HOUSE BILL NO. 543

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

IN THE HOUSE

FEBRUARY 1, 1991

FEBRUARY 2, 1991

MARCH 5, 1991 COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.

PRINTING REPORT.

ON TAXATION.

FIRST READING.

MARCH 9, 1991 SECOND READING, DO PASS.

MARCH 11, 1991 ENGROSSING REPORT.

MARCH 12, 1991 THIRD READING, PASSED. AYES, 98; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 13, 1991

INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.

INTRODUCED AND REFERRED TO COMMITTEE

FIRST READING.

MARCH 27, 1991 COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.

APRIL 3, 1991 SECOND READING, CONCURRED IN.

APRIL 4, 1991 THIRD READING, CONCURRED IN. AYES, 49; NOES, 1.

RETURNED TO HOUSE.

IN THE HOUSE

APRIL 4, 1991

SENT TO ENROLLING.

RECEIVED FROM SENATE.

REPORTED CORRECTLY ENROLLED.

LC 0489/01

LC 0489/01

USE BILL NO. 543 UK? Peterson Jaughr 1 INTRODUCED BY MUCKIN 2 Camer Branke Wgett Russel 3 "AN ACT CLARIFYING THAT THE 4 Nomber las BILITY FOR THE CREDIT FOR DÉPENDENT CARE ASSISTANCE 5 APPLIES TO THE AMOUNT PAID OR INCURRED BY THE EMPLOYER THAT 6 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.

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

Montana Legislative Council

1 on behalf of the employee.

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

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

INTRODUCED BILL -2-HB 543

LC 0489/01

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

17 (7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular 18 year may be carried forward and offset against the 19 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 credit may not be carried forward beyond the fifth 25

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 on behalf of the corporation's shareholders. A shareholder's 5 6 credit must be computed using the shareholder's pro rata 7 share of the corporation's costs that gualify for the 8 credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law. 9

LC 0489/01

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 a16 business, trade, occupation, or profession in this state.

17 (c) "Internal Revenue Code" means the federal Internal18 Revenue Code as amended and in effect on January 1, 1989."

NEW SECTION. Section 2. Retroactive applicability.
 [This act] applies retroactively, within the meaning of
 1-2-109, to taxable years beginning after December 31, 1990.
 NEW SECTION. Section 3. Effective date. [This act] is

23 effective on passage and approval.

ennessen og her standen i som en stande stande stande i som en stande stande i som en stande i som stande i som stande stande i som stande i som stande stande i som stande stande i som stande i som stande i som stande stande i som stande

-End-

-3-

52nd Legislature

HB 0543/02

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; <u>INCREASING THE</u> 11 <u>AMOUNT OF THE CREDIT TO 20 PERCENT</u>; AMENDING SECTION 12 15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 13 AND A RETROACTIVE APPLICABILITY DATE."

۲.

14

•

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

Section 1. Section 15-31-131, MCA, is amended to read: 16 "15-31-131. Credit for dependent care assistance. (1) 17 There is a credit against the taxes otherwise due under this 18 chapter allowable to an employer for amounts paid or 19 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.

Montana Legislative Council

HB 0543/02

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

-2-

SECOND READING

HB 543

the second s

and an effective on the second second second second second and second and the second second second lines of a second line second s

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 income of the employee to whom the dependent care assistance 11 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.

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

-3-

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.

(8) If the taxpayer is an S corporation, as defined in 6 section 1361 of the Internal Revenue Code, and the taxpayer 7 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 applies to the corporation as otherwise provided by law. 13

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 a20 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 <u>NEW SECTION.</u> 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.

-4-

HB 543

HB 0543/02

1 NEW SECTION. Section 3. Effective date. [This act] is

2 effective on passage and approval.

- *

-End-

-5-

•

L'Montana Legislative Council

1	HOUSE BILL NO. 543	1 (2) (a) The amount of the credit allowed	under
2	INTRODUCED BY DARKO, PETERSON, VAUGHN,	2 subsection (1) is 15% 20% of the amount paid or inc	urred by
3	RANEY, BROOKE, WYATT, RUSSELL, GILBERT,	3 the employer during the taxable year, but the credit	may not
4	R. JOHNSON, COCCHIARELLA, KIMBERLEY,	4 exceed \$1,250 of day-care assistance actually provide	-
5	J. RICE, MESSMORE, MERCER	5 on behalf of the employee.	
6		6 (b) For the purposes of this subsection, marital	l status
7	A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE	7 must be determined under the rules of section 21(e)	
8	ELIGIBILITY FOR THE CREDIT FOR DEPENDENT CARE ASSISTANCE	8 (4) of the Internal Revenue Code.	
9	APPLIES TO THE AMOUNT PAID OR INCURRED BY THE EMPLOYER THAT	9 (c) In the case of an onsite facility, the among the second	unt upon
10	IS NOT PART OF A SALARY REDUCTION PLAN; INCREASING THE	10 which the credit allowed under subsection (1) is bas	
11	AMOUNT OF THE CREDIT TO 20 PERCENT; AMENDING SECTION	11 respect to any dependent, must be based upon utiliza	tion and
12	15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	12 the value of the services provided.	
13	AND A RETROACTIVE APPLICABILITY DATE."	13 (3) An amount paid or incurred during the taxab	le year
14		14 of an employer in providing dependent care assistan	ce to or
15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	15 on behalf of any employee does not qualify for the	credit
16	Section 1. Section 15-31-131, MCA, is amended to read:	16 allowed under subsection (1) if the amount was	paid or
17	"15-31-131. Credit for dependent care assistance. (1)	17 incurred to an individual described in section 129(c)(1) or
18	There is a credit against the taxes otherwise due under this	18 (2) of the Internal Revenue Code.	
19	chapter allowable to an employer for amounts paid or	19 (4) An amount paid or incurred by an emp	loyer to
20	incurred during the taxable year by the employer for	20 provide dependent care assistance to or on behalf	of an
21	dependent care assistance actually provided to or on behalf	21 employee does not qualify for the credit allow	ed under
22	of an employee if the assistance is furnished by a	22 subsection (1):	
23	registered or licensed day-care provider and pursuant to a	23 (a) if to the extent the amount is paid or	incurred
24	program that meets the requirements of section 89(k) and	24 pursuant to a salary reduction plan; or	
25	129(d)(2) through (6) of the Internal Revenue Code.	25 (b) if the amount is paid or incurred for serv	ices not
	A	-2-	HB 543

THIRD READING

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

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

HB 0543/02

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.

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

14 (9) For purposes of the credit allowed under subsection15 (1):

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

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

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

23 <u>NEW SECTION.</u> 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.

-3-

HB 543

-4-

1 NEW SECTION. Section 3. Effective date. [This act] is

2 effective on passage and approval.

.

.

.

-End-

-5-

5

2.*

HB 0543/02

1	HOUSE BILL NO. 543	1	(2) (a) The amount of the credit allowed under
2	INTRODUCED BY DARKO, PETERSON, VAUGHN,	2	subsection (1) is $\frac{154}{201}$ of the amount paid or incurred by
3	RANEY, BROOKE, WYATT, RUSSELL, GILBERT,	3	the employer during the taxable year, but the credit may not
4	R. JOHNSON, COCCHIARELLA, KIMBERLEY,	4	exceed \$1,250 of day-care assistance actually provided to or
5	J. RICE, MESSMORE, MERCER	5	on behalf of the employee.
6		6	(b) For the purposes of this subsection, marital status
7	A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT THE	7	must be determined under the rules of section 21(e)(3) and
8	ELIGIBILITY FOR THE CREDIT FOR DEPENDENT CARE ASSISTANCE	8	(4) of the Internal Revenue Code.
9	APPLIES TO THE AMOUNT PAID OR INCURRED BY THE EMPLOYER THAT	9	(c) In the case of an onsite facility, the amount upon
10	IS NOT PART OF A SALARY REDUCTION PLAN; INCREASING THE	10	which the credit allowed under subsection (1) is based, with
11	AMOUNT OF THE CREDIT TO 20 PERCENT; AMENDING SECTION	11	respect to any dependent, must be based upon utilization and
12	15-31-131, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	12	the value of the services provided.
13	AND A RETROACTIVE APPLICABILITY DATE."	13	(3) An amount paid or incurred during the taxable year
14		14	of an employer in providing dependent care assistance to or
15	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	15	on behalf of any employee does not qualify for the credit
16	Section 1. Section 15-31-131, MCA, is amended to read:	16	allowed under subsection (1) if the amount was paid or
17	"15-31-131. Credit for dependent care assistance. (1)	17	incurred to an individual described in section $129(c)(1)$ or
18	There is a credit against the taxes otherwise due under this	18	(2) of the Internal Revenue Code.
19	chapter allowable to an employer for amounts paid or	19	(4) An amount paid or incurred by an employer to
20	incurred during the taxable year by the employer for	20	provide dependent care assistance to or on behalf of an
21	dependent care assistance actually provided to or on behalf	21	employee does not qualify for the credit allowed under
22	of an employee if the assistance is furnished by a	22	subsection (1):
23	registered or licensed day-care provider and pursuant to a	23	(a) if to the extent the amount is paid or incurred
24	program that meets the requirements of section 89(k) and	24	pursuant to a salary reduction plan; or
25	129(d)(2) through (6) of the Internal Revenue Code.	25	(b) if the amount is paid or incurred for services not



HB 0543/02

-2-

HB 543

REFERENCE BILL

HB 543

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.

(6) The amount upon which the credit allowed under 9 subsection (1) is based may not be included in the gross 10 income of the employee to whom the dependent care assistance 11 is provided. However, the amount excluded from the income of 12 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 subsection do not qualify as expenses for which a deduction 19 is allowed to the employee under 15-30-121. 20

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

- 3-

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

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

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 a20 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."

NEW SECTION. Section 2. Retroactive applicability.
(This act) applies retroactively, within the meaning of
1-2-109, to taxable years beginning after December 31, 1990.

-4-

1 NEW SECTION. Section 3. Effective date. [This act] is

2 effective on passage and approval.

.

-End-

-5-

HB 543

-

.