

106TH CONGRESS
1ST SESSION

S. 1147

To amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide child care assistance for dependents of their employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 27, 1999

Mr. GRAHAM (for himself, Mr. JEFFORDS, Mr. KOHL, and Mrs. HUTCHISON) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide child care assistance for dependents of their employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Worksite Child Care
5 Development Act of 1999”.

1 **SEC. 2. ALLOWANCE OF CREDIT FOR EMPLOYER EXPENSES**
 2 **FOR CHILD CARE ASSISTANCE.**

3 (a) IN GENERAL.—Subpart D of part IV of sub-
 4 chapter A of chapter 1 of the Internal Revenue Code of
 5 1986 (relating to business related credits) is amended by
 6 adding at the end the following new section:

7 **“SEC. 45D. EMPLOYER-PROVIDED CHILD CARE CREDIT.**

8 “(a) IN GENERAL.—For purposes of section 38, the
 9 employer-provided child care credit determined under this
 10 section for the taxable year is an amount equal to the sum
 11 of—

12 “(1) 50 percent of the qualified child care facil-
 13 ity start-up expenses,

14 “(2) 50 percent of the qualified child care facil-
 15 ity expenses, and

16 “(3) 50 percent of the qualified child care ex-
 17 penses,

18 of the taxpayer during the taxable year.

19 “(b) DOLLAR LIMITATIONS.—

20 “(1) QUALIFIED CHILD CARE FACILITY START-
 21 UP EXPENSES.—The total amount of the credit de-
 22 termined under subsection (a)(1) for all taxable
 23 years shall not exceed \$100,000.

24 “(2) QUALIFIED CHILD CARE FACILITY EX-
 25 PENSES.—The amount of the credit determined

1 under subsection (a)(2) for any taxable year shall
 2 not exceed \$25,000.

3 “(3) QUALIFIED CHILD CARE EXPENSES.—The
 4 amount of the credit determined under subsection
 5 (a)(3) for any taxable year shall not exceed \$50,000.

6 “(c) DEFINITIONS.—For purposes of this section—

7 “(1) QUALIFIED CHILD CARE EXPENSES.—

8 “(A) IN GENERAL.—The term ‘qualified
 9 child care expenses’ means any amount paid or
 10 incurred to reimburse an employee for expenses
 11 for child care which enables the employee to be
 12 gainfully employed including expenses related
 13 to—

14 “(i) day care and before and after
 15 school care,

16 “(ii) transportation associated with
 17 such care, and

18 “(iii) before and after school and holi-
 19 day programs including educational and
 20 recreational programs and camp programs.

21 “(B) FAIR MARKET VALUE.—The term
 22 ‘qualified child care expenses’ shall not include
 23 expenses in excess of the fair market value of
 24 such care.

25 “(2) QUALIFIED CHILD CARE FACILITY.—

1 “(A) IN GENERAL.—The term ‘qualified
2 child care facility’ means a facility—

3 “(i) the principal use of which is to
4 provide child care assistance to dependents
5 of employees, and

6 “(ii) which meets the requirements of
7 all applicable laws and regulations of the
8 State or local government in which it is lo-
9 cated, including, but not limited to, the li-
10 censing of the facility as a child care facil-
11 ity or back-up child care facility providing
12 daily care for dependents who are mildly ill
13 or need temporary care for other reasons
14 that disrupt the normal care arrangements
15 of employees.

16 Clause (i) shall not apply to a facility which is
17 the principal residence (within the meaning of
18 section 1034) of the operator of the facility.

19 “(B) SPECIAL RULES WITH RESPECT TO A
20 TAXPAYER.—A facility shall not be treated as a
21 qualified child care facility with respect to a
22 taxpayer unless—

23 “(i) enrollment in the facility is open
24 to employees of the taxpayer during the
25 taxable year,

1 “(ii) the facility is not the principal
2 trade or business of the taxpayer, and

3 “(iii) the use of such facility (or the
4 eligibility to use such facility) does not dis-
5 criminate in favor of employees of the tax-
6 payer who are highly compensated employ-
7 ees (within the meaning of section 414(q)).

8 “(C) CHILD CARE FACILITIES SPONSORED
9 BY MORE THAN ONE TAXPAYER.—A facility
10 that is sponsored by more than 1 taxpayer shall
11 be treated as a qualified child care facility if it
12 meets the requirements of this paragraph.

13 “(3) QUALIFIED CHILD CARE FACILITY EX-
14 PENSES.—The term ‘qualified child care facility ex-
15 penses’ means any amount paid or incurred—

16 “(A) for the operating costs of a qualified
17 child care facility of the taxpayer,

18 “(B) under a contract with a qualified
19 child care facility to provide child care services
20 to employees of the taxpayer, or

21 “(C) under a contract to provide child care
22 resource and referral coordination services to
23 employees of the taxpayer.

24 “(4) QUALIFIED CHILD CARE FACILITY START-
25 UP EXPENSES.—The term ‘qualified child care facil-

1 ity start-up expenses’ means any amount paid or
2 incurred—

3 “(A) to acquire, construct, rehabilitate, or
4 expand property—

5 “(i) which is to be used as part of a
6 qualified child care facility of the taxpayer,

7 “(ii) with respect to which a deduction
8 for depreciation (or amortization in lieu of
9 depreciation) is allowable, and

10 “(iii) which does not constitute part of
11 the principal residence (within the meaning
12 of section 1034) of the taxpayer or any
13 employee of the taxpayer, or

14 “(B) to acquire equipment and supplies
15 necessary for the operation of a qualified child
16 care facility.

17 “(d) CHILD CARE FACILITIES SPONSORED BY MORE
18 THAN ONE TAXPAYER.—In the case of a qualified child
19 care facility that is sponsored by more than 1 taxpayer,
20 the credit determined under paragraphs (1) and (2) of
21 subsection (a) for each taxpayer for any taxable year may
22 be apportioned among the taxpayers in any manner deter-
23 mined by the taxpayers.

24 “(e) RECAPTURE OF ACQUISITION AND CONSTRUC-
25 TION CREDIT.—

1 “(1) IN GENERAL.—If, as of the close of any
 2 taxable year, there is a recapture event with respect
 3 to any qualified child care facility of the taxpayer,
 4 then the tax of the taxpayer under this chapter for
 5 such taxable year shall be increased by an amount
 6 equal to the product of—

7 “(A) the applicable recapture percentage,
 8 and

9 “(B) the aggregate decrease in the credits
 10 allowed under section 38 for all prior taxable
 11 years which would have resulted if the qualified
 12 child care facility expenses of the taxpayer de-
 13 scribed in subsection (c)(4) with respect to such
 14 facility had been zero.

15 “(2) APPLICABLE RECAPTURE PERCENTAGE.—

16 “(A) IN GENERAL.—For purposes of this
 17 subsection, the applicable recapture percentage
 18 shall be determined from the following table:

“If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	90
Year 5	80
Year 6	70
Year 7	60
Year 8	50
Year 9	40
Year 10 and thereafter	0.

19 “(B) YEARS.—For purposes of subpara-
 20 graph (A), year 1 shall begin on the first day

1 of the taxable year in which the qualified child
 2 care facility is placed in service by the taxpayer.

3 “(3) RECAPTURE EVENT DEFINED.—For pur-
 4 poses of this subsection, the term ‘recapture event’
 5 means—

6 “(A) CESSATION OF OPERATION.—The
 7 cessation of the operation of the facility as a
 8 qualified child care facility.

9 “(B) CHANGE IN OWNERSHIP.—

10 “(i) IN GENERAL.—Except as pro-
 11 vided in clause (ii), the disposition of a
 12 taxpayer’s interest in a qualified child care
 13 facility with respect to which the credit de-
 14 scribed in subsection (a) was allowable.

15 “(ii) AGREEMENT TO ASSUME RECAP-
 16 TURE LIABILITY.—Clause (i) shall not
 17 apply if the person acquiring such interest
 18 in the facility agrees in writing to assume
 19 the recapture liability of the person dis-
 20 posing of such interest in effect imme-
 21 diately before such disposition. In the
 22 event of such an assumption, the person
 23 acquiring the interest in the facility shall
 24 be treated as the taxpayer for purposes of
 25 assessing any recapture liability (computed

1 as if there had been no change in owner-
2 ship).

3 “(4) SPECIAL RULES.—

4 “(A) TAX BENEFIT RULE.—The tax for
5 the taxable year shall be increased under para-
6 graph (1) only with respect to credits allowed
7 by reason of this section which were used to re-
8 duce tax liability. In the case of credits not so
9 used to reduce tax liability, the carryforwards
10 and carrybacks under section 39 shall be appro-
11 priately adjusted.

12 “(B) NO CREDITS AGAINST TAX.—Any in-
13 crease in tax under this subsection shall not be
14 treated as a tax imposed by this chapter for
15 purposes of determining the amount of any
16 credit under subpart A, B, or D of this part.

17 “(C) NO RECAPTURE BY REASON OF CAS-
18 UALTY LOSS.—The increase in tax under this
19 subsection shall not apply to a cessation of op-
20 eration of the facility as a qualified child care
21 facility by reason of a casualty loss to the ex-
22 tent such loss is restored by reconstruction or
23 replacement within a reasonable period estab-
24 lished by the Secretary.

1 “(f) SPECIAL RULES.—For purposes of this
2 section—

3 “(1) AGGREGATION RULES.—All persons which
4 are treated as a single employer under subsections
5 (a) and (b) of section 52 shall be treated as a single
6 taxpayer.

7 “(2) PASS-THRU IN THE CASE OF ESTATES AND
8 TRUSTS.—Under regulations prescribed by the Sec-
9 retary, rules similar to the rules of subsection (d) of
10 section 52 shall apply.

11 “(3) ALLOCATION IN THE CASE OF PARTNER-
12 SHIPS.—In the case of partnerships, the credit shall
13 be allocated among partners under regulations pre-
14 scribed by the Secretary.

15 “(g) NO DOUBLE BENEFIT.—

16 “(1) REDUCTION IN BASIS.—For purposes of
17 this subtitle—

18 “(A) IN GENERAL.—If a credit is deter-
19 mined under this section with respect to any
20 property by reason of expenditures described in
21 subsection (c)(4), the basis of such property
22 shall be reduced by the amount of the credit so
23 determined.

24 “(B) CERTAIN DISPOSITIONS.—If during
25 any taxable year there is a recapture amount

1 determined with respect to any property the
 2 basis of which was reduced under subparagraph
 3 (A), the basis of such property (immediately be-
 4 fore the event resulting in such recapture) shall
 5 be increased by an amount equal to such recap-
 6 ture amount. For purposes of the preceding
 7 sentence, the term ‘recapture amount’ means
 8 any increase in tax (or adjustment in
 9 carrybacks or carryovers) determined under
 10 subsection (e).

11 “(2) OTHER DEDUCTIONS AND CREDITS.—No
 12 deduction or credit shall be allowed under any other
 13 provision of this chapter with respect to the amount
 14 of the credit determined under this section.

15 “(h) TERMINATION.—This section shall not apply to
 16 taxable years beginning after December 31, 2009.”

17 (b) CONFORMING AMENDMENTS.—

18 (1) Section 38(b) of the Internal Revenue Code
 19 of 1986 is amended—

20 (A) by striking out “plus” at the end of
 21 paragraph (11),

22 (B) by striking out the period at the end
 23 of paragraph (12), and inserting a comma and
 24 “plus”, and

1 (C) by adding at the end the following new
2 paragraph:

3 “(13) the employer-provided child care credit
4 determined under section 45D.”

5 (2) The table of sections for subpart D of part
6 IV of subchapter A of chapter 1 is amended by add-
7 ing at the end the following new item:

“Sec. 45D. Employer-provided child care credit.”

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply to taxable years beginning after
10 December 31, 1999.

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