

# STATE OF NEW YORK

3546

2021-2022 Regular Sessions

## IN ASSEMBLY

January 27, 2021

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

AN ACT to amend the tax law, in relation to establishing business franchise and personal income tax credits for employers which provide care for the elderly dependents of their employees during work hours and establishing a personal income tax credit for the provision of care to the elderly dependent of a taxpayer during work hours

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

Section 1. Section 210-B of the tax law is amended by adding a new subdivision 55 to read as follows:

55. Employee elderly dependent care credit. (a) Allowance of credit. There shall be allowed as a credit against the tax imposed by this article for the amount, not to exceed one thousand dollars for each employee dependent for which adult day care services are provided, actually expended by the taxpayer providing or paying another to provide dependent care for the taxpayer's employees' dependents during the employees' work hours, which care must be provided in an eligible facility, as described in paragraph (c) of this subdivision. Credit is applied to the cost of any contract executed by the taxpayer for another provider of services to provide dependent care; or, if the taxpayer elects to provide dependent care itself, to expenses incurred for: dependent care staff, learning and recreational materials and equipment, and the construction and maintenance of a facility. This cost is net of any reimbursement. The credit shall not be allowed for any expenses which are paid by an employee and serve as the basis for a personal income tax credit. The credits allowed under this subdivision shall not be used by any corporation other than the corporation actually qualifying for the credits.

(b) Carryover. Credit may be carried forward for the five successive years if the amount allowable as credit exceeds income tax liability in

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

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1 a tax year; however, thereafter, if the amount allowable as a credit  
2 exceeds the tax liability, the amount of excess shall not be refundable  
3 or carried forward to any other taxable year.

4 (c) Eligible facility. An eligible facility must have an average daily  
5 enrollment for the taxable year of no less than six persons sixty years  
6 of age or older and be licensed or certified according to the applicable  
7 law or regulations; or must serve five or fewer persons age sixty or  
8 older in a family child care/elder care home approved by the office of  
9 children and family services for participation in the United States  
10 department of agriculture child and adult nutrition program; or must  
11 serve adult relatives of employees in either a community-based elder  
12 care facility or a facility at the employment site; or must serve adult  
13 dependents having physical, emotional, or mental disabilities in either  
14 a community-based facility or a facility at the employment site.

15 (d) Certification. Taxpayers shall be certified as eligible for the  
16 tax credit by the office of children and family services for programs  
17 serving elderly adults and by the commissioner for programs serving  
18 other adult dependents.

19 (e) Additional credit. In addition to the credit allowed pursuant to  
20 paragraph (a) of this subdivision, there shall be allowed an additional  
21 credit, subject to the provisions of paragraph (b) of this subdivision,  
22 for additional eligible expenses assumed or incurred by the employer  
23 which increase the quality, availability, and affordability of dependent  
24 care in the community used by employees during the employees' work  
25 hours. The commissioner shall promulgate rules and regulations defining  
26 the eligibility of expenses and the amount of the credit allowable  
27 therefor. The commissioner shall further provide an additional credit  
28 for administrative costs incurred in complying with the foregoing  
29 provisions.

30 § 2. Section 606 of the tax law is amended by adding a new subsection  
31 (w) to read as follows:

32 (w) Dependent elderly care credit. (1) Employer. (A) Allowance of  
33 credit. A taxpayer shall be allowed a credit against the tax imposed by  
34 this article for the amount, not to exceed one thousand dollars for each  
35 employee dependent for which adult day care services are provided, actu-  
36 ally expended by the taxpayer providing or paying another to provide  
37 dependent care for the taxpayer's employees' dependents during the  
38 employees' work hours, which care must be provided in an eligible facil-  
39 ity, as described in subparagraph (C) of this paragraph. Credit is  
40 applied to the cost of any contract executed by the taxpayer for another  
41 entity to provide dependent care; or, if the taxpayer elects to provide  
42 dependent care itself, to expenses incurred for: dependent care staff,  
43 learning and recreational materials and equipment, and the construction  
44 and maintenance of a facility. This cost is net of any reimbursement.  
45 The credit shall not be allowed for any expenses which are paid by  
46 employees and serve as the basis for a personal income tax credit. The  
47 credits allowed under this paragraph shall not be used by any employer  
48 other than the employer actually qualifying for the credits.

49 (B) Carryover. Credit may be carried forward for the five successive  
50 years if the amount allowable as credit exceeds income tax liability in  
51 a tax year; however, thereafter, if the amount allowable as a credit  
52 exceeds the tax liability, the amount of excess shall not be refundable  
53 or carried forward to any other taxable year.

54 (C) Eligible facility. An eligible facility must have an average  
55 daily enrollment for the taxable year of no less than six persons sixty  
56 years of age or older and be licensed or certified according to the

1 applicable law or regulations; or must serve five or fewer persons age  
2 sixty or older in a family child care/elder care home approved by the  
3 office of children and family services for participation in the United  
4 States department of agriculture child and adult nutrition program; or  
5 must serve adult relatives of employees in either a community-based  
6 elder care facility or a facility at the employment site; or must serve  
7 adult dependents having physical, emotional, or mental disabilities in  
8 either a community-based facility or a facility at the employment site.

9 (D) Certification. Taxpayers shall be certified as eligible for the  
10 tax credit by the office of children and family services for programs  
11 serving elderly adults and by the commissioner for programs serving  
12 other adult dependents.

13 (E) Additional credit. In addition to the credit allowed pursuant to  
14 subparagraph (A) of this paragraph, there shall be allowed an additional  
15 credit, subject to the provisions of subparagraph (B) of this paragraph,  
16 for additional eligible expenses assumed or incurred by the employer  
17 which increase the quality, availability, and affordability of dependent  
18 care in the community used by employees during the employees' work  
19 hours. The commissioner shall promulgate rules and regulations defining  
20 the eligibility of expenses and the amount of the credit allowable  
21 therefor. The commissioner shall further provide an additional credit  
22 for administrative costs incurred in complying with the foregoing  
23 provisions.

24 (2) Individual. (A) Allowance of credit. A taxpayer shall be allowed  
25 a credit against the tax imposed by this article for the amount, not to  
26 exceed one thousand dollars for each elderly dependent of the taxpayer  
27 for which adult day care services are provided, actually expended by the  
28 taxpayer as payment to an eligible facility for providing dependent care  
29 during the taxpayer's work hours, which care must be provided in an  
30 eligible facility, as described in subparagraph (C) of this paragraph.  
31 This cost is net of any reimbursement. The credit shall not be allowed  
32 for any expenses which are paid by an employer of the taxpayer and serve  
33 as the basis for a tax credit for such employer. The credits allowed  
34 under this paragraph shall not be used by any taxpayer other than the  
35 taxpayer actually qualifying for the credits.

36 (B) Carryover. Credit may be carried forward for the five successive  
37 years if the amount allowable as credit exceeds income tax liability in  
38 a tax year; however, thereafter, if the amount allowable as a credit  
39 exceeds the tax liability, the amount of excess shall not be refundable  
40 or carried forward to any other taxable year.

41 (C) Eligible facility. An eligible facility must have an average  
42 daily enrollment for the taxable year of no less than six persons sixty  
43 years of age or older and be licensed or certified according to the  
44 applicable law or regulations; or must serve five or fewer persons age  
45 sixty or older in a family child care/elder care home approved by the  
46 office of children and family services for participation in the United  
47 States department of agriculture child and adult nutrition program; or  
48 must serve adult relatives of employees in either a community-based  
49 elder care facility or a facility at the employment site; or must serve  
50 adult dependents having physical, emotional, or mental disabilities in  
51 either a community-based facility or a facility at the employment site.

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

1	<u>(xlvii) Dependent elderly care</u>	<u>Amount of credit for</u>
2	<u>credit under paragraph one of</u>	<u>employee elderly dependent care</u>
3	<u>subsection (w)</u>	<u>under subdivision fifty-five</u>
4		<u>of section two hundred ten-B</u>

5     § 4. This act shall take effect on the first of January next succeed-  
6 ing the date on which it shall have become a law and shall apply to  
7 taxable years commencing on and after such effective date. Effective  
8 immediately, the addition, amendment and/or repeal of any rule or regu-  
9 lation necessary for the implementation of this act on its effective  
10 date are authorized to be made on or before such effective date.