DEPARTMENT OF TAXATION
2023 Fiscal Impact Statement

1. **Patron** Timothy V. Anderson

2. **Bill Number** HB 1479
   House of Origin:
   X **Introduced**
   ____ **Substitute**
   ____ **Engrossed**

   Second House:
   ____ **In Committee**
   ____ **Substitute**
   ____ **Enrolled**

3. **Committee** House Finance

4. **Title** Employer Provided Childcare Tax Credit

5. **Summary/Purpose:**

   This bill would create a new nonrefundable individual and corporate income tax credit for twenty percent of qualified child care expenditures incurred by a small business. The credit would be limited to no more than $300,000 per taxpayer per taxable year.

   The tax credit provided by this bill would be effective for taxable years beginning on and after January 1, 2023, but before January 1, 2028. The credit would only be permitted for qualified child care expenditures incurred on or after July 1, 2024.

6. **Budget amendment necessary:** Yes.
   Item(s): Page 1, Revenue Estimates
   274 and 276, Department of Taxation

7. **Fiscal Impact Estimates are:** Unknown. (See Line 8.)
   7a. Expenditure Impact:

Fiscal Year	***Dollars***	***Positions***	***Fund***
2023-24	($240,943)	1	GF
2024-25	($75,898)	1	GF
2025-26	($75,898)	1	GF
2026-27	($75,898)	1	GF
2027-28	($75,898)	1	GF
2028-29	($75,898)	1	GF

8. **Fiscal implications:**

   Administrative Costs

   The Department of Taxation ("the Department") estimates that this bill would result in additional administrative costs $240,943 in Fiscal Year 2024 and $75,898 in each fiscal year thereafter. These cost include the addition of one full-time employee and the expenses associated with creating a new tax credit program, including updating the Department's systems and forms.

Revenue Impact

This bill would result in an unknown negative General Fund revenue impact beginning as early as Fiscal Year 2025. It is unknown how many small businesses would take advantage of the proposed tax credit program.

9. Specific agency or political subdivisions affected:

Department of Taxation

10. Technical amendment necessary: Yes.

Small businesses organized as pass-through entities generally pass through items of income and other tax attributes, including tax credits, to the entity's owners. As a result, nonrefundable tax credits are generally limited by the tax liability of the owners, not the business itself. To ensure that business owners can claim the tax credit on their returns and also benefit from the carryover provisions of this bill, the following technical amendments are suggested:

Line 37, after "C."
Strike: Remainder of line through Line 42
Insert: If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the excess may be carried over for credit against the income taxes of the taxpayer in the next five taxable years, or until the total credit amount has been taken, whichever occurs first.

Line 43, after "D."
Insert: For purposes of this section, the amount of any credit attributable to a partnership, electing small business corporation (S corporation), or limited liability company shall be allocated to the individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities. E.

Because the tax credit would be based on expenditures incurred during the preceding taxable year, and only expenditures incurred on and after July 1, 2024 would qualify, taxpayers will not be able to claim the credit until they file their Taxable Year 2025 returns. If that is not the intent, the Department suggests technical amendments to clarify the timing of when the credit may be claimed.

11. Other comments:

Day-care Facility Investment Tax Credit

In 1996, the General Assembly enacted a tax credit for any employer who establishes a licensed child day-care center primarily for the children of employees. The credit was equal to 25 percent of the cost of the facility up to $25,000. The maximum amount of credits that can be approved in any fiscal year is limited to $100,000. Expenditures paid or incurred for planning, site preparation, construction, renovation, or acquisition of facilities for the purpose of establishing a child day-care facility to be used primarily by the children of employees are qualified for the Day-care Facility Investment Tax Credit. In addition, equipment installed for permanent use within or immediately adjacent to such facility, including kitchen appliances, to the extent that such equipment or appliances are necessary in the use of such facility for purposes of child day-care also qualify for the tax credit.

This credit is currently considered obsolete under Virginia law, and may not be claimed by a taxpayer without permission from the General Assembly.

Proposed Legislation

This bill would create a new nonrefundable individual and corporate income tax credit for twenty percent of qualified child care expenditures incurred by a small business. “Qualified child care expenditure” would mean any amount paid or incurred (i) for the operating costs of a qualified child day center by the small business, including costs related to the training of employees, to scholarship programs, and to providing increased compensation to employees with higher levels of child care training, or (ii) under a contract with a qualified child day center to provide child care services to employees of the small business. Qualified child care expenditures would not include expenses in excess of the fair market value of such child care.

For purposes of this bill, a “small business” would be defined as a business that is at least 51 percent independently owned and controlled by one or more individuals, or in the case of a cooperative association organized as a nonstock corporation, is at least 51 percent independently controlled by one or more members, who are U.S. citizens or legal resident aliens and, together with affiliates, has fewer than 100 employees. To qualify for the proposed tax credit, a small business would be required to offer child care options to full-time employees with children. Any small business that intends to claim the proposed tax credit would be required to maintain records of its monthly qualified childcare expenditures, including purchase receipts and invoices.

A “qualified child day center” would mean any duly licensed child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

The credit would be limited to no more than $300,000 per taxpayer per taxable year. A small business would be required to submit with its tax return the records of its monthly qualified expenditures, including any purchase receipts or invoices. The amount of credit allowed for a small business would be 20 percent of the aggregate amount incurred on monthly qualified childcare expenditures incurred in the preceding taxable year.

The amount of the credit claimed in any single taxable year would not be permitted to exceed the small business’s liability for taxes imposed by this chapter for that taxable year. If the amount of credit exceeds the small business’s tax liability for the taxable year in which the credit was earned, the amount that exceeds the tax liability would be permitted to be carried over for credit against the income taxes of the small business in the next five taxable years or until the total amount of the tax credit has been taken, whichever is sooner. Because small businesses that

The Tax Commissioner would be required to develop guidelines for claiming the tax credit proposed by this bill. Such guidelines would be exempt from the provisions of the Administrative Process Act.

The tax credit provided by this bill would be effective for taxable years beginning on and after January 1, 2023, but before January 1, 2028. The credit would only be permitted for qualified child care expenditures incurred on or after July 1, 2024.

cc : Secretary of Finance

Date: 1/29/2023 RWC
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