under paragraph (1) (without regard to this subparagraph) shall be reduced by an amount equal to the product of—

(i) the amount otherwise so determined under paragraph (1), multiplied by

(ii) a percentage equal to 2 percentage points for each employee of the employer for the preceding taxable year in excess of 50 employees.

(C) Wage limitation

(i) In general

No contributions with respect to any employee who receives wages from the employer for the taxable year in excess of $100,000 may be taken into account for such taxable year under subparagraph (A).

(ii) Wages

For purposes of the preceding sentence, the term ''wages'' has the meaning given such term by section 3121(a).

(iii) Inflation adjustment

In the case of any taxable year beginning in a calendar year after 2023, the $100,000 amount under clause (i) shall be increased by an amount equal to—

(I) such dollar amount, multiplied by

(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting ''calendar year 2007'' for ''calendar year 2016'' in subparagraph (A)(ii) thereof.

If any amount as adjusted under this clause is not a multiple of $5,000, such amount shall be rounded to the next lowest multiple of $5,000.

(3) Applicable percentage

For purposes of this section, the applicable percentage for the taxable year during which the eligible employer plan is established with respect to the eligible employer shall be 100 percent, and for taxable years thereafter shall be determined under the following table:

In the case of the following taxable year beginning after the taxable year during which plan is established with respect to the eligible employer:	The applicable percentage shall be:
1st	100%
2nd	75%
3rd	50%
4th	25%
Any taxable year thereafter	0%

(4) Determination of eligible employer; number of employees

For purposes of this subsection, whether an employer is an eligible employer and the number of employees of an employer shall be determined under the rules of subsection (c), except that paragraph (2) thereof shall only apply to the taxable year during which the eligible employer plan to which this section applies is established with respect to the eligible employer.

(Added Pub. L. 107–16, title VI, §619(a), June 7, 2001, 115 Stat. 108; amended Pub. L. 107–147, title IV, §411(n)(1), Mar. 9, 2002, 116 Stat. 48; Pub. L. 116–94, div. O, title I, §104(a), Dec. 20, 2019, 133 Stat. 3147; Pub. L. 117–328, div. T, title I, §§102(a)–(c), 111(a), Dec. 29, 2022, 136 Stat. 5277, 5278, 5293.)

Editorial Notes

AMENDMENTS

2022—Subsec. (d)(3)(A). Pub. L. 117–328, §111(a), substituted ''effective with respect to the eligible employer'' for ''effective''.

Subsec. (e)(2). Pub. L. 117–328, §102(c), amended par. (2) generally. Prior to amendment, text read as follows: ''No deduction shall be allowed for that portion of the qualified startup costs paid or incurred for the taxable year which is equal to the credit determined under subsection (a).''

Subsec. (e)(4). Pub. L. 117–328, §102(a), added par. (4).

Subsec. (f). Pub. L. 117–328, §102(b), added subsec. (f).

2019—Subsec. (b)(1). Pub. L. 116–94 amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''$500 for the first credit year and each of the 2 taxable years immediately following the first credit year, and''.

2002—Subsec. (e)(1). Pub. L. 107–147 substituted ''subsection (m)'' for ''subsection (n)''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2022 AMENDMENT

Pub. L. 117–328, div. T, title I, §102(d), Dec. 29, 2022, 136 Stat. 5278, provided that: ''The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2022.''

Pub. L. 117–328, div. T, title I, §111(b), Dec. 29, 2022, 136 Stat. 5293, provided that: ''The amendment made by this section [amending this section] shall take effect as if included in the enactment of section 104 of the Setting Every Community Up for Retirement Enhancement Act of 2019 [div. O of Pub. L. 116–94, see Effective Date of 2019 Amendment note below].''

EFFECTIVE DATE OF 2019 AMENDMENT

Pub. L. 116–94, div. O, title I, §104(b), Dec. 20, 2019, 133 Stat. 3147, provided that: ''The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2019.''

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Section applicable to costs paid or incurred in taxable years beginning after Dec. 31, 2001, with respect to qualified employer plans first effective after such date, see section 619(d) of Pub. L. 107–16, as amended, set out as an Effective Date of 2001 Amendment note under section 38 of this title.

§ 45F. Employer-provided child care credit

(a) In general

For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to the sum of—

(1) 25 percent of the qualified child care expenditures, and

(2) 10 percent of the qualified child care resource and referral expenditures,

of the taxpayer for such taxable year.

(b) Dollar limitation

The credit allowable under subsection (a) for any taxable year shall not exceed $150,000.

(c) Definitions

For purposes of this section—

(1) Qualified child care expenditure

(A) In general

The term ''qualified child care expenditure'' means any amount paid or incurred—

(i) to acquire, construct, rehabilitate, or expand property—

(I) which is to be used as part of a qualified child care facility of the taxpayer,

(II) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and

(III) which does not constitute part of the principal residence (within the meaning of section 121) of the taxpayer or any employee of the taxpayer,

(ii) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training, or

(iii) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer.

(B) Fair market value

The term ''qualified child care expenditures'' shall not include expenses in excess of the fair market value of such care.

(2) Qualified child care facility

(A) In general

The term ''qualified child care facility'' means a facility—

(i) the principal use of which is to provide child care assistance, and

(ii) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including the licensing of the facility as a child care facility.

Clause (i) shall not apply to a facility which is the principal residence (within the meaning of section 121) of the operator of the facility.

(B) Special rules with respect to a taxpayer

A facility shall not be treated as a qualified child care facility with respect to a taxpayer unless—

(i) enrollment in the facility is open to employees of the taxpayer during the taxable year,

(ii) if the facility is the principal trade or business of the taxpayer, at least 30 percent of the enrollees of such facility are dependents of employees of the taxpayer, and

(iii) the use of such facility (or the eligibility to use such facility) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

(3) Qualified child care resource and referral expenditure

(A) In general

The term ''qualified child care resource and referral expenditure'' means any amount paid or incurred under a contract to provide child care resource and referral services to an employee of the taxpayer.

(B) Nondiscrimination

The services shall not be treated as qualified unless the provision of such services (or the eligibility to use such services) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

(d) Recapture of acquisition and construction credit

(1) In general

If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of—

(A) the applicable recapture percentage, and

(B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer described in subsection (c)(1)(A) with respect to such facility had been zero.

(2) Applicable recapture percentage

(A) In general

For purposes of this subsection, the applicable recapture percentage shall be determined from the following table:

If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

(B) Years

For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

(3) Recapture event defined

For purposes of this subsection, the term ''recapture event'' means—

(A) Cessation of operation

The cessation of the operation of the facility as a qualified child care facility.

(B) Change in ownership

(i) In general

Except as provided in clause (ii), the disposition of a taxpayer's interest in a quali-

fied child care facility with respect to which the credit described in subsection (a) was allowable.

(ii) Agreement to assume recapture liability

Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

(4) Special rules

(A) Tax benefit rule

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) No credits against tax

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(C) No recapture by reason of casualty loss

The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(e) Special rules

For purposes of this section—

(1) Aggregation rules

All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

(2) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(3) Allocation in the case of partnerships

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

(f) No double benefit

(1) Reduction in basis

For purposes of this subtitle—

(A) In general

If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

(B) Certain dispositions

If, during any taxable year, there is a recapture amount determined with respect to any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term ''recapture amount'' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

(2) Other deductions and credits

No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

(Added Pub. L. 107–16, title II, § 205(a), June 7, 2001, 115 Stat. 50; amended Pub. L. 107–147, title IV, § 411(d)(1), Mar. 9, 2002, 116 Stat. 46.)

Editorial Notes

AMENDMENTS

2002—Subsec. (d)(4)(B). Pub. L. 107–147 substituted ''this chapter or for purposes of section 55'' for ''subpart A, B, or D of this part''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. 107–16, to which such amendment relates, see section 411(x) of Pub. L. 107–147, set out as a note under section 25B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2001, see section 205(c) of Pub. L. 107–16, set out as an Effective Date of 2001 Amendment note under section 38 of this title.

§ 45G. Railroad track maintenance credit

(a) General rule

For purposes of section 38, the railroad track maintenance credit determined under this section for the taxable year is an amount equal to 40 percent (50 percent in the case of any taxable year beginning before January 1, 2023) of the qualified railroad track maintenance expenditures paid or incurred by an eligible taxpayer during the taxable year.

(b) Limitation

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the product of—

(A) $3,500, multiplied by

(B) the sum of—

(i) the number of miles of railroad track owned or leased by the eligible taxpayer as of the close of the taxable year, and

(ii) the number of miles of railroad track assigned for purposes of this subsection to the eligible taxpayer by a Class II or Class III railroad which owns or leases such railroad track as of the close of the taxable year.

(2) Assignments

With respect to any assignment of a mile of railroad track under paragraph (1)(B)(ii)—