

AMENDED IN SENATE APRIL 23, 2015

**SENATE BILL**

**No. 670**

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**Introduced by Senator Jackson**

February 27, 2015

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An act ~~relating to child care~~, to amend Section 17052.6 of, and to add and repeal Sections 17052.17, 17052.18, 23617, and 23618 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 670, as amended, Jackson. ~~Child care~~. *Income taxes: credit: dependent care: child care.*

(1) *The Personal Income Tax Law, in modified conformity to federal income tax law, authorizes a credit for household and dependent care expenses necessary for gainful employment, as provided. That law provides that the amount of the state credit is a percentage of the allowable federal credit determined on the basis of the amount of federal adjusted gross income earned, as provided.*

*This bill, for taxable years beginning on or after January 1, 2016, would increase the amount of the applicable state credit percentage, as provided.*

(2) *The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.*

*This bill, for taxable years beginning on and after January 1, 2016, and before January 1, 2021, would allow a credit in the amount of 30% of the costs of startup expenses for child care programs, constructing a child care facility, providing child care information and referral services, and contributing to a qualified care plan, as defined. The 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.*

~~Existing law provides that it is the intent of the Legislature that in providing child development programs the Superintendent of Public Instruction give priority to children of families that qualify under applicable federal statutes or regulations as recipients of public assistance and other low-income and disadvantaged families.~~

~~This bill would declare that it is the intent of the Legislature to enhance and expand the state's early care and educational system.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

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

1     SECTION 1. Section 17052.6 of the Revenue and Taxation  
2     Code is amended to read:

3     17052.6. (a) For each taxable year beginning on or after  
4     January 1, 2000, there shall be allowed as a credit against the "net  
5     tax", as defined in Section 17039, an amount determined in  
6     accordance with Section 21 of the Internal Revenue Code, *relating*  
7     *to expenses for household and dependent care services necessary*  
8     *for gainful employment*, except that the amount of the credit shall  
9     be a percentage, as provided in subdivision (b) of the allowable  
10    federal credit without taking into account whether there is a federal  
11    tax liability.

12    (b) For the purposes of subdivision (a), the percentage of the  
13    allowable federal credit shall be determined as follows:

14    (1) For taxable years beginning before January 1, 2003:

	The percentage of
If the adjusted gross income is:	credit is:
18    \$40,000 or less.....	63%
19    Over \$40,000 but not over \$70,000.....	53%
20    Over \$70,000 but not over \$100,000.....	42%
21    Over \$100,000.....	0%

22  
23    (2) For taxable years beginning on or after January 1, ~~2003:~~  
24    ~~2003, and before January 1, 2016:~~

1		The percentage of
2	If the adjusted gross income is:	credit is:
3	\$40,000 or less.....	50%
4	Over \$40,000 but not over \$70,000.....	43%
5	Over \$70,000 but not over \$100,000.....	34%
6	Over \$100,000.....	0%

(3) For taxable years beginning on or after January 1, 2016:

10		The percentage of
11	If the adjusted gross income is:	credit is:
12	\$40,000 or less.....	63%
13	Over \$40,000 but not over \$70,000.....	53%
14	Over \$70,000 but not over \$100,000.....	42%
15	Over \$100,000.....	0%

(c) For purposes of this section, “adjusted gross income” means adjusted gross income as computed for purposes of paragraph (2) of subdivision (h) of Section 17024.5.

(d) The credit authorized by this section shall be limited, as follows:

(1) Employment-related expenses, within the meaning of Section 21 of the Internal Revenue Code, *relating to expenses for household and dependent care services necessary for gainful employment*, shall be limited to expenses for household services and care provided in this state.

(2) Earned income, within the meaning of Section 21(d) of the Internal Revenue Code, *relating to earned income limitation*, shall be limited to earned income subject to tax under this part. For purposes of this paragraph, compensation received by a member of the armed forces for active services as a member of the armed forces, other than pensions or retired pay, shall be considered earned income subject to tax under this part, whether or not the member is domiciled in this state.

(e) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child, as defined in Section ~~151(e)(3)~~ *152(c)(3)* of the Internal Revenue Code, *relating to age requirements*, shall be treated, for purposes of Section 152 of the Internal Revenue Code, *relating to dependent defined*, as applicable

1 for purposes of this section, as receiving over one-half of his or  
2 her support during the calendar year from the parent having custody  
3 for a greater portion of the calendar year, that parent shall be treated  
4 as a “custodial parent,” within the meaning of Section 152(e) of  
5 the Internal Revenue Code, *relating to special rule for divorced*  
6 *parents, etc.*, as applicable for purposes of this section, and the  
7 child shall be treated as a qualifying individual under Section  
8 21(b)(1) of the Internal Revenue Code, *relating to qualifying*  
9 *individual*, as applicable for purposes of this section, if both of the  
10 following apply:

11 (1) The child receives over one-half of his or her support during  
12 the calendar year from his or her parents who never married each  
13 other and who lived apart at all times during the last six months  
14 of the calendar year.

15 (2) The child is in the custody of one or both of his or her parents  
16 for more than one-half of the calendar year.

17 (f) The amendments to this section made by Section 1.5 of  
18 Chapter 824 of the Statutes of 2002 shall apply only to taxable  
19 years beginning on or after January 1, 2002.

20 (g) The amendments made to this section by ~~the act adding this~~  
21 ~~subdivision~~ *Chapter 14 of the Statutes of 2011* shall apply to  
22 taxable years beginning on or after January 1, 2011.

23 SEC. 2. Section 17052.17 is added to the Revenue and Taxation  
24 Code, to read:

25 17052.17. (a) For each taxable year beginning on or after  
26 January 1, 2016, and before January 1, 2021, there shall be  
27 allowed as a credit against the “net tax,” as defined by Section  
28 17039, an amount equal to the amount determined in subdivision  
29 (b).

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

32 (A) The cost paid or incurred by the taxpayer on or after  
33 January 1, 2016, for the startup expenses of establishing a child  
34 care program or constructing a child care facility in California,  
35 to be used primarily by the children of the taxpayer’s employees.

36 (B) For each taxable year beginning on or after January 1,  
37 2016, the cost paid or incurred by the taxpayer for startup expenses  
38 of establishing a child care program or constructing a child care  
39 facility in California, to be used primarily by the children of

1 *employees of tenants leasing commercial or office space in a*  
2 *building owned by the taxpayer.*

3 *(C) (i) The cost paid or incurred by the taxpayer on or after*  
4 *January 1, 2016, for contributions to California child care*  
5 *information and referral services, including, but not limited to,*  
6 *those that identify local child care services, offer information*  
7 *describing these resources to the taxpayer's employees, and make*  
8 *referrals of the taxpayer's employees to child care services where*  
9 *there are vacancies.*

10 *(ii) In the case of a child care facility established by two or*  
11 *more taxpayers, the credit shall be allowed to each taxpayer if the*  
12 *facility is to be used primarily by the children of the employees of*  
13 *each of the taxpayers or the children of the employees of the tenants*  
14 *of each of the taxpayers.*

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

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

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

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

33 *(2) If the credit carryovers from preceding taxable years allowed*  
34 *under paragraph (1) plus the credit allowed for the taxable year*  
35 *under subdivision (b) would exceed an aggregate total of fifty*  
36 *thousand dollars (\$50,000), then the credit allowed to reduce the*  
37 *"net tax" under this section for the taxable year shall be limited*  
38 *to fifty thousand dollars (\$50,000) and the amount in excess of the*  
39 *fifty-thousand-dollar (\$50,000) limit may be carried over and*  
40 *applied against the "net tax" in the following year, and succeeding*

1 years if necessary, in an amount which, when added to the credit  
2 allowed under subdivision (b) for that succeeding taxable year,  
3 does not exceed fifty thousand dollars (\$50,000).

4 (f) A deduction shall not be allowed as otherwise provided in  
5 this part for that portion of expenses paid or incurred for the  
6 taxable year which is equal to the amount of the credit allowed  
7 under this section attributable to those expenses.

8 (g) In lieu of claiming the tax credit provided by this section,  
9 the taxpayer may elect to take depreciation pursuant to Section  
10 17250. In addition, the taxpayer may take depreciation pursuant  
11 to that section for the cost of a facility in excess of the amount of  
12 the tax credit claimed under this section.

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

17 (i) A credit shall not be allowed under subparagraph (B) of  
18 paragraph (1) of subdivision (b) in the case of any taxpayer that  
19 is required by any local ordinance or regulation to provide a child  
20 care facility.

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

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

38 (k) In order to be allowed the credit under subparagraph (A)  
39 or (B) of paragraph (1) of subdivision (b), the taxpayer shall  
40 indicate, in the form and manner prescribed by the Franchise Tax

1 Board, the number of children that the child care program or  
2 facility will be able to legally accommodate.

3 (l) (1) On or before January 1, 2018, the Franchise Tax Board  
4 shall submit to the Legislature a report on the following:

5 (A) The dollar amount of credits claimed annually.

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

8 (C) The number of children served by these facilities.

9 (2) The report to be submitted by paragraph (1) shall be  
10 submitted in compliance with Section 9795 of the Government  
11 Code.

12 (3) Section 41 does not apply to the credit allowed by this  
13 section.

14 (m) This section shall remain in effect only until December 1,  
15 2021, and as of that date is repealed.

16 SEC. 3. Section 17052.18 is added to the Revenue and Taxation  
17 Code, to read:

18 17052.18. (a) For each taxable year beginning on or after  
19 January 1, 2016, and before January 1, 2021, there shall be  
20 allowed as a credit against the "net tax," as defined by Section  
21 17039, an amount equal to the amount determined in subdivision  
22 (b).

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

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

30 (c) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

27 (d) If an employer makes contributions to a qualified care plan  
28 and also collects fees from parents to support a child care facility  
29 owned and operated by the employer, a credit shall not be allowed  
30 under this section for contributions in the amount, if any, by which  
31 the sum of the contributions and fees exceed the total cost of  
32 providing care. The Franchise Tax Board may require information  
33 about fees collected from parents of children served in the facility  
34 from taxpayers claiming credits under this section.

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

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



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

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

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

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

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

14 (i) A deduction shall not be allowed as otherwise provided in  
15 this part for that portion of expenses paid or incurred for the  
16 taxable year that is equal to the amount of the credit allowed under  
17 this section.

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

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

27 (l) (1) On or before January 1, 2018, the Franchise Tax Board  
28 shall submit to the Legislature a report on the following:

29 (A) The dollar amount of credits claimed annually.

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

32 (2) The report to be submitted by paragraph (1) shall be  
33 submitted in compliance with Section 9795 of the Government  
34 Code.

35 (3) Section 41 does not apply to the credit allowed by this  
36 section.

37 (m) This section shall remain in effect only until December 1,  
38 2021, and as of that date is repealed.

39 SEC. 4. Section 23617 is added to the Revenue and Taxation  
40 Code, to read:

1     23617. (a) For each taxable year beginning on or after  
2     January 1, 2016, and before January 1, 2021, there shall be  
3     allowed as a credit against the “tax,” as defined by Section 23036,  
4     an amount equal to the amount determined in subdivision (b).

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

7     (A) The cost paid or incurred by the taxpayer on or after  
8     January 1, 2016, for the startup expenses of establishing a child  
9     care program or constructing a child care facility in California,  
10    to be used primarily by the children of the taxpayer’s employees.

11    (B) For each taxable year beginning on or after January 1,  
12    2016, the cost paid or incurred by the taxpayer for startup expenses  
13    of establishing a child care program or constructing a child care  
14    facility in California to be used primarily by the children of  
15    employees of tenants leasing commercial or office space in a  
16    building owned by the taxpayer.

17    (C) (i) The cost paid or incurred by the taxpayer on or after  
18    January 1, 2016, for contributions to California child care  
19    information and referral services, including, but not limited to,  
20    those that identify local child care services, offer information  
21    describing these resources to the taxpayer’s employees, and make  
22    referrals of the taxpayer’s employees to child care services where  
23    there are vacancies.

24    (ii) In the case of a child care facility established by two or  
25    more taxpayers, the credit shall be allowed to each taxpayer if the  
26    facility is to be used primarily by the children of the employees of  
27    each of the taxpayers or the children of the employees of the tenants  
28    of each of the taxpayers.

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

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

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

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

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

18    (f) A deduction shall not be allowed as otherwise provided in  
19    this part for that portion of expenses paid or incurred for the  
20    taxable year which is equal to the amount of the credit allowed  
21    under this section attributable to those expenses.

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

26    (h) A credit shall not be allowed under subparagraph (B) of  
27    paragraph (1) of subdivision (b) in the case of any taxpayer that  
28    is required by any local ordinance or regulation to provide a child  
29    care facility.

30    (i) (1) In order to be eligible for the credit allowed under  
31    subparagraph (A) or (B) of paragraph (1) of subdivision (b), the  
32    taxpayer shall submit to the Franchise Tax Board upon request a  
33    statement certifying that the costs for which the credit is claimed  
34    are incurred with respect to the startup expenses of establishing  
35    a child care program or constructing a child care facility in  
36    California to be used primarily by the children of the taxpayer’s  
37    employees or the children of the employees of tenants leasing  
38    commercial or office space in a building owned by the taxpayer  
39    and which will be in operation for at least 60 consecutive months  
40    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.*

(j) *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.*

(k) (1) *On or before January 1, 2018, the Franchise Tax Board shall submit to the Legislature a report on the following:*

(A) *The dollar amount of credits claimed annually.*

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

(C) *The number of children served by these facilities.*

(2) *The report to be submitted by paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.*

(3) *Section 41 does not apply to the credit allowed by this section.*

(l) *This section shall remain in effect only until December 1, 2021, and as of that date is repealed.*

SEC. 5. *Section 23618 is added to the Revenue and Taxation Code, to read:*

23618. (a) *For each taxable year beginning on or after January 1, 2016, and before January 1, 2021, 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.*

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

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

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

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

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

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

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

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

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

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

34 (d) If an employer makes contributions to a qualified care plan  
35 and also collects fees from parents to support a child care facility  
36 owned and operated by the employer, a credit shall not be allowed  
37 under this section for contributions in the amount, if any, by which  
38 the sum of the contributions and fees exceed the total cost of  
39 providing care. The Franchise Tax Board may require information

1 *about fees collected from parents of children served in the facility*  
2 *from taxpayers claiming credits under this section.*

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

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

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

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

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

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

22 *(i) A deduction shall not be allowed as otherwise provided in*  
23 *this part for that portion of expenses paid or incurred for the*  
24 *taxable year that is equal to the amount of the credit allowed under*  
25 *this section.*

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

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

35 *(l) (1) On or before January 1, 2018, the Franchise Tax Board*  
36 *shall submit to the Legislature a report on the following:*

37 *(A) The dollar amount of credits claimed annually.*

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

1     (2) *The report to be submitted by paragraph (1) shall be*  
2     *submitted in compliance with Section 9795 of the Government*  
3     *Code.*

4     (3) *Section 41 does not apply to the credit allowed by this*  
5     *section.*

6     (m) *This section shall remain in effect only until December 1,*  
7     *2021, and as of that date is repealed.*

8     SEC. 6. *This act provides for a tax levy within the meaning of*  
9     *Article IV of the Constitution and shall go into immediate effect.*

10    ~~SECTION 1. It is the intent of the Legislature to enhance and~~  
11    ~~expand the state's early care and education system.~~