Internal Revenue Code Section 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 qualified 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.