# 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:**

Section 1. The tax law is amended by adding a new article 24-A to read as follows:

**ARTICLE 24-A**
**NEW YORK CITY QUALITY CHILD CARE TAX**


**Section 860. Definitions.**
**861. Imposition of tax and rate.**
**862. Pass through of tax prohibited.**
**863. Exemption override.**
**864. Payment of tax.**
**865. Deposit and disposition of revenue.**
**866. Procedural provisions.**
**867. Enforcement with other taxes.**


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

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

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

**(2) the United Nations; or**

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

**(b) Payroll expense. Payroll expense means wages and compensation as 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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regard to section 3121(a)(1) and section 3231(e)(2)(A)(i)), paid to all covered employees.

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

§ 861. Imposition of tax and rate. For the purpose of providing an additional stable and reliable dedicated funding source to address child care affordability, accessibility, and quality for families with children four years of age and under in a city with a population of one million or more, a tax is hereby imposed on employers and individuals as follows: For employers who engage in business in a city with a population of one million or more, the tax is imposed at a rate of (a) fifteen hundredths (.15) percent of the payroll expense for employers with payroll expense greater than two million five hundred thousand dollars and no greater than five million dollars in any calendar year, (b) eighteen hundredths (.18) percent of the payroll expense for employers with payroll expense greater than five million dollars and no greater than ten million dollars in any calendar year, and (c) twenty-two hundredths (.22) percent of the payroll expense for employers with payroll expense in excess of ten million dollars in any calendar year. If the employer is a professional employer organization, as defined in section nine hundred sixteen of the labor law, the employer's tax shall be calculated by determining the payroll expense attributable to each client who has entered into a professional employer agreement with such organization and the payroll expense attributable to such organization itself, multiplying each of those payroll expense amounts by the applicable rate set forth in this paragraph and adding those products together.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 4. This act shall take effect immediately.