

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *543*
 2 INTRODUCED BY *Nick Peterson*
 3 *Carey Brank* *Wendy Russell* *Billent* *Mercer*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
 5 ELIGIBILITY FOR THE CREDIT FOR DEPENDENT CARE ASSISTANCE
 6 APPLIES TO THE AMOUNT PAID OR INCURRED BY THE EMPLOYER THAT
 7 IS NOT PART OF A SALARY REDUCTION PLAN; AMENDING SECTION
 8 15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 9 AND A RETROACTIVE APPLICABILITY DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 15-31-131, MCA, is amended to read:

13 ***15-31-131. Credit for dependent care assistance. (1)**

14 There is a credit against the taxes otherwise due under this
15 chapter allowable to an employer for amounts paid or
16 incurred during the taxable year by the employer for
17 dependent care assistance actually provided to or on behalf
18 of an employee if the assistance is furnished by a
19 registered or licensed day-care provider and pursuant to a
20 program that meets the requirements of section 89(k) and
21 129(d)(2) through (6) of the Internal Revenue Code.

22 (2) (a) The amount of the credit allowed under
23 subsection (1) is 15% of the amount paid or incurred by the
24 employer during the taxable year, but the credit may not
25 exceed \$1,250 of day-care assistance actually provided to or

1 on behalf of the employee.

2 (b) For the purposes of this subsection, marital status
3 must be determined under the rules of section 21(e)(3) and
4 (4) of the Internal Revenue Code.

5 (c) In the case of an onsite facility, the amount upon
6 which the credit allowed under subsection (1) is based, with
7 respect to any dependent, must be based upon utilization and
8 the value of the services provided.

9 (3) An amount paid or incurred during the taxable year
10 of an employer in providing dependent care assistance to or
11 on behalf of any employee does not qualify for the credit
12 allowed under subsection (1) if the amount was paid or
13 incurred to an individual described in section 129(c)(1) or
14 (2) of the Internal Revenue Code.

15 (4) An amount paid or incurred by an employer to
16 provide dependent care assistance to or on behalf of an
17 employee does not qualify for the credit allowed under
18 subsection (1):

19 (a) if to the extent the amount is paid or incurred
20 pursuant to a salary reduction plan; or

21 (b) if the amount is paid or incurred for services not
22 performed within this state.

23 (5) If the credit allowed under subsection (1) is
24 claimed, the amount of any deduction allowed or allowable
25 under this chapter for the amount that qualifies for the



1 credit (or upon which the credit is based) must be reduced
2 by the dollar amount of the credit allowed. The election to
3 claim a credit allowed under this section must be made at
4 the time of filing the tax return.

5 (6) The amount upon which the credit allowed under
6 subsection (1) is based may not be included in the gross
7 income of the employee to whom the dependent care assistance
8 is provided. However, the amount excluded from the income of
9 an employee under this section may not exceed the
10 limitations provided in section 129(b) of the Internal
11 Revenue Code. For purposes of Title 15, chapter 30, part 2,
12 with respect to an employee to whom dependent care
13 assistance is provided, "wages" does not include any amount
14 excluded under this subsection. Amounts excluded under this
15 subsection do not qualify as expenses for which a deduction
16 is allowed to the employee under 15-30-121.

17 (7) Any tax credit otherwise allowable under this
18 section that is not used by the taxpayer in a particular
19 year may be carried forward and offset against the
20 taxpayer's tax liability for the next succeeding tax year.
21 Any credit remaining unused in the next succeeding tax year
22 may be carried forward and used in the second succeeding tax
23 year, and likewise through the fifth year succeeding the tax
24 year in which the credit was first allowed or allowable. A
25 credit may not be carried forward beyond the fifth

1 succeeding tax year.

2 (8) If the taxpayer is an S corporation, as defined in
3 section 1361 of the Internal Revenue Code, and the taxpayer
4 elects to take tax credit relief, the election may be made
5 on behalf of the corporation's shareholders. A shareholder's
6 credit must be computed using the shareholder's pro rata
7 share of the corporation's costs that qualify for the
8 credit. In all other respects, the effect of the tax credit
9 applies to the corporation as otherwise provided by law.

10 (9) For purposes of the credit allowed under subsection
11 (1):

12 (a) The definitions and special rules contained in
13 section 129(e) of the Internal Revenue Code apply to the
14 extent applicable.

15 (b) "Employer" means an employer carrying on a
16 business, trade, occupation, or profession in this state.

17 (c) "Internal Revenue Code" means the federal Internal
18 Revenue Code as amended and in effect on January 1, 1989."

19 NEW SECTION. Section 2. Retroactive applicability.

20 [This act] applies retroactively, within the meaning of
21 1-2-109, to taxable years beginning after December 31, 1990.

22 NEW SECTION. Section 3. Effective date. [This act] is
23 effective on passage and approval.

-End-

APPROVED BY COMMITTEE
ON TAXATION

1 HOUSE BILL NO. 543
 2 INTRODUCED BY DARKO, PETERSON, VAUGHN,
 3 RANEY, BROOKE, WYATT, RUSSELL, GILBERT,
 4 R. JOHNSON, COCCHIARELLA, KIMBERLEY,
 5 J. RICE, MESSMORE, MERCER
 6

7 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
 8 ELIGIBILITY FOR THE CREDIT FOR DEPENDENT CARE ASSISTANCE
 9 APPLIES TO THE AMOUNT PAID OR INCURRED BY THE EMPLOYER THAT
 10 IS NOT PART OF A SALARY REDUCTION PLAN; INCREASING THE
 11 AMOUNT OF THE CREDIT TO 20 PERCENT; AMENDING SECTION
 12 15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 13 AND A RETROACTIVE APPLICABILITY DATE."
 14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 15-31-131, MCA, is amended to read:

17 "15-31-131. Credit for dependent care assistance. (1)
 18 There is a credit against the taxes otherwise due under this
 19 chapter allowable to an employer for amounts paid or
 20 incurred during the taxable year by the employer for
 21 dependent care assistance actually provided to or on behalf
 22 of an employee if the assistance is furnished by a
 23 registered or licensed day-care provider and pursuant to a
 24 program that meets the requirements of section 89(k) and
 25 129(d)(2) through (6) of the Internal Revenue Code.

1 (2) (a) The amount of the credit allowed under
 2 subsection (1) is ~~15%~~ 20% of the amount paid or incurred by
 3 the employer during the taxable year, but the credit may not
 4 exceed \$1,250 of day-care assistance actually provided to or
 5 on behalf of the employee.

6 (b) For the purposes of this subsection, marital status
 7 must be determined under the rules of section 21(e)(3) and
 8 (4) of the Internal Revenue Code.

9 (c) In the case of an onsite facility, the amount upon
 10 which the credit allowed under subsection (1) is based, with
 11 respect to any dependent, must be based upon utilization and
 12 the value of the services provided.

13 (3) An amount paid or incurred during the taxable year
 14 of an employer in providing dependent care assistance to or
 15 on behalf of any employee does not qualify for the credit
 16 allowed under subsection (1) if the amount was paid or
 17 incurred to an individual described in section 129(c)(1) or
 18 (2) of the Internal Revenue Code.

19 (4) An amount paid or incurred by an employer to
 20 provide dependent care assistance to or on behalf of an
 21 employee does not qualify for the credit allowed under
 22 subsection (1):

23 (a) if to the extent the amount is paid or incurred
 24 pursuant to a salary reduction plan; or

25 (b) if the amount is paid or incurred for services not



1 performed within this state.

2 (5) If the credit allowed under subsection (1) is
3 claimed, the amount of any deduction allowed or allowable
4 under this chapter for the amount that qualifies for the
5 credit (or upon which the credit is based) must be reduced
6 by the dollar amount of the credit allowed. The election to
7 claim a credit allowed under this section must be made at
8 the time of filing the tax return.

9 (6) The amount upon which the credit allowed under
10 subsection (1) is based may not be included in the gross
11 income of the employee to whom the dependent care assistance
12 is provided. However, the amount excluded from the income of
13 an employee under this section may not exceed the
14 limitations provided in section 129(b) of the Internal
15 Revenue Code. For purposes of Title 15, chapter 30, part 2,
16 with respect to an employee to whom dependent care
17 assistance is provided, "wages" does not include any amount
18 excluded under this subsection. Amounts excluded under this
19 subsection do not qualify as expenses for which a deduction
20 is allowed to the employee under 15-30-121.

21 (7) Any tax credit otherwise allowable under this
22 section that is not used by the taxpayer in a particular
23 year may be carried forward and offset against the
24 taxpayer's tax liability for the next succeeding tax year.
25 Any credit remaining unused in the next succeeding tax year

1 may be carried forward and used in the second succeeding tax
2 year, and likewise through the fifth year succeeding the tax
3 year in which the credit was first allowed or allowable. A
4 credit may not be carried forward beyond the fifth
5 succeeding tax year.

6 (8) If the taxpayer is an S corporation, as defined in
7 section 1361 of the Internal Revenue Code, and the taxpayer
8 elects to take tax credit relief, the election may be made
9 on behalf of the corporation's shareholders. A shareholder's
10 credit must be computed using the shareholder's pro rata
11 share of the corporation's costs that qualify for the
12 credit. In all other respects, the effect of the tax credit
13 applies to the corporation as otherwise provided by law.

14 (9) For purposes of the credit allowed under subsection
15 (1):

16 (a) The definitions and special rules contained in
17 section 129(e) of the Internal Revenue Code apply to the
18 extent applicable.

19 (b) "Employer" means an employer carrying on a
20 business, trade, occupation, or profession in this state.

21 (c) "Internal Revenue Code" means the federal Internal
22 Revenue Code as amended and in effect on January 1, 1989."

23 **NEW SECTION. Section 2. Retroactive applicability.**

24 [This act] applies retroactively, within the meaning of
25 1-2-109, to taxable years beginning after December 31, 1990.

HB 0543/02

- 1 NEW SECTION. **Section 3.** **Effective date.** [This act] is
- 2 effective on passage and approval.

-End-

1 HOUSE BILL NO. 543

2 INTRODUCED BY DARKO, PETERSON, VAUGHN,
 3 RANEY, BROOKE, WYATT, RUSSELL, GILBERT,
 4 R. JOHNSON, COCCHIARELLA, KIMBERLEY,
 5 J. RICE, MESSMORE, MERCER
 6

7 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
 8 ELIGIBILITY FOR THE CREDIT FOR DEPENDENT CARE ASSISTANCE
 9 APPLIES TO THE AMOUNT PAID OR INCURRED BY THE EMPLOYER THAT
 10 IS NOT PART OF A SALARY REDUCTION PLAN; INCREASING THE
 11 AMOUNT OF THE CREDIT TO 20 PERCENT; AMENDING SECTION
 12 15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 13 AND A RETROACTIVE APPLICABILITY DATE."
 14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 15-31-131, MCA, is amended to read:

17 "15-31-131. Credit for dependent care assistance. (1)
 18 There is a credit against the taxes otherwise due under this
 19 chapter allowable to an employer for amounts paid or
 20 incurred during the taxable year by the employer for
 21 dependent care assistance actually provided to or on behalf
 22 of an employee if the assistance is furnished by a
 23 registered or licensed day-care provider and pursuant to a
 24 program that meets the requirements of section 89(k) and
 25 129(d)(2) through (6) of the Internal Revenue Code.

1 (2) (a) The amount of the credit allowed under
 2 subsection (1) is ~~15%~~ 20% of the amount paid or incurred by
 3 the employer during the taxable year, but the credit may not
 4 exceed \$1,250 of day-care assistance actually provided to or
 5 on behalf of the employee.

6 (b) For the purposes of this subsection, marital status
 7 must be determined under the rules of section 21(e)(3) and
 8 (4) of the Internal Revenue Code.

9 (c) In the case of an onsite facility, the amount upon
 10 which the credit allowed under subsection (1) is based, with
 11 respect to any dependent, must be based upon utilization and
 12 the value of the services provided.

13 (3) An amount paid or incurred during the taxable year
 14 of an employer in providing dependent care assistance to or
 15 on behalf of any employee does not qualify for the credit
 16 allowed under subsection (1) if the amount was paid or
 17 incurred to an individual described in section 129(c)(1) or
 18 (2) of the Internal Revenue Code.

19 (4) An amount paid or incurred by an employer to
 20 provide dependent care assistance to or on behalf of an
 21 employee does not qualify for the credit allowed under
 22 subsection (1):

23 (a) if to the extent the amount is paid or incurred
 24 pursuant to a salary reduction plan; or

25 (b) if the amount is paid or incurred for services not

1 performed within this state.

2 (5) If the credit allowed under subsection (1) is
 3 claimed, the amount of any deduction allowed or allowable
 4 under this chapter for the amount that qualifies for the
 5 credit (or upon which the credit is based) must be reduced
 6 by the dollar amount of the credit allowed. The election to
 7 claim a credit allowed under this section must be made at
 8 the time of filing the tax return.

9 (6) The amount upon which the credit allowed under
 10 subsection (1) is based may not be included in the gross
 11 income of the employee to whom the dependent care assistance
 12 is provided. However, the amount excluded from the income of
 13 an employee under this section may not exceed the
 14 limitations provided in section 129(b) of the Internal
 15 Revenue Code. For purposes of Title 15, chapter 30, part 2,
 16 with respect to an employee to whom dependent care
 17 assistance is provided, "wages" does not include any amount
 18 excluded under this subsection. Amounts excluded under this
 19 subsection do not qualify as expenses for which a deduction
 20 is allowed to the employee under 15-30-121.

21 (7) Any tax credit otherwise allowable under this
 22 section that is not used by the taxpayer in a particular
 23 year may be carried forward and offset against the
 24 taxpayer's tax liability for the next succeeding tax year.
 25 Any credit remaining unused in the next succeeding tax year

1 may be carried forward and used in the second succeeding tax
 2 year, and likewise through the fifth year succeeding the tax
 3 year in which the credit was first allowed or allowable. A
 4 credit may not be carried forward beyond the fifth
 5 succeeding tax year.

6 (8) If the taxpayer is an S corporation, as defined in
 7 section 1361 of the Internal Revenue Code, and the taxpayer
 8 elects to take tax credit relief, the election may be made
 9 on behalf of the corporation's shareholders. A shareholder's
 10 credit must be computed using the shareholder's pro rata
 11 share of the corporation's costs that qualify for the
 12 credit. In all other respects, the effect of the tax credit
 13 applies to the corporation as otherwise provided by law.

14 (9) For purposes of the credit allowed under subsection
 15 (1):

16 (a) The definitions and special rules contained in
 17 section 129(e) of the Internal Revenue Code apply to the
 18 extent applicable.

19 (b) "Employer" means an employer carrying on a
 20 business, trade, occupation, or profession in this state.

21 (c) "Internal Revenue Code" means the federal Internal
 22 Revenue Code as amended and in effect on January 1, 1989."

23 **NEW SECTION. Section 2. Retroactive applicability.**
 24 [This act] applies retroactively, within the meaning of
 25 1-2-109, to taxable years beginning after December 31, 1990.

1 NEW SECTION. **Section 3.** **Effective date.** [This act] is
2 effective on passage and approval.

-End-

1 HOUSE BILL NO. 543

2 INTRODUCED BY DARKO, PETERSON, VAUGHN,
 3 RANEY, BROOKE, WYATT, RUSSELL, GILBERT,
 4 R. JOHNSON, COCCHIARELLA, KIMBERLEY,
 5 J. RICE, MESSMORE, MERCER
 6

7 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE
 8 ELIGIBILITY FOR THE CREDIT FOR DEPENDENT CARE ASSISTANCE
 9 APPLIES TO THE AMOUNT PAID OR INCURRED BY THE EMPLOYER THAT
 10 IS NOT PART OF A SALARY REDUCTION PLAN; INCREASING THE
 11 AMOUNT OF THE CREDIT TO 20 PERCENT; AMENDING SECTION
 12 15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
 13 AND A RETROACTIVE APPLICABILITY DATE."
 14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 **Section 1.** Section 15-31-131, MCA, is amended to read:

17 "15-31-131. Credit for dependent care assistance. (1)
 18 There is a credit against the taxes otherwise due under this
 19 chapter allowable to an employer for amounts paid or
 20 incurred during the taxable year by the employer for
 21 dependent care assistance actually provided to or on behalf
 22 of an employee if the assistance is furnished by a
 23 registered or licensed day-care provider and pursuant to a
 24 program that meets the requirements of section 89(k) and
 25 129(d)(2) through (6) of the Internal Revenue Code.

1 (2) (a) The amount of the credit allowed under
 2 subsection (1) is ~~15%~~ 20% of the amount paid or incurred by
 3 the employer during the taxable year, but the credit may not
 4 exceed \$1,250 of day-care assistance actually provided to or
 5 on behalf of the employee.

6 (b) For the purposes of this subsection, marital status
 7 must be determined under the rules of section 21(e)(3) and
 8 (4) of the Internal Revenue Code.

9 (c) In the case of an onsite facility, the amount upon
 10 which the credit allowed under subsection (1) is based, with
 11 respect to any dependent, must be based upon utilization and
 12 the value of the services provided.

13 (3) An amount paid or incurred during the taxable year
 14 of an employer in providing dependent care assistance to or
 15 on behalf of any employee does not qualify for the credit
 16 allowed under subsection (1) if the amount was paid or
 17 incurred to an individual described in section 129(c)(1) or
 18 (2) of the Internal Revenue Code.

19 (4) An amount paid or incurred by an employer to
 20 provide dependent care assistance to or on behalf of an
 21 employee does not qualify for the credit allowed under
 22 subsection (1):

23 (a) if to the extent the amount is paid or incurred
 24 pursuant to a salary reduction plan; or

25 (b) if the amount is paid or incurred for services not

1 performed within this state.

2 (5) If the credit allowed under subsection (1) is
3 claimed, the amount of any deduction allowed or allowable
4 under this chapter for the amount that qualifies for the
5 credit (or upon which the credit is based) must be reduced
6 by the dollar amount of the credit allowed. The election to
7 claim a credit allowed under this section must be made at
8 the time of filing the tax return.

9 (6) The amount upon which the credit allowed under
10 subsection (1) is based may not be included in the gross
11 income of the employee to whom the dependent care assistance
12 is provided. However, the amount excluded from the income of
13 an employee under this section may not exceed the
14 limitations provided in section 129(b) of the Internal
15 Revenue Code. For purposes of Title 15, chapter 30, part 2,
16 with respect to an employee to whom dependent care
17 assistance is provided, "wages" does not include any amount
18 excluded under this subsection. Amounts excluded under this
19 subsection do not qualify as expenses for which a deduction
20 is allowed to the employee under 15-30-121.

21 (7) Any tax credit otherwise allowable under this
22 section that is not used by the taxpayer in a particular
23 year may be carried forward and offset against the
24 taxpayer's tax liability for the next succeeding tax year.
25 Any credit remaining unused in the next succeeding tax year

1 may be carried forward and used in the second succeeding tax
2 year, and likewise through the fifth year succeeding the tax
3 year in which the credit was first allowed or allowable. A
4 credit may not be carried forward beyond the fifth
5 succeeding tax year.

6 (8) If the taxpayer is an S corporation, as defined in
7 section 1361 of the Internal Revenue Code, and the taxpayer
8 elects to take tax credit relief, the election may be made
9 on behalf of the corporation's shareholders. A shareholder's
10 credit must be computed using the shareholder's pro rata
11 share of the corporation's costs that qualify for the
12 credit. In all other respects, the effect of the tax credit
13 applies to the corporation as otherwise provided by law.

14 (9) For purposes of the credit allowed under subsection
15 (1):

16 (a) The definitions and special rules contained in
17 section 129(e) of the Internal Revenue Code apply to the
18 extent applicable.

19 (b) "Employer" means an employer carrying on a
20 business, trade, occupation, or profession in this state.

21 (c) "Internal Revenue Code" means the federal Internal
22 Revenue Code as amended and in effect on January 1, 1989."

23 NEW SECTION. **Section 2. Retroactive applicability.**
24 [This act] applies retroactively, within the meaning of
25 1-2-109, to taxable years beginning after December 31, 1990.

HB 0543/02

- 1 NEW SECTION. **Section 3.** **Effective date.** [This act] is
- 2 effective on passage and approval.

-End-