

107TH CONGRESS  
1ST SESSION

# S. 99

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.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 22, 2001

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

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## 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 “Child Care Infrastruc-  
5 ture Act of 2001”.

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:

7 **“SEC. 45E. 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) 25 percent of the qualified child care ex-  
 13 penditures, and

14 “(2) 10 percent of the qualified child care re-  
 15 source and referral expenditures,  
 16 of the taxpayer for such taxable year.

17 “(b) DOLLAR LIMITATION.—The credit allowable  
 18 under subsection (a) for any taxable year shall not exceed  
 19 \$150,000.

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

21 “(1) QUALIFIED CHILD CARE EXPENDITURE.—

22 “(A) IN GENERAL.—The term ‘qualified  
 23 child care expenditure’ means any amount paid  
 24 or incurred—

25 “(i) to acquire, construct, rehabilitate,  
 26 or expand property—

1                   “(I) which is to be used as part  
2                   of a qualified child care facility of the  
3                   taxpayer,

4                   “(II) with respect to which a de-  
5                   duction for depreciation (or amortiza-  
6                   tion in lieu of depreciation) is allow-  
7                   able, and

8                   “(III) which does not constitute  
9                   part of the principal residence (within  
10                  the meaning of section 121) of the  
11                  taxpayer or any employee of the tax-  
12                  payer,

13                  “(ii) for the operating costs of a quali-  
14                  fied child care facility of the taxpayer, in-  
15                  cluding costs related to the training of em-  
16                  ployees, to scholarship programs, and to  
17                  the providing of increased compensation to  
18                  employees with higher levels of child care  
19                  training,

20                  “(iii) under a contract with a qualified  
21                  child care facility to provide child care  
22                  services to employees of the taxpayer, or

23                  “(iv) to reimburse an employee for ex-  
24                  penses for child care which enables the em-

ployee to be gainfully employed including  
expenses related to—

“(I) day care and before and  
after school care,

“(II) transportation associated  
with such care, and

“(III) before and after school  
and holiday programs including edu-  
cational and recreational programs  
and camp programs.

“(B) FAIR MARKET VALUE.—The term  
‘qualified child care expenditures’ shall not in-  
clude expenses in excess of the fair market  
value of such care.

“(2) QUALIFIED CHILD CARE FACILITY.—

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

“(i) the principal use of which is to  
provide child care assistance, and

“(ii) which meets the requirements of  
all applicable laws and regulations of the  
State or local government in which it is lo-  
cated, including the licensing of the facility  
as a child care facility.

1           Clause (i) shall not apply to a facility which is  
 2           the principal residence (within the meaning of  
 3           section 121) of the operator of the facility.

4           “(B) SPECIAL RULES WITH RESPECT TO A  
 5           TAXPAYER.—A facility shall not be treated as a  
 6           qualified child care facility with respect to a  
 7           taxpayer unless—

8                   “(i) enrollment in the facility is open  
 9                   to employees of the taxpayer during the  
 10                  taxable year,

11                  “(ii) if the facility is the principal  
 12                  trade or business of the taxpayer, at least  
 13                  30 percent of the enrollees of such facility  
 14                  are dependents of employees of the tax-  
 15                  payer, and

16                  “(iii) the use of such facility (or the  
 17                  eligibility to use such facility) does not dis-  
 18                  criminate in favor of employees of the tax-  
 19                  payer who are highly compensated employ-  
 20                  ees (within the meaning of section 414(q)).

21           “(3) QUALIFIED CHILD CARE RESOURCE AND  
 22           REFERRAL EXPENDITURE.—

23                   “(A) IN GENERAL.—The term ‘qualified  
 24                   child care resource and referral expenditure’  
 25                   means any amount paid or incurred under a

1 contract to provide child care resource and re-  
 2 ferral services to an employee of the taxpayer.

3 “(B) NONDISCRIMINATION.—The services  
 4 shall not be treated as qualified unless the pro-  
 5 vision of such services (or the eligibility to use  
 6 such services) does not discriminate in favor of  
 7 employees of the taxpayer who are highly com-  
 8 pensated employees (within the meaning of sec-  
 9 tion 414(q)).

10 “(d) RECAPTURE OF ACQUISITION AND CONSTRUC-  
 11 TION CREDIT.—

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

18 “(A) the applicable recapture percentage,  
 19 and

20 “(B) the aggregate decrease in the credits  
 21 allowed under section 38 for all prior taxable  
 22 years which would have resulted if the qualified  
 23 child care expenditures of the taxpayer de-  
 24 scribed in subsection (c)(1)(A) with respect to  
 25 such facility had been zero.

1 “(2) APPLICABLE RECAPTURE PERCENTAGE.—

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

<b>“If the recapture event occurs in:</b>	<b>The applicable recapture percentage is:</b>
Years 1–3 .....	100
Year 4 .....	85
Year 5 .....	70
Year 6 .....	55
Year 7 .....	40
Year 8 .....	25
Years 9 and 10 .....	10
Years 11 and thereafter .....	0.

5 “(B) YEARS.—For purposes of subpara-  
6 graph (A), year 1 shall begin on the first day  
7 of the taxable year in which the qualified child  
8 care facility is placed in service by the taxpayer.

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

12 “(A) CESSATION OF OPERATION.—The  
13 cessation of the operation of the facility as a  
14 qualified child care facility.

15 “(B) CHANGE IN OWNERSHIP.—

16 “(i) IN GENERAL.—Except as pro-  
17 vided in clause (ii), the disposition of a  
18 taxpayer’s interest in a qualified child care  
19 facility with respect to which the credit de-  
20 scribed in subsection (a) was allowable.

1                   “(ii) AGREEMENT TO ASSUME RECAP-  
 2                   TURE LIABILITY.—Clause (i) shall not  
 3                   apply if the person acquiring such interest  
 4                   in the facility agrees in writing to assume  
 5                   the recapture liability of the person dis-  
 6                   posing of such interest in effect imme-  
 7                   diately before such disposition. In the  
 8                   event of such an assumption, the person  
 9                   acquiring the interest in the facility shall  
 10                  be treated as the taxpayer for purposes of  
 11                  assessing any recapture liability (computed  
 12                  as if there had been no change in owner-  
 13                  ship).

14               “(4) SPECIAL RULES.—

15                   “(A) TAX BENEFIT RULE.—The tax for  
 16                   the taxable year shall be increased under para-  
 17                   graph (1) only with respect to credits allowed  
 18                   by reason of this section which were used to re-  
 19                   duce tax liability. In the case of credits not so  
 20                   used to reduce tax liability, the carryforwards  
 21                   and carrybacks under section 39 shall be appro-  
 22                   priately adjusted.

23                   “(B) NO CREDITS AGAINST TAX.—Any in-  
 24                   crease in tax under this subsection shall not be  
 25                   treated as a tax imposed by this chapter for



1 purposes of determining the amount of any  
 2 credit under subpart A, B, or D of this part.

3 “(C) NO RECAPTURE BY REASON OF CAS-  
 4 UALTY LOSS.—The increase in tax under this  
 5 subsection shall not apply to a cessation of op-  
 6 eration of the facility as a qualified child care  
 7 facility by reason of a casualty loss to the ex-  
 8 tent such loss is restored by reconstruction or  
 9 replacement within a reasonable period estab-  
 10 lished by the Secretary.

11 “(e) SPECIAL RULES.—For purposes of this  
 12 section—

13 “(1) AGGREGATION RULES.—All persons which  
 14 are treated as a single employer under subsections  
 15 (a) and (b) of section 52 shall be treated as a single  
 16 taxpayer.

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

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

25 “(f) NO DOUBLE BENEFIT.—

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

3           “(A) IN GENERAL.—If a credit is deter-  
4 mined under this section with respect to any  
5 property by reason of expenditures described in  
6 subsection (c)(1)(A), the basis of such property  
7 shall be reduced by the amount of the credit so  
8 determined.

9           “(B) CERTAIN DISPOSITIONS.—If, during  
10 any taxable year, there is a recapture amount  
11 determined with respect to any property the  
12 basis of which was reduced under subparagraph  
13 (A), the basis of such property (immediately be-  
14 fore the event resulting in such recapture) shall  
15 be increased by an amount equal to such recap-  
16 ture amount. For purposes of the preceding  
17 sentence, the term ‘recapture amount’ means  
18 any increase in tax (or adjustment in  
19 carrybacks or carryovers) determined under  
20 subsection (d).

21           “(2) OTHER DEDUCTIONS AND CREDITS.—No  
22 deduction or credit shall be allowed under any other  
23 provision of this chapter with respect to the amount  
24 of the credit determined under this section.”.

25           (b) CONFORMING AMENDMENTS.—

1           (1) Section 38(b) of the Internal Revenue Code  
 2           of 1986 is amended by striking “plus” at the end of  
 3           paragraph (12), by striking the period at the end of  
 4           paragraph (13) and inserting “, plus”, and by add-  
 5           ing at the end the following:

6           “(14) the employer-provided child care credit  
 7           determined under section 45E.”.

8           (2) The table of sections for subpart D of part  
 9           IV of subchapter A of chapter 1 of such Code is  
 10          amended by adding at the end the following:

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

11          (3) Section 1016(a) of such Code is amended  
 12          by striking “and” at the end of paragraph (26), by  
 13          striking the period at the end of paragraph (27) and  
 14          inserting “, and”, and by adding at the end the fol-  
 15          lowing:

16          “(28) in the case of a facility with respect to  
 17          which a credit was allowed under section 45E, to the  
 18          extent provided in section 45E(f)(1).”.

19          (c) EFFECTIVE DATE.—The amendments made by  
 20          this section shall apply to taxable years beginning after  
 21          December 31, 2001.

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