AMENDED IN SENATE MAY 13, 2015

AMENDED IN SENATE APRIL 23, 2015

# SENATE BILL No. 670

**Introduced by Senator Jackson**

February 27, 2015

An act 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. 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.

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

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

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

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

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

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

| If the adjusted gross income is: | The percentage of credit is: |
|---|---|
| $40,000 or less | 63% |
| Over $40,000 but not over $70,000 | 53% |
| Over $70,000 but not over $100,000 | 42% |
| Over $100,000 | 0% |

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

| If the adjusted gross income is: | The percentage of credit is: |
|---|---|
| $40,000 or less | 50% |
| Over $40,000 but not over $70,000 | 43% |
| Over $70,000 but not over $100,000 | 34% |
| Over $100,000 | 0% |

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

| If the adjusted gross income is: | The percentage of credit is: |
|---|---|
| $40,000 or less | 63% |
| Over $40,000 but not over $70,000 | 53% |
| Over $70,000 but not over $100,000 | 42% |
| 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 ~~152(e)(3)~~ *152(f)(1)* 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 for purposes of this section, as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a "custodial parent," within the meaning of Section 152(e) of the Internal Revenue Code, relating to special rule for divorced parents, etc., as applicable for purposes of this section, and the child shall be treated as a ~~qualifying individual under Section~~

~~21(b)(1) of the Internal Revenue Code, relating to qualifying individual, as applicable for purposes of this section,~~ *dependent who has not attained 13 years of age*, if both of the following apply:

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

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

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

(g) The amendments made to this section by Chapter 14 of the Statutes of 2011 shall apply to taxable years beginning on or after January 1, 2011.

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

17052.17. (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 "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 January 1, 2016, 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, 2016, 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) (i) The cost paid or incurred by the taxpayer on or after January 1, 2016, 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.

(ii) 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 a 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) for the taxable year 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) A deduction shall not 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) A credit shall not 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*) (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.

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

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

17052.18. (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 "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 individual treated as employee.

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

(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, a credit shall not 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 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 19 years of age 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) A deduction shall not 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*) (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 children of employees served by the qualified child care plan for which the taxpayer claimed a credit.

(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.

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

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

23617. (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 any of the following:

(A) The cost paid or incurred by the taxpayer on or after January 1, 2016, 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, 2016, 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) (i) The cost paid or incurred by the taxpayer on or after January 1, 2016, 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.

(ii) 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 a 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) A deduction shall not 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) 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.

(h) A credit shall not 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.

(i) (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.

(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.

(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 individual treated as employee.

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

(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, a credit shall not 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 19 years of age 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) A deduction shall not 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*) (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 children of employees served by the qualified child care plan for which the taxpayer claimed a credit.

(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.

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

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

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