STATE OF NEW YORK

322

2023-2024 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2023

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:

Section 1. Section 44 of the tax law, as amended by section 1 of part L of chapter 59 of the laws of 2019 and subdivision (a) as amended by section 5 of part D of chapter 59 of the laws of 2021, is amended to read as follows:

§ 44. Employer-provided child care credit. (a) General. A taxpayer subject to tax under article nine-A, twenty-two, or thirty-three of this chapter shall be allowed a credit against such tax in an amount equal to [~~two hundred percent of the portion of the credit that is allowed to the taxpayer under section 45F of the internal revenue code~~] **the sum of fifty percent of the qualified child care expenditures and twenty percent of the qualified child care resource and referral expenditures for the taxpayer for such taxable year,** that is attributable to (i) qualified child care expenditures paid or incurred with respect to a qualified child care facility with a situs in the state, [~~and to~~] (ii) qualified child care resource and referral expenditures paid or incurred with respect to the taxpayer's employees working in the state**, (iii) qualified in-home care expenditures paid or incurred with respect to the taxpayer's employees working in the state, and (iv) qualified backup care expenditures paid or incurred with respect to the taxpayer's employees working in the state**. The credit allowable under this subdivision for any taxable year shall not exceed five hundred thousand dollars. If the entity operating the qualified child care facility is a partnership or a New York S corporation, then such cap shall be applied

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

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at the entity level, so the aggregate credit allowed to all the partners or shareholders of such entity in a taxable year does not exceed five hundred thousand dollars.

(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:

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

(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.

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

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

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

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

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

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

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

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

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

(II) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable; and

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

(2) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training; or

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

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

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

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

(2) which meets the requirements of all applicable laws and regulations of the state or local government in which it is located, including the licensing of the facility as a child care facility. Clause one of this subparagraph shall not apply to a facility which is the principal residence of the operator of the facility.

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

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

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

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

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

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

(v) "Recapture event" means:

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

(B) a change in ownership of the facility.

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

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

(A) By contracting with a provider or a backup child care benefits provider and providing direct payments to the qualified care provider or making payments to a backup child care benefits provider for backup care services.

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

(C) By reimbursing an employee directly or through a backup child care benefit provider for backup child care paid directly by the employee.

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

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

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

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

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

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

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

§ 2. This act shall take effect immediately and shall apply to taxable years beginning on or after January 1, 2024.