COLORADO
Department of Revenue
Taxation Division
Physical Address:
1375 Sherman Street
Denver, CO 80203
Mailing Address:
P.O. Box 17087
Denver, CO 80217-0087

PLR-16-012

April 18, 2016

XXXXXXXXXXXXXX
Attn: XXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

Re: Child Care Contribution Tax Credit Certification

Dear XXXXXXXXXXX,

You submitted on behalf of XXXXXXXXXXXXXX ("Company") and with respect to the XXXXXXXXXXXXXXXXXX ("Fund") a request for a private letter ruling to the Colorado Department of Revenue ("Department") pursuant to Department Rule 1 CCR 201-1, 24-35-103.5. This letter is the Department's private letter ruling. This ruling is binding on the Department to the extent set forth in Department Rule 1 CCR 201-1, 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Issue

Are contributions made to Company to benefit the Fund eligible for the child care contribution credit authorized by § 39-22-121, C.R.S.?

Conclusion

Contributions made to the Fund are eligible for the child care contribution credit. In calculating the allowable credit, 85% of any contribution will be allocated to qualifying purposes and 15% will be allocated to non-qualifying purposes.

Background

Company is not licensed by the Colorado Department of Human Services and does not directly provide child care services to children, but rather engages in multiple activities that indirectly support child care in Colorado. One of these activities is the administration of the Fund. The Fund awards grants to eligible nonprofit child care programs in Colorado to enable them to make capital improvements tied to providing quality indoor and outdoor physical environments for children, families, and staff. Examples of these projects include kitchen upgrades, carpet and window replacement, and retrofits that enable programs to increase their capacity to serve more children in child care settings. Grantees also receive intensive technical assistance regarding the preparation of both financial statements and successful grant proposals.

Grant applications must meet several criteria in order to qualify for awards from the Fund. Grantees must have a current license in good standing with the Colorado Division of Early Care and Learning (within the Department of Human Services) as a child care center or preschool. Grantees must serve children ages birth to five years old and may serve children up to age 12, but not children older than 12 years old. Grantees may only apply for grants and must use any awarded funds to make permanent facility improvements to child care facilities in Colorado. Eighty-five percent of contributions made to the Fund are distributed to grantees. The remaining fifteen percent is retained by Company to cover administrative costs, including the technical assistance provided to grantees (regarding financial statements and grant proposals), grant distribution, and the review of applications and final reports.

Company has separately applied to the Department for registration as a unlicensed child care program for the training program it administers for child care providers and the Department has approved this application. This program operates independently from and is unrelated to the Fund that is the subject of this ruling.

Structure of Analysis

To determine whether contributions made to the Fund qualify for the child care contribution credit, the Department will examine the following questions:

1) Can contributions made to an organization that does not directly provide child care "promote child care" under the provisions of §§ 39-22-121(1.5) and (2)(a), C.R.S.?
2) Do Fund grantees and their activities satisfy the various requirements for the credit under § 39-22-121(1.7), (2)(a), and (3), C.R.S.?
3) Are contributions made to the Fund used directly and exclusively for eligible purposes and functions under § 39-22-121(2) and (3), C.R.S.?

Discussion

The child care contribution credit is allowed for contributions made "to promote child care in the state."[1] The following purposes or functions "promote child care" and are eligible for the credit under the terms of the statute[2]:

> *"(a) Donating money...for the establishment or operation of a child care facility that uses the donation to provide child care, a child care program that is not a child care facility but provides child care services...or any other program that received donations for which a credit was allowed to the donor...for any income tax year that ended before January 1, 2004, in the state[3];*

---

[1] § 39-22-121(1.5), C.R.S.

[2] § 39-22-121(2), C.R.S.

[3] Prior to 2004, the statute did not define child care facilities that were eligible for the credit, nor did it limit the credit to the provision of child care for children age 12 and younger. House Bill 04-1119 identified the types of facilities that would be eligible to receive contributions and limited the credit to contributions made for the benefit of children age 12 and younger, but also included a grandfathering provision that would allow organizations that qualified prior to 2004 to continue accepting contributions, even if they no longer met the qualifications. See Department Rule 1 CCR 201-2, 39-22-121(7)(a).

(b) Donating money to establish a grant or loan program for a parent or parents in the state requiring financial assistance for child care;

(c) Pooling moneys of several businesses and donating such moneys for the establishment of a child care facility in the state;

(d) Donating money for the training of child care providers in the state; and

(e) Donating money, services, or equipment for the establishment of an information dissemination program in the state to provide information and referral services to assist a parent or parents in obtaining child care."§39-22-121(2), C.R.S.

It is clear the Fund does not perform the purposes or functions identified in paragraphs (b) through (e). Company suggests instead that the Fund is eligible for the credit under paragraph (a), "donating money...for the establishment or operation of a child care facility..." However, Company is not itself a child care facility or an organization that directly provides child care services.

As a result, the first critical question is whether contributions must be made directly to a child care facility or provider to qualify for the credit under this provision, or if qualifying contributions may be made to an intermediate organization that then awards grants to eligible child care facilities. Notably, the statutory language in paragraph (a) above does not require contributions to be made *to* a child care facility, but rather that they be made *for* the establishment or operation of child care facility in order to qualify under this provision. Contributions made to the Fund (and subsequently granted to child care facilities for capital improvements) are indeed made for the operation of child care facilities, despite not being made directly to child care facilities.

In determining whether organizations that do not directly provide child care may qualify under paragraph (a), we can additionally consider by analogy the other purposes and functions authorized by paragraphs (b) through (e) above. Each of these paragraphs authorize credits for contributions made to organizations that do not directly provide child care services. In particular, paragraph (b) and (c) authorize credits for "donating money to establish a grant or loan program for a parent or parents...requiring financial assistance for child care" and for "[p]ooling moneys of several businesses and donating such moneys for the establishment of a child care facility," respectively. These two provisions demonstrate not only the legislature's contemplation of both the aggregation of funds by intermediate organizations that do not directly provide child care and grant programs that distribute contributions to multiple ultimate recipients, but also their authorization of credits for such programs so long as they meet the statutory requirements.

Based upon the statutory language of paragraph (a) and the analogy offered by the other authorized purposes and functions, we find that contributions made to organizations that do not directly provide child care may qualify under paragraph (a), provided that such contributions are ultimately "for the establishment or operation of a child care facility that uses the donation to provide child care."

The second critical question then is whether or not contributions made to the Fund are ultimately "for the establishment or operation of a child care facility that uses the donation

to provide child care." This question hinges on whether the Fund's grantees qualify as child care facilities under the law, provide eligible child care, and use amounts awarded to them in for authorized purposes and functions. The Fund only qualifies for the credit if and to the extent that it awards grants for purposes or functions that meet the qualifications for the credit.

For the Fund to qualify for the credit, grants made from the Fund must satisfy four statutory requirements.

1) The Fund must award grants for the establishment or operation of child care facilities licensed by the Department of Human Services, registered with the Department of Revenue, or grandfathered under the law as it existed prior to 2004.[4] Company awards grants from the Fund only to child care centers and preschools licensed by the Colorado Division of Early Care and Learning, a division of the Department of Human Services.[5]
2) Additionally, the credit is only allowed for child care provided to children age twelve and younger.[6] Applicants must serve children age five and younger and be child care programs licensed to provide care to children no older than twelve to be considered for a grant from the Fund.
3) The credit is also allowed exclusively for contributions used to promote child care in Colorado.[7] Company awards grants from the Fund exclusively to child care facilities in Colorado.
4) Finally, credits are only allowed for contributions used directly for the promotion of child care.[8] The Fund awards grants solely for capital improvements to child care facilities, which qualify as the promotion of child care under the law.[9]

The Fund's own qualifying criteria (child care facility licensure, serving children no older than twelve years old, located in Colorado, and utilizing grants exclusively for capital improvements) ensures that the grants it awards are for purposes and functions that qualify for the credit.

The final critical question pertains to the use and allocation of contributions made to the Fund. The credit is only allowed for contributions used directly for the enumerated child care purposes and functions.[10] This requirement is expressed in various provisions of statute and regulation. For example, contributions made to for-profit businesses must be

---

[4] § 39-22-121(2)(a), C.R.S.

[5] For the purpose of the credit, "child care facility" is defined as any of a non-exhaustive list of child care providers, including child care centers, requiring licensure by the Department of Human Services. § 39-22-121(6.5), C.R.S. The statutory definition of "child care center" includes preschools. § 26-6-102(1.5), C.R.S.

[6] § 39-22-121(1.7), C.R.S.

[7] §§§ 39-22-121(1.5), (2), and (3), C.R.S.

[8] § 39-22-121(3), C.R.S.

[9] Statute does not explicitly define what expenditures qualify as the "promotion of child care." However, in the discussion of for-profit child care facilities, statute makes clear that the use of contributions "for the acquisition or improvement of facilities" qualifies for the credit. § 39-22-121(4), C.R.S.

[10] § 39-22-121(3), C.R.S.

"directly invested...for the acquisition or improvement of facilities, equipment, or services, including the improvement of staff salaries, staff training, or the quality of child care" and not used to cover extraneous administrative costs or to generate profit.[11] Additionally, while qualifying contributions may be invested in an account that provides future payments, the interest and principal withdrawn from the account must be used exclusively for the authorized child care purposes.[12]

Company, with respect to the administration of the Fund[13], is neither a qualifying child care facility or program under Department Rule 1 CCR 201-2, 39-22-121(5), nor does it directly provide child care or perform any other function eligible for the credit under § 39-22-121(2), C.R.S. Consequently, those portions of contributions made to the Fund that are expended to cover Company's administrative costs do not qualify for the credit. Department Rule 1 CCR 201-2, 39-22-121(10) discusses the calculation of the credit for contributions that are split between qualified and nonqualified purposes. The rule provides various options for allocating contributions between qualifying and non-qualifying purposes, but prohibits the arbitrary establishment of a separate fund to cover non-qualifying expenses.[14] Given the existing operation of the Fund, by which 85% of total contributions are distributed to grantees and 15% are used to cover Company's administrative costs, the most reasonable allocation for any contribution in determining the credit is 85% to qualifying purposes and 15% for non-qualifying purposes. The Child Care Contribution Tax Credit Certification (Form DR 1317) allows for allocating qualifying contributions in such a manner in certifying the credit.

Therefore, to the extent contributions made to the Fund are distributed to qualifying child care facilities and programs to finance eligible child care purposes and functions, such contributions qualify for the child care contribution credit. However, because only 85% of total contributions made to the Fund are distributed to qualifying child care facilities and programs, 85% of each contribution made to the Fund will qualify for the credit and 15% of each contribution will be considered ineligible for the credit.[15]

Miscellaneous

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts. The Department reserves the right, among others, to independently evaluate Company's representations. The ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling and is subject to modification or revocation in accordance to Department Regulation 24-35-103.5.

---

[11] § 39-22-121(4), C.R.S.

[12] Dept. Rule 1 CCR 201-2, 39-22-121(12)

[13] Company has applied to the Department of Revenue and received approval as unlicensed child care organization eligible to accept qualifying contributions. However, this application and approval has been made exclusively with respect to Company's child care providers training program under § 39-22-121(2)(c), C.R.S.

[14] Dept. Rule 1 CCR 201-2, 39-22-121(10)(c)

[15] The allocation of contributions prescribed here for the purpose of calculating the credit, 85% to qualifying child care purposes and 15% to non-qualifying administrative costs, is based upon Company's current use and allocation of contributions made to the Fund. If Company's use and allocation of such contributions changes, or if Company receives contributions that donors specifically designate for administrative costs, appropriate adjustments should be made in determining the percentage of each contributions that qualifies for the credit.

This ruling is binding on the Department to the extent set forth in Department Regulation 24-35-103.5. It cannot be relied upon by any taxpayer other than the taxpayer to whom the ruling is made.

Enclosed is a redacted version of this ruling. Pursuant to statute and regulation, this redacted version of the ruling will be made public within 60 days of the date of this letter. Please let me know in writing within that 60 day period whether you have any suggestions or concerns about this redacted version of the ruling.

Sincerely,

Ken Schade
Colorado Department of Revenue
Office of Tax Policy Analysis

This ruling cannot be relied upon by any other taxpayer other than the taxpayer to whom the ruling is made.