

STATE OF NEW YORK

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IN ASSEMBLY

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Introduced by M. of A. RA, JENSEN, GANDOLFO, MAHER, SLATER, BENDETT, BLANKENBUSH, MANKTELOW, SMULLEN, ANGELINO, MILLER, CHANG, LEMONDES, McDONOUGH, BRABENEC, TANNOUSIS, MORINELLO, DeSTEFANO, TAGUE, SIMPSON, PALMESANO, DiPIETRO, PIROZZOLO, WALSH, SMITH, BEEPHAN -- read once and referred to the Committee on Ways and Means

AN ACT to amend the social services law 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:

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 shall be established and maintained in accordance with the
20 provisions of this title.

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

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1 program is created to provide financial assistance to New York's child
2 care providers to facilitate the enhancement, expansion, and improvement
3 of access to quality child care.

4 § 458-r. Definitions. For the purposes of this title:

5 1. "Certificate of tax credit" shall mean the document issued to a
6 business entity by the office after the office has verified that the
7 business entity has met all applicable eligibility criteria in this
8 title. The certificate shall specify the exact amount of the tax credit
9 under this title that a business entity may claim, pursuant to section
10 four hundred fifty-eight-u of this title.

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

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

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

20 § 458-s. Eligibility criteria. 1. To be eligible for a tax credit
21 under the child care capital improvement tax credit program, a business
22 entity shall:

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

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

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

35 § 458-t. Application and approval process. 1. A child care program
36 shall submit a complete application as prescribed by the commissioner.

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

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

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

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

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

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

54 3. After reviewing a child care program's completed final application
55 and determining that the business entity meets the eligibility criteria

1 as set forth in this article, the office may issue to that child care
2 program a certificate of tax credit.

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

6 § 458-u. Child care program capital improvement tax credit. 1. A busi-
7 ness entity in the child care facility capital improvement tax credit
8 program that meets the eligibility requirements of section four hundred
9 fifty-eight-s of this title may be eligible to claim a credit equal to
10 fifty percent of its qualified child care program capital costs as
11 defined in subdivision four of section four hundred fifty-eight-r of
12 this title; provided, however, that such credit shall not be less than
13 one thousand dollars.

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

17 3. The credit shall be allowed as provided in section fifty, subdivi-
18 sion sixty-one of section two hundred ten-B and subsection (qqq) of
19 section six hundred six of the tax law.

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

24 § 458-v. Powers and duties of the commissioner. 1. The commissioner
25 may promulgate regulations establishing an application process and
26 eligibility criteria, that shall be applied consistent with the purposes
27 of this title, so as not to exceed the annual cap on tax credits set
28 forth in section four hundred fifty-eight-y of this title which,
29 notwithstanding any provisions to the contrary in the state administra-
30 tive procedure act, may be adopted on an emergency basis.

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

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

42 § 458-w. Maintenance of records. Each business entity participating in
43 the program shall keep all relevant records for their duration of
44 program participation for at least three years.

45 § 458-x. Reporting. Each business entity participating in this program
46 shall submit a performance report to the office at a time prescribed in
47 regulations by the commissioner. The commissioner shall, on or before
48 April first, two thousand twenty-six and every quarter thereafter until
49 program funds are fully expended, submit a report to the governor, the
50 temporary president of the senate, the speaker of the assembly, the
51 chair of the senate finance committee, and the chair of the assembly
52 ways and means committee, setting forth the activities undertaken by the
53 program. Such report shall include, but not necessarily be limited to,
54 the following in each reporting period to the extent such information is
55 available: the total number of participants approved and the region in
56 which the business is located; the total amount of payments disbursed

1 and tax credits claimed, and the average amount of payments disbursed
2 and tax credits claimed; the names of payment recipients and tax credits
3 claimed; and such other information as the commissioner determines
4 necessary and appropriate to effectuate the purpose of the program. Such
5 reports shall, at the same time, be included on the office's website.

6 § 458-y. Cap on tax credit. The total amount of tax credits listed on
7 certificates of tax credit issued by the commissioner pursuant to this
8 title may not exceed two hundred fifty million dollars.

9 § 2. The tax law is amended by adding a new section 50 to read as
10 follows:

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

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

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

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

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

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

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

52 (e) Credit recapture. If a certificate of tax credit issued by the
53 office of children and family services under title thirteen of article
54 six of the social services law is revoked by such office, the amount of
55 credit described in this section and claimed by the taxpayer prior to

1 that revocation shall be added back to tax in the taxable year in which
2 any such revocation becomes final.

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

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

6 (2) article 22: section 606, subsection (qqq).

7 § 3. Section 210-B of the tax law is amended by adding a new subdivi-
8 sion 61 to read as follows:

9 61. Child care program capital improvement tax credit. (a) Allowance
10 of credit. A taxpayer shall be allowed a credit, to be computed as
11 provided in section fifty of this chapter, against the taxes imposed by
12 this article.

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

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

27 (qqq) Child care program capital improvement tax credit. (1) Allowance
28 of credit. A taxpayer shall be allowed a credit, to be computed as
29 provided in section fifty of this chapter, against the tax imposed by
30 this article.

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

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

40 <u>(lii) Child care program</u>	<u>Amount of credit under</u>
41 <u>capital under improvement</u>	<u>subdivision sixty-one of section two</u>
42 <u>subsection (qqq)</u>	<u>hundred ten-B</u>

43 § 6. This act shall take effect immediately.