

Federal & State Employer Tax Incentives: Expanding the Availability & Affordability of Child Care

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Federal Tax Incentives to Promote Child Care Availability and Affordability for Employees:

Tax Credits for Employers Providing Child Care and/or Resource and Referral Services to Parents

Under current federal tax law ([Internal Revenue Code §45F](#)), employers can receive a tax credit equal to 25% of qualified expenses for employee child care plus 10% of qualified expenses for child care resource and referral services. The maximum total credit that can be claimed by a business cannot exceed \$150,000 per taxable year. The credit is part of the general business credit and can be claimed any time within 3 years from the due date of the return. ([IRS Form 8882](#))

To be eligible for the credit:

- The primary use of the program must be for child care and the program must meet all applicable state and local laws.
- The child care program must be open to enrollment to the employees of the business.
- Enrollment cannot discriminate in favor of highly compensated employees.
- At least 30 percent of the children enrolled in the program must be dependents of employees of the business.

Qualified child care expenses include costs to:

- Acquire, construct, rehabilitate or expand property that is to be used for the child care program;
- Operate the program, including the costs of training and compensation for employees of the child care program as well as scholarship programs;
- Contract with a qualified program (licensed or regulated) within the community to provide child care to employees of the employer.

Child Care Resource and Referral expenditures:

Qualified child care resource and referral expenses are amounts paid or incurred under a contract to provide child care resource and referral services to the employees of the business. Activities must be provided in a way that does not discriminate in favor of highly compensated individuals.



Employer Sponsored Dependent Care Assistance Plans for Child Care Expenses (DCAPs)

Under current federal tax law, employers can set up Dependent Care Assistance Plans, which are flexible spending accounts ([Section 129 of the Internal Revenue Code](#)). If employers choose to offer such plans, employees can set aside up to \$5,000 in pre-tax salary for dependent care expenses.

Using pre-tax dollars means a tax savings to employees (potentially 20-40% of child care expenses depending upon the family's tax bracket and expenses incurred for child care) as well as a tax savings for employers (funds set aside through a flexible spending account reduce employer payroll – for example, these funds aren't subject to FICA or FUTA taxes). For many employees with young children, they may already be paying for child care, so the option for a flexible spending

account reimburses them at a tax savings for money that would be spent anyway.

How do flexible spending plans work? An employer establishes a written plan (required by the IRS) and distributes a summary of the plan to all employees (required by the Department of Labor). Employees estimate how much they think they will spend on child care for the year. They can then choose to have up to \$5,000 of their salary per year set aside tax-free into a flexible spending account through regular paychecks. As child care expenses are incurred, employees can submit for reimbursement from their flexible spending account (FSA). FSAs are capped at \$5,000. Expenses related to dependent children under age 13 or related to dependents who are mentally or physically incapable of caring for themselves (and who the employee claims as a dependent) are eligible for reimbursement through FSAs.

Here's [a calculator](#) to help employees figure out tax savings by utilizing DCAP benefits. It's always a good idea to consult with a tax professional, but conceptually, there are savings to be realized through the tax code for employers who wish to assist their employees with child care affordability.

New York State Tax Incentives to Promote Child Care Availability and Affordability for Employees:

NY Employer Provided Child Care Credit. New York State has what is referred to as a “piggy-back” tax credit for employer sponsored child care. What that means is that the [NYS tax law](#) rides on the back of the federal [§45F tax credit](#).

In New York, the eligibility for and expenses allowed are the same as the federal credit (except child care programs must be located in New York).

- Instead of 25% of expenses allowed for the credit, NYS law allows 50% of expenses for the credit.
- Instead of 10% of expenses allowed for child care resource & referral services, NYS law allows 20% of expenses for the credit.
- Instead of an annual overall cap for the credit at \$150,000, NYS law allows a credit up to \$500,000.

NY Child Care Creation and Expansion Credit. This [new tax credit law](#) for employers is intended to expand the supply of infant and toddler care. It is administered by the NY Office of Children and Family Services and is applicable for 2023 and 2024 (unless extended by the NYS Legislature).

Employers providing licensed or registered child care slots for their employees (either directly or through a third party – e.g., through a contract with a child care provider), can apply for the tax credit. The total amount of tax credits is capped at \$25 million per year.

To qualify for the credit, child care “seats” must be newly created or expanded, and cannot have existed prior to April 1, 2023. Tax credit rules related to infant and toddler expansion:

- **Infant slot amount.** The product of the number of infant child care seats that have been created or expanded and 20% of the infant child care “rate”. *(The rate is related to the 2022 NY child care market rate survey, which reflects market prices for care by age of the child, child care setting, and region of the state. Under state law, rates are set at the 80th percentile, which means families whose care is paid for with a subsidy can access 80% of providers in a community).*
- **Toddler slot amount.** The product of the number of toddler child care seats that have been created or expanded and 20% of the toddler child care rate *(described above)*.
- Employers are limited to the creation or expansion of 25 new slots for infants and toddlers. If an employer creates more than 25 child care slots, credit will be given for the infant seats first (which are more expensive for families) and then the toddler seats. *(While both credits are 20%, the price of care is higher for infant care, which means that the tax credit for infant slots is higher than the credit for toddler slots).*
- Employers must limit the cost imposed on employees to no more than 40% of the established child care rate (described above).
- The amount of tax credits per slot or employer may be reduced due to allocation of available funds.

Contact the OCFS Division of Child Care Services via email with any questions at Ocfs.sm.ChildCareBusinessTaxCredit@ocfs.ny.gov.

NY Excelsior Child Care Services Tax Credit (Component of the Excelsior Jobs Program Credit)

Under [NY's Excelsior Jobs Program Credit law](#), an employer participating in the [Excelsior Jobs Program](#) is eligible to claim a credit for each net new job it creates in New York. A component of

the Excelsior Jobs Program Credit is the ability for employers to claim a credit on its net new child care services expenditures for its operation, sponsorship, or direct financial support of a child care services program. The credit is up to 6% of the net new child care services expenditures.

Businesses interested in the Excelsior Jobs Program should contact the appropriate [ESD Industry Director](#) or the appropriate ESD [Regional Office](#).

Resource Summary

Federal

- IRS [Form 8882, Employer-provided Child Care Credit](#)
- [Dependent Care Assistance Plans \(DCAPs\)](#)

New York State

Employer-Provided Child Care Credit

- New York Department of Taxation and Finance, [Instructions for Form CT-652 Employer-Provided Child Care Credit](#)
- New York Department of Taxation and Finance, [Form CT-652, Employer-Provided Child Care Credit](#)
- [New York Employer-Provided Child Care Credit Law](#)

Child Care Creation and Expansion Credit

- New York Child Care Creation and Expansion Credit [FAQs](#)
- [New York Child Care Creation and Expansion Credit Law](#)
- [NY Office of Child & Family Services memo](#) related to child care rates (related to age of the child, child care setting, and geography)
- New York Department of Taxation and Finance, [Form CT-662, Child Care Creation and Expansion Credit](#)
- Office of Children and Family Services Child Care Creation and Expansion Credit [web page](#)
- For questions about the Child Care Creation and Expansion Credit, OCFS Division of Child Care Services via email at Ocfs.sm.ChildCareBusinessTaxCredit@ocfs.ny.gov

Excelsior Jobs Program Credit

- New York Department of Taxation and Finance, [Instructions for Form CT-607 Claim for Excelsior Jobs Program Tax Credit](#)
- New York Department of Taxation and Finance, [Form CT-607, Claim for Excelsior Jobs Program Tax Credit](#)
- [New York Excelsior Jobs Program Credit Law](#)
- [New York Excelsior Jobs Program Overview](#)