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 Assembly, do enact as follows:

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

TITLE 13

CHILD CARE PROGRAM CAPITAL IMPROVEMENT TAX CREDIT PROGRAM

Section 458-p. Short title.
458-q. Statement of legislative findings and declaration.
458-r. Definitions.
458-s. Eligibility criteria.
458-t. Application and approval process.
458-u. Child care program capital improvement tax credit.
458-v. Powers and duties of the commissioner.
458-w. Maintenance of records.
458-x. Reporting.
458-y. Cap on tax credit.

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

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

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

1. "Certificate of tax credit" shall mean the document issued to a business entity by the office after the office has verified that the

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

LBD13858-01-3

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

2. "Commissioner" shall mean the commissioner of the office of children and family services.

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

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

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

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

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

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

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

2. The commissioner shall establish procedures and a timeframe for child care facilities to submit applications. As part of the application, each child care program shall:

(a) provide evidence in a form and manner prescribed by the commissioner of their eligibility;

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

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

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

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

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

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

§ 458-u. Child care program capital improvement tax credit. 1. A business entity in the child care facility capital improvement tax credit

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) 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 60;

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

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

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

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

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

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

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

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

(li) Child care program capital improvement under subsection (ppp)	**Amount of credit under subdivision sixty of section two hundred ten-B**

§ 6. This act shall take effect immediately.