-  
7 alent increase in the tax imposed under this section.

8 (g) Rules. The commissioner shall promulgate any rules and regulations  
9 necessary to implement and administer the provisions of this section.

10 (h) Cross-references. For the application of the credit provided in  
11 this section, see the following provisions of this chapter:

12 (1) article 9-A: section 210-B, subdivision 28;

13 (2) article 22: section 606, subsection (ccc);

14 (3) article 33: section 1511, subdivision (dd).

15 § 2. Section 210-B of the tax law is amended by adding a new subdivi-  
16 sion 28 to read as follows:

17 28. Employer provided or sponsored child care credit. (a) Allowance of  
18 credit. A taxpayer will be allowed a credit, to be computed as provided  
19 in section forty-four of this chapter, against the taxes imposed by this  
20 article.

21 (b) Application of credit. The credit allowed under this subdivision  
22 for any taxable year will not reduce the tax due for such year to less  
23 than the amount prescribed in paragraph (d) of subdivision one of  
24 section two hundred ten of this article. However, if the amount of cred-  
25 it allowed under this subdivision for any taxable year reduces the tax  
26 to such amount or if the taxpayer otherwise pays tax based on the fixed  
27 dollar minimum amount, any amount of credit thus not deductible in such  
28 taxable year will be treated as an overpayment of tax to be credited or  
29 refunded in accordance with the provisions of section one thousand  
30 eighty-six of this chapter. Provided, however, the provisions of  
31 subsection (c) of section one thousand eighty-eight of this chapter  
32 notwithstanding, no interest will be paid thereon.

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

36 <u>(xliv) Employer</u>	<u>Amount of credit</u>
37 <u>provided or sponsored</u>	<u>under subdivision</u>
38 <u>child care credit</u>	<u>twenty-eight of</u>
39 <u>under subsection</u>	<u>section two hundred</u>
40 <u>(ccc)</u>	<u>ten-B</u>

41 § 4. Section 606 of the tax law is amended by adding a new subsection  
42 (ccc) to read as follows:

43 (ccc) Employer provided or sponsored child care credit. (1) Allowance  
44 of credit. A taxpayer shall be allowed a credit, to be computed as  
45 provided in section forty-four of this chapter, against the tax imposed  
46 by this article.

47 (2) Application of credit. If the amount of the credit allowed under  
48 this subsection for any taxable year exceeds the taxpayer's tax for such  
49 year, the excess will be treated as an overpayment of tax to be credited  
50 or refunded in accordance with the provisions of section six hundred  
51 eighty-six of this article, provided, however, that no interest will be  
52 paid thereon.

53 § 5. Section 1511 of the tax law is amended by adding a new subdivi-  
54 sion (dd) to read as follows:

1 (dd) Employer provided or sponsored child care credit. (1) Allowance  
2 of credit. A taxpayer will be allowed a credit, to be computed as  
3 provided in section forty-four of this chapter, against the taxes  
4 imposed by this article.

5 (2) Application of credit. The credit allowed under this subdivision  
6 for any taxable year will not reduce the tax due for such year to less  
7 than the minimum tax fixed by this article. However, if the amount of  
8 credit allowed under this subdivision for any taxable year reduces the  
9 tax to such amount, any amount of credit thus not deductible in such  
10 taxable year will be treated as an overpayment of tax to be credited or  
11 refunded in accordance with the provisions of section one thousand  
12 eighty-six of this chapter. Provided, however, the provisions of  
13 subsection (c) of section one thousand eighty-eight of this chapter  
14 notwithstanding, no interest will be paid thereon.

15 § 6. This act shall take effect immediately.