



**COLORADO**  
**Department of Revenue**

Taxation Division

Physical Address:  
Office of Tax Policy Analysis  
1375 Sherman Street, Room 607  
Denver, CO 80203

Mailing Address:  
Office of Tax Policy Analysis, Room 607  
P.O. Box 17087  
Denver, CO 80217-0087

PLR 19-002

April 22, 2019

XXXXXXXXXXXX  
Attn: XXXXXXXX  
XXXXXXXXXXXX  
XXXXXXXXXXXX

Re: XXXXXXXX

Dear XXXXXXXX,

You submitted a request for a private letter ruling on behalf of XXXXXXXX (“the Club”), regarding the XXXXXXXX (“the Project”), to the Colorado Department of Revenue (“Department”) pursuant to Department Regulation 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 Regulation 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.

**Issues**

Do donations made to the Club to fund the Project qualify for the child care contribution credit?

**Conclusions**

No, donations made to the Club to fund the Project do not qualify for the child care contribution credit.

### Background

The Club is a 501(c)(3) tax-exempt organization that provides training and competition programs for aspiring young ski racers. Its membership includes XXX athletes taking part in various programs, such as XXX, XXX, XXX, XXX, and XXX.

The Club is currently fundraising for the Project which it describes as follows:

*“The XXXXXX Project will expand [the Club’s] training environment for [its] athletes. We have exceeded capacity on our existing training arena and are on the cusp of receiving approval from the United States Forest Service to build new trails for the exclusive use of our membership. We believe that [the Project] will be an extension of our core business and vision: to be the premier snowsports club in the world. [The Project] will give us a competitive advantage in attracting, retaining, and developing high level snowsports athletes.”*

The Club’s budget for the Project includes the following expenses:

Snowmaking equipment	\$XXXXXX
Water feeder pipe	\$XXXXXX
Lift / trails	\$XXXXXX
Legal / permitting	\$XXXXXX
Contingency	\$XXXXXX

### Discussion

Colorado law authorizes an income tax credit for taxpayers who make monetary contributions to promote child care in Colorado.<sup>1</sup> Eligible contributions include donations of money for the establishment or operation of unlicensed child care programs that provide child care services similar to those provided by licensed child care centers.<sup>2</sup> Licensed child care centers are defined, in part, as facilities maintained for whole or part of the day for the care of five or more children.<sup>3</sup> The credit is allowed only with respect to child care provided to children age twelve or younger.<sup>4</sup>

Licensed child care centers generally provide child care services during the day to allow parents to work. Regulations promulgated by the Colorado Department of Human Services state that child care centers “provide comprehensive care for children when the parents or guardians are employed or otherwise unavailable to care for the children.”<sup>5</sup> Similarly, the federal child care credit is allowed for the

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<sup>1</sup> § 39-22-121(1.5), C.R.S.

<sup>2</sup> § 39-22-121(2)(a), C.R.S.

<sup>3</sup> § 26-6-102(5), C.R.S.

<sup>4</sup> § 39-22-121(1.7), C.R.S.

<sup>5</sup> 12 CCR 2509-8, 7.702.1.A.

provision of care for children specifically “to enable [parents or guardians] to be gainfully employed.”<sup>6</sup>

Although parents may work while their children participate in the Club’s training programs, enabling parental employment is not a significant purpose of the Project. Instead, the Club states that the Project “will expand the Club’s training environment for its athletes,” serve as “an extension of [the Club’s] core business and visions: to be the premier snowsports club in the world,” and “will give [the Club] a competitive advantage in attracting, retaining, and developing high level snowsports athletes.” None of these project objectives are related to enabling parents to engage in gainful employment.

Additionally, the term “child care” is not so broad as to encompass any variety of service provided with respect to a child. Treasury regulations regarding the federal child care credit advise, for example, that the “primary function” of care “is to assure the individual’s well-being and protection” and “[n]ot all expenses relating to a qualifying individual are for the individual’s care.”<sup>7</sup> Similarly, regulations promulgated by the Colorado Department of Human Services include under the rubric of “Child Care Services” such things as health care for an ill or injured child, children’s hand washing and diapering, supervision, nutrition, behavior modification, overnight care, gross motor activities, and transportation.<sup>8</sup> These regulations do not contemplate the cultivation and development of a specific athletic ability, such as skiing. Furthermore, state law draws an appropriate distinction between “guest child care facilities” and “ski schools.” The former provide short-term child care “[w]hile parents or persons in charge of such child are patronizing the ski area,”<sup>9</sup> while the latter’s purpose is “teaching children how to ski or snowboard.”<sup>10</sup>

The essential purpose of the Project is neither the assurance of children’s well-being and protection nor the provisioning of any of the various child care services offered by licensed child care centers, but rather the development of athletic skills and abilities. The contrast between qualifying child care services and the Project’s purpose becomes even more evident when the expenses for the Project are considered. The Club has indicated that Project expenses include \$XXXXXX for snowmaking equipment and \$XXXXXX for ski lifts and trails. Such expenses would not reasonably be incurred by a licensed child care center.

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<sup>6</sup> 26 U.S.C. § 21(a)(1) and (b)(2). See also § 39-22-103(11), C.R.S. (explaining that “except as otherwise expressly provided or clearly appearing from the context, [terms used in Colorado income tax statutes] shall have the same meaning as when used in a comparable context in the internal revenue code” and “[d]ue consideration shall be given in the interpretation of [Colorado income tax statutes] to applicable sections of the internal revenue code...and to federal rulings and regulations interpreting such sections”).

<sup>7</sup> 26 CFR § 21(d). See also § 39-22-103(11), C.R.S.

<sup>8</sup> 12 CCR 2509-8, 7.702.5.

<sup>9</sup> § 26-6-102(16), C.R.S.

<sup>10</sup> § 26-6-103.5(6), C.R.S.

Finally, the child care contribution credit is allowed only for contributions made to provide care to children age twelve and younger.<sup>11</sup> The Project will be used for programs for children of all ages, including children over the age of twelve.

Based on the foregoing, it is clear that the Project will not serve to “provide[] child care services similar to those provided by a [licensed] child care center.”<sup>12</sup> Consequently, donations made toward the Project do not qualify for the child care contribution credit.

### **Miscellaneous**

This ruling is premised on the assumption that Company has completely and accurately disclosed all material facts and that all representations are true and complete. The Department reserves the right, among others, to independently evaluate Company’s representations and assumptions. The ruling is null and void if any such assumption and 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.

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 notify XXXXXX in writing within that 60 day period if you have any suggestions or concerns about this redacted version of the ruling. If you have any other questions regarding this ruling, please contact XXXXXX at XXX-XXX-XXXX or XXX.XXXXX@state.co.us.

Sincerely,

Office of Tax Policy Analysis  
Colorado Department of Revenue

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

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<sup>11</sup> § 39-22-121(1.7), C.R.S.

<sup>12</sup> § 39-22-121(2)(a), C.R.S.