

STATE OF NEW YORK

9067

IN SENATE

May 6, 2022

Introduced by Sen. GOUNARDES -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the tax law, in relation to employer-provided child care credits

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

1 Section 1. Section 44 of the tax law, as amended by section 1 of part
2 L of chapter 59 of the laws of 2019 and subdivision (a) as amended by
3 section 5 of part D of chapter 59 of the laws of 2021, is amended to
4 read as follows:
5 § 44. Employer-provided child care credit. (a) General. A taxpayer
6 subject to tax under article nine-A, twenty-two, or thirty-three of this
7 chapter shall be allowed a credit against such tax in an amount equal to
8 [~~two hundred percent of the portion of the credit that is allowed to the~~
9 ~~taxpayer under section 45F of the internal revenue code~~] the sum of
10 fifty percent of the qualified child care expenditures and twenty
11 percent of the qualified child care resource and referral expenditures
12 for the taxpayer for such taxable year, that is attributable to (i)
13 qualified child care expenditures paid or incurred with respect to a
14 qualified child care facility with a situs in the state, [~~and to~~] (ii)
15 qualified child care resource and referral expenditures paid or incurred
16 with respect to the taxpayer's employees working in the state, (iii)
17 qualified in-home care expenditures paid or incurred with respect to the
18 taxpayer's employees working in the state, and (iv) qualified backup
19 care expenditures paid or incurred with respect to the taxpayer's
20 employees working in the state. The credit allowable under this subdivi-
21 sion for any taxable year shall not exceed five hundred thousand
22 dollars. If the entity operating the qualified child care facility is a
23 partnership or a New York S corporation, then such cap shall be applied
24 at the entity level, so the aggregate credit allowed to all the partners
25 or shareholders of such entity in a taxable year does not exceed five
26 hundred thousand dollars.

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

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(b) Credit recapture. (i) If there is a cessation of operation or change in ownership [~~as defined by section 45F of the internal revenue code~~] relating to a qualified child care facility with a situs in the state, the taxpayer shall add back the applicable recapture percentage of the credit allowed under this section, in accordance with the recapture provisions of [~~section 45F of the internal revenue code, but the recapture amount shall be limited to the credit allowed under this section~~] this subdivision.

(ii) If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of:

(A) the applicable recapture percentage; and

(B) the aggregate decrease in the credits allowed under section 38 of the internal revenue code for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer with respect to such facility had been zero.

(iii) (A) For the purposes of this subdivision, the applicable recapture percentage shall be determined from the following table:

<u>If the recapture event occurs in:</u>	<u>The applicable recapture percentage is:</u>
<u>Years one--three</u>	<u>one hundred</u>
<u>Year four</u>	<u>eighty-five</u>
<u>Year five</u>	<u>seventy</u>
<u>Year six</u>	<u>fifty-five</u>
<u>Year seven</u>	<u>forty</u>
<u>Year eight</u>	<u>twenty-five</u>
<u>Years nine--ten</u>	<u>ten</u>
<u>Year eleven or thereafter</u>	<u>zero.</u>

(B) For the purposes of subparagraph (A) of this paragraph, year one shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

(iv) (A) The tax for the taxable year shall be increased under paragraph (ii) of this subdivision only with respect to credits allowed by reason of this section which were used to reduce tax liability.

(B) Any increase in tax under this subdivision shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter.

(C) The increase in tax under this subdivision shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the commissioner.

(c) Special rules. For the purposes of this section:

(i) All persons which are treated as a single employer under subsections (a) and (b) of section 52 of the internal revenue code shall be treated as a single taxpayer.

(ii) Under regulations prescribed by the commissioner, rules similar to the rules of subsection (d) of section 52 of the internal revenue code shall apply.

(iii) In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the commissioner.

1 (d) No double benefit. (i) For purposes of this chapter:

2 (A) If a credit is determined under this section with respect to any
3 property by reason of qualified child care expenditures, the basis of
4 such property shall be reduced by the amount of the credit so deter-
5 mined.

6 (B) If, during any taxable year, there is a recapture amount deter-
7 mined with respect to any property the basis of which was reduced under
8 subparagraph (A) of this paragraph, the basis of such property (imme-
9 diately before the event resulting in such recapture) shall be increased
10 by an amount equal to such recapture amount. For purposes of this
11 subparagraph, the term "recapture amount" shall mean any increase in tax
12 determined under subdivision (b) of this section.

13 (ii) No deduction or credit shall be allowed under any other provision
14 of this chapter with respect to the amount of the credit determined
15 under this section.

16 (e) Reporting requirements. A taxpayer that has claimed a credit under
17 this section shall notify the commissioner of any cessation of opera-
18 tion, change in ownership, or agreement to assume recapture liability
19 [~~as such terms are defined by section 45F of the internal revenue code~~],
20 in the form and manner prescribed by the commissioner.

21 [~~(d)~~] (f) Definitions. [~~The terms "qualified child care expenditures",~~
22 ~~"qualified child care facility", "qualified child care resource and~~
23 ~~referral expenditure", "cessation of operation", "change of ownership",~~
24 ~~and "applicable recapture percentage" shall have the same meanings as in~~
25 ~~section 45F of the internal revenue code.~~] For the purposes of this
26 section, the following terms shall have the following meanings:

27 (i) (A) "Qualified child care expenditure" means any amount paid or
28 incurred:

29 (1) to acquire, construct, rehabilitate, or expand property:

30 (I) which is to be used as part of a qualified child care facility of
31 the taxpayer;

32 (II) with respect to which a deduction for depreciation (or amorti-
33 zation in lieu of depreciation) is allowable; and

34 (III) which is not part of the principal residence of the taxpayer or
35 any employee of the taxpayer;

36 (2) for the operating costs of a qualified child care facility of the
37 taxpayer, including costs related to the training of employees, to scho-
38 larship programs, and to the providing of increased compensation to
39 employees with higher levels of child care training; or

40 (3) under a contract with a qualified child care facility to provide
41 child care services to employees of the taxpayer.

42 (B) The term "qualified child care expenditures" shall not include
43 expenses in excess of the fair market value of such care.

44 (ii) (A) "Qualified child care facility" means a facility:

45 (1) the principal use of which is to provide child care assistance;
46 and

47 (2) which meets the requirements of all applicable laws and regu-
48 lations of the state or local government in which it is located, includ-
49 ing the licensing of the facility as a child care facility. Clause one
50 of this subparagraph shall not apply to a facility which is the princi-
51 pal residence of the operator of the facility.

52 (B) A facility shall not be a "qualified child care facility" with
53 respect to a taxpayer unless:

54 (1) enrollment in the facility is open to employees of the taxpayer
55 during the taxable year;

1 (2) if the facility is the principal trade or business of the taxpayer,
2 at least thirty percent of the enrollees of such facility are depend-
3 ents of employees of the taxpayer; and

4 (3) the use of such facility (or the eligibility to use such facility)
5 does not discriminate in favor of employees of the taxpayer who are
6 highly compensated employees, as defined by section 414 of the internal
7 revenue code.

8 (iii) "Qualified child care resource and referral expenditure" means
9 any amount paid or incurred under a contract to provide child care
10 resource and referral services to an employee of the taxpayer.

11 (iv) "Applicable recapture percentage" means the amount determined
12 under subparagraph (A) of paragraph (iii) of subdivision (b) of this
13 section.

14 (v) "Recapture event" means:

15 (A) the cessation of operation of the facility as a qualified child
16 care facility; or

17 (B) a change in ownership of the facility.

18 (vi) "Change in ownership" means the disposition of a taxpayer's
19 interest in a qualified child care facility with respect to which the
20 credit described in subdivision (a) of this section was allowable. The
21 term "change in ownership" shall not apply if the person acquiring such
22 interest in the facility agrees in writing to assume the recapture
23 liability of the person disposing of such interest in effect immediately
24 before such disposition. In the event of such an assumption, the person
25 acquiring the interest in the facility shall be treated as the taxpayer
26 for purposes of assessing any recapture liability (computed as if there
27 had been no change in ownership).

28 (vii) "Backup care" means care provided to a dependent when an employ-
29 ee's regular care cannot be utilized. A taxpayer may provide backup
30 care in any of the following ways:

31 (A) By contracting with a provider or a backup childcare benefits
32 provider and providing direct payments to the qualified care provider or
33 making payments to a backup childcare benefits provider for backup care
34 services.

35 (B) By directly paying or arranging for payment of backup childcare
36 annually to a qualified care provider or a backup childcare benefits
37 provider upon receipt of an invoice detailing the number of backup care
38 hours used by an employee.

39 (C) By reimbursing an employee directly or through a backup childcare
40 benefit provider for backup childcare paid directly by the employee.

41 (viii) "Backup childcare benefit provider" means third-party vendor
42 that offers services that provide employees options for locating and/or
43 arranging for the provision of backup childcare, either through various
44 backup childcare providers or through a reimbursement program for care
45 paid directly by the employee.

46 (ix) "In-home care expenditures" means expenses for childcare provided
47 in the employee's home, or expenses for care arranged through a third-
48 party vendor that offers services for locating and/or arranging for the
49 provision of childcare in the employee's home, or through a reimburse-
50 ment program for care paid directly by the employee.

51 (x) "Paid backup childcare" or "paid backup childcare benefit" means
52 an employee benefit consisting of the employer paying for all or a
53 portion of backup childcare for an employee's dependent.

54 ~~(e)~~ (g) Cross-references. For application of the credit provided for
55 in this section, see the following provisions of this chapter:

56 (1) article 9-A: section 210-B, subdivision 53;

1 (2) article 22: section 606(i), subsections (i) and (jjj);

2 (3) article 33: section 1511, subdivision (dd).

3 § 2. This act shall take effect immediately and shall apply to taxable
4 years beginning on or after January 1, 2023.