STATE OF NEW YORK

8943

IN SENATE

August 26, 2020

Introduced by Sens. HELMING, SERINO -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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:

Section 1. The tax law is amended by adding a new section 45 to read as follows:

§ 45. Employer provided or sponsored child care. (a) Definitions. For the purposes of this section, the following terms shall have the following meanings:

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

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

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

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

(5) "Premises of the employer" means a workplace premises of an employer, within the state, providing the child care, or by one employer providing the child care in the event that the child care property is owned jointly or severally by such employer and one or more employers; provided, however, that if such workplace premises are impracticable or otherwise unsuitable for the on-site location of a child care facility, as determined by the office of children and family services, or in cities of one million or more, the city department of health and mental hygiene, such facility may be located within a reasonable distance of the premises of the employer.

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

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

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

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

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

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

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

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

(c) Conditions and limitations. The tax credit allowed under subdivision (b) of this section shall be subject to the following conditions and limitations:

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

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

(3) the employer shall not receive any tax credit for care provided to the children of any employee whose annual household income exceeds two hundred thousand dollars. The department shall establish rules and accounting measures to ensure that any costs of care provided to employees with annual household incomes exceeding two hundred thousand dollars are itemized by the employer and excluded from the tax credit provided to employers pursuant to this section.

(d) Election. In addition to the tax credit provided under subdivision (b) of this section, an employer shall be granted a credit against the

tax for the taxable year in which the employer first places in service qualified child care property. The credit shall equal twenty percent of the cost of all qualified child care property purchased or acquired by the employer and first placed in service during a taxable year. Such credit shall not exceed twenty thousand dollars.

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

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

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

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

(A) a description of the child care facility;

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

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

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

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

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

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

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

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

(f) Recapture.

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

(A) any transfer by reason of death;

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

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

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

(E) any accident or casualty, the taxpayer's tax imposed by this article for the taxable year in which such disposition or cessation occurs shall be increased by the recapture portion of the credit allowed under paragraph two of this subdivision for all prior taxable years.

(2) For purposes of paragraph one of this subdivision, the recapture portion shall reduce the credit otherwise allowable under subdivision (d) of this section, but shall not, at any point, reduce the tax credit

below zero. Any excess of the recapture amount shall result in an equivalent increase in the tax imposed under this section.

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

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

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

(2) article 22: section 606, subsection (kkk);

(3) article 33: section 1511, subdivision (ee).

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

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

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

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

(xlvi) Employer provided or sponsored child care credit under subsection (kkk)	Amount of credit under subdivision twenty-eight of section two hundred ten-B

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

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

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

§ 5. Section 1511 of the tax law is amended by adding a new subdivision (ee) to read as follows:

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

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

§ 6. This act shall take effect immediately and shall apply to taxable years commencing on or after January 1, 2020.