

SENATE BILL NO. 282

INTRODUCED BY HALLIGAN, VINCENT, GAGE,
CRIPPEN, FARRELL, NORMAN

IN THE SENATE

JANUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
FEBRUARY 7, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 8, 1989	PRINTING REPORT.
FEBRUARY 9, 1989	SECOND READING, DO PASS.
FEBRUARY 10, 1989	ENGROSSING REPORT.
FEBRUARY 11, 1989	THIRD READING, PASSED. AYES, 40; NOES, 7.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
FEBRUARY 20, 1989	FIRST READING.
APRIL 7, 1989	ON MOTION, REREFERRED TO COMMITTEE ON TAXATION.
APRIL 17, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 19, 1989	SECOND READING, CONCURRED IN AS AMENDED.
	ON MOTION, RULES SUSPENDED AND BILL PLACED ON THIRD READING THIS DAY
	THIRD READING, CONCURRED IN.

AYES, 62; NOES, 33.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 20, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

ON MOTION, RULES SUSPENDED AND BILL
PLACED ON THIRD READING THIS DAY.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 INTRODUCTION BY *Senate* BILL NO. *282*
2 *Handwritten signature: Vincent*
3 *Handwritten signature: Fanelp*
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CREDIT
5 AGAINST MONTANA INCOME TAXES FOR AMOUNTS PAID BY AN EMPLOYER
6 FOR DEPENDENT CARE ASSISTANCE PROVIDED TO OR ON BEHALF OF AN
7 EMPLOYEE; AMENDING SECTION 15-30-201, MCA; AND PROVIDING AN
8 APPLICABILITY DATE."
9

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

11 NEW SECTION. Section 1. Credit for dependent care
12 assistance. (1) There is a credit against the taxes
13 otherwise due under this chapter allowable to an employer
14 for amounts paid or incurred during the taxable year by the
15 employer for dependent care assistance actually provided to
16 or on behalf of an employee if the assistance is furnished
17 by a licensed day-care provider and pursuant to a program
18 that meets the requirements of section 89(k) and 129(d)(2)
19 through (6) of the Internal Revenue Code.

20 (2) (a) The amount of the credit allowed under
21 subsection (1) is 50% of the amount paid or incurred by the
22 employer during the taxable year but may not exceed \$2,500
23 of day-care assistance actually provided to or on behalf of
24 the employee.

25 (b) For the purposes of this subsection, marital

1 status must be determined under the rules of section
2 21(e)(3) and (4) of the Internal Revenue Code.

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

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

13 (4) An amount paid or incurred by an employer to
14 provide dependent care assistance to or on behalf of an
15 employee does not qualify for the credit allowed under
16 subsection (1) if the amount is paid or incurred pursuant to
17 a salary reduction plan or is paid or incurred for services
18 not performed within this state.

19 (5) If the credit allowed under subsection (1) is
20 claimed, the amount of any deduction allowed or allowable
21 under this chapter for the amount that qualifies for the
22 credit (or upon which the credit is based) must be reduced
23 by the dollar amount of the credit allowed. The election to
24 claim a credit allowed under this section must be made at
25 the time of filing the tax return.

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

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

23 (8) If the taxpayer is an S corporation, as defined in
 24 section 1361 of the Internal Revenue Code, and the taxpayer
 25 elects to take tax credit relief, the election may be made

1 on behalf of the corporation's shareholders. A shareholder's
 2 credit must be computed using the shareholder's pro rata
 3 share of the corporation's costs that qualify for the
 4 credit. In all other respects, the effect of the tax credit
 5 applies to the corporation as otherwise provided by law.

6 (9) For purposes of the credit allowed under
 7 subsection (1):

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

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

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

15 **NEW SECTION. Section 2. Credit for dependent care**
 16 **assistance.** There is a credit against the taxes otherwise
 17 due under this chapter allowable to an employer for amounts
 18 paid or incurred during the taxable year by the employer for
 19 dependent care assistance. The credit must be computed in
 20 accordance with the provisions of [section 1].

21 **Section 3.** Section 15-30-201, MCA, is amended to read:

22 **"15-30-201. Definitions.** When used in 15-30-201
 23 through 15-30-209, the following definitions apply:

24 (1) "Agricultural labor" includes all services
 25 performed on a farm or ranch in connection with cultivating

1 the soil or in connection with raising or harvesting any
2 agricultural or horticultural commodity, including the
3 raising, shearing, feeding, caring for, training, and
4 management of livestock, bees, poultry, and fur-bearing
5 animals and wildlife.

6 (2) "Employee" includes an officer, employee, or
7 elected public official of the United States, the state of
8 Montana, or any political subdivision thereof or any agency
9 or instrumentality of ~~any one or more of the foregoing the~~
10 United States, the state of Montana, or a political
11 subdivision thereof. The term "employee" also includes an
12 officer of a corporation.

13 (3) "Employer" means the person for whom an individual
14 performs or performed any service, of whatever nature, as
15 ~~the an~~ an employee of ~~such the~~ such the person; except that if the
16 person for whom the individual performs or performed the
17 service does not have control of the payment of the wages
18 for ~~such the~~ such the service, the term "employer" means the person
19 having control of the payment of ~~such~~ such wages.

20 (4) "Wages" means all remuneration (other than fees
21 paid to a public official) for services performed by an
22 employee for his employer, including the cash value of all
23 remuneration paid in any medium other than cash, except that
24 ~~such the~~ such the term ~~shall~~ does not include remuneration paid:

25 (a) for active service as a member of the regular

1 armed forces of the United States, as defined in 10 U.S.C.
2 101(33);

3 (b) for agricultural labor as defined in subsection
4 (1);

5 (c) for domestic service in a private home, local
6 college club, or local chapter of a college fraternity or
7 sorority;

8 (d) for casual labor not in the course of the
9 employer's trade or business performed in any calendar
10 quarter by an employee unless the cash remuneration paid for
11 ~~such the~~ such the service is \$50 or more and ~~such the~~ such the service is
12 performed by an individual who is regularly employed by ~~such~~ such
13 ~~the~~ the employer to perform ~~such the~~ such the service. For purposes of
14 this subsection (4)(d), an individual is considered to be
15 regularly employed by an employer during a calendar quarter
16 only if:

17 (i) on each of ~~some~~ some 24 days during ~~such a~~ such a quarter ~~such~~ such
18 ~~the~~ the individual performs ~~service not in the course of the~~ service not in the course of the
19 ~~employer's trade or business for such the~~ employer's trade or business for such the employer for some
20 portion of the day ~~service--not--in--the--course--of--the~~ service--not--in--the--course--of--the
21 ~~employer's trade or business; and~~ employer's trade or business; and

22 (ii) ~~such the~~ such the individual was regularly employed (as
23 determined under subsection (4)(d)(i)) by ~~such the~~ such the employer
24 in the performance of ~~such~~ such service during the preceding
25 calendar quarter;

(e) for services by a citizen or resident of the United States for a foreign government or an international organization;

(f) for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such the order;

(g) (i) for services performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution; or

(ii) for services performed by an individual in and at the time of the sale of newspapers or magazines to ultimate consumers under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such the price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such the service or is entitled to be credited with the unsold newspapers or magazines turned back;

(h) for services not in the course of the employer's trade or business to the extent paid in any medium other than cash when such the payments are in the form of lodgings or meals and such the services are received by the employee

at the request of and for the convenience of the employer;

(i) to or for an employee as a payment for or a contribution toward the cost of any group plan or program which benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or dependents, and employees' club activities;

(j) for national guard and reserve training as provided in 5 U.S.C. 5517(d);

(k) as tips, in accordance with section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(1) by an employer for dependent care assistance actually provided to or on behalf of an employee and for which a credit is allowed under [section 1 or 2], subject to the limitations provided in section 129(b) of the Internal Revenue Code as it read on January 1, 1989. (Subsection (4)(k) terminates on occurrence of contingency--sec. 3, Ch. 634, L. 1983.)"

NEW SECTION. Section 4. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an

1 integral part of Title 15, chapter 30, part 1, and the
2 provisions of Title 15, chapter 30, part 1, apply to
3 [section 2].

4 NEW SECTION. **Section 5.** Extension of authority. Any
5 existing authority to make rules on the subject of the
6 provisions of [this act] is extended to the provisions of
7 [this act].

8 NEW SECTION. **Section 6.** Applicability. [This act]
9 applies to taxable years beginning after December 31, 1989.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB282, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing a credit against Montana income taxes for amounts paid by an employer for dependent care assistance provided to or on behalf of an employee; and providing an applicability date.

ASSUMPTIONS:

1. The proposed legislation applies to taxable years beginning after December 31, 1989, so there is no fiscal impact until FY91.
2. Individual income taxes are estimated to be and \$254,428,000 in FY91. (REAC)
3. Under current law, employees may exclude from gross income the cost of employer-provided child care. The revenue loss attributable to this deduction is currently estimated to be \$294,000 in FY91. (Tax Expenditure Report of the Department of Revenue)
4. The average effective tax rate for employees benefiting from the current law deduction is 6%. Therefore, the total cost of employer-provided child care for individual income tax is estimated to be \$4,900,000 in FY91.
5. Fifty percent of the employer-provided child care cost will be claimed as a tax credit.
6. This analysis does not factor in the potential impact of the \$2,500 credit cap.
7. The remaining fifty percent will continue to be claimed as a deduction from gross income.
8. Department of Revenue expenditures will increase by \$22,050 in FY91 and \$3,120 in subsequent fiscal years.
9. There are no data upon which to base an estimate of the impact of this proposal on corporation license tax revenue.
10. The proposal will have no fiscal impact on the Department of Family Services.

FISCAL IMPACT:			FY91			
Revenue Impact:	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
Ind. Income Tax		NO IMPACT		\$254,428,000	\$251,831,000	(\$2,597,000)
Fund Information:						
General Fund				\$148,077,096	\$146,565,642	(\$1,511,454)
Foundation Program				80,908,104	80,082,258	(825,846)
Sinking Fund				25,442,800	25,183,100	(259,700)
Total				\$254,428,000	\$251,831,000	(\$2,597,000)
Expenditure Impact:						
(General Fund)				\$ -0-	\$ 15,260	\$ 15,260
Personal Services				-0-	6,790	6,790
Operating Expenses				\$ -0-	\$ 22,050	\$ 22,050
Total						

Ray Shackleford 2/4/89
 RAY SHACKLEFORD BUDGET DIRECTOR DATE
 OFFICE OF BUDGET AND PROGRAM PLANNING

Mike Halligan 2-6-89
 MIKE HALLIGAN, PRIMARY SPONSOR DATE

Fiscal Note for SB282, as introduced

SB 282

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB282, on third reading.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing a credit against Montana income taxes for amounts paid by an employer for dependent care assistance provided to or on behalf of an employee; and providing an applicability date.

ASSUMPTIONS:

1. The proposed legislation applies to taxable years beginning after December 31, 1989, so there is no fiscal impact until FY91.
2. Individual income taxes are estimated to be \$274,732,000 in FY91. (HJR 13)
3. Under current law, employees may exclude from gross income the cost of employer-provided child care. The revenue loss attributable to this deduction is currently estimated to be \$294,000 in FY91, which approximates 1,000 employees (Tax Expenditure Report of the Department of Revenue).
4. The average effective tax rate for employees benefiting from the current law deduction is 6%. Therefore, the total cost of employer-provided child care for individual income tax is estimated to be \$4,900,000 in FY91.
5. Fifty percent of the employer-provided child care cost will be claimed as a tax credit.
6. This analysis does not factor in the potential impact of the \$2,500 credit cap.
7. The remaining fifty percent will continue to be claimed as a deduction from gross income.
8. Department of Revenue expenditures will increase by \$22,050 in FY91 and \$3,120 in subsequent fiscal years.
9. There are no data upon which to base an estimate of the impact of this proposal on corporation license tax revenue.
10. The proposal will have no fiscal impact on the Department of Family Services.

FISCAL IMPACT:

	FY90			FY91		
<u>Revenue Impact:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Ind. Income Tax		NO IMPACT		\$274,732,000	\$272,135,000	(\$2,597,000)
<u>Fund Information:</u>						
General Fund				\$159,894,024	\$158,382,570	(\$1,511,454)
Foundation Program				87,364,776	86,538,930	(825,846)
Sinking Fund				27,473,200	27,213,500	(259,700)
Total				\$274,732,000	\$272,135,000	(\$2,597,000)
<u>Expenditure Impact:</u>						
(General Fund)				\$ -0-	\$ 15,260	\$ 15,260
Personal Services				-0-	6,790	6,790
Operating Expenses				\$ -0-	\$ 22,050	\$ 22,050
Total						

Dave Lewis 4/19/89
 DAVE LEWIS, BUDGET DIRECTOR DATE
 OFFICE OF BUDGET AND PROGRAM PLANNING

Mike Halligan 4-19-89
 MIKE HALLIGAN, PRIMARY SPONSOR DATE

Fiscal Note for SB282, on third reading

SB 282 - Revised

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 282

INTRODUCED BY HALLIGAN, VINCENT, GAGE,

CRIPPEN, FARRELL, NORMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CREDIT AGAINST MONTANA INCOME TAXES FOR AMOUNTS PAID BY AN EMPLOYER FOR DEPENDENT CARE ASSISTANCE PROVIDED TO OR ON BEHALF OF AN EMPLOYEE; AMENDING SECTION 15-30-201, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. Section 1. Credit for dependent care assistance. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a REGISTERED OR licensed day-care provider and pursuant to a program that meets the requirements of section 89(k) and 129(d)(2) through (6) of the Internal Revenue Code.

(2) (a) The amount of the credit allowed under subsection (1) is 50% of the amount paid or incurred by the employer during the taxable year but may not exceed \$2,500 of day-care assistance actually provided to or 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.

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

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

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1) if the amount is paid or incurred pursuant to a salary reduction plan or is paid or incurred for services not 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 credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at

the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction 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 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 section 1361 of the Internal Revenue Code, and the taxpayer

elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (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.

NEW SECTION. Section 2. Credit for dependent care assistance. There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance. The credit must be computed in accordance with the provisions of [section 1].

Section 3. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services

performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision thereof or any agency or instrumentality of ~~any one or more of the foregoing the~~ United States, the state of Montana, or a political subdivision thereof. The term "employee" also includes an officer of a corporation.

(3) "Employer" means the person for whom an individual performs or performed any service, of whatever nature, as ~~the an~~ an employee of ~~such the~~ such the person; except that if the person for whom the individual performs or performed the service does not have control of the payment of the wages for ~~such the~~ such the service, the term "employer" means the person having control of the payment of ~~such~~ such wages.

(4) "Wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash, except that ~~such the term shall does~~ such the not include remuneration paid:

(a) for active service as a member of the regular armed forces of the United States, as defined in 10 U.S.C. 101(33);

(b) for agricultural labor as defined in subsection (1);

(c) for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(d) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for ~~such the~~ such the service is \$50 or more and ~~such the~~ such the service is performed by an individual who is regularly employed by ~~such the~~ such the employer to perform ~~such the~~ such the service. For purposes of this subsection (4)(d), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of ~~some~~ some 24 days during ~~such a~~ such a quarter ~~such the~~ such the individual performs ~~service not in the course of the~~ service not in the course of the ~~employer's trade or business for such the~~ employer's trade or business for such the employer for some portion of the day ~~service--not--in--the--course--of--the~~ service--not--in--the--course--of--the ~~employer's trade or business; and~~ employer's trade or business; and

(ii) ~~such the~~ such the individual was regularly employed (as determined under subsection (4)(d)(i)) by ~~such the~~ such the employer in the performance of ~~such~~ such service during the preceding

1 calendar quarter;

2 (e) for services by a citizen or resident of the
3 United States for a foreign government or an international
4 organization;

5 (f) for services performed by a duly ordained,
6 commissioned, or licensed minister of a church in the
7 exercise of his ministry or by a member of a religious order
8 in the exercise of duties required by such the order;

9 (g) (i) for services performed by an individual under
10 the age of 18 in the delivery or distribution of newspapers
11 or shopping news, not including delivery or distribution to
12 any point for subsequent delivery or distribution; or

13 (ii) for services performed by an individual in and at
14 the time of the sale of newspapers or magazines to ultimate
15 consumers under an arrangement under which the newspapers or
16 magazines are to be sold by him at a fixed price, his
17 compensation being based on the retention of the excess of
18 such the price over the amount at which the newspapers or
19 magazines are charged to him, whether or not he is
20 guaranteed a minimum amount of compensation for such the
21 service or is entitled to be credited with the unsold
22 newspapers or magazines turned back;

23 (h) for services not in the course of the employer's
24 trade or business to the extent paid in any medium other
25 than cash when such the payments are in the form of lodgings

1 or meals and such the services are received by the employee
2 at the request of and for the convenience of the employer;

3 (i) to or for an employee as a payment for or a
4 contribution toward the cost of any group plan or program
5 which benefits the employee, including but not limited to
6 life insurance, hospitalization insurance for the employee
7 or dependents, and employees' club activities;

8 (j) for national guard and reserve training as
9 provided in 5 U.S.C. 5517(d);

10 (k) as tips, in accordance with section 3402(k) of the
11 Internal Revenue Code of 1954, as amended and applicable on
12 January 1, 1983, received by persons for services rendered
13 by them to patrons of premises licensed to provide food,
14 beverage, or lodging;

15 (l) by an employer for dependent care assistance
16 actually provided to or on behalf of an employee and for
17 which a credit is allowed under [section 1 or 2], subject to
18 the limitations provided in section 129(b) of the Internal
19 Revenue Code as it read on January 1, 1989. (Subsection
20 (4)(k) terminates on occurrence of contingency--sec. 3, Ch.
21 634, L. 1983.)"

22 NEW SECTION. **Section 4.** Codification instruction. (1)
23 [Section 1] is intended to be codified as an integral part
24 of Title 15, chapter 31, part 1, and the provisions of Title
25 15, chapter 31, part 1, apply to [section 1].

1 (2) [Section 2] is intended to be codified as an
2 integral part of Title 15, chapter 30, part 1, and the
3 provisions of Title 15, chapter 30, part 1, apply to
4 [section 2].

5 NEW SECTION. **Section 5.** Extension of authority. Any
6 existing authority to make rules on the subject of the
7 provisions of [this act] is extended to the provisions of
8 [this act].

9 NEW SECTION. **Section 6.** Applicability. [This act]
10 applies to taxable years beginning after December 31, 1989.

-End-

SENATE BILL NO. 282

INTRODUCED BY HALLIGAN, VINCENT, GAGE,

CRIPPEN, FARRELL, NORMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CREDIT AGAINST MONTANA INCOME TAXES FOR AMOUNTS PAID BY AN EMPLOYER FOR DEPENDENT CARE ASSISTANCE PROVIDED TO OR ON BEHALF OF AN EMPLOYEE; AMENDING SECTION 15-30-201, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1.** Credit for dependent care assistance. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a REGISTERED OR licensed day-care provider and pursuant to a program that meets the requirements of section 89(k) and 129(d)(2) through (6) of the Internal Revenue Code.

(2) (a) The amount of the credit allowed under subsection (1) is 50% of the amount paid or incurred by the employer during the taxable year but may not exceed \$2,500 of day-care assistance actually provided to or 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.

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

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

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1) if the amount is paid or incurred pursuant to a salary reduction plan or is paid or incurred for services not 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 credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at

the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. Amounts excluded under this subsection do not qualify as expenses for which a deduction 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 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 section 1361 of the Internal Revenue Code, and the taxpayer

elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (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.

NEW SECTION. Section 2. Credit for dependent care assistance. There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance. The credit must be computed in accordance with the provisions of [section 1].

Section 3. Section 15-30-201, MCA, is amended to read:
"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

(1) "Agricultural labor" includes all services

1 performed on a farm or ranch in connection with cultivating
2 the soil or in connection with raising or harvesting any
3 agricultural or horticultural commodity, including the
4 raising, shearing, feeding, caring for, training, and
5 management of livestock, bees, poultry, and fur-bearing
6 animals and wildlife.

7 (2) "Employee" includes an officer, employee, or
8 elected public official of the United States, the state of
9 Montana, or any political subdivision thereof or any agency
10 or instrumentality of any-one-or-more-of-the-foregoing the
11 United States, the state of Montana, or a political
12 subdivision thereof. The term "employee" also includes an
13 officer of a corporation.

14 (3) "Employer" means the person for whom an individual
15 performs or performed any service, of whatever nature, as
16 the an employee of such the person; except that if the
17 person for whom the individual performs or performed the
18 service does not have control of the payment of the wages
19 for such the service, the term "employer" means the person
20 having control of the payment of such wages.

21 (4) "Wages" means all remuneration (other than fees
22 paid to a public official) for services performed by an
23 employee for his employer, including the cash value of all
24 remuneration paid in any medium other than cash, except that
25 such the term shall does not include remuneration paid:

1 (a) for active service as a member of the regular
2 armed forces of the United States, as defined in 10 U.S.C.
3 101(33);

4 (b) for agricultural labor as defined in subsection
5 (1);

6 (c) for domestic service in a private home, local
7 college club, or local chapter of a college fraternity or
8 sorority;

9 (d) for casual labor not in the course of the
10 employer's trade or business performed in any calendar
11 quarter by an employee unless the cash remuneration paid for
12 such the service is \$50 or more and such the service is
13 performed by an individual who is regularly employed by such
14 the employer to perform such the service. For purposes of
15 this subsection (4)(d), an individual is considered to be
16 regularly employed by an employer during a calendar quarter
17 only if:

18 (i) on each of ~~some~~ 24 days during such a quarter such
19 the individual performs service not in the course of the
20 employer's trade or business for such the employer for some
21 portion of the day ~~service--not--in--the--course--of--the~~
22 ~~employer's-trade-or-business; and~~

23 (ii) such the individual was regularly employed (as
24 determined under subsection (4)(d)(i)) by such the employer
25 in the performance of such service during the preceding

1 calendar quarter;

2 (e) for services by a citizen or resident of the
3 United States for a foreign government or an international
4 organization;

5 (f) for services performed by a duly ordained,
6 commissioned, or licensed minister of a church in the
7 exercise of his ministry or by a member of a religious order
8 in the exercise of duties required by such the order;

9 (g) (i) for services performed by an individual under
10 the age of 18 in the delivery or distribution of newspapers
11 or shopping news, not including delivery or distribution to
12 any point for subsequent delivery or distribution; or

13 (ii) for services performed by an individual in and at
14 the time of the sale of newspapers or magazines to ultimate
15 consumers under an arrangement under which the newspapers or
16 magazines are to be sold by him at a fixed price, his
17 compensation being based on the retention of the excess of
18 such the price over the amount at which the newspapers or
19 magazines are charged to him, whether or not he is
20 guaranteed a minimum amount of compensation for such the
21 service or is entitled to be credited with the unsold
22 newspapers or magazines turned back;

23 (h) for services not in the course of the employer's
24 trade or business to the extent paid in any medium other
25 than cash when such the payments are in the form of lodgings

1 or meals and such the services are received by the employee
2 at the request of and for the convenience of the employer;

3 (i) to or for an employee as a payment for or a
4 contribution toward the cost of any group plan or program
5 which benefits the employee, including but not limited to
6 life insurance, hospitalization insurance for the employee
7 or dependents, and employees' club activities;

8 (j) for national guard and reserve training as
9 provided in 5 U.S.C. 5517(d);

10 (k) as tips, in accordance with section 3402(k) of the
11 Internal Revenue Code of 1954, as amended and applicable on
12 January 1, 1983, received by persons for services rendered
13 by them to patrons of premises licensed to provide food,
14 beverage, or lodging;

15 (l) by an employer for dependent care assistance
16 actually provided to or on behalf of an employee and for
17 which a credit is allowed under [section 1 or 2], subject to
18 the limitations provided in section 129(b) of the Internal
19 Revenue Code as it read on January 1, 1989. (Subsection
20 (4)(k) terminates on occurrence of contingency--sec. 3, Ch.
21 634, L. 1983.)"

22 NEW SECTION. Section 4. Codification instruction. (1)
23 [Section 1] is intended to be codified as an integral part
24 of Title 15, chapter 31, part 1, and the provisions of Title
25 15, chapter 31, part 1, apply to [section 1].

1 (2) [Section 2] is intended to be codified as an
2 integral part of Title 15, chapter 30, part 1, and the
3 provisions of Title 15, chapter 30, part 1, apply to
4 [section 2].

5 NEW SECTION. **Section 5.** Extension of authority. Any
6 existing authority to make rules on the subject of the
7 provisions of [this act] is extended to the provisions of
8 [this act].

9 NEW SECTION. **Section 6.** Applicability. [This act]
10 applies to taxable years beginning after December 31, 1989.

-End-

COMMITTEE OF THE WHOLE AMENDMENT
SENATE BILL 282
Representative Mark O'Keefe

April 19, 1989 3:31 pm
Page 1 of 1

Mr. Chairman: I move to amend SENATE BILL 282 (third reading copy -- blue).

Signed: 
Representative Mark O'Keefe

And, that such amendments to SENATE BILL 282 read as follows:

1. Page 1, line 22.

Strike: "50%"

Insert: "15%"

2. Page 1, line 23.

Following: "but"

Insert: "the credit"

Following: "exceed"

Strike: "\$2,500"

Insert: "\$1,250"

ADOPT

REJECT

HOUSE

SB 282

SENATE BILL NO. 282

INTRODUCED BY HALLIGAN, VINCENT, GAGE,

CRIPPEN, FARRELL, NORMAN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CREDIT AGAINST MONTANA INCOME TAXES FOR AMOUNTS PAID BY AN EMPLOYER FOR DEPENDENT CARE ASSISTANCE PROVIDED TO OR ON BEHALF OF AN EMPLOYEE; AMENDING SECTION 15-30-201, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1.** Credit for dependent care assistance. (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a REGISTERED OR licensed day-care provider and pursuant to a program that meets the requirements of section 89(k) and 129(d)(2) through (6) of the Internal Revenue Code.

(2) (a) The amount of the credit allowed under subsection (1) is ~~50%~~ 15% of the amount paid or incurred by the employer during the taxable year, but THE CREDIT may not exceed ~~\$27,500~~ \$1,250 of day-care assistance actually provided to or 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.

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

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

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1) if the amount is paid or incurred pursuant to a salary reduction plan or is paid or incurred for services not 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 credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at

1 the time of filing the tax return.

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

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

24 (8) If the taxpayer is an S corporation, as defined in
25 section 1361 of the Internal Revenue Code, and the taxpayer

1 elects to take tax credit relief, the election may be made
2 on behalf of the corporation's shareholders. A shareholder's
3 credit must be computed using the shareholder's pro rata
4 share of the corporation's costs that qualify for the
5 credit. In all other respects, the effect of the tax credit
6 applies to the corporation as otherwise provided by law.

7 (9) For purposes of the credit allowed under
8 subsection (1):

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

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

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

16 NEW SECTION. **Section 2. Credit for dependent care**
17 **assistance.** There is a credit against the taxes otherwise
18 due under this chapter allowable to an employer for amounts
19 paid or incurred during the taxable year by the employer for
20 dependent care assistance. The credit must be computed in
21 accordance with the provisions of [section 1].

22 **Section 3. Section 15-30-201, MCA, is amended to read:**

23 **"15-30-201. Definitions.** When used in 15-30-201
24 through 15-30-209, the following definitions apply:

25 (1) "Agricultural labor" includes all services

1 performed on a farm or ranch in connection with cultivating
2 the soil or in connection with raising or harvesting any
3 agricultural or horticultural commodity, including the
4 raising, shearing, feeding, caring for, training, and
5 management of livestock, bees, poultry, and fur-bearing
6 animals and wildlife.

7 (2) "Employee" includes an officer, employee, or
8 elected public official of the United States, the state of
9 Montana, or any political subdivision thereof or any agency
10 or instrumentality of ~~any one or more of the foregoing the~~
11 United States, the state of Montana, or a political
12 subdivision thereof. The term "employee" also includes an
13 officer of a corporation.

14 (3) "Employer" means the person for whom an individual
15 performs or performed any service, of whatever nature, as
16 ~~the~~ an employee of ~~such the~~ person; except that if the
17 person for whom the individual performs or performed the
18 service does not have control of the payment of the wages
19 for ~~such the~~ service, the term "employer" means the person
20 having control of the payment of ~~such~~ wages.

21 (4) "Wages" means all remuneration (other than fees
22 paid to a public official) for services performed by an
23 employee for his employer, including the cash value of all
24 remuneration paid in any medium other than cash, except that
25 ~~such the~~ term ~~shall~~ does not include remuneration paid:

1 (a) for active service as a member of the regular
2 armed forces of the United States, as defined in 10 U.S.C.
3 101(33);

4 (b) for agricultural labor as defined in subsection
5 (1);

6 (c) for domestic service in a private home, local
7 college club, or local chapter of a college fraternity or
8 sorority;

9 (d) for casual labor not in the course of the
10 employer's trade or business performed in any calendar
11 quarter by an employee unless the cash remuneration paid for
12 ~~such the~~ service is \$50 or more and ~~such the~~ service is
13 performed by an individual who is regularly employed by ~~such~~
14 the employer to perform ~~such the~~ service. For purposes of
15 this subsection (4)(d), an individual is considered to be
16 regularly employed by an employer during a calendar quarter
17 only if:

18 (i) on each of ~~some~~ 24 days during ~~such a~~ quarter ~~such~~
19 the individual performs service not in the course of the
20 employer's trade or business for such the employer for some
21 portion of the day ~~service--not--in--the--course--of--the~~
22 ~~employer's trade or business; and~~

23 (ii) ~~such the~~ individual was regularly employed (as
24 determined under subsection (4)(d)(i)) by ~~such the~~ employer
25 in the performance of ~~such~~ service during the preceding

1 calendar quarter;

2 (e) for services by a citizen or resident of the
3 United States for a foreign government or an international
4 organization;

5 (f) for services performed by a duly ordained,
6 commissioned, or licensed minister of a church in the
7 exercise of his ministry or by a member of a religious order
8 in the exercise of duties required by such the order;

9 (g) (i) for services performed by an individual under
10 the age of 18 in the delivery or distribution of newspapers
11 or shopping news, not including delivery or distribution to
12 any point for subsequent delivery or distribution; or

13 (ii) for services performed by an individual in and at
14 the time of the sale of newspapers or magazines to ultimate
15 consumers under an arrangement under which the newspapers or
16 magazines are to be sold by him at a fixed price, his
17 compensation being based on the retention of the excess of
18 such the price over the amount at which the newspapers or
19 magazines are charged to him, whether or not he is
20 guaranteed a minimum amount of compensation for such the
21 service or is entitled to be credited with the unsold
22 newspapers or magazines turned back;

23 (h) for services not in the course of the employer's
24 trade or business to the extent paid in any medium other
25 than cash when such the payments are in the form of lodgings

1 or meals and such the services are received by the employee
2 at the request of and for the convenience of the employer;

3 (i) to or for an employee as a payment for or a
4 contribution toward the cost of any group plan or program
5 which benefits the employee, including but not limited to
6 life insurance, hospitalization insurance for the employee
7 or dependents, and employees' club activities;

8 (j) for national guard and reserve training as
9 provided in 5 U.S.C. 5517(d);

10 (k) as tips, in accordance with section 3402(k) of the
11 Internal Revenue Code of 1954, as amended and applicable on
12 January 1, 1983, received by persons for services rendered
13 by them to patrons of premises licensed to provide food,
14 beverage, or lodging;

15 (l) by an employer for dependent care assistance
16 actually provided to or on behalf of an employee and for
17 which a credit is allowed under [section 1 or 2], subject to
18 the limitations provided in section 129(b) of the Internal
19 Revenue Code as it read on January 1, 1989. (Subsection
20 (4)(k) terminates on occurrence of contingency--sec. 3, Ch.
21 634, L. 1983.)"

22 **NEW SECTION. Section 4.** Codification instruction. (1)
23 [Section 1] is intended to be codified as an integral part
24 of Title 15, chapter 31, part 1, and the provisions of Title
25 15, chapter 31, part 1, apply to [section 1].

1 (2) [Section 2] is intended to be codified as an
2 integral part of Title 15, chapter 30, part 1, and the
3 provisions of Title 15, chapter 30, part 1, apply to
4 [section 2].

5 NEW SECTION. **Section 5.** Extension of authority. Any
6 existing authority to make rules on the subject of the
7 provisions of [this act] is extended to the provisions of
8 [this act].

9 NEW SECTION. **Section 6.** Applicability. [This act]
10 applies to taxable years beginning after December 31, 1989.

-End-