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MEMORANDUM[1]

TO: Statutory Revision Committee

FROM: Sarah Lozano, Office of Legislative Legal Services

DATE: February 19, 2021

SUBJECT: Modifications to the state tax credit for contributions to promote child care

Summary

Section 39-22-121, C.R.S., allows a taxpayer who makes a contribution to promote child care to claim a state tax credit for a percentage of their contribution. Section 39-22-121 (1), C.R.S., only applies to the 1999 income tax year, and allows a credit for monetary or in-kind contributions. Section 39-22-121 (1.5), C.R.S., added in 2000, is applicable to the income tax years prior to January 1, 2025, and only allows a credit for monetary contributions. Therefore, section 39-22-121 (1), C.R.S., should be repealed because it is only applicable to the 1999 income tax year and all references to in-kind contributions throughout section 39-22-121, C.R.S, should be removed because only monetary contributions currently qualify for a credit. The Department of Revenue and the Office of Legislative Legal Services identified this provision and related statutory defects.

[1] This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

Analysis

The applicable credits are codified in section 39-22-121 (1), C.R.S., and section 39-22-121 (1.5), C.R.S. The credit codified in section 39-22-121 (1), C.R.S., should be repealed because it only applies to the 1999 income tax year. Further, any reference to in-kind contributions throughout section 39-22-121, C.R.S., should be removed because the tax credit codified in section 39-22-121 (1.5), C.R.S., does not permit in-kind contributions:

> **39-22-121. Credit for child care facilities - repeal.** (1) For the income tax year commencing on or after January 1, 1999, but prior to January 1, 2000, any taxpayer who makes a monetary or in-kind contribution to promote child care in the state shall be allowed a credit against the income tax imposed by this article in an amount equal to twenty-five percent of the total value of the contribution except as otherwise provided in subsection (5) of this section.
>
> (1.5) For income tax years commencing prior to January 1, 2025, any taxpayer who makes a monetary contribution to promote child care in the state is allowed a credit against the income tax imposed by this article 22 in an amount equal to fifty percent of the total value of the contribution except as otherwise provided in subsections (5) and (6.7) of this section.

Statutory Charge[2]

The Statutory Revision Committee (SRC) is tasked with discovering "defects and anachronisms in the law" and recommending legislation "to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law." The repeal of section 39-22-121 (1), C.R.S., and removal any reference to in-kind contributions throughout section 39-22-121, C.R.S., fits within the SRC's charge because the revisions would repeal a credit that is no longer in effect and make the entire statute consistent with current law.

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[2] The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions." § 2-3-902 (1), C.R.S. In addition, the SRC "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

Proposed Bill

The attached bill repeals section 39-22-121 (1), C.R.S., and removes any reference to in-kind contributions within section 39-22-121, C.R.S.

ADDENDUM A

39-22-121. Credit for child care facilities – repeal. (1) For the income tax year commencing on or after January 1, 1999, but prior to January 1, 2000, any taxpayer who makes a monetary or in-kind contribution to promote child care in the state shall be allowed a credit against the income tax imposed by this article in an amount equal to twenty-five percent of the total value of the contribution except as otherwise provided in subsection (5) of this section.

(1.5) For income tax years commencing prior to January 1, 2025, any taxpayer who makes a monetary contribution to promote child care in the state is allowed a credit against the income tax imposed by this article 22 in an amount equal to fifty percent of the total value of the contribution except as otherwise provided in subsections (5) and (6.7) of this section.

(1.7) As used in this section, unless the context otherwise requires, "child care" means care provided to a child twelve years of age or younger.

(2) Monetary or in-kind contributions to promote child care in the state shall include the following types of contributions:

(a) Donating money, real estate, or property for the establishment or operation of a child care facility that uses the donation to provide child care, a child care program that is not a child care facility but provides child care services similar to those provided by a child care center, as defined in section 26-6-102 (5), C.R.S., or any other program that received donations for which a credit was allowed to the donor pursuant to this section for any income tax year that ended before January 1, 2004, in the state;

(b) Donating money to establish a grant or loan program for a parent or parents in the state requiring financial assistance for child care;

(c) Pooling moneys of several businesses and donating such moneys for the establishment of a child care facility in the state;

(d) Donating money for the training of child care providers in the state; and

(e) Donating money, services, or equipment for the establishment of an information dissemination program in the state to provide information and referral services to assist a parent or parents in obtaining child care.

(3) In no event shall credits be allowed pursuant to this section for contributions that are not directly related to promoting child care in the state or for contributions that a taxpayer makes to a child care facility in which the taxpayer or a person related to the taxpayer has a financial interest.

(4) When a contribution for which a credit is claimed pursuant to this section is made to a for-profit business, such contribution shall be directly invested by the business for the acquisition or improvement of facilities,

equipment, or services, including the improvement of staff salaries, staff training, or the quality of child care.

(5) The credit allowed by this section shall not exceed one hundred thousand dollars or the taxpayer's actual income tax liability for the tax year for which the credit is claimed, whichever is less. In-kind contributions shall not exceed fifty percent of the total amount of the credit claimed for a given tax year.

(6) If the amount of the credit allowed pursuant to the provisions of this section exceeds the amount of income taxes otherwise due on the taxpayer's income in the income tax year for which the credit is being claimed, the amount of the credit not used as an offset against income taxes in said income tax year may be carried forward and used as a credit against subsequent years' income tax liability for a period not to exceed five years and shall be applied first to the earliest income tax years possible. Any credit remaining after said period shall not be refunded or credited to the taxpayer.

(6.5) For the purposes of this section, "child care facility" means:

(a) Any facility required to be licensed pursuant to part 1 of article 6 of title 26, C.R.S., and shall include, but is not limited to:

(I) Child care centers;

(II) Child placement agencies;

(III) Family child care homes;

(IV) Foster care homes;

(V) Homeless youth shelters;

(VI) Residential child care facilities; and

(VII) Secure residential treatment centers; and

(b) For income tax years commencing on and after January 1, 2013, any approved facility school as such term is defined in section 22-2-402 (1), C.R.S., that is also affiliated with a licensed or certified hospital in the state and is also a nonprofit organization; except that, subject to the limitations specified in subsections (5) and (6) of this section and paragraph (d) of subsection (6.7) of this section, any credit for a monetary contribution made to an approved facility school in the income tax year commencing on or after January 1, 2013, but before January 1, 2014, shall not be claimed until the income tax year commencing on or after January 1, 2014.

(6.7) (a) If the revenue estimate prepared by the staff of the legislative council in December 2010 and December 2011 indicates that the amount of the total general fund revenues for that particular fiscal year will not be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year, then the credit authorized in this section shall not be allowed for any income tax year commencing during the calendar year following the year in which the estimate is prepared; except that any taxpayer who would have been eligible to claim a credit pursuant to this section in the income tax year in which the credit is not allowed shall be allowed to claim the credit earned in such income tax year in the next income tax year in which the estimate indicates that the amount of the total general fund revenues will be sufficient to grow the total state general fund appropriations by six percent over such appropriations for the previous fiscal year.

(b) The department of revenue shall, through its website, specify on or before January 1, 2011, and January 1, 2012, whether the credit authorized in this section shall be allowed for a given income tax year pursuant to paragraph (a) of this subsection (6.7).

(c) Notwithstanding any other provision, and subject to the limitations in subsections (5) and (6) of this section, in the income tax year commencing on January 1, 2013, a taxpayer may claim no more than fifty percent of any credit allowed pursuant to subsection (1.5) of this section and paragraph (a) of this subsection (6.7) and any credit carried forward pursuant to subsection (6) of this section. The remainder of all credits allowed as described in this paragraph (c) shall be carried forward to the income tax year commencing January 1, 2014.

(d) Notwithstanding any other provision, and subject to the limitations in subsections (5) and (6) of this section, in the income tax year commencing on January 1, 2014, a taxpayer may claim no more than seventy-five percent of any credit allowed pursuant to subsection (1.5) of this section and any credit carried forward pursuant to subsection (6) of this section and paragraph (c) of this subsection (6.7). The remainder of all credits allowed as described in this paragraph (d) shall be carried forward to the income tax year commencing January 1, 2015.

(7) This section is repealed, effective January 1, 2032.

DRAFT
2.4.21

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT

LLS NO. 21-0724.01 Sarah Lozano x3858 **COMMITTEE BILL**

Statutory Revision Committee

BILL TOPIC: "Mod To Child Care Tax Credit To Address Defects"
DEADLINES: File by: 2/25/2021

A BILL FOR AN ACT

CONCERNING THE ELIMINATION OF OBSOLETE PROVISIONS OF THE CHILD CARE CONTRIBUTION STATE INCOME TAX CREDIT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov/.)

Statutory Revision Committee. House Bill 00-1351, enacted in 2000, removed the provision permitting a child care contribution income tax credit for an in-kind contribution. Accordingly, the bill removes all references in the statute to an in-kind contribution. The bill also repeals an obsolete provision that is only applicable to the income tax year that commenced on or after January 1, 1999, but prior to January 1, 2000.

Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 39-22-121, **amend** (2) introductory portion, (2)(a), (2)(c), (2)(e), and (5); and **repeal** (1) as follows:

39-22-121. Credit for child care facilities - repeal. (1) ~~For the income tax year commencing on or after January 1, 1999, but prior to January 1, 2000, any taxpayer who makes a monetary or in-kind contribution to promote child care in the state shall be allowed a credit against the income tax imposed by this article in an amount equal to twenty-five percent of the total value of the contribution except as otherwise provided in subsection (5) of this section.~~

(2) Monetary ~~or in-kind~~ contributions to promote child care in the state shall include the following types of contributions:

(a) Donating money ~~real estate, or property~~ for the establishment or operation of a child care facility that uses the donation to provide child care, a child care program that is not a child care facility but provides child care services similar to those provided by a child care center, as defined in section 26-6-102 (5), ~~C.R.S.,~~ or any other program that received donations for which a credit was allowed to the donor pursuant to this section for any income tax year that ended before January 1, 2004, in the state;

(c) Pooling ~~moneys~~ MONEY of several businesses and donating ~~such moneys~~ THE MONEY for the establishment of a child care facility in the state;

(e) Donating money ~~services, or equipment~~ for the establishment of an information dissemination program in the state to provide information and referral services to assist a parent or parents in obtaining child care.

(5) The credit allowed by this section shall not exceed one hundred thousand dollars or the taxpayer's actual income tax liability for the tax year for which the credit is claimed, whichever is less. ~~In-kind contributions shall not exceed fifty percent of the total amount of the credit claimed for a given tax year.~~

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.