

DEPARTMENT OF REVENUE

RULE NO.: 12ER24-17
 RULE TITLE: Child Care Tax Credits Program;
 Participation; Allocation; Carryforward;
 Transfer; Rescindment

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Child Care Tax Credits Program; Participation; Allocation; Carryforward; Transfer; Rescindment

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Section 61, Chapter 2024-158, L.O.F., authorizes the Department of Revenue to promulgate emergency rules to implement the Child Care Tax Credits program, as provided in sections 26, 32, 36, 39, 44, 49, 53, 54, and 55, Chapter 2024-158, L.O.F. The promulgation of this emergency rule ensures that the public is notified in the most expedient and appropriate manner regarding the Child Care Tax Credits program.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized the promulgation of emergency rules to implement the provisions of sections 26, 32, 36, 39, 44, 49, 53, 54, and 55, Chapter 2024-158, L.O.F., which provides for the Child Care Tax Credits program. Additionally, this emergency rule is the most expedient and appropriate means of notifying taxpayers of these provisions.

SUMMARY: Emergency Rule 12ER24-17, Child Care Tax Credits Program; Participation; Allocation; Carryforward; Transfer; Rescindment, incorporates provisions for the Child Care Tax Credits program as provided in Chapter 2024-158, L.O.F. The emergency rule provides: (1) definitions for purposes of administering the program; (2) the taxes for which a credit allocation may be granted under the program; (3) the process and applications required to apply for an allocation of the tax credit available each state fiscal year under the program; (4) for each tax, the period during which an application for an allocation of the available annual tax credit cap must be submitted; (5) the tax credits and deductions against each tax due that must be deducted to determine the limitation of the child care tax credits available; (6) for each tax, how the tax is to be taken on a tax return; (7) procedures and the required form to transfer a tax credit in a complete transfer of all assets to another entity or to another member of the same affiliated group of corporations; (8) procedures and the required form to rescind an unused credit allocation; and (9) that the Department will notify the applicant by letter of approval or denial of an application and how to protest a denial of a credit allocation, transfer, or rescindment. This emergency rule supersedes Emergency Rule 12ER24-14.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Martha Gregory, Office of Technical

Assistance, telephone (850)717-6041, email RuleComments@floridarevenue.com.

THE FULL TEXT OF THE EMERGENCY RULE IS:

12ER24-17 Child Care Tax Credits Program; Participation; Allocation; Carryforward; Transfer; Rescindment.

(1) Definitions. For purpose of this rule, the following terms mean:

(a) “Affiliated group of corporations” is given the same meaning as the definition provided in Section 220.03(1)(b), F.S.

(b) “Credit allocation” means an allocation to a taxpayer of an annual tax credit cap authorized under the Child Care Tax Credits Program.

(c) “Department” means the Florida Department of Revenue.

(d) “Division” means the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

(e) “Eligible children” means the children or grandchildren of an employee of a taxpayer, if such employee is the child or grandchild’s caregiver as defined in Section 39.01, F.S.

(f) “Eligible child care facility” means a child care facility that is licensed under Section 402.305, F.S., or is exempt from licensure under Section 402.316, F.S.

(g) “State fiscal year” means the annual period beginning July 1 through June 30 of the following year.

(h) “Tax credit cap” means the maximum annual tax credit amount that the Department is authorized by Section 402.261, F.S., to allocate.

(2) Taxpayers eligible to participate in the program. Taxpayers who pay any of the following taxes may apply to the Department for a credit allocation:

(a) For the taxes administered by the Department:

1. Florida corporate income tax imposed under Chapter 220, F.S.

2. Florida insurance premium tax imposed under Section 624.509, F.S.

3. Florida state sales and use tax self-accrued and paid directly to the Department in accordance with a valid Sales and Use Tax Direct Pay Permit, issued by the Department, as provided in Section 212.183, F.S., and Rule 12A-1.0911, F.A.C.

4. Florida oil production tax imposed under Section 211.02, F.S., or Florida gas production tax imposed under Section 211.025, F.S.

(b) For excise taxes administered by the Division:

1. Excise tax on liquor beverages imposed under Section 565.12, F.S.;

2. Excise tax on wine beverages imposed under Section 564.06, F.S., except excise taxes imposed on wine produced by manufacturers in Florida from products grown in Florida; or,

3. Excise tax on malt beverages imposed under Section 563.05, F.S.

(3) Applications for credit allocations.

(a) To apply for an allocation of the available program credits, taxpayers must submit Child Care Tax Credits Program – Application for Tax Credit Allocation (Form DR-556000, incorporated by reference in Rule 12ER24-16) to the Department. Taxpayers applying for an allocation of credit for child care facility startup costs under Section 402.261(2)(a), F.S., or operation of a taxpayer’s eligible child care facility under Section 402.261(2)(b), F.S., must attach Child Care Tax Credits Program – Application for Tax Credit Allocation Eligible Child Care Facility Statement (Form DR-556000A, incorporated by reference in Rule 12ER24-16) to Form DR-556000.

1. Taxpayers required to file returns and remit payments by electronic means pursuant to Section 213.755, F.S., and Rule Chapter 12-24, F.A.C., must apply online using the Department’s website. When the application is completed and submitted online, a confirmation number will be provided with the date and time of submission.

2. The fastest and easiest way to apply for an allocation is online at floridarevenue.com/taxes/multitaxcredits. Taxpayers who are not required to file returns and remit payments by electronic means pursuant to Section 213.755, F.S., and Rule Chapter 12-24, F.A.C., may also apply by submitting a paper application with the Department.

3.a. Pursuant to Section 402.261(4)(c), F.S., if two or more taxpayers choose to jointly establish and operate an eligible child care facility, or cause a not-for-profit taxpayer to establish and operate an eligible child care facility, the taxpayers must jointly file Form DR-556000, or the not-for-profit taxpayer may file Form DR-556000. Notwithstanding subparagraph 1., a joint paper application must be filed.

b. A joint paper application for an allocation of credit must be submitted to the Department by email at CreditTrackingGroup@floridarevenue.com or by mail to:

Florida Department of Revenue
Revenue Accounting
P.O. Box 6609
Tallahassee, FL 32314-6609

(b) A separate application to receive a credit allocation is required for:

1. Each tax listed in subsection (2) against which the taxpayer intends to apply any allocation of credit received.

2. Each beverage license issued by the Division for which a separate return to report and pay the excise taxes on liquor, wine, and malt beverages is filed with the Division.

3. Each tax credit cap year.

(c) Taxpayers are eligible to apply during the following periods to receive a credit allocation from each annual tax credit cap for the following taxes as follows:

1. Corporate Income Tax – A taxpayer may make an application for a credit allocation on the first business day of January of each calendar year for its tax year that begins during that calendar year. The credit must be earned before the date the taxpayer is required to file its Florida corporate income/franchise tax return for that tax year pursuant to Section 220.222, F.S., including a valid extended due date.

a. Example: A calendar year taxpayer may apply for a credit allocation for the 2025-2026 state fiscal year credit beginning on January 2, 2025. The credit must be earned before May 1, 2026; however, if the due date of the taxpayer’s Florida corporate income/franchise tax return is validly extended, the credit must be earned before November 1, 2026.

b. Example: A taxpayer with a tax year beginning December 1, 2025, and ending November 30, 2026, may apply for a credit allocation for the 2025-2026 state fiscal year credit beginning on January 2, 2025. The credit must be earned before April 1, 2027; however, if the due date of the taxpayer’s Florida corporate income/franchise tax return is validly extended, the credit must be earned before October 1, 2027.

2. Insurance Premium Tax – A taxpayer may make an application for a credit allocation on the first business day of January of each calendar year and before the due date of the insurance premium taxes and fees return, which is March 1 following the taxable year. The credit must be earned during the taxpayer’s taxable year. Example: For the 2025-2026 state fiscal year tax credit cap, a taxpayer may submit an application for a credit allocation beginning on January 2, 2025. The credit must be earned on or before December 31, 2025.

3. Sales and Use Tax – Tax on Oil and Gas Production – Excise Taxes on Liquor, Wine, and Malt Beverages – A taxpayer may make an application for a credit allocation on the first business day of January of the calendar year preceding the state fiscal year beginning on July 1 of the calendar year. The credit must be earned by June 30 of the state fiscal year for which the taxpayer is applying. For example, for a credit allocation for the 2025-2026 state fiscal year, taxpayers may apply for a credit allocation beginning on January 2, 2025. The credit must be earned by June 30, 2026.

(d) The Department will accept applications until either the tax credit cap is reached or until the end of the state fiscal year for sales and use tax, the tax on oil and gas production, and the excise taxes on liquor, wine, and malt beverages; until on or before the day the taxpayer’s insurance premium tax return is due; or until the day before the due date of the taxpayer’s Florida corporate income/franchise tax return for corporate income tax, whichever occurs first.

(4) Notification.

(a) The Department will approve credit allocations on a first-come, first-served basis. Following receipt of an application, the Department will send written correspondence regarding the amount of the credit allocation for each tax applied for, or the reason the credit allocation could not be approved. For excise tax on liquor, wine, and malt beverages, the Division must approve the credit allocation before the Department will issue such correspondence.

(b) When the Department is not able to approve an application, a letter explaining the reason for the denial will be mailed to the taxpayer. The taxpayer may protest the denial pursuant to Sections 120.569 and 120.57, F.S. The Department will reserve the denied amount of the allocation for the taxpayer during the protest period.

(c)1. If the amount of credit allocation requested by a taxpayer is subsequently determined to be overstated, the taxpayer may not claim more credit on its tax return than it was allocated by the Department. For example, Taxpayer A requested an allocation of credit of \$800,000, based on estimated costs of constructing an eligible child care facility. Later, it was determined Taxpayer A should have only applied for an allocation of \$750,000, based on actual eligible child care facility startup costs. Taxpayer A is only entitled to claim a credit of up to \$750,000 on its tax return. Taxpayer A may rescind the \$50,000 in unused credit allocation so that it may be reallocated to other taxpayers, if such rescindment is made within the timeframes provided in subsection (8).

2. If the amount of credit allocation requested by a taxpayer is later determined to be understated, the taxpayer may not claim more credit on its tax return than it was allocated by the Department. For example, Taxpayer Z submitted Form DR-556000 to the Department, requesting an allocation of credit of \$64,800. The request was based on Taxpayer Z making payments to an eligible child care facility in the name and for the benefit of its employees, estimating that it would be paying for child care costs for 18 eligible children. Later, Taxpayer Z determined its allocation request should have been for \$72,000, because it actually made payments to an eligible child care facility for 20 eligible children. Taxpayer Z is limited to a credit of \$64,800 when it files its tax return.

(5) Tax Credits.

(a)1. Corporate Income Tax – One hundred percent of the credit earned against any corporate income tax due for the tax year is allowed. The amount of the tax credit for a tax year:

a. Is taken in the order of the credits provided against the corporate income tax in Section 220.02(8), F.S.

b. Is revoked and rescinded when a taxpayer applies for a credit allocation after timely requesting an extension of time in which to file its Florida corporate income/franchise tax return

and fails to remit sufficient tentative tax, such that its extension is not valid under Sections 220.222 and 220.32, F.S.

2. Taxpayers must attach a copy of the tax credit allocation letter issued by the Department to the Florida corporate income/franchise tax return on which any tax credit is taken.

(b)1. Insurance Premium Tax – One hundred percent of the credit earned against any insurance premium tax due under Section 624.509(1), F.S., for the tax year is allowed. The amount of the tax credit for a tax year is limited to the insurance premium tax due after deducting:

a. Assessments made pursuant to Section 440.51, F.S. (workers' compensation administrative assessments);

b. Credits for taxes paid under Sections 175.101 and 185.08, F.S. (firefighters' and police officers' pension trust funds);

c. Credits for income taxes paid under Chapter 220, F.S., and the salary credit allowed under Section 624.509(5), F.S., as these are limited by Section 624.509(6), F.S. (the 65 percent limitation);

d. The amount of the Strong Families Tax Credit under Section 624.51057, F.S., and

e. The amount of the Live Local Program credit under Section 624.51058, F.S.

2. Taxpayers must attach a copy of the tax credit allocation letter issued by the Department to the tax return on which any tax credit is taken.

(c)1. Sales and Use Tax – One hundred percent of the credit earned is allowed against any state sales and use tax due self-accrued and paid directly to the Department in accordance with a valid Sales and Use Tax Direct Pay Permit issued by the Department.

2. The Department will send written instructions on how to claim the credit allocation as a tax credit on a sales and use tax return remitted to the Department by electronic means.

(d)1. Tax on Oil and Gas Production – One hundred percent of the credit earned is allowed against any tax due on oil or gas production in Florida imposed under Sections 211.02 and 211.025, F.S.

2. The tax credit may not exceed 50 percent of the tax due on the return on which the tax credit is taken. If a taxpayer has earned tax credits under Section 1002.395, F.S. (Florida Tax Credit Scholarship Program), Section 402.62, F.S. (Strong Families Tax Credit), and Section 1003.485, F.S. (The New Worlds Reading Initiative), the credit under Section 1002.395, F.S., will be applied first; the credit under Section 402.62, F.S., will be applied second; the credit under Section 1003.485, F.S., will be applied third; and the credit under Section 402.261, F.S., will be applied fourth, as applicable, until the 50 percent limit is reached.

3. Taxpayers must attach a copy of the tax credit allocation letter issued by the Department to the tax return on which the

credit allocation, or a portion of the credit allocation, is taken as a tax credit.

(e)1. Excise Tax on Liquor, Wine, and Malt Beverages – One hundred percent of the credit earned is allowed against the following taxes administered by the Division.

a. Excise tax on liquor beverages imposed under Section 565.12, F.S.;

b. Excise tax on wine beverages imposed under Section 564.06, F.S., except excise taxes imposed on wine produced by manufacturers in Florida from products grown in Florida; or

c. Excise tax on malt beverages imposed under Section 563.05, F.S.

2. The tax credit taken on a return filed with the Division is limited to 90 percent of the tax due on the return. Taxpayers must attach a copy of the tax credit allocation letter from the Department to the tax return on which any tax credit is taken.

(f) Credits earned for corporate income tax or insurance premium tax will be taken into account when determining the estimated payment amounts required to meet the prior year exceptions for each tax. Cross reference: Rules 12C-1.034 and 12B-8.001, F.A.C.

(6) Carryforward of unused credits.

(a) When a taxpayer is unable to use a tax credit during the period specified by the Department in the tax credit allocation letter, because the taxpayer's liability is insufficient, the taxpayer may carry forward the unused tax credit amount for a period not to exceed five years.

(b) Examples.

1. Corporate Income Tax Example – A calendar year taxpayer applied for and was approved for a credit allocation against corporate income tax for the tax year ending December 31, 2025. Any unused carryforward from its tax year ending December 31, 2025, expires on the due date pursuant to Section 220.222, F.S., for the Florida corporate income/franchise tax return for the taxable year ending December 31, 2030.

2. Insurance Premium Tax Example – A taxpayer applied for and was approved for a credit allocation against insurance premium tax due for calendar year 2025. Any unused carryforward from its tax year ending December 31, 2025, expires on December 31, 2030.

3. Sales and Use Tax Example – A taxpayer who holds a Sales and Use Tax Direct Pay Permit applied for and was approved for a credit allocation against sales and use tax due to the Department for the state fiscal year 2025-2026. The taxpayer's state tax liability in accordance with the Permit was insufficient to use the entire credit allocation on sales and use tax returns filed with the Department on or before June 30, 2026. Any unused carryforward from the 2025-2026 state fiscal year expires June 30, 2031.

4. Tax on Oil and Gas Production – The same application periods and credit carryforward periods that apply to a sales and

use tax credit allocation apply to a credit allocation against the tax on oil and gas production.

5. Excise Taxes on Liquor, Wine, and Malt Beverages Example – A taxpayer who holds a liquor license issued by the Division applied for and was approved for a credit allocation against the liquor excise tax for returns due during the state fiscal year 2025-2026. The taxpayer's liability was insufficient to use the entire credit allocation during that state fiscal year. Any unused carryforward from the 2025-2026 state fiscal year expires June 30, 2031.

(7) Transfers of unused tax credits.

(a) A taxpayer may not convey, assign, or transfer an approved credit allocation or a carryforward tax credit to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction. However, an approved credit allocation that has not been claimed on a tax return or a carryforward tax credit that has not been claimed on a tax return may be transferred between members of the same affiliated group of corporations.

(b) A transferred credit allocation or carryforward tax credit may only be used against the same tax as the original credit allocation approved by the Department.

(c) A transferred credit allocation or carryforward tax credit may only be taken by the receiving member of the affiliated group during the same period for which the transferring member was approved.

(d)1. A taxpayer must notify the Department of its intent to transfer any unused credit allocation or carryforward tax credit to another member of its affiliated group by submitting Child Care Tax Credits Program – Notice of Intent to Transfer a Tax Credit (Form DR-556200, incorporated by reference in Rule 12ER24-16). A separate notice must be submitted for each member of an affiliated group of corporations receiving a transfer.

2. Taxpayers must submit an application for transfer of any unused credit allocation or carryforward tax credit to the Department by email at CreditTrackingGroup@floridarevenue.com or by mail to:

Florida Department of Revenue

Revenue Accounting

P.O. Box 6609

Tallahassee, FL 32314-6609

(e) The Department must approve the application for transfer of the unused credit allocation or carryforward tax credit before the receiving member may claim a tax credit on a tax return. For excise tax on liquor, wine, and malt beverages, the Division must also approve the transfer before the receiving member may claim a tax credit on a tax return.

(f) Following receipt of an application, the Department will send written correspondence approving the transfer or providing the reason the transfer could not be approved. The

taxpayer may protest the denial pursuant to Sections 120.569 and 120.57, F.S.

(g) If the transfer is approved, a copy of the approval letter will be sent to both the transferring member and the receiving member. The approval letter will include instructions on how the receiving member may claim a tax credit on a tax return.

(8) Rescindment of unused tax credits.

(a) The rescindment provision allows credit allocations that will not be used by the taxpayer to be reallocated to other taxpayers who may use the credit allocation. Taxpayers must apply online using the Department's website at floridarevenue.com or submit Child Care Tax Credits Program – Application for Rescindment of Previous Allocation of Tax Credit (Form DR-556100, incorporated by reference in Rule 12ER24-16) to the Department to rescind all or a portion of an unused credit allocation. See paragraph (3)(a) for submitting the application to the Department.

(b) An application for rescindment of the unused credit allocation by the Department will not be approved when:

1. The amount of credit allocation requested to be rescinded has been claimed as a credit on a previously filed return; or

2. The allocation year is closed for all taxpayers. The allocation period for a calendar year is closed for all taxes and all taxpayers on October 1 of the third year following the January 1 opening of the allocation period, regardless of whether the annual tax credit cap has been reached. For example, the allocation period beginning January 1, 2025, for the state fiscal year beginning July 1, 2025, closes for all taxpayers on October 1, 2027.

(c) Following receipt of an application, the Department will send written correspondence regarding the amount of the rescindment, or the reason rescindment could not be approved. For excise tax on liquor, wine, and malt beverages, the Division must approve the rescindment before the Department will issue such correspondence. The taxpayer may protest the denial pursuant to Sections 120.569 and 120.57, F.S.

Rulemaking Authority 213.06(1), 402.261(7) FS., s. 61, Ch. 2024-158 LOF. Law Implemented 211.0254, 212.1835, 220.19, 402.261, 561.1214, 624.509(7), 624.5107 FS. History—New 10-24-24.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: October 24, 2024

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