New York City Department of Finance

Notice of Adoption of Final Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Commissioner of Finance by section 1043 of the New York City Charter, that the New York City Department of Finance ("DOF or "Department") promulgates this new chapter 59 of title 19 of the Rules of the City of New York, regarding the business tax credit for creating or expanding a program that provides child care services for their employees with respect to infants (0 to 1.5 years of age) and toddlers (1.5 to 3 years of age) in a permitted child care program.

The proposed rule was published on June 8, 2023. A public hearing was held on July 11, 2023. DOF received no public comments but has made a few minor clarifying changes to the rule, as detailed below.

Statement of Basis and Purpose

Part II of Chapter 59 of the Laws of 2022, which is mostly codified in Administrative Code § 11-144, provides that businesses subject to certain New York City business income taxes, specifically the Unincorporated Business Tax (UBT), the General Corporation Tax (GCT) and the Business Corporation Tax (i.e., the Corporate Tax of 2015) may qualify for a refundable tax credit for providing new or expanded child care services for their employees with respect to infants (0 to 1.5 years of age) and toddlers (1.5 to 3 years of age) in a permitted child care program.

The credit amount is generally based on the weekly child care subsidy market rates for infants and toddlers for New York City as set forth in a child care market rate survey report by the New York State Office of Children and Family Services (the "child care rate") published in 2022 and the average number of new or additional child care seats that are occupied while the child care program is in operation. The credit is capped at 25 new or additional child care seats that are occupied. Further, the child care program may not impose a cost on employees in excess of 40 percent of the child care rate. Finally, the credit is subject to an aggregate overall cap of 25 million dollars.

This rule sets forth procedures and requirements for the administration of the credit. These include:

- The eligibility requirements for the credit;
- The method for calculating the credit;
- Procedures concerning the credit application;
- Procedures and requirements concerning the tax years or periods in which the credit may be taken;
- Procedures and requirements for allocating the credit if the credits claimed by taxpayers exceed the twenty-five million-dollar cap.

This rule reflects some minor revisions since the proposed rule. Specifically, DOF revised a few definitions to clarify that the maximum number of seats available for the credit is 25 per taxpayer, even if the taxpayer has 2 or more permitted locations. DOF also revised text in the definitions and examples to clarify that an expanded program involves a program that existed before April 1, 2022.

New material is underlined.

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department unless otherwise specified or unless the context clearly indicates otherwise.

Amendment to Rule

Section 1. Title 19 of the Rules of the City of New York is amended by adding a new chapter 59 to read as follows:

§ 59-01 Definitions.

52/53 taxpayer. The term "52/53 taxpayer" means a taxpayer that elects to have its tax years vary from 52 to 53 weeks under subsection f of section 441 of the internal revenue code.

Application submitted during the discretionary period. The term "application submitted during the discretionary period" means an application submitted by a taxpayer to the Department that was incomplete as of the date of the due date but then completed by such taxpayer and resubmitted to the Department during the discretionary period.

Child care program. The term "child care program" means a child care program for which a permit or permits to operate such program has been issued by the city department of health and mental hygiene pursuant to article forty-seven of the health code.

Child care infant rate. The term "child care rate" means the weekly child care subsidy market rates, based on the 2021-22 New York state child care market rate survey, for infant care provided by a permitted day care center in county cluster five (New York City), as reflected in the 2022 child care market rate survey report published by the New York state office of children and family services in compliance with section 98.45 of title 45 of the code of federal regulations.

Child care toddler rate. The term "child care rate" means the weekly child care subsidy market rates, based on the 2021-22 New York state child care market rate survey, for toddler care provided by a permitted day care center in county cluster five (New York City), as reflected in the 2022 child care market rate survey report published by the New York state office of children and family services in compliance with section 98.45 of title 45 of the code of federal regulations.

Child care seats. The term "child care seats" means the maximum number of children to be allowed on the premises of a child care program at any time that such program is in operation as specified on the permit issued for such program by the department of health and mental hygiene.

Child care seats that are occupied. The term "child care seats that are occupied" means, for each service year in which a child care program is in operation, the average daily number of children in attendance on the premises of such child care program.

City. The term "City" means the city of New York.

Commissioner. The term "Commissioner" means the commissioner of the department of finance of the city.

Creates child care. The term "creates child care" means the making available of child care seats

in a child care program by a taxpayer, directly or through a third party, for employees of such taxpayer, where such child care program was not available before April 1, 2022, provided that the costs imposed on such employees for such child care program do not exceed 40 percent of the child care rate.

Department. The term "Department" means the department of finance of the city.

Department of health and mental hygiene. The terms "department of health and mental hygiene" means the department of health and mental hygiene of the city.

Discretionary period. The term "discretionary period" means the period beginning after the due date and ending on November 30 of the calendar year in which the service year ended.

Due date. The term "due date" means November 1 of the calendar year in which the service year ended.

Expands child care. The term "expands child care" means the increase in the number of child care seats made available by a taxpayer, directly or through a third party, for employees of such taxpayer in a child care program that existed before April 1, 2022, provided that such increase requires a new or amended permit issued by the department of health and mental hygiene pursuant to article forty-seven of the health code on or after April 1, 2022, and, provided further, that the costs imposed on such employees for such child care program do not exceed 40 percent of the child care rate.

Infant. The term "infant" means a person 0 to 1.5 years of age.

Number of calendar weeks in operation. The term "number of calendar weeks in operation" means the number of calendar weeks a new child care program is in operation for at least one day during the service year.

Number of calendar weeks of operation following expansion. The term "number of calendar weeks of operation following expansion" means the number of calendar weeks an existing child care program is in operation for at least one day following the expansion during the service year.

Seat cap for a created program. The term "seat cap for a created program" means the lesser of (i) the maximum number of child care seats indicated in the permit or permits for the program issued by the department of health and mental hygiene or (ii) twenty-five per taxpayer.

Seat cap for an expanded program. The term "seat cap for an expanded program" means the lesser of (i) the increase in the maximum number of child care seats following the expansion as indicated by the permit or permits for the program issued by the department of health and mental hygiene; or (ii) twenty-five per taxpayer.

Service year. The term "service year" means the twelve-month period commencing on October 1 and ending on September 30 in the subsequent calendar year.

Toddler. The term "toddler" means a person 1.5 to 3 years of age.

§ 59-02 Eligibility for Credit.

To be eligible for the credit established by this chapter, a taxpayer must:

a. be subject to the City unincorporated business tax, general corporation tax or the business corporation tax (i.e., the Corporate Tax of 2015);

b. either create child care or expand child care; and

c. submit a complete application in accordance with section 59-03 of this chapter.

§ 59-03 Application.

a. A taxpayer must submit a complete application on a form prescribed by the Commissioner no later than the due date. An application submitted after the due date will not be considered, except to the extent authorized under paragraph 2 of subdivision d of section 59-04 of this chapter. The Department has no obligation to inform a taxpayer whether an application is complete or incomplete.

b. To be considered complete, an application must contain all information and documentation the commissioner requires, including the following:

1. a permit issued by the department of health and mental hygiene to operate a child care center indicating the number of child care seats or, in the case of a child care center that has expanded child care, a permit issued by such department demonstrating such expansion; and

2. a certification form signed by an independent certified public accountant that provides the following information regarding the service year for which the credit is sought:

(i) the maximum number of child care seats allowed in the permit;

(ii) the total number of child care seats that are occupied, i.e., the average daily number of children in attendance at the child care program, disaggregated by infant seats and toddler seats;

(iv) if the taxpayer has expanded child care, the total number of child care seats that were occupied before such expansion and the total number of child care seats that were occupied after such expansion, i.e., the average daily number of children in attendance at the child care program before such expansion and the average daily number of children in attendance after such expansion, disaggregated by infant seats and toddler seats; and

(v) the number of calendar weeks in operation, or in the case of a child care center that has expanded child care, the number of calendar weeks in operation before such expansion and the number of weeks in operation following expansion.

c. A taxpayer that submits an application must retain all data and documentation that validates the information in the application, including all numbers in the certification form included in the application, through the entire period in which the tax against which the credit was or may be taken may be assessed, including any agreed-upon period of extension of a limitations period for the assessment of such tax. Such taxpayer must make available all such data and documentation to the Department upon the Department's request.

§ 59-04 Determination of Credit.

a. *Determination by Department.* No later than January 31 immediately following the due date, the Department will:

1. approve a taxpayer's complete and timely application and determine the amount of the credit in accordance with this section; or

2. deny the application.

b. *Calculation of Credit*.

1. Formula for the creation of child care. The amount of credit for a taxpayer that creates child care will be calculated pursuant to the following formula: the product of the amount determined under subparagraph (i) and the amount determined under subparagraph (ii).

(i) The amount determined under this subparagraph will be the sum of:

(A) the product of four percent of the child care infant rate and the number of infant child care seats that are occupied, as determined under subparagraph (iii); and

(B) the product of four percent of the child care toddler rate and the number of toddler child care seats that are occupied, as determined under subparagraph (iii).

(ii) The amount determined under this clause will be the lesser of:

(A) the number of days the child care program is in operation during the service year; or

(B) the product of 260 and a fraction, in which the numerator is the number of calendar weeks such program is in operation and the denominator is 52.

(iii) In determining the number of infant or toddler child care seats that are occupied, the following rules apply:

(A) Except as provided in clause (B) of this subparagraph, the number of infant child care seats that are occupied and the number of toddler child care seats that are occupied are the numbers provided for each respective category in the certification form included in the taxpayer's application.

(B) If the sum of the number of infant child care seats that are occupied and the number of toddler child care seats that are occupied exceeds the seat cap for a created program, the number of infant child care seats that are occupied will be reduced until such sum does not exceed the seat cap. If such sum still exceeds the seat cap after reducing the number of infant child care seats that are occupied to zero, the number of toddler child care seats that are occupied will be reduced until such sum does not exceed the seat cap.

2. Formula for the expansion of child care. The amount of credit for a taxpayer that expands child care will be calculated pursuant to the following formula: the product of the amount determined under subparagraph (i) and the amount determined under subparagraph (ii).

(i) The amount determined under this subparagraph will be the sum of:

(A) the product of four percent of the child care infant rate and the number of additional occupied infant child care seats, as determined under subparagraph (iii); and

(B) the product of four percent of the child care toddler rate and the number of additional occupied toddler child care seats, as determined under subparagraph (iii).

(ii) The amount determined under this clause will be the lesser of:

(A) the number of days the program is in operation following expansion during the service year; or

(B) the product of 260 and a fraction, in which the numerator is the number of calendar weeks such program is in operation following expansion and the denominator is 52.

(iii) In determining the number of additional occupied infant or toddler child care seats, the following rules apply:

(A) Except as provided in clause (B) of this subparagraph, the number of additional occupied infant child care seats is the difference between the number of infant child care seats that were occupied after such expansion and the number of infant child care seats that were occupied before such expansion, as provided in the certification form included in the taxpayer's application, and the number of additional occupied toddler child care seats is the difference between the number of toddler child care seats that were occupied after such expansion and the number of toddler child care seats occupied before such expansion, as provided in the certification form included in the taxpayer's application.

(B) If the sum of the number of additional occupied infant child care seats and the number of additional occupied toddler child care seats exceeds the seat cap for an expanded program, the number of additional occupied infant child care seats will be reduced until such sum does not exceed the seat cap. If such sum still exceeds the seat cap after reducing the number of additional occupied infant child care seats, the number of additional occupied toddler child care seats will be reduced until such sum does not exceed the seat cap.

3. Examples. The principles and calculations set forth in this subdivision are illustrated in the examples set forth in § 59-06.

c. *Maximum Amount of Available Credit*. The total amount of credits to all taxpayers may not exceed $25 million in any year.

d. *Reduction of Credit*.

1. If the total amount of credits otherwise authorized for taxpayers that submitted completed applications on or before the due date exceed $25 million, each such credit will be reduced by multiplying such credit by a fraction, in which the numerator is $25 million and the denominator is the total amount of credits otherwise authorized for such taxpayers.

2. If the total amount of credits authorized for taxpayers that submitted completed applications on or before the due date do not exceed $25 million, the Commissioner may consider an application submitted during the discretionary period.

(i) Any credit for a taxpayer with an application submitted during the discretionary period will be limited to no more than the amount remaining for the tax year, after subtracting all authorized credits granted to taxpayers whose completed applications were received on or before the due date.

(ii) If the total amount of credits otherwise authorized for taxpayers with an application submitted during the discretionary period exceeds the amount remaining for the tax year, each such credit will be reduced by multiplying such credit by a fraction, in which the numerator is the amount remaining for the tax year and the denominator is the total amount of credits otherwise authorized for such taxpayers.

§ 59-05 Applicable Tax Year for Credit.

a. *Tax Year of Twelve Months.* The following rules apply to a taxpayer with a 12-month tax year:

1. For a taxpayer, other than a 52/53 week taxpayer, whose 12-month tax year ends on or after December 31 and on or before September 29, the credit will be applied to the tax year in which the service year ends.

2. For a taxpayer, other than a 52/53 week taxpayer, whose 12-month tax year ends on or after September 30 and on or before December 30, the credit will be applied to the tax year immediately following the tax year in which the service year ends.

3. For a 52/53 week taxpayer whose tax year ends (i) on or after January 1 and on or before September 22 or (ii) within 7 days of December 31, the credit will be applied to the tax year in which the service year ends.

4. For a 52/53 week taxpayer whose tax year ends (i) on or after September 23 and on or before December 24 or (ii) within 7 days of September 30, the credit will be applied to the tax year immediately following the tax year in which the service year ends.

b. *Short Tax Year.* The following rules apply to a taxpayer with a short tax year:

1. Except as provided in paragraphs (2) or (3) of this subdivision, for a taxpayer with a short tax year in which the service year concludes, the credit will be applied to such short tax year.

2. For a taxpayer with a short tax year in which the service year ends and such short tax year began before the calendar year in which the service year ends, the credit will be applied to the tax year immediately following such short tax year.

3. For a taxpayer with a short tax year (i) in which the service year ends, (ii) that begins in the calendar year in which the service year ends, and (iii) ends on or after September 30 and on or before December 30 of such calendar year, the credit will be applied to the tax year immediately following such short tax year, provided that such immediately following tax year is longer than such short tax year.

§ 59-06 Examples.

Example 1

Taxpayer X has created a new child care program in which a maximum of 22 child care seats is authorized under the permit DOHMH has issued. The child care program operates for 180 days within 38 calendar weeks during the service year. During these 180 days that the program was in operation, a sum total of 2,844 infant child care seats were occupied and a sum total of 747 toddler child care seats were occupied. The credit is determined as follows.

Calculation of the number of infant child care seats and toddler child care seats that are occupied:

Infant child care seats that are occupied, i.e., the average daily number of infants in attendance on the premises of such child care program: 2,844/180 = 15.8 (this number must be listed on the certification form)

Toddler child care seats that are occupied, i.e., the average daily number of toddlers in attendance on the premises of such child care program: 747/180= 4.15 (this number must be listed on the certification form)

The sum of 15.8 and 4.15 is 19.95. This number is less than the lesser of 22 (the maximum number of child care seats in the program), or 25 (the maximum number of seats allowed for the credit). Hence, the taxpayer uses both 15.8, the number of infant child care seats that are occupied, and 4.15, the number of toddler child care seats that were occupied to determine the credit amount.

Calculation of four percent of the child care rates:

The child care rate is $406 for infants and $370 for toddlers.

Four percent of the infant child care rate: ($406 x 4 percent = $16.24)

Four percent of the child care rate: ($370 x 4 percent = $14.80)

Calculation of the credit:

The product of the number of infant child care seats that are occupied and four percent of the infant child care rate: (15.8 x $16.24 = $256.59)

The product of the number of toddler child are seats that are occupied and four percent of the toddler child care rate: (4.15 x $14.80 = $61.42)

The sum of these products is (256.59 + 61.42 = $318.01)

The number of days the program was in operation is 180.

The limitation on the number of days is 260 multiplied by 38 (the number of calendar weeks the program was in operation) and divided by 52 (260 x 38/52 = 190).

Because 180 is less than 190, the credit is calculated using 180, the number of days the program was in operation. Hence, the credit amount is:

$318.01 x 180 = $57,241.80

Example 2

The facts are the same as in Example 1 except that Taxpayer X's new child care program operates for 180 days within 34 calendar weeks during the service year. During these 180 days that the program was in operation, a sum total of 3,717 infant child care seats were occupied and a sum total of 747 toddler child care seats were occupied. The credit is determined as follows.

Calculation of the number of infant child care seats and toddler child care seats that are occupied:

Infant child care seats that are occupied, i.e., the average daily number of infants in attendance on the premises of such child care program: 3717/180 = 20.65 (this number must be listed on the certification form)

Toddler child care seats that are occupied, i.e., the average daily number of toddlers in attendance on the premises of such child care program: 747/180= 4.15 (this number must be listed on the certification form)

The sum of 20.65 and 4.15 is 24.8. This number is greater than the lesser of 22 (the maximum number of child care seats in the program), or 25 (the maximum number of seats allowed for the credit). Hence, the number of infant child care seats is reduced by 2.8 (24.8 – 22 = 2.8), the difference between the sum of 24.8 and 22.

Accordingly, the number of infant child care seats that are occupied is reduced from 20.65 to 17.85 (20.65 – 2.8 = 17.85) in calculating the credit. The number of toddler child care seats that were occupied, during the service year, is 4.15, and this amount does not have to be reduced and will be used to calculate the credit.

Calculation of four percent of the child care rates:

The child care rate is $406 for infants and $370 for toddlers.

Four percent of the infant child care rate: ($406 x 4 percent = $16.24)

Four percent of the toddler child care rate: ($370 x 4 percent = $14.80)

Calculation of the credit:

The product of the number of infant child care seats that are occupied and four percent of the infant child care rate: (17.85 x $16.24 = $289.88)

The product of the number of toddler child are seats that are occupied and four percent of the toddler child care rate: (4.15 x $14.80 = $61.42)

The sum of these products is (289.88 + 61.42 = $351.30)

The number of days the program was in operation is 180.

The limitation on the number of days is 260 multiplied by 34 (the number of calendar weeks the program was in operation) and divided by 52 (260 x 34/52 = 170).

Because 180 is greater than the limitation of 170, the credit is calculated using 170, the limitation on the number of days for which the credit is available. Hence, the credit amount is:

$351.30 x 170 = $59,721.

Example 3

On September 1, 2022, Taxpayer Y has expanded a child care program that was in existence before April 1, 2022. Before the expansion, a maximum of 20 child care seats was authorized under the old permit DOHMH had issued. Under this old permit, the child care program operated for a total of 125 days, during which a sum total of 2,000 infant child care seats and a sum total of 250 toddler child care seats were occupied.

After the expansion, the child care program is authorized to have a maximum of 32 child care seats under the new permit DOHMH has issued. The child care program operates for 90 days within 19 calendar weeks following the expansion during the service year. During these 90 days the program was in operation following the expansion, a sum total of 2,430 infant child care seats and a sum total of 360 toddler child care seats were occupied. The credit is determined as follows.

Calculation of the additional occupied infant child care seats and toddler child care seats:

Number of infant child care seats that are occupied following expansion, i.e., the average daily number of infants in attendance on the premises of such child care program following expansion: (2,430/90 = 27) (this number must be listed on the certification form)

Less: the number of infant child care seats that were occupied before the expansion, i.e., the average daily number of infants in attendance on the premises of such child care program before the expansion: (2000/125 = 16) (this number must be listed on the certification form)

Number of additional occupied infant child care seats: (27 - 16 = 11)

Number of toddler child care seats that are occupied following expansion i.e., the average daily number of infants in attendance on the premises of such child care program following expansion: (360/90 = 4) (this number must be listed on the certification form)

Less: the number of toddler child care seats that were occupied, i.e., the average daily number of infants in attendance on the premises of such child care program before expansion: (250/125 = 2) (this number must be listed on the certification form)

Number of additional occupied toddler child care seats: (4 - 2 = 2)

The sum of the additional occupied infant child care seats of 11 and additional occupied toddler child care seats of 2 is 13. This number is greater than the lesser of 12 (32 - 20 = 12) (the increase in the maximum number of child care seats in the child care program) or 25 (the maximum number of seats allowed for the credit). Hence, the number of additional occupied infant child care seats is reduced by 1, the difference between 13 and 12.

Accordingly, the number of additional occupied infant child care seats is reduced from 11 to 10 (11 - 1 = 10) in calculating the credit. The number of additional occupied toddler child care seats is 2, and this amount does not have to be reduced and will be used to calculate the credit.

Calculation of four percent of the child care rates:

The child care rate is $406 for infants and $370 for toddlers.

Four percent of the infant child care rate: ($406 x 4 percent = $16.24)

Four percent of the toddler child care rate: ($370 x 4 percent = $14.80)
Calculation of the credit:

The product of the number of additional occupied infant child care seats and four percent of the infant child care rate is: (10 x 16.24 = $162.40)

The product of the number of additional occupied toddler child care seats and four percent of the child care rate factor is: (2 x 14.80 = $29.60)

The sum of these products is: (162.40 + 29.60 = $192

The number of days the program was in operation is 90.

The limitation on the number of days is 260 multiplied by 19 (the number of calendar weeks the program was in operation following expansion) and divided by 52 (260 x 19/52 = 95).

Because 90 is less than 95, the credit is calculated using 90, the number of days the program was in operation following expansion during the service year. Hence, the credit amount is:

$192 x 90 = $17,280.