

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.

LBD11907-02-9

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.