

STATE OF NEW YORK

9264

IN ASSEMBLY

February 22, 2024

Introduced by M. of A. RA, JENSEN, GANDOLFO, MAHER, SLATER -- read once
and referred to the Committee on Ways and Means

AN ACT to amend the social services and the tax law, in relation to
establishing the child care program capital improvement tax credit
program

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

1 Section 1. Article 6 of the social services law is amended by adding a
2 new title 13 to read as follows:

TITLE 13

CHILD CARE PROGRAM CAPITAL IMPROVEMENT TAX CREDIT PROGRAM

3 Section 458-p. Short title.

4 458-q. Statement of legislative findings and declaration.

5 458-r. Definitions.

6 458-s. Eligibility criteria.

7 458-t. Application and approval process.

8 458-u. Child care program capital improvement tax credit.

9 458-v. Powers and duties of the commissioner.

10 458-w. Maintenance of records.

11 458-x. Reporting.

12 458-y. Cap on tax credit.

13 § 458-p. Short title. This title shall be known and may be cited as
14 the "child care program capital improvement tax credit program act".

15 § 458-q. Statement of legislative findings and declaration. It is
16 hereby found and declared that New York state needs, as a matter of
17 public policy, to support increased access to quality child care for New
18 York families. The child care program capital improvement tax credit
19 program is created to provide financial assistance to New York's child
20 care providers to facilitate the enhancement, expansion, and improvement
21 of access to quality child care.

22 § 458-r. Definitions. For the purposes of this title:

23 1. "Certificate of tax credit" shall mean the document issued to a
24 business entity by the office after the office has verified that the
25 business entity is eligible for the tax credit.

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

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1 business entity has met all applicable eligibility criteria in this
2 title. The certificate shall specify the exact amount of the tax credit
3 under this title that a business entity may claim, pursuant to section
4 four hundred fifty-eight-u of this title.

5 2. "Commissioner" shall mean the commissioner of the office of chil-
6 dren and family services.

7 3. "Office" shall mean the office of children and family services.

8 4. "Qualified child care program capital costs" shall mean costs
9 incurred from the improvement, expansion, enhancement, or to generally
10 increase the safety of child care programs, including costs for: (i)
11 materials required for expansion projects; (ii) building construction
12 and retrofits; (iii) installation of air purifying equipment; and (iv)
13 other costs as determined by the office to be eligible under this title.

14 § 458-s. Eligibility criteria. 1. To be eligible for a tax credit
15 under the child care capital improvement tax credit program, a business
16 entity shall:

17 (a) be a child care program for which a license or registration to
18 operate such program has been issued by the office pursuant to section
19 three hundred ninety of this article; and

20 (b) have at least two thousand dollars in qualifying child care
21 program improvement capital costs.

22 2. A child care program shall be in substantial compliance with any
23 public health or other emergency orders or regulations related to the
24 entity's business sector or other laws and regulations as determined by
25 the commissioner. In addition, a child care program may not owe past due
26 state taxes or local property taxes unless the business entity is making
27 payments and complying with an approved binding payment agreement
28 entered into with the taxing authority.

29 § 458-t. Application and approval process. 1. A child care program
30 shall submit a complete application as prescribed by the commissioner.

31 2. The commissioner shall establish procedures and a timeframe for
32 child care facilities to submit applications. As part of the applica-
33 tion, each child care program shall:

34 (a) provide evidence in a form and manner prescribed by the commis-
35 sioner of their eligibility;

36 (b) agree to allow the department of taxation and finance to share the
37 child care program's tax information with the office; provided, however,
38 that any information shared as a result of this program shall not be
39 available for disclosure or inspection under the state freedom of infor-
40 mation law;

41 (c) allow the office and its agents access to any and all books and
42 records the office may require to monitor compliance;

43 (d) certify, under penalty of perjury, that it is in substantial
44 compliance with all emergency orders or public health regulations
45 currently required of such entity, and local, and state tax laws; and

46 (e) agree to provide any additional information required by the office
47 relevant to this article.

48 3. After reviewing a child care program's completed final application
49 and determining that the business entity meets the eligibility criteria
50 as set forth in this article, the office may issue to that child care
51 program a certificate of tax credit.

52 4. The commissioner shall establish an annual application deadline and
53 provide all applicable deadline and application materials on its
54 website.

55 § 458-u. Child care program capital improvement tax credit. 1. A busi-
56 ness entity in the child care facility capital improvement tax credit

1 program that meets the eligibility requirements of section four hundred
2 fifty-eight-s of this title may be eligible to claim a credit equal to
3 fifty percent of its qualified child care program capital costs as
4 defined in subdivision four of section four hundred fifty-eight-r of
5 this title; provided, however, that such credit shall not be less than
6 one thousand dollars.

7 2. A business entity, including a partnership, limited liability
8 company and subchapter S corporation, may not receive a credit in excess
9 of fifty thousand dollars under this program.

10 3. The credit shall be allowed as provided in section forty-nine,
11 subdivision sixty of section two hundred ten-B and subsection (ppp) of
12 section six hundred six of the tax law.

13 4. A business entity may claim the tax credit in the taxable year that
14 includes the date the certificate of tax credit was issued by the office
15 pursuant to subdivision three of section four hundred fifty-eight-t of
16 this title.

17 § 458-v. Powers and duties of the commissioner. 1. The commissioner
18 may promulgate regulations establishing an application process and
19 eligibility criteria, that shall be applied consistent with the purposes
20 of this title, so as not to exceed the annual cap on tax credits set
21 forth in section four hundred fifty-eight-y of this title which,
22 notwithstanding any provisions to the contrary in the state administra-
23 tive procedure act, may be adopted on an emergency basis.

24 2. The commissioner shall, in consultation with the department of
25 taxation and finance, develop a certificate of tax credit that shall be
26 issued by the commissioner to eligible businesses. Such certificate
27 shall contain such information as required by the department of taxation
28 and finance.

29 3. The commissioner shall solely determine the eligibility of any
30 applicant applying for entry into the program and shall remove any busi-
31 ness entity from the program for failing to meet any of the requirements
32 set forth in section four hundred fifty-eight-s of this title or for
33 failing to meet the requirements set forth in subdivision one of section
34 four hundred fifty-eight-t of this title.

35 § 458-w. Maintenance of records. Each business entity participating in
36 the program shall keep all relevant records for their duration of
37 program participation for at least three years.

38 § 458-x. Reporting. Each business entity participating in this program
39 shall submit a performance report to the office at a time prescribed in
40 regulations by the commissioner. The commissioner shall, on or before
41 April first, two thousand twenty-four and every quarter thereafter until
42 program funds are fully expended, submit a report to the governor, the
43 temporary president of the senate, the speaker of the assembly, the
44 chair of the senate finance committee, and the chair of the assembly
45 ways and means committee, setting forth the activities undertaken by the
46 program. Such report shall include, but not necessarily be limited to,
47 the following in each reporting period to the extent such information is
48 available: the total number of participants approved and the region in
49 which the business is located; the total amount of payments disbursed
50 and tax credits claimed, and the average amount of payments disbursed
51 and tax credits claimed; the names of payment recipients and tax credits
52 claimed; and such other information as the commissioner determines
53 necessary and appropriate to effectuate the purpose of the program. Such
54 reports shall, at the same time, be included on the office's website.

1 § 458-y. Cap on tax credit. The total amount of tax credits listed on
2 certificates of tax credit issued by the commissioner pursuant to this
3 title may not exceed two hundred fifty million dollars.

4 § 2. The tax law is amended by adding a new section 49 to read as
5 follows:

6 § 49. Child care program capital improvement tax credit. (a) Allowance
7 of credit. A taxpayer subject to tax under article nine-A or twenty-two
8 of this chapter shall be allowed a credit against such tax, pursuant to
9 the provisions referenced in subdivision (f) of this section. The amount
10 of the credit is equal to the amount determined pursuant to section four
11 hundred fifty-eight-u of the social services law. No cost or expense
12 paid or incurred by the taxpayer which is included as part of the calcu-
13 lation of this credit shall be the basis of any other tax credit allowed
14 under this chapter.

15 (b) Eligibility. To be eligible for the child care program capital
16 improvement tax credit, the taxpayer shall have been issued a certif-
17 icate of tax credit by the office of children and family services pursu-
18 ant to subdivision three of section four hundred fifty-eight-s of the
19 social services law, which certificate shall set forth the amount of the
20 credit that may be claimed for the taxable year. The taxpayer shall be
21 allowed to claim only the amount listed on the certificate of tax credit
22 for that taxable year. A taxpayer that is a partner in a partnership,
23 member of a limited liability company or shareholder in a subchapter S
24 corporation that has received a certificate of tax credit shall be
25 allowed its pro rata share of the credit earned by the partnership,
26 limited liability company or subchapter S corporation.

27 (c) Tax return requirement. The taxpayer shall be required to attach
28 to its tax return in the form prescribed by the commissioner, proof of
29 receipt of its certificate of tax credit issued by the commissioner of
30 the office of children and family services.

31 (d) Information sharing. Notwithstanding any provision of this chap-
32 ter, employees of the office of children and family services and the
33 department shall be allowed and are directed to share and exchange:

34 (1) information derived from tax returns or reports that is relevant
35 to a taxpayer's eligibility to participate in the child care program
36 capital improvement tax credit program;

37 (2) information regarding the credit applied for, allowed or claimed
38 pursuant to this section and taxpayers that are applying for the credit
39 or that are claiming the credit; and

40 (3) information contained in or derived from credit claim forms
41 submitted to the office and applications for admission into the child
42 care program capital improvement tax credit program. Except as provided
43 in paragraph two of this subdivision, all information exchanged between
44 the office of children and family services and the department shall not
45 be subject to disclosure or inspection under the state's freedom of
46 information law.

47 (e) Credit recapture. If a certificate of tax credit issued by the
48 office of children and family services under title thirteen of the
49 social services law is revoked by such office, the amount of credit
50 described in this section and claimed by the taxpayer prior to that
51 revocation shall be added back to tax in the taxable year in which any
52 such revocation becomes final.

53 (f) Cross references. For application of the credit provided for in
54 this section, see the following provisions of this chapter:

55 (1) article 9-A: section 210-B, subdivision 60;

56 (2) article 22: section 606, subsection (ppp).

1 § 3. Section 210-B of the tax law is amended by adding a new subdivi-
2 sion 60 to read as follows:

3 60. Child care program capital improvement tax credit. (a) Allowance
4 of credit. A taxpayer shall be allowed a credit, to be computed as
5 provided in section forty-nine of this chapter, against the taxes
6 imposed by this article.

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

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

21 (ppp) Child care program capital improvement tax credit. (1) Allowance
22 of credit. A taxpayer shall be allowed a credit, to be computed as
23 provided in section forty-nine of this chapter, against the tax imposed
24 by this article.

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

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

34 <u>(li) Child care program</u>	<u>Amount of credit under</u>
35 <u>capital under improvement</u>	<u>subdivision sixty of section two</u>
36 <u>subsection (ppp)</u>	<u>hundred ten-B</u>

37 § 6. This act shall take effect immediately.