

# FEDERAL & STATE EMPLOYER TAX INCENTIVES

## Expanding the Availability & Affordability of Child Care

### Federal Tax Incentives for Employers

#### TAX CREDITS FOR EMPLOYERS PROVIDING CHILD CARE AND/OR RESOURCE AND REFERRAL SERVICES

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 three years from the due date of the return. (See IRS Form 8882)

#### TO BE ELIGIBLE FOR THE CREDIT:

- The primary use of the program must be for child care. The program must meet all applicable state and local laws.
- The child care program must be available for enrollment to the business's employees.
- 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 CATEGORIES:

- Costs to acquire, construct, rehabilitate or expand property for use in a child care program;
- Operational expenses, including training and compensation for employees of the child care program, as well as funds for scholarship programs;
- Expenses for contracting with a licensed or regulated child care provider within the community to offer child care services to the employer's workforce.

#### 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 (DCAPs), which are flexible spending accounts. 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 family care expenses depending upon the family's tax bracket and expenses incurred for child care. DCAPS also offer a tax savings for employers by allowing the funds to be set aside through a flexible spending account, which reduces employer payroll costs. These funds are exempt from FICA or FUTA taxes. Many employees with young children may already be paying for child care; the option for a flexible spending account reimburses parents at a tax savings for money that would be spent anyway.

## HOW DO FLEXIBLE SPENDING PLANS WORK?

An employer establishes a written plan, as required by the IRS, and distributes a summary of the plan to all employees, which is required by the U.S. 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 paycheck deductions.

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. (Link: <https://www.fsafeds.gov/support/savingscalculator/s/dcfesa>). In general, there are cost savings to be realized through the tax code for employees who are able to participate in an employer-sponsored DCAP. Everyone's family and tax situations are different; a tax professional can help answer your specific questions and concerns.

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

### NY STATE CHILD AND DEPENDENT CARE TAX CREDIT

The NY State Child and Dependent Care Tax Credit is a New York State "piggy-back" tax credit that builds upon the federal §45F tax credit for employer-sponsored child care. Essentially, New York State's tax law mirrors the federal credit but with enhanced benefits for eligible employers when their child care programs are based in New York.

- Increased credit rate. New York State allows a credit of 50% of eligible expenses, compared to the federal rate of 25%.
- Enhanced credit for referral services. For child care resource and referral services, New York State allows 20% of expenses for the credit, doubling the federal rate of 10%.
- Higher annual cap. New York State permits an annual credit limit of \$500,000, significantly higher than the federal cap of \$150,000.

### NY CHILD CARE CREATION AND EXPANSION CREDIT

This new tax credit law for employers is intended to increase the availability of infant and toddler care. Administered by the NY Office of Children and Family Services (OCFS), the credit applies for 2023 and 2024 (with potential extensions from the NYS Legislature).

Employers providing licensed or registered child care slots for their employees—either directly or through contracts with 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 after April 1, 2023. Key aspects of the credit include:

- Infant Slot Credit: Calculated as 20% of the regional "rate" per infant seat created or expanded, based on the 2022 New York State Child Care Market Rate Survey. Rates are set at the 80th percentile, meaning subsidized care can cover 80% of available providers.
- Toddler Slot Credit: Similarly calculated as 20% of the toddler care rate per newly created or expanded toddler seat.

#### Additionally:

- Slot Limits: Employers can receive credit for up to 25 new infant and toddler slots combined. Credit priority goes to infant slots, which are costlier for families, providing a higher credit value.
- Employee Cost Cap: Employers must ensure that employees pay no more than 40% of the established child care rate for these slots.
- Allocation of Funds: The final credit amount per slot or employer may be adjusted based on fund availability.

For questions about the Child Care Creation and Expansion Credit, contact OCFS Division of Child Care Services via email at [ocfs.sm.childcarebusinessstaxcredit@ocfs.ny.gov](mailto:ocfs.sm.childcarebusinessstaxcredit@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.