

# STATE OF NEW YORK

6143

2019-2020 Regular Sessions

## IN SENATE

May 17, 2019

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the tax law and the state finance law, in relation to establishing the New York city quality child care tax; and providing for an appropriation therefor

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 article 24-A to read  
2 as follows:

### ARTICLE 24-A

#### NEW YORK CITY QUALITY CHILD CARE

#### TAX

#### Section 860. Definitions.

7 861. Imposition of tax and rate.

8 862. Pass through of tax prohibited.

9 863. Exemption override.

10 864. Payment of tax.

11 865. Deposit and disposition of revenue.

12 866. Procedural provisions.

13 867. Enforcement with other taxes.

14 § 860. Definitions. For the purposes of this article:

15 (a) Employer. Employer means an employer required by section six  
16 hundred seventy-one of this chapter to deduct and withhold tax from  
17 wages, that has a payroll expense in excess of two million five hundred  
18 thousand dollars in any calendar quarter; other than

19 (1) any agency or instrumentality of the United States;

20 (2) the United Nations; or

21 (3) an interstate agency or public corporation created pursuant to an  
22 agreement or compact with another state or the Dominion of Canada.

23 (b) Payroll expense. Payroll expense means wages and compensation as  
24 defined in sections 3121 and 3231 of the internal revenue code (without

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

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1 regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all  
2 covered employees.

3 (c) Covered employee. Covered employee means an employee who is  
4 employed in a city with a population of one million or more.

5 § 861. Imposition of tax and rate. For the purpose of providing an  
6 additional stable and reliable dedicated funding source to address child  
7 care affordability, accessibility, and quality for families with chil-  
8 dren four years of age and under in a city with a population of one  
9 million or more, a tax is hereby imposed on employers and individuals as  
10 follows: For employers who engage in business in a city with a popu-  
11 lation of one million or more, the tax is imposed at a rate of (a)  
12 fifteen hundredths (.15) percent of the payroll expense for employers  
13 with payroll expense greater than two million five hundred thousand  
14 dollars and no greater than five million dollars in any calendar year,  
15 (b) eighteen hundredths (.18) percent of the payroll expense for employ-  
16 ers with payroll expense greater than five million dollars and no great-  
17 er than ten million dollars in any calendar year, and (c) twenty-two  
18 hundredths (.22) percent of the payroll expense for employers with  
19 payroll expense in excess of ten million dollars in any calendar year.  
20 If the employer is a professional employer organization, as defined in  
21 section nine hundred sixteen of the labor law, the employer's tax shall  
22 be calculated by determining the payroll expense attributable to each  
23 client who has entered into a professional employer agreement with such  
24 organization and the payroll expense attributable to such organization  
25 itself, multiplying each of those payroll expense amounts by the appli-  
26 cable rate set forth in this paragraph and adding those products togeth-  
27 er.

28 § 862. Pass through of tax prohibited. An employer cannot deduct from  
29 the wages or compensation of an employee any amount that represents all  
30 or any portion of the tax imposed on the employer under this article.

31 § 863. Exemption override. (a) Except as provided in subdivision (b)  
32 of this section, any exemption from tax specified in any other New York  
33 state law will not apply to the tax imposed by this article.

34 (b) If a tax-free NY area approved pursuant to the provisions of arti-  
35 cle twenty-one of the economic development law is located within a city  
36 with a population of one million or more, the payroll expense in such  
37 tax-free NY area of any employer that is located in such area and  
38 accepted into the START-UP NY program shall be exempt from the tax  
39 imposed under this article.

40 § 864. Payment of tax. Employers with payroll expense. The tax imposed  
41 on the payroll expense of employers under section eight hundred sixty-  
42 one of this article must be paid at the same time the employer is  
43 required to remit payments under section six hundred seventy-four of  
44 this chapter; provided however, that employers subject to the provisions  
45 in section nine of this chapter must pay the tax on the payroll expense  
46 at the same time as the withholding tax remitted under the electronic  
47 payment reporting system and the electronic funds transfer system  
48 authorized by section nine of this chapter.

49 § 865. Deposit and disposition of revenue. (a) The taxes, interest,  
50 and penalties imposed by this article and collected or received by the  
51 commissioner shall be deposited daily with such responsible banks, bank-  
52 ing houses or trust companies, as may be designated by the comptroller,  
53 to the credit of the comptroller in trust for the commissioner of the  
54 office of children and family services. An account may be established in  
55 one or more of such depositories. Such deposits will be kept separate  
56 and apart from all other money in the possession of the comptroller. The

1 comptroller shall require adequate security from all such depositories.  
2 Of the total revenue collected or received under this article, the comp-  
3 troller shall retain such amount as the commissioner may determine to be  
4 necessary for refunds under this article. The commissioner is authorized  
5 and directed to deduct from the amounts it receives under this article,  
6 before deposit into the trust accounts designated by the comptroller, a  
7 reasonable amount necessary to effectuate refunds of appropriations of  
8 the department to reimburse the department for the costs incurred to  
9 administer, collect and distribute the taxes imposed by this article.

10 (b) On or before the twelfth and twenty-sixth day of each succeeding  
11 month, after reserving such amount for such refunds and deducting such  
12 amounts for such costs, as provided for in subsection (a) of this  
13 section, the commissioner shall certify to the comptroller the amount of  
14 all revenues so received during the prior month as a result of the  
15 taxes, interest and penalties so imposed. The amount of revenues so  
16 certified shall be paid over by the fifteenth and the final business day  
17 of each succeeding month from such account without appropriation into  
18 the New York city quality child care fund established pursuant to  
19 section ninety-nine-hh of the state finance law, provided, however, that  
20 the comptroller shall ensure that any payments to the New York city  
21 quality child care fund which are due to be paid by the final business  
22 day in the month of December pursuant to this subsection shall be  
23 received by the New York city quality child care fund on the same busi-  
24 ness day in which it is paid.

25 § 866. Procedural provisions. (a) General. All provisions of article  
26 twenty-two of this chapter will apply to the provisions of this article  
27 in the same manner and with the same force and effect as if the language  
28 of article twenty-two of this chapter had been incorporated in full into  
29 this article and had been specifically adjusted for and expressly  
30 referred to the tax imposed by this article, except to the extent that  
31 any provision is either inconsistent with a provision of this article or  
32 is not relevant to this article. Notwithstanding the preceding sentence,  
33 no credit against tax in article twenty-two of this chapter can be used  
34 to offset the tax due under this article.

35 (b) Combined filings. Notwithstanding any other provisions of this  
36 article:

37 (1) The commissioner may require the filing of a combined return which  
38 may also include any of the returns required to be filed by a taxpayer  
39 pursuant to the provisions of section six hundred fifty-one of this  
40 chapter and which may be required to be filed by such taxpayer pursuant  
41 to any local law enacted pursuant to the authority of article thirty,  
42 thirty-A or thirty-B of this chapter.

43 (2) Where a combined return is required, and with respect to the  
44 payment of estimated tax, the commissioner may also require the payment  
45 to it of a single amount which shall equal the total of the amounts  
46 (total taxes less any credits or refunds) which would have been required  
47 to be paid with the returns or in payment of estimated tax pursuant to  
48 the provisions of this article, the provisions of article twenty-two of  
49 this chapter, and the provisions of local laws enacted under the author-  
50 ity of article thirty, thirty-A or thirty-B of this chapter.

51 (3) Notwithstanding any other law to the contrary, the commissioner  
52 may require that all filings of forms or returns under this article must  
53 be filed electronically and all payments of tax must be paid electron-  
54 ically.

55 § 867. Enforcement with other taxes. (a) Joint assessment. If there is  
56 assessed a tax under this article and there is also assessed a tax

1 against the same taxpayer pursuant to article twenty-two of this chapter  
2 or under a local law enacted pursuant to the authority of article thirty-  
3 ty, article thirty-A, or article thirty-B of this chapter, and payment  
4 of a single amount is required under the provisions of this article,  
5 such payment shall be deemed to have been made with respect to the taxes  
6 so assessed in proportion to the amounts of such taxes due, including  
7 tax, penalties, interest and additions to tax.

8 (b) Joint action. If the commissioner takes action under such article  
9 twenty-two or under a local law enacted pursuant to the authority of  
10 article thirty, thirty-A, or thirty-B of this chapter with respect to  
11 the enforcement and collection of the tax or taxes assessed under such  
12 articles, the commissioner shall, whenever possible and necessary,  
13 accompany such action with a similar action under similar enforcement  
14 and collection provisions of the tax imposed by this article.

15 (c) Apportionment of moneys collected by joint action. Any moneys  
16 collected as a result of such joint action shall be deemed to have been  
17 collected in proportion to the amounts due, including tax, penalties,  
18 interest and additions to tax, under article twenty-two of this chapter  
19 or under a local law enacted pursuant to the authority of article thirty-  
20 ty, thirty-A, or thirty-B of this chapter and the tax imposed by this  
21 article.

22 (d) Joint deficiency action. Whenever the commissioner takes any  
23 action with respect to a deficiency of income tax under article twenty-  
24 two of this chapter or under a local law enacted pursuant to the author-  
25 ity of article thirty, thirty-A, or thirty-B of this chapter, other than  
26 the action set forth in subsection (a) of this section, the commissioner  
27 may in his or her discretion accompany such action with a similar action  
28 under this article.

29 § 2. The state finance law is amended by adding a new section 99-hh to  
30 read as follows:

31 § 99-hh. New York city quality child care fund. 1. There is hereby  
32 established in the joint custody of the state comptroller and the  
33 commissioner of taxation and finance a fund to be known as the "New York  
34 city quality child care fund".

35 2. The New York city quality child care fund shall consist of moneys  
36 received by the state pursuant to article twenty-four-A of the tax law  
37 and all other moneys appropriated, credited or transferred thereto from  
38 any other fund or source.

39 3. Moneys of the New York city quality child care fund, following  
40 appropriation by the legislature and allocation by the director of the  
41 budget, shall be made available to the commissioner of the office of  
42 children and family services for the purpose of addressing child care  
43 affordability, accessibility, and quality for families with children  
44 four years of age and under in a city with a population of one million  
45 or more by subsidizing the cost to providers of constructing child care  
46 facilities, meeting training requirements, expanding child care provid-  
47 ers' access to professional development and coaching, and supporting  
48 education scholarships.

49 § 3. The sum of five hundred million dollars (\$500,000,000), or so  
50 much thereof as may be necessary, is hereby appropriated to the office  
51 of children and family services out of the moneys in the state treasury  
52 in the general fund to the credit of the New York city quality child  
53 care fund established pursuant to section 99-hh of the state finance law  
54 not otherwise appropriated, and made immediately available, for the  
55 purpose of addressing child care affordability, accessibility, and qual-  
56 ity for families with children four years of age and under in a city

1 with a population of one million or more and carrying out the provisions  
2 of this act. The office of children and family services shall develop a  
3 request for applications soliciting potential applicants seeking assist-  
4 ance for subsidizing the cost to providers of constructing child care  
5 facilities, meeting training requirements, expanding child care provid-  
6 ers' access to professional development and coaching, and providing  
7 education scholarships for families with children four years of age and  
8 under in a city with a population of one million or more. Funds for such  
9 purpose shall be distributed over a period of five years; provided that  
10 in the event that the commissioner of the office of children and family  
11 services elects to discontinue the program after the initial five year  
12 period, any remaining funding shall be returned to the state treasury to  
13 the credit of the general fund.

14 § 4. This act shall take effect immediately.