

# STATE OF NEW YORK

5515

2021-2022 Regular Sessions

## IN ASSEMBLY

February 19, 2021

Introduced by M. of A. WALKER, CRUZ -- read once and referred to the  
Committee on Ways and Means

AN ACT to amend the tax law, in relation to establishing the NYC under 3  
act

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

1 Section 1. This act shall be known and may be cited as the "NYC under  
2 3 act".

3 § 2. The tax law is amended by adding a new article 24-A to read as  
4 follows:

5 ARTICLE 24-A  
6 NYC UNDER 3 ACT

7 Section 860. Definitions.

8 861. Imposition of tax and rate.

9 862. Pass through of tax prohibited.

10 863. Exemption override.

11 864. Payment of tax.

12 865. Deposit and disposition of revenue.

13 866. Procedural provisions.

14 867. Enforcement with other taxes.

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

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

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

21 (2) the United Nations;

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

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

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(4) (i) any non-profit early childhood services provider which receives funding from the federal or state government, or any municipal, state or federal agency, or political subdivision.

(ii) As used in this section, the term "early childhood services" shall mean services which include, but are not limited to, registered, certified or licensed care in family day care homes; group family day care homes; school-age child care programs; head start programs; day care centers; child care which may be provided without a permit, certificate or registration in accordance with this statute; early childhood education programs approved by the state education department; and care provided in a children's camp as defined in section fourteen hundred of the public health law.

(b) Payroll expense. Payroll expense means wages and compensation as defined in sections 3121 and 3231 of the internal revenue code (without 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 under three years of age 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 in excess of six hundred twenty-five thousand dollars and not more than one million two hundred fifty thousand dollars per calendar quarter, (b) eighteen hundredths (.18) percent of the payroll expense for employers with payroll expense in excess of one million two hundred fifty thousand dollars and not more than two million five hundred thousand dollars per calendar quarter, and (c) twenty-two hundredths (.22) percent of the payroll expense for employers with payroll expense in excess of two million five hundred thousand dollars per calendar quarter. 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 subsection (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-

1 one of this article must be paid at the same time the employer is  
2 required to remit payments under section six hundred seventy-four of  
3 this chapter; provided however, that employers subject to the provisions  
4 in section nine of this chapter must pay the tax on the payroll expense  
5 at the same time as the withholding tax remitted under the electronic  
6 payment reporting system and the electronic funds transfer system  
7 authorized by section nine of this chapter.

8 § 865. Deposit and disposition of revenue. (a) The taxes, interest,  
9 and penalties imposed by this article and collected or received by the  
10 commissioner shall be deposited daily with such responsible banks, bank-  
11 ing houses or trust companies, as may be designated by the comptroller  
12 of the city of New York, to the credit of such comptroller in trust for  
13 the city of New York. Such deposits shall be kept separate and apart  
14 from all other money in the possession of the comptroller of the city of  
15 New York. The comptroller of the city of New York shall require adequate  
16 security from all such depositories. Of the total revenue collected or  
17 received under this article, the comptroller of the city of New York  
18 shall retain such amount as the commissioner may determine to be neces-  
19 sary for refunds under this article. The comptroller of the city of New  
20 York is authorized and directed to deduct from the amounts it receives  
21 under this article, before deposit into the trust accounts designated by  
22 such comptroller, a reasonable amount necessary to effectuate refunds of  
23 the department to reimburse the department for the costs incurred to  
24 administer, collect and distribute the taxes imposed by this article.

25 (b) After reserving such amount for such refunds and deducting such  
26 amounts for such costs, as provided for in subsection (a) of this  
27 section, the commissioner shall certify to the comptroller of the city  
28 of New York the amount of all revenues so received during the prior  
29 month as a result of the taxes, interest and penalties so imposed. The  
30 amount of revenues so certified shall be paid over by the fifteenth and  
31 the final business day of each succeeding month from such account with-  
32 out appropriation into the general fund of the city of New York.

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

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

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

51 (2) Where a combined return is required, and with respect to the  
52 payment of estimated tax, the commissioner may also require the payment  
53 to it of a single amount which shall equal the total of the amounts  
54 (total taxes less any credits or refunds) which would have been required  
55 to be paid with the returns or in payment of estimated tax pursuant to  
56 the provisions of this article, the provisions of article twenty-two of

1 this chapter, and the provisions of local laws enacted under the author-  
2 ity of article thirty, thirty-A or thirty-B of this chapter.

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

7 § 867. Enforcement with other taxes. (a) Joint assessment. If there is  
8 assessed a tax under this article and there is also assessed a tax  
9 against the same taxpayer pursuant to article twenty-two of this chapter  
10 or under a local law enacted pursuant to the authority of article thir-  
11 ty, thirty-A, or thirty-B of this chapter, and payment of a single  
12 amount is required under the provisions of this article, such payment  
13 shall be deemed to have been made with respect to the taxes so assessed  
14 in proportion to the amounts of such taxes due, including tax, penal-  
15 ties, interest and additions to tax.

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

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

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

37 § 3. This act shall take effect immediately.