

Assembly Bill No. 1282

Passed the Assembly January 26, 2006

Chief Clerk of the Assembly

Passed the Senate August 24, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 17052.17, 17052.18, 23617, and 23617.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1282, Mullin. Income taxes: credits: child care.

The existing Personal Income Tax and Corporation Tax Law provide tax credits for startup expenses for child care programs or constructing a child care facility, costs for child care information and referral services, and costs paid or incurred for contributions to a qualified care plan. Under existing law these credits are only available for certain taxable years beginning before January 1, 2007.

This bill would extend the credits to taxable years beginning before January 1, 2012. This bill would also require the Franchise Tax Board to report to the Legislature on the effectiveness of these credits, as specified.

This bill would take effect immediately as a tax levy.

The people of the State of California do enact as follows:

SECTION 1. Section 17052.17 of the Revenue and Taxation Code is amended to read:

17052.17. (a) For each taxable year beginning on or after January 1, 1988, and before January 1, 2012, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of any of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) For each taxable year beginning on or after January 1, 1993, the cost paid or incurred by the taxpayer for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer.

(C) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services, including, but not limited to, those that identify local child care services, offer information describing these resources to the taxpayer's employees, and make referrals of the taxpayer's employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed to each taxpayer if the facility is to be used primarily by the children of the employees of each of the taxpayers or the children of the employees of the tenants of each of the taxpayers.

(2) The amount of the credit allowed by this section shall not exceed fifty thousand dollars (\$50,000) for any taxable year.

(c) For purposes of this section, "startup expenses" include, but are not limited to, feasibility studies, site preparation, and construction, renovation or acquisition of facilities for purposes of establishing or expanding onsite or nearsite centers by one or more employers or one or more building owners leasing space to employers.

(d) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to his, her, or its respective share of the costs paid or incurred.

(e) (1) In the case where the credit allowed and limited under subdivision (b) exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted. However, the excess from any one year shall not exceed fifty thousand dollars (\$50,000).

(2) If the credit carryovers from preceding taxable years allowed under paragraph (1) plus the credit allowed for the taxable year under subdivision (b) would exceed an aggregate total of fifty thousand dollars (\$50,000), then the credit allowed

to reduce the “net tax” under this section for the taxable year shall be limited to fifty thousand dollars (\$50,000) and the amount in excess of the fifty thousand dollar (\$50,000) limit may be carried over and applied against the “net tax” in the following year, and succeeding years if necessary, in an amount which, when added to the credit allowed under subdivision (b) for that succeeding taxable year, does not exceed fifty thousand dollars (\$50,000).

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 17250. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) No credit shall be allowed under subparagraph (B) of paragraph (1) of subdivision (b) in the case of any taxpayer that is required by any local ordinance or regulation to provide a child care facility.

(j) (1) In order to be eligible for the credit allowed under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer’s employees or the children of the employees of tenants leasing commercial or office space in a building owned by the taxpayer and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period

shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(k) In order to be allowed the credit under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall indicate, in the form and manner prescribed by the Franchise Tax Board, the number of children that the child care program or facility will be able to legally accommodate.

(l) On or before January 1, 2011, the Franchise Tax Board shall submit to the Legislature a report on the following:

(1) The dollar amount of credits claimed annually.

(2) The number of child care facilities established or constructed by taxpayers claiming the credit.

(3) The number of children served by these facilities.

(m) This section shall remain in effect only until December 1, 2012, and as of that date is repealed.

SEC. 2. Section 17052.18 of the Revenue and Taxation Code is amended to read:

17052.18. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2012, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of the cost paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee.

(2) The amount of the credit allowed by this section in any taxable year shall not exceed three hundred sixty dollars (\$360) for each qualified dependent.

(c) For purposes of this section:

(1) "Qualified care plan" means a plan providing qualified care.

(2) "Qualified care" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code that is a specialized center with respect to short-term illnesses of an employee's dependents. "Qualified care" must be provided in this state under the authority of a license when required by California law.

(3) “Specialized center” means a facility that provides care to mildly ill children and that may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross-infection.

(4) “Contributions” include direct payments to child care programs or providers. “Contributions” do not include amounts contributed to a qualified care plan pursuant to a salary reduction agreement to provide benefits under a dependent care assistance program within the meaning of Section 129 of the Internal Revenue Code, as applicable, for purposes of Part 11 (commencing with Section 23001) and this part.

(5) “Qualified employee” means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.

(6) “Employee” includes an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(7) “Qualified dependent” means any dependent of a qualified employee who is under the age of 12 years.

(d) If an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children.

(e) If the duration of the child care received is less than 42 weeks, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) If the credit allowed by this section exceeds the “net tax,” the excess may be carried over to reduce the “net tax” in the

following year, and succeeding years if necessary until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee's spouse under subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee and is under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year that is equal to the amount of the credit allowed under this section.

(j) If the credit is taken by an employer for contributions to a qualified care plan that is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) In order to be allowed the credit authorized under this section the taxpayer shall indicate, in the form and manner prescribed by the Franchise Tax Board, the number of children of employers served by the qualified child care plan.

(l) On or before January 1, 2011, the Franchise Tax Board shall submit to the Legislature a report on the following:

(1) The dollar amount of credits claimed annually.

(2) The number of children of employees served by the qualified child care plan for which the taxpayer claimed a credit.

(m) This section shall remain in effect only until December 1, 2012, and as of that date is repealed.

SEC. 3. Section 23617 of the Revenue and Taxation Code is amended to read:

23617. (a) For each taxable year beginning on or after January 1, 1988, and before January 1, 2012, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of any of the following:

(A) The cost paid or incurred by the taxpayer on or after September 23, 1988, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer's employees.

(B) For each taxable year beginning on or after January 1, 1993, the cost paid or incurred by the taxpayer for startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer.

(C) The cost paid or incurred by the taxpayer on or after September 23, 1988, for contributions to California child care information and referral services, including, but not limited to, those that identify local child care services, offer information describing these resources to the taxpayer's employees, and make referrals of the taxpayer's employees to child care services where there are vacancies.

In the case of a child care facility established by two or more taxpayers, the credit shall be allowed if the facility is to be used primarily by the children of the employees of each of the taxpayers or the children of the employees of tenants of each of the taxpayers.

(2) The amount of the credit allowed by this section shall not exceed fifty thousand dollars (\$50,000) for any taxable year.

(c) For purposes of this section, "startup expenses" include, but are not limited to, feasibility studies, site preparation, and construction, renovation, or acquisition of facilities for purposes of establishing or expanding onsite or nearsite centers by one or more employers or one or more building owners leasing space to employers.

(d) If two or more taxpayers share in the costs eligible for the credit provided by this section, each taxpayer shall be eligible to receive a tax credit with respect to its respective share of the costs paid or incurred.

(e) (1) In the case where the credit allowed and limited under subdivision (b) for the taxable year exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and

succeeding years if necessary, until the credit has been exhausted. However, the excess from any one year shall not exceed fifty thousand dollars (\$50,000).

(2) If the credit carryovers from preceding taxable years allowed under paragraph (1) plus the credit allowed for the taxable year under subdivision (b) would exceed an aggregate total of fifty thousand dollars (\$50,000), then the credit allowed to reduce the “tax” under this section for the taxable year shall be limited to fifty thousand dollars (\$50,000) and the amount in excess of the fifty thousand dollar (\$50,000) limit may be carried over and applied against the “tax” in the following year, and succeeding years if necessary, in an amount which, when added to the credit allowed under subdivision (b) for that succeeding taxable year, does not exceed fifty thousand dollars (\$50,000).

(f) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those expenses.

(g) In lieu of claiming the tax credit provided by this section, the taxpayer may elect to take depreciation pursuant to Section 24371.5. In addition, the taxpayer may take depreciation pursuant to that section for the cost of a facility in excess of the amount of the tax credit claimed under this section.

(h) The basis for any child care facility for which a credit is allowed shall be reduced by the amount of the credit attributable to the facility. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(i) No credit shall be allowed under subparagraph (B) of paragraph (1) of subdivision (b) in the case of any taxpayer that is required by any local ordinance or regulation to provide a child care facility.

(j) (1) In order to be eligible for the credit allowed under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall submit to the Franchise Tax Board upon request a statement certifying that the costs for which the credit is claimed are incurred with respect to the startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer’s employees or the children of the employees of tenants leasing commercial or office space in a building owned by the taxpayer

and which will be in operation for at least 60 consecutive months after completion.

(2) If the child care center for which a credit is claimed pursuant to this section is disposed of or ceases to operate within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(k) In order to be allowed the credit under subparagraph (A) or (B) of paragraph (1) of subdivision (b), the taxpayer shall indicate, in the form and manner prescribed by the Franchise Tax Board, the number of children that the child care program or facility will be able to legally accommodate.

(l) On or before January 1, 2011, the Franchise Tax Board shall submit to the Legislature a report on the following:

(1) The dollar amount of credits claimed annually.

(2) The number of child care facilities established or constructed by taxpayers claiming the credit.

(3) The number of children served by these facilities.

(m) This section shall remain in effect only until December 1, 2012, and as of that date is repealed.

SEC. 4. Section 23617.5 of the Revenue and Taxation Code is amended to read:

23617.5. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2012, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the amount determined in subdivision (b).

(b) (1) The amount of the credit allowed by this section shall be 30 percent of the cost paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee.

(2) The amount of the credit allowed by this section in any taxable year shall not exceed three hundred sixty dollars (\$360) for each qualified dependent.

(c) For purposes of this section:

(1) "Qualified care plan" means a plan providing qualified care.

(2) "Qualified care" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider

care, and a dependent care center as defined by Section 21(b)(2)(D) of the Internal Revenue Code that is a specialized center with respect to short-term illnesses of an employee's dependents. "Qualified care" must be provided in this state under the authority of a license when required by California law.

(3) "Specialized center" means a facility that provides care to mildly ill children and that may do all of the following:

(A) Be staffed by pediatric nurses and day care workers.

(B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

(C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

(D) Separate children according to their illness and symptoms in order to protect them from cross-infection.

(4) "Contributions" include direct payments to child care programs or providers. "Contributions" do not include amounts contributed to a qualified care plan pursuant to a salary reduction agreement to provide benefits under a dependent care assistance program within the meaning of Section 129 of the Internal Revenue Code, as applicable, for purposes of Part 10 (commencing with Section 17001) and this part.

(5) "Qualified employee" means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.

(6) "Employee" includes an individual who is an employee within the meaning of Section 401(c)(1) of the Internal Revenue Code (relating to self-employed individuals).

(7) "Qualified dependent" means any dependent of a qualified employee who is under the age of 12 years.

(d) If an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, no credit shall be allowed under this section for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The Franchise Tax Board may require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this section.

(e) If the duration of the child care received is less than 42 weeks, the employer shall claim a prorated portion of the allowable credit. The employer shall prorate the credit using the ratio of the number of weeks of care received divided by 42 weeks.

(f) If the credit allowed under this section exceeds the “tax,” the excess may be carried over to reduce the “tax” in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) The credit shall not be available to an employer if the care provided on behalf of an employee is provided by an individual who:

(1) Qualifies as a dependent of that employee or that employee’s spouse under subdivision (d) of Section 17054.

(2) Is (within the meaning of Section 17056) a son, stepson, daughter, or stepdaughter of that employee and is under the age of 19 at the close of that taxable year.

(h) The contributions to a qualified care plan shall not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.

(i) No deduction shall be allowed as otherwise provided in this part for that portion of expenses paid or incurred for the taxable year that is equal to the amount of the credit allowed under this section.

(j) If the credit is taken by an employer for contributions to a qualified care plan that is used at a facility owned by the employer, the basis of that facility shall be reduced by the amount of the credit. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(k) In order to be allowed the credit authorized under this section, the taxpayer shall indicate, in the form and manner prescribed by the Franchise Tax Board, the number of children of employers served by the qualified child care plan.

(l) On or before January 1, 2011, the Franchise Tax Board shall submit to the Legislature a report on the following:

(1) The dollar amount of credits claimed annually.

(2) The number of children of employees served by the qualified child care plan for which the taxpayer claimed a credit.

(m) This section shall remain in effect only until December 1, 2012, and as of that date is repealed.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

Approved _____, 2006

Governor