



**COLORADO**  
Department of Revenue

Taxation Division

Office of Tax Policy  
P.O. Box 17087  
Denver, CO 80217-0087

dor\_taxpolicy@state.co.us

GIL 23-004

November 28, 2023

XXXXXXXXXX  
XXXXXXXXXX

Via Electronic Mail: XXXXXXXXXXXX

Re: Child Care Contribution Credit

Dear XXXXXXXXXXXX:

You submitted a request for a general information letter regarding the child care contribution credit allowed by section 39-22-121, C.R.S. The Colorado Department of Revenue ("Department") issues general information letters and private letter rulings. A general information letter provides a general overview of the relevant tax issues but is not binding on the Department. A private letter ruling provides a specific determination for a specific set of facts, is binding on the Department, and requires payment of a fee. For more information about general information letters and private letter rulings, please see 1 CCR 201-1, Rule 24-35-103.5.

### Issues

1. What happens to the excess if the child care contribution credit allowed to the donor exceeds the amount of the donor's Colorado income tax liability in the year that the credit is earned and claimed?
2. What must an organization do to accept contributions that qualify for the credit if it intends to use the contributions to construct a child care facility that will provide child care but is not yet licensed to do so?
3. Are donations disqualified if the organization intends to use a facility for purposes other than child care?

### Discussion

Taxpayers that make a qualifying monetary contribution to promote child care in Colorado may claim an income tax credit equal to 50% of the total qualifying contribution.<sup>1</sup> The maximum credit allowed for all contributions made during a tax year is \$100,000.<sup>2</sup> To claim the credit, the

---

<sup>1</sup> Section 39-22-121(1.5), C.R.S.

<sup>2</sup> *Id.* at (5).

donor must obtain a signed statement from the recipient organization (currently using form DR 1317) and file it with their income tax return.<sup>3</sup>

If the credit allowed to the donor exceeds the donor's Colorado income tax liability for the income tax year in which the donation was made and the credit was claimed, the excess is not refunded to the donor.<sup>4</sup> The donor may carry the excess credit forward for up to five tax years, but the credit must be applied to the earliest tax years possible.<sup>5</sup> Any credit remaining after the carryforward period is not refunded and may not be used.<sup>6</sup>

Among other things, a credit is allowed for contributions made for the establishment or operation of a child care facility that uses the donation to provide child care.<sup>7</sup> Child care facilities include any facility required to be licensed by the Colorado Department of Human Services ("CDHS") pursuant to part 9 of article 6 of title 26 or the Colorado Department of Early Childhood ("CDEC") pursuant to part 3 of article 5 of title 26.5.<sup>8</sup> "Child care" means care provided to a child twelve years of age or younger.<sup>9</sup>

Contributions may be used for the establishment of a child care facility, which includes the construction of the facility itself.<sup>10</sup> If an organization intends to accept contributions for the establishment of a child care facility before it is required to be licensed by CDHS or CDEC, the organization must first register with the Department by filing form DR 1318.<sup>11</sup> The organization must demonstrate that it will use contributions to establish and operate a child care facility to provide child care (as defined above), and explain that it will obtain a license from the appropriate agency when it is required to do so.<sup>12</sup> The organization must also submit documentation that supports the registration, such as fundraising or informational brochures; bylaws, board meeting minutes, or other organizational documents; and requests for construction proposals.<sup>13</sup> The documentation should demonstrate that the facility to be established will be a child care facility that will provide child care as those terms are defined above.

The credit is limited to contributions that will be used to promote child care in Colorado as defined by the statute.<sup>14</sup> The Department's rules recognize, however, that an organization may be engaged in and accept contributions for nonqualifying activities as well.<sup>15</sup> In these situations,

---

<sup>3</sup> 1 CCR 201-2, Rule 39-22-121, paragraph (11).

<sup>4</sup> Section 39-22-121(6), C.R.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at (2.5).

<sup>8</sup> *Id.* at (6.5)(a). An approved facility school, as such term is defined in section 22-2-402(1), C.R.S., is also a "child care facility" for purposes of the credit. *Id.* at (6.5)(b).

<sup>9</sup> *Id.* at (1.7).

<sup>10</sup> *Id.* at (2)(a). See also 1 CCR 201-2, Rule 39-22-121, paragraph (10)(a)(iii) (describing the partial qualification of contributions to a community center construction project where a child care facility is only part of the overall project).

<sup>11</sup> 1 CCR 201-2, Rule 39-22-121, paragraph (6). Organizations must review the applicable statutes, related rules, and other material issued by CDHS and CDEC to determine whether and when they must apply for a license.

<sup>12</sup> *Id.* at (6)(a)(i) and (ii).

<sup>13</sup> *Id.* at (6)(a)(iii). Upon becoming licensed, the organization should notify the Department that it should be removed from the list of unlicensed programs.

<sup>14</sup> Section 39-22-121(1.5), C.R.S.

<sup>15</sup> 1 CCR 201-2, Rule 39-22-121, paragraph (10).

the rules permit contributions to be allocated among qualifying and nonqualifying purposes.<sup>16</sup> This allocation must be done in a reasonable manner based on the facts of the situation.<sup>17</sup> Organizations may make written requests to the Department to obtain permission to use a method other than the methods described in the rule.<sup>18</sup>

### **Miscellaneous**

This letter represents the good-faith opinion of Department personnel who are knowledgeable on state taxes issues. However, the Department does not make a specific determination on any of the issues raised and the Department is not bound by this general information letter.

Thank you for your request.

Sincerely,

Office of Tax Policy  
Colorado Department of Revenue

---

<sup>16</sup> *Id.* at (10)(b).

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at (10)(b)(iv).