

EMPLOYER TAX CREDIT FOR CHILD CARE

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Suzanne Harrison

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill creates nonrefundable corporate and individual income tax credits for employers that pay for or provide child care for employees.

Highlighted Provisions:

This bill:

- ▶ creates nonrefundable corporate and individual income tax credits for employers that make payments to third parties for providing child care or that provide child care for one or more employees;
 - ▶ defines terms;
 - ▶ creates an application process for an employer that pays for or provides child care for employees to receive a tax credit certificate;
 - ▶ requires the Department of Workforce Services to report certain information related to the tax credit to the Legislature in the department's annual report;
 - ▶ sets a termination date for the tax credit but requires legislative review before the termination date to determine whether the Legislature should extend the tax credit;
- and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

63I-1-235, as last amended by Laws of Utah 2019, Chapters 89 and 246

63I-1-259, as last amended by Laws of Utah 2019, Chapters 29 and 479

ENACTS:

35A-5-401, Utah Code Annotated 1953

35A-5-402, Utah Code Annotated 1953

35A-5-403, Utah Code Annotated 1953

59-7-625, Utah Code Annotated 1953

59-10-1041, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Part 4. Tax Credit for Employer Provided Dependent Care.

Section 1. Section **35A-5-401** is enacted to read:

35A-5-401. Definitions.

As used in this part:

(1) "Dependent" means:

(a) a child under the age of 13; or

(b) a child under the age of 18, if the child has a disability.

(2) "Dependent care" means continuous care and supervision of dependents that is provided:

(a) in lieu of care ordinarily provided by a parent or a legal guardian in the dependent's home;

(b) for less than 24 hours a day;

(c) for direct compensation;

(d) during an employer's business hours; and

(e) by a provider that is licensed in accordance with Title 26, Chapter 39, Utah Child Care Licensing Act.

(3) "Dependent care expenses" means the amounts:

(a) if the employer pays a third party to provide dependent care, paid in accordance

with a contract between the employer and the third party provider; or

(b) if the employer provides dependent care, incurred for:

(i) dependent care staff;

(ii) learning and recreational materials and equipment used in providing dependent care; and

(iii) maintenance of a dependent care facility.

(4) "Qualified application" means an application for a tax credit certificate that meets the requirements of Subsections [35A-5-402](#)(2) and (3).

(5) "Tax credit" means a tax credit described in:

(a) Section [59-7-625](#), if an employer files an income tax return under Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

(b) Section [59-10-1041](#), if an employer files an income tax return under Title 59, Chapter 10, Individual Income Tax Act.

Section 2. Section **35A-5-402** is enacted to read:

35A-5-402. Application for and issuance of tax credit certificate for tax credit for employer provided dependent care.

(1) An employer who seeks to claim a tax credit shall apply annually to the department for a tax credit certificate.

(2) The employer shall apply for a tax credit certificate on a form provided by the department and approved by the State Tax Commission.

(3) The employer shall include in the application the following information for the year for which the employer seeks to claim a tax credit:

(a) proof of the amount of dependent care expenses paid or incurred;

(b) for payments of dependent care expenses to one or more third party providers:

(i) the name and license number, or other identifying information, of each third party provider; and

(ii) a copy of the contract between the employer and each third party provider;

(c) for dependent care expenses incurred by the employer in providing child care, an itemized list of expenses for:

(i) dependent care staff;

(ii) learning and recreational materials and equipment used in providing dependent

90 care; and

91 (iii) maintenance of a dependent care facility; and

92 (d) responses to questions developed by the department regarding the benefits that the
93 employer or the employees receive from the availability of the tax credit.

94 (4) (a) The department shall issue a tax credit certificate to an employer that the
95 department determines:

96 (i) paid or incurred dependent care expenses during the year; and

97 (ii) completed a qualified application.

98 (b) Subject to Subsection (5), the tax credit certificate shall state the amount of the
99 employer's tax credit, which is equal to the lesser of:

100 (i) 50% of the dependent care expenses that the employer paid or incurred during the
101 year; and

102 (ii) \$50,000.

103 (5) (a) The maximum aggregate amount of tax credit certificates that the department
104 may issue for a year is \$500,000.

105 (b) If the department receives qualified applications for tax credit certificates in
106 amounts that exceed the aggregate amount of tax credit certificates that the department may
107 issue for the year, the department shall issue tax credit certificates:

108 (i) in the order that the department receives the qualified applications until the total
109 aggregate amount is met; and

110 (ii) for the final employer to receive a tax credit certificate, in an amount equal to the
111 difference between the maximum aggregate amount described in this Subsection (5) and the
112 aggregate dollar amount of the tax credit certificates that the department has already issued for
113 the year.

114 (6) The department shall submit to the State Tax Commission an electronic list that
115 includes:

116 (a) the name and identifying information of each employer to which the department
117 issues a tax credit certificate; and

118 (b) for each employer, the amount of the tax credit stated on the tax credit certificate.

119 (7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
120 department may make rules governing administration of the tax credit certificate process

described in this section.

Section 3. Section **35A-5-403** is enacted to read:

35A-5-403. Report to the Legislature.

The department shall include in the annual report required by Section [35A-1-109](#) the following information for the previous year:

(1) a compilation of the responses to the questions regarding employer and employee benefits from the availability of the tax credit; and

(2) the number of employers to which the department issued a tax credit certificate.

Section 4. Section **59-7-625** is enacted to read:

59-7-625. Nonrefundable tax credit for employer provided dependent care.

(1) As used in this section:

(a) "Dependent care expenses" means the same as that term is defined in Section [35A-5-401](#).

(b) "Employer" means a taxpayer that receives a tax credit certificate in accordance with Section [35A-5-402](#).

(2) An employer may claim a nonrefundable tax credit for dependent care expenses in an amount equal to the amount stated on the tax credit certificate issued in accordance with Section [35A-5-402](#).

(3) (a) An employer may carry forward the amount of the tax credit that exceeds the employer's tax liability for a period of five years.

(b) An employer may not carry back the amount of a tax credit that exceeds the employer's tax liability.

Section 5. Section **59-10-1041** is enacted to read:

59-10-1041. Nonrefundable tax credit for employer provided dependent care.

(1) As used in this section:

(a) "Dependent care expenses" means the same as that term is defined in Section [35A-5-401](#).

(b) "Employer" means a claimant that receives a tax credit certificate in accordance with Section [35A-5-402](#).

(2) An employer may claim a nonrefundable tax credit for dependent care expenses in an amount equal to the amount stated on the tax credit certificate issued in accordance with

Section [35A-5-402](#).

(3) (a) An employer may carry forward the amount of the tax credit that exceeds the employer's tax liability for a period of five years.

(b) An employer may not carry back the amount of a tax credit that exceeds the employer's tax liability.

Section 6. Section **63I-1-235** is amended to read:

63I-1-235. Repeal dates, Title 35A.

(1) Subsection [35A-1-109](#)(4)(c), related to the Talent Ready Utah Board, is repealed January 1, 2023.

(2) Subsection [35A-4-312](#)(5)(p), describing information that may be disclosed to the federal Wage and Hour Division, is repealed July 1, 2022.

(3) Title 35A, Chapter 5, Part 4, Tax Credit for Employer Provided Dependent Care, is repealed January 1, 2026.

~~[(3)]~~ (4) Title 35A, Chapter 8, Part 22, Commission on Housing Affordability, is repealed July 1, 2023.

~~[(4)]~~ (5) Section [35A-9-501](#) is repealed January 1, 2021.

~~[(5)]~~ (6) Title 35A, Chapter 11, Women in the Economy Commission Act, is repealed January 1, 2025.

Section 7. Section **63I-1-259** is amended to read:

63I-1-259. Repeal dates, Title 59.

(1) Section [59-1-213.1](#) is repealed ~~[on]~~ May 9, 2024.

(2) Section [59-1-213.2](#) is repealed ~~[on]~~ May 9, 2024.

(3) Subsection [59-1-405](#)(1)(g) is repealed ~~[on]~~ May 9, 2024.

(4) Subsection [59-1-405](#)(2)(b) is repealed ~~[on]~~ May 9, 2024.

~~[(5)]~~ ~~Section [59-7-618](#) is repealed July 1, 2020.]~~

(5) Section [59-7-625](#) is repealed January 1, 2026.

(6) Section [59-9-102.5](#) is repealed December 31, 2020.

~~[(7)]~~ ~~Section [59-10-1033](#) is repealed July 1, 2020.]~~

(7) Section [59-10-1041](#) is repealed January 1, 2026.

~~[(8)]~~ ~~Subsection [59-12-2219](#)(13), which addresses new revenue supplanting existing allocations, is repealed on June 30, 2020.]~~

183 [~~(9)~~] (8) Title 59, Chapter 28, State Transient Room Tax Act, is repealed on January 1,
184 2023.

185 Section 8. **Effective date.**

186 This bill takes effect for a taxable year that begins on or after January 1, 2021.