

By Mr. Tolman, a petition (accompanied by bill, Senate, No. 135) of Steven A. Tolman, Susan C. Fargo, Scott P. Brown and Thomas J. O'Brien for legislation to grant a tax credit to employers providing day care for employees. Children and Families.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT TO GRANT A TAX CREDIT TO EMPLOYERS PROVIDING DAY CARE FOR EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 63 of the General Laws is amended by inserting at the
2 end thereof a new section:—

3 “SECTION 82. Tax Credit for employers providing child care.

4 a) As used in this section, the term:

5 (1) “Cost of operation” means reasonable direct operational
6 costs incurred by an employer as a result of providing employer
7 provided or employer sponsored child care facilities; provided,
8 however, that the term cost of operation shall exclude the cost of
9 any property that is qualified child care property.

10 (2) “Employer” means any employer upon whom an income tax
11 is imposed by this article.

12 (3) “Employer provided” refers to child care offered on the
13 premises of the employer.

14 (4) “Employer sponsored” refers to a contractual arrangement
15 with a child care facility that is paid for by the employer.

16 (5) “Premises of the employer” refers to any location within
17 Massachusetts and located on the workplace premises of the
18 employer providing the child care or one of the employers pro-
19 viding the child care in the event that the child care property is
20 owned jointly or severally by the taxpayer and one or more
21 employers; provided, however, that if such workplace premises
22 are impracticable or otherwise unsuitable for the on-site location

23 of such child care facility, as determined by the commissioner,
24 such facility may be located within a reasonable distance of the
25 premises of the employer.

26 (6) "Qualified child care property" means all real property and
27 tangible personal property purchased or acquired on or after
28 July 1, 2003, or which property is first placed in service on or
29 after July 1, 2003, for use exclusively in the construction, expan-
30 sion, improvement, or operation of an employer provided child
31 care facility, but only if:

32 (A) The facility is licensed or commissioned by the Office of
33 Child Care Services;

34 (B) At least 95 percent of the children who use the facility are
35 children of employees of:

36 (i) the taxpayer and other employers in the event that the child
37 care property is owned jointly or severally by the taxpayer and
38 one or more employers; or

39 (ii) a corporation that is a member of the taxpayer's "affiliated
40 group" within the meaning of Section 1504(a) of the Internal Rev-
41 enue Code; and

42 (C) The taxpayer has not previously claimed any tax credit for
43 the cost of operation for such qualified child care property placed
44 in service prior to taxable years beginning on or after January 1,
45 2004.

46 Qualified child care property includes, but is not limited to,
47 amounts expended on land acquisition, improvements, buildings,
48 and building improvements and furniture, fixtures, and equip-
49 ment.

50 (7) "Recapture amount" means, with respect to property as to
51 which a recapture event has occurred, an amount equal to the
52 applicable recapture percentage of the aggregate credits claimed
53 under subsection (d) of this section for all taxable years preceding
54 the recapture year, whether or not such credits were used.

55 (8) "Recapture event" refers to any disposition of qualified
56 child care property by the taxpayer, or any other event or circum-
57 stance under which property ceases to be qualified child care
58 property with respect to the taxpayer, except for:

59 (A) Any transfer by reason of death;

60 (B) Any transfer between spouses or incident to divorce;

61 (C) Any transaction to which Section 381(a) of the Internal
62 Revenue Code applies;

63 (D) Any change in the form of conducting the taxpayer's trade
64 or business so long as the property is retained in such trade or
65 business as qualified child care property and the taxpayer retains a
66 substantial interest in such trade or business; or

67 (E) Any accident or casualty.

68 (9) "Recapture percentage" refers to the applicable percentage
69 set forth in the following table:

70 If the recapture 71 event occurs within —	The recapture percentage is:
72 Five full years after the qualified child care 73 property is placed in service	100
74 The sixth full year after the qualified child care 75 property is placed in service	90
76 The seventh full year after the qualified child care 77 property is placed in service	80
78 The eighth full year after the qualified child care 79 property is placed in service	70
80 The ninth full year after the qualified child care 81 property is placed in service	60
82 The tenth full year after the qualified child care 83 property is placed in service	50
84 The eleventh full year after the qualified child care 85 property is placed in service	40
86 The twelfth full year after the qualified child care 87 property is placed in service	30
88 The thirteenth full year after the qualified child care 89 property is placed in service	20
90 The fourteenth full year after the qualified child care 91 property is placed in service	10
92 Any period after the close of the fourteenth full year 93 after the qualified child care property is placed 94 in service	0

95 (10) "Recapture year" means the taxable year in which a recap-
96 ture event occurs with respect to qualified child care property.

97 (b) A tax credit against the tax imposed under this article shall
98 be granted to an employer who provides or sponsors child care for
99 employees. The amount of the tax credit shall be equal to 75 per-

100 cent of the cost of operation to the employer less any amounts
101 paid for by employees during a taxable year.

102 (c) The tax credit allowed under subsection (b) of this Section
103 shall be subject to the following conditions and limitations:

104 (1) Such credit shall not exceed 50 percent of the amount of the
105 taxpayer's income tax liability for the taxable year as computed
106 without regard to any other credits;

107 (2) Any such credit claimed but not used in any taxable year
108 may be carried forward for five years from the close of the tax-
109 able year in which the cost of operation was incurred; and

110 (3) The employer shall certify to the department the names of
111 the employees, the name of the child care provider, and such other
112 information as may be required by the department to ensure that
113 credits are granted only to employers who provide or sponsor
114 approved child care pursuant to this Section.

115 (d) In addition to the tax credit provided under subsection (b)
116 of this Section, a taxpayer shall be allowed a credit against the tax
117 imposed under this article for the taxable year in which the tax-
118 payer first places in service qualified child care property and for
119 each of the ensuing nine taxable years following such taxable
120 year. The aggregate amount of the credit shall equal 100 percent
121 of the cost of all qualified child care property purchased or
122 acquired by the taxpayer and first placed in service during a tax-
123 able year, and such credit may be claimed at a rate of 10 percent
124 per year over a period of ten taxable years.

125 (e) The tax credit allowable under subsection (d) of this
126 Section shall be subject to the following conditions and limita-
127 tions:

128 (1) Any such credit claimed in any taxable year but not used in
129 such taxable year may be carried forward for three years from the
130 close of such taxable year. The sale, merger, acquisition, or bank-
131 ruptcy of any taxpayer shall not create new eligibility for the
132 credit in any succeeding taxpayer;

133 (2) In no event shall the amount of any such tax credit,
134 including any carryover of such credit from a prior taxable year,
135 exceed 50 percent of the taxpayer's income tax liability as deter-
136 mined without regard to any other credits; and

137 (3) For every year in which a taxpayer claims such credit, the
138 taxpayer shall attach a schedule to the taxpayer's Massachusetts

139 income tax return setting forth the following information with
140 respect to such tax credit:

141 (A) A description of the child care facility;

142 (B) The amount of qualified child care property acquired
143 during the taxable year and the cost of such property;

144 (C) The amount of tax credit claimed for the taxable year;

145 (D) The amount of qualified child care property acquired in
146 prior taxable years and the cost of such property;

147 (E) Any tax credit utilized by the taxpayer in prior taxable
148 years;

149 (F) The amount of tax credit carried over from prior years;

150 (G) The amount of tax credit utilized by the taxpayer in the cur-
151 rent taxable year;

152 (H) The amount of tax credit to be carried forward to subse-
153 quent tax years; and

154 (I) A description of any recapture event occurring during the
155 taxable year, a calculation of the resulting reduction in tax credits
156 allowable for the recapture year and future taxable years, and a
157 calculation of the resulting increase in tax for the recapture year.

158 (f) If a recapture event occurs with respect to qualified child
159 care property:

160 (1) The credit otherwise allowable under subsection (d) of this
161 section with respect to such property for the recapture year and all
162 subsequent taxable years shall be reduced by the applicable recap-
163 ture percentage; and

164 (2) All credits previously claimed with respect to such property
165 under subsection (d) of this section shall be recaptured as follows:

166 (A) Any carryover attributable to such credits under para-
167 graph (1) of subsection (e) of this section shall be reduced, but not
168 below zero, by the recapture amount;

169 (B) The tax credit otherwise allowable under subsection (d) of
170 this Section for the recapture year, if any, as reduced under para-
171 graph (1) of this subsection, shall be further reduced, but not
172 below zero, by the excess of the recapture amount over the
173 amount taken into account under subparagraph (A) of this para-
174 graph; and

175 (C) The tax imposed under this article for the recapture year
176 shall be increased by the excess of the recapture amount over the

177 amounts taken into account under subparagraphs (A) and (B) of
178 this paragraph, as applicable.

179 (g) The commissioner shall promulgate any rules and regula-
180 tions necessary to implement and administer this section.”

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