

AMENDED IN ASSEMBLY AUGUST 20, 2015

AMENDED IN ASSEMBLY AUGUST 18, 2015

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE MAY 13, 2015

AMENDED IN SENATE APRIL 23, 2015

SENATE BILL

No. 670

Introduced by Senator Jackson
(Coauthor: Senator Nguyen)

February 27, 2015

An act 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: child care.

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 authorize, in the case where the credit allowed for the taxable year exceeds the "net tax" or "tax" the excess to be carried over to reduce the "net tax" or "tax" in the following year, and the succeeding 7 years if necessary, as specified. 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:

1 SECTION 1. Section 17052.17 is added to the Revenue and
2 Taxation Code, to read:

3 17052.17. (a) For each taxable year beginning on or after
4 January 1, 2016, and before January 1, 2021, there shall be allowed
5 as a credit against the “net tax,” as defined by Section 17039, an
6 amount equal to the amount determined in subdivision (b).

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

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

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

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

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

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

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

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

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

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

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

32 (g) In lieu of claiming the tax credit provided by this section,
33 the taxpayer may elect to take depreciation pursuant to Section
34 17250. In addition, the taxpayer may take depreciation pursuant
35 to that section for the cost of a facility in excess of the amount of
36 the tax credit claimed under this section.

37 (h) The basis for any child care facility for which a credit is
38 allowed shall be reduced by the amount of the credit attributable
39 to the facility. The basis adjustment shall be made for the taxable
40 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. 2. Section 17052.18 is added to the Revenue and Taxation Code, to read:

1 17052.18. (a) For each taxable year beginning on or after
2 January 1, 2016, and before January 1, 2021, there shall be allowed
3 as a credit against the “net tax,” as defined by Section 17039, an
4 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 the cost paid or incurred by the taxpayer for
7 contributions to a qualified care plan made on behalf of any
8 qualified dependent of the taxpayer’s qualified employee.

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

12 (c) For purposes of this section:

13 (1) “Qualified care plan” means a plan providing qualified care.

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

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

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

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

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

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

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

38 (5) “Qualified employee” means any employee of the taxpayer
39 who is performing services for the taxpayer in this state, within

1 the meaning of Section 25133, during the period in which the
2 qualified care is performed.

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

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

8 (d) If an employer makes contributions to a qualified care plan
9 and also collects fees from parents to support a child care facility
10 owned and operated by the employer, a credit shall not be allowed
11 under this section for contributions in the amount, if any, by which
12 the sum of the contributions and fees exceed the total cost of
13 providing care. The Franchise Tax Board may require information
14 about fees collected from parents of children served in the facility
15 from taxpayers claiming credits under this section.

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

20 (f) If the credit allowed by this section exceeds the "net tax,"
21 the excess may be carried over to reduce the "net tax" in the
22 following year, and the succeeding seven years if necessary, until
23 the credit has been exhausted.

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

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

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

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

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

39 (j) If the credit is taken by an employer for contributions to a
40 qualified care plan that is used at a facility owned by the employer,

1 the basis of that facility shall be reduced by the amount of the
2 credit. The basis adjustment shall be made for the taxable year for
3 which the credit is allowed.

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

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

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

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

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

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

18 (m) This section shall remain in effect only until December 1,
19 2021, and as of that date is repealed.

20 SEC. 3. Section 23617 is added to the Revenue and Taxation
21 Code, to read:

22 23617. (a) For each taxable year beginning on or after January
23 1, 2016, and before January 1, 2021, there shall be allowed as a
24 credit against the "tax," as defined by Section 23036, an amount
25 equal to the amount determined in subdivision (b).

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

28 (A) The cost paid or incurred by the taxpayer on or after January
29 1, 2016, for the startup expenses of establishing a child care
30 program or constructing a child care facility in California, to be
31 used primarily by the children of the taxpayer's employees.

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

38 (C) (i) The cost paid or incurred by the taxpayer on or after
39 January 1, 2016, for contributions to California child care
40 information and referral services, including, but not limited to,

1 those that identify local child care services, offer information
2 describing these resources to the taxpayer's employees, and make
3 referrals of the taxpayer's employees to child care services where
4 there are vacancies.

5 (ii) In the case of a child care facility established by two or more
6 taxpayers, the credit shall be allowed to each taxpayer if the facility
7 is to be used primarily by the children of the employees of each
8 of the taxpayers or the children of the employees of the tenants of
9 each of the taxpayers.

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

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

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

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

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

39 (f) A deduction shall not be allowed as otherwise provided in
40 this part for that portion of expenses paid or incurred for the taxable

1 year which is equal to the amount of the credit allowed under this
2 section attributable to those expenses.

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

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

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

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

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

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

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

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

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

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

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

3 ~~(l) This section shall remain in effect only until December 1,~~
4 ~~2021, and as of that date is repealed.~~

5 SEC. 4. Section 23618 is added to the Revenue and Taxation
6 Code, to read:

7 23618. (a) For each taxable year beginning on or after January
8 1, 2016, and before January 1, 2021, there shall be allowed as a
9 credit against the “tax,” as defined by Section 23036, an amount
10 equal to the amount determined in subdivision (b).

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

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

18 (c) For purposes of this section:

19 (1) “Qualified care plan” means a plan providing qualified care.

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

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

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

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

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

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

37 (4) “Contributions” include direct payments to child care
38 programs or providers. “Contributions” do not include amounts
39 contributed to a qualified care plan pursuant to a salary reduction
40 agreement to provide benefits under a dependent care assistance

1 program within the meaning of Section 129 of the Internal Revenue
2 Code, as applicable, for purposes of Part 10 (commencing with
3 Section 17001) and this part.

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

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

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

13 (d) If an employer makes contributions to a qualified care plan
14 and also collects fees from parents to support a child care facility
15 owned and operated by the employer, a credit shall not be allowed
16 under this section for contributions in the amount, if any, by which
17 the sum of the contributions and fees exceed the total cost of
18 providing care. The Franchise Tax Board may require information
19 about fees collected from parents of children served in the facility
20 from taxpayers claiming credits under this section.

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

25 (f) If the credit allowed by this section exceeds the "tax," the
26 excess may be carried over to reduce the "tax" in the following
27 year, and the succeeding seven years if necessary, until the credit
28 has been exhausted.

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

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

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

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

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

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

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

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

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

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

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

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

24 (m) This section shall remain in effect only until December 1,
25 2021, and as of that date is repealed.

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