

Child Care Creation and Expansion Tax Credit

Program Overview

The Child Care Creation and Expansion Tax Credit is intended to support businesses that provide subsidized infant or toddler care for their employees.

There is a critical shortage of infant and toddler child care that is available and accessible to working parents in New York State. To spur the creation and expansion of child care programs and address this vital need, the Office of Children and Family Services (OCFS) is administering a new tax credit program for businesses that directly create or collaborate with a child care program to offer additional infant/toddler child care opportunities for their own employees. Eligible businesses that create new infant/toddler child care seats, or expand existing programs, in 2023 and/or 2024 can apply for the tax credit.

Program Highlights

This initiative is designed to incentivize and assist businesses that generate greatly needed infant and toddler child care seats for their own employees' children. Businesses with a location in New York subject to tax under Tax Law Article 9-A, 22 or 33, and providing licensed or registered child day care seats for their employees, either directly or through a third party, can apply for the tax credit. The child care seats **must be newly created or expanded, and the seats cannot have existed prior to April 1, 2023.**

NOTE: If the applying business created seats on or after 4/1/2023, but did not have the seats occupied until 2024, those seats can be claimed for the 2024 tax year.

Businesses must limit the cost imposed on employees to no more than 40% of the established child care rate, therefore the applying business would subsidize the remaining cost of child care.

The child care tax credit program will be available for two years (2023 and 2024), and New York State will make \$25 million available each year. The credit will be allocated based on increased capacity in the infant and/or toddler age groups on a pro rata basis to each business that demonstrates eligibility until funding is exhausted.

Definitions:

Certificate of tax credit - shall mean the document issued to a business entity by OCFS after OCFS has verified that the business entity has met all applicable eligibility criteria in this title. The certificate shall specify the exact amount of the tax credit under this title that a business entity may claim, pursuant to section three hundred ninety-four-d of this title, and the service year.

Child care program - shall mean a child day care for which a license or registration to operate such program has been issued by OCFS pursuant to section three hundred ninety of this article.

Child care rate - shall mean the weekly child care subsidy market rates, based on the 80th percentile of the 2021-22 New York State child care market rate survey, for infant and toddler care provided by a licensed or registered child care program, as reflected in the 2022 child care market rate survey report published by OCFS in compliance with 45 CFR §98.45. Please see **rates** for further details: <https://ocfs.ny.gov/main/policies/external/2022/lcm/22-OCFS-LCM-14.pdf>

Child care seats - shall mean the maximum number of children to be allowed on the premises of a child care program at any time that such program is in operation as specified on the license or registration issued for such program by OCFS.

Creates child care – shall mean the making available of child care seats in a child care program by a business entity, directly or through a third-party, for employees of such business entity, where such child care program was not available prior to April 1, 2023, provided that the costs imposed on such employees for such child care program do not exceed 40% of the child care rate.

Expands child care - shall mean the increase in the number of child care seats in a child care program made available by a business entity, directly or through a third party, for employees of such business entity, provided that such increase requires a new or amended license or registration issued by OCFS pursuant to NYS SSL §390 on or after April 1, 2023 and, provided further, that the costs imposed on such employees for such child care program do not exceed 40% of the child care rate.

In attendance on the premises - shall include both children physically in attendance on the premises of a child care program and children who are enrolled to be physically in attendance on the premises.

Infant - for the purposes of calculating the New York State Child Care Creation and Expansion Credit, shall mean a child up to 18 months of age at a day care center, or a child up to 24 months of age at a family day care or group family day care

Occupied - shall mean, for each service year in which a child care program is in operation, the average daily number of children in attendance on the premises of such child care program.

Service year - shall mean the twelve-month period, or portion thereof, commencing on January 1 and ending on December 31.

Toddler - For the purposes of calculating the New York State Child Care Creation and Expansion Credit, shall mean a child 18 months of age up to 36 months of age at a day care center, or a child 24 months of age up to 36 months of age at a family day care or group family day care.

Eligibility:

To be eligible for a tax credit under the Child Care Creation and Expansion Credit, a business entity must:

- (a) be required to file a tax return pursuant to Article 9-A, 22 or 33, of the New York State Tax Law;
- (b) be a child care program, or contract with such child care program, as defined in this Part that is licensed or registered pursuant to New York Social Services Law §390;
- (c) create or expand child care seats, directly or through a third party, for the employees of such business entity as authorized by New York State statute;
- (d) operate a business location in New York State;
- (e) be in substantial compliance with all child care licensing laws and regulations related to the entity's business sector or other laws and regulations as determined by the Commissioner; and
- (f) not owe any past due New York State or local property taxes unless the business entity is making payments and complying with an approved binding payment agreement entered into with the taxing authority.

Ineligible Programs:

Certain programs will be ineligible for a tax credit under the Child Care Creation and Expansion Credit. Programs shall be considered ineligible which are:

1. Legally Exempt Child Care Programs
2. NYC DOH Permitted Child Care Programs
3. Out-of-State Child Care Programs
4. Preschool Child Care Programs
5. Comprised of Preschool Child Care Seats
6. Comprised of School-Age Child Care Seats
7. Child Care Programs in the Application Process (not open and operating)

How to Apply:

Applications for the tax credit will be made available online January 1, 2025 and must be completed and successfully uploaded by January 31, 2025, immediately following the end of the service year. The service year shall mean the 12-month period, or portion thereof, commencing on January 1 and ending on December 31.

A taxpayer must submit a complete application to OCFS on a form prescribed by the Commissioner by January 31 immediately following the end of the service year.

Applications that are incomplete as of the January 31 deadline will not be considered. Applications that are submitted after the due date will not be considered. OCFS has no obligation to inform the taxpayer whether an application is complete or incomplete.

It is highly recommended that applications be submitted at least 10 business days prior to the deadline to ensure that they upload properly and are received by OCFS. Please review guidelines below to determine what information needs to be included for the application to be deemed complete.

Application Portal for Tax Year of 2023- 1/1/2024-1/31/2024 (closed)

Application Portal for Tax Year of 2024: 1/1/2025-1/31/2025 (Link will be posted on 1/1/2025)

Guidelines for submitting the application:

On the application, the applying business will need to fill out their business and contact information thoroughly; be sure to check that all information entered is correct prior to submitting your application.

The applying business will need to select which day care(s) they created and occupied seats for their employee's children.

The applying business will indicate how many infant seats were created for their employees' children on or after 4/1/2023, how many of those seats were occupied, and the number of calendar weeks each seat was occupied between 1/1/2024 and 12/31/2024.

The applying business will indicate how many toddler seats were created for their employees' children on or after 4/1/2023, how many of those seats were occupied, and the number of calendar weeks each seat was occupied between 1/1/2024 and 12/31/2024.

The applying business must attest that these seats were created for, and occupied by, their own employee's infants/toddlers.

NOTE: If the applying business created seats on or after 4/1/2023, but did not have the seats occupied until 2024, those seats can be claimed for the 2024 tax year.

The tax credit is calculated based on when the seats were occupied, not created (Note: Seats must have been created on, or after, 4/1/2023), and for the duration of calendar weeks each slot was occupied during the tax year.

The applying business must attest that they limit the cost imposed on employees to no more than 40% of the established child care rate; therefore, the applying business is subsidizing the remaining cost of the child care.

Please reference the child care rates on the OCFS website:

<https://ocfs.ny.gov/main/policies/external/2022/lcm/22-OCFS-LCM-14.pdf>

The applying business must review and agree to the remaining attestations listed on the application summary page; consent to allow OCFS and its agents access to any and all books and records required to monitor compliance; and agreement to provide any additional information required by OCFS for participation in this program.

Application Review

Upon submission of applications, OCFS will review all the information entered by the applying business. OCFS will review the day care center that the seats are reportedly created at to ensure that their license was updated to reflect the newly created/expanded seats on or after 4/1/2023.

OCFS will reach out to applying business if any further information is needed throughout the review process and provide a deadline for a response for the application to be considered.

OCFS will coordinate with the NYS Department of Taxation and Finance (DTF) to ensure businesses are in good standing. Applicants must consent to allow the NYS Department of Taxation and Finance to share the business entity's tax information relevant to administration of this credit with OCFS. However, any information shared as a result of this process shall not be available for disclosure or inspection under the state freedom of information law.

If the application is deemed eligible and approved, OCFS will generate and send a Tax Credit Certificate to the business that will reflect the total amount of the approved tax credit.

A business entity participating in the program must retain all data and documentation that validates the information in the application for at least three years, including all numbers in the certification form included in the application, through the entire period in which the tax against which the credit was or may be taken may be assessed, including any agreed-upon period of extension of a limitations period for the assessment of such tax. Such business entity must make available all such data and documentation to OCFS upon request.

Calculation of Credit:

The tax credit will be calculated based on the number of new seats created and occupied and the market rate for the county in which the child care program is located. Please see **rates** on the OCFS website for further details: <https://ocfs.ny.gov/main/policies/external/2022/lcm/22-OCFS-LCM-14.pdf>

A business entity that meets all requirements may be eligible to claim a credit for the portion of the service year in which the child care program was in operation, equal to the sum of:

- (a) the product of the number of infant child care seats that have been created or expanded and 20% of the child care rate (in accordance with the 2022 child care market rate survey report published by OCFS) for such infant child care seats, and
- (b) the product of the number of toddler child care seats that have been created or expanded and 20% of the child care rate (in accordance with the 2022 child care market rate survey report published by OCFS) for such toddler child care seats, **provided that such infant and toddler child care seats are occupied.**

Reduction of Credit - If the total amount of credits otherwise authorized for taxpayers that submitted completed applications on or before the due date exceed \$25 million, each such credit shall be reduced by multiplying such credit by a fraction, in which the numerator is \$25 million and the denominator is the total amount of credits otherwise authorized for such taxpayers.

Please note: Credit shall not be allowed for more than 25 child care seats that are occupied, and the amount of such credit may be reduced due to allocation of available funds. If a program creates more than 25 child care seats, and they include both infant and toddler seats, the credit will be given for the infant seats first and then the toddler seats.

Please see **rates on the OCFS website** for further details:

<https://ocfs.ny.gov/main/policies/external/2022/lcm/22-OCFS-LCM-14.pdf>

Revocation of the Certificate of Tax Credit:

OCFS reserves the right to revoke, or partially revoke, tax credit certificates that have been issued in error. It is the responsibility of the business entity to report any errors to OCFS within 10 days of discovery. Any tax credit revoked shall be recaptured in the tax year such revocation becomes final. If applicable, OCFS will issue a revised certificate to the business entity within 10 days of notification of an error. Any decision made by OCFS to deny, revoke, or partially revoke tax credit certificates is final and there shall be no appeal process once a decision has been rendered.

Frequently Asked Questions:

Frequently Asked Questions [Word FAQ](#) | [PDF FAQ](#)

Resources and Forms:

[Tax and Finance forms and instructions are available on the Tax and Finance website.](#)

Application Assistance:

Questions? Please contact the OCFS Division of Child Care Services via email at ocfs.sm.childcarebusinessstaxcredit@ocfs.ny.gov