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SENATE BILL NO. 97

INTRODUCED BY

*Foster*

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN INCOME TAX CREDIT FOR HOUSEHOLD AND DEPENDENT CARE SERVICES BASED ON THE INTERNAL REVENUE CODE; ALLOWING A SIMILAR CREDIT FOR EMPLOYMENT-RELATED EXPENSES CONSIDERED TO HAVE BEEN PAID FOR A CHILD CARED FOR AT A LICENSED DAY-CARE HOME OPERATED BY THE CHILD'S PARENT; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**NEW SECTION. Section 1. Credit for dependent care expenses necessary for employment -- credit for licensed day-care operator.** (1) There is a credit against the tax imposed by 15-30-103 for the expenses of household and dependent care services equal to 25% of the credit allowed in section 21 of the Internal Revenue Code.

(2) (a) A taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business is allowed a credit against the taxes imposed by 15-30-103 equal to 25% of the credit that would be allowed under section 21 of the Internal Revenue Code for employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in section 21 of the Internal Revenue Code.

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the credit under this subsection (2).

(3) (a) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(b) There is no carryback or carryforward of the credit permitted under this section.

1           **Section 2.** Section 15-30-121, MCA, is amended to read:

2           "**15-30-121. Deductions allowed in computing net income.** In computing net income, there are  
3 allowed as deductions:

4           (1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b),  
5 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 are labeled or amended, subject  
6 to the following exceptions, which are not deductible:

7           (a) items provided for in 15-30-123;

8           (b) state income tax paid;

9           (2) federal income tax paid within the taxable tax year;

10          ~~(3) expenses of household and dependent care services as outlined in subsections (3)(a) through~~  
11 ~~(3)(c) and (9) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as~~  
12 ~~follows:~~

13          ~~(a) expenses for household and dependent care services necessary for gainful employment incurred~~  
14 ~~for:~~

15           ~~(i) a dependent under 15 years of age for whom an exemption can be claimed;~~

16           ~~(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross~~  
17 ~~income do not apply, who is unable to provide self care because of physical or mental illness; and~~

18           ~~(iii) a spouse who is unable to provide self care because of physical or mental illness;~~

19          ~~(b) employment related expenses incurred for the following services, but only if such expenses are~~  
20 ~~incurred to enable the taxpayer to be gainfully employed:~~

21           ~~(i) household services which are attributable to the care of the qualifying individual; and~~

22           ~~(ii) care of an individual who qualifies under subsection (3)(a);~~

23          ~~(c) expenses incurred in maintaining a household if over half of the cost of maintaining the~~  
24 ~~household is furnished by an individual or, if the individual is married during the applicable period, is~~  
25 ~~furnished by the individual and the individual's spouse;~~

26          ~~(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following~~  
27 ~~limitations:~~

28           ~~(i) a deduction is allowed under subsection (3)(a) for employment related expenses incurred during~~  
29 ~~the year only to the extent the expenses do not exceed \$4,800;~~

30           ~~(ii) expenses for services in the household are deductible under subsection (3)(a) for~~

1 ~~employment related expenses only if they are incurred for services in the taxpayer's household, except that~~  
 2 ~~employment related expenses incurred for services outside the taxpayer's household are deductible, but~~  
 3 ~~only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent~~  
 4 ~~the expenses incurred during the year do not exceed:~~

5 ~~(A) \$2,400 in the case of one qualifying individual;~~

6 ~~(B) \$3,600 in the case of two qualifying individuals; and~~

7 ~~(C) \$4,800 in the case of three or more qualifying individuals;~~

8 ~~(e) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the taxable year~~  
 9 ~~during which the expenses are incurred, the amount of the employment related expenses incurred must be~~  
 10 ~~reduced by one half of the excess of the combined adjusted gross income over \$18,000;~~

11 ~~(f) for purposes of this subsection (3):~~

12 ~~(i) married couples shall file a joint return or file separately on the same form;~~

13 ~~(ii) if the taxpayer is married during any period of the taxable year, employment related expenses~~  
 14 ~~incurred are deductible only if:~~

15 ~~(A) both spouses are gainfully employed, in which case the expenses are deductible only to the~~  
 16 ~~extent that they are a direct result of the employment; or~~

17 ~~(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);~~

18 ~~(iii) an individual legally separated from the individual's spouse under a decree of divorce or of~~  
 19 ~~separate maintenance may not be considered as married;~~

20 ~~(iv) the deduction for employment related expenses must be divided equally between the spouses~~  
 21 ~~when filing separately on the same form;~~

22 ~~(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the~~  
 23 ~~taxable year and payments made to an individual with respect to whom a deduction is allowable under~~  
 24 ~~15-30-112(5) are not deductible as employment related expenses;~~

25 ~~(4)(3) in the case of an individual, political contributions determined in accordance with the~~  
 26 ~~provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable tax~~  
 27 ~~year ended December 31, 1978;~~

28 ~~(5)(4) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which~~  
 29 ~~that was not otherwise deducted in computing taxable income;~~

30 ~~(6)(5) contributions to the child abuse and neglect prevention program provided for in 41-3-701,~~

1 subject to the conditions set forth in 15-30-156;

2 ~~(7)(6)~~ premium payments for long-term care insurance with benefits that meet or exceed the  
3 minimum standards as established by the state insurance commissioner; and

4 ~~(8)(7)~~ contributions to the Montana drug abuse resistance education program provided for in  
5 44-2-702, subject to the conditions set forth in 15-30-159.

6 ~~(9) (a) Subject to the conditions of subsection (3), a taxpayer who operates a family day care home  
7 or a group day care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own  
8 child and at least one unrelated child in the ordinary course of business may deduct employment related  
9 expenses considered to have been paid for the care of the child.~~

10 ~~(b) The amount of employment related expenses considered to have been paid by the taxpayer is  
11 equal to the amount the taxpayer charges for the care of a child of the same age for the same number of  
12 hours of care. The employment related expenses apply regardless of whether any expenses actually have  
13 been paid. Employment related expenses may not exceed the amounts specified in subsection (3)(d)(ii).~~

14 ~~(c) Only a day care operator who is licensed and registered as required in 52-2-721 is allowed the  
15 deduction under this subsection (9). (Subsection (8) (7) terminates on occurrence of contingency--sec. 12,  
16 Ch. 808, L. 1991.)"~~

17

18 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
19 integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to  
20 [section 1].

21

22 **NEW SECTION. Section 4. Effective date -- retroactive applicability.** [This act] is effective on  
23 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after  
24 December 31, 1994.

25

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0097, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act allowing an income tax credit for household and dependent care services based on the internal revenue code; allowing a similar credit for employment-related expenses considered to have been paid for a child cared for at a licensed day-care home operated by the child's parent; and providing an immediate effective date and a retroactive applicability date.

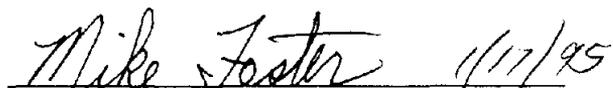
ASSUMPTIONS:

1. The act applies beginning with tax year 1995.
2. For tax year 1992, Montanans claimed a total of \$6,055,000 in federal child and dependent care credit on 19,652 returns, for an average credit of \$308 (IRS' Midwest Automated Compliance System (MACS)).
3. The federal child care credit for all states totaled \$2.6 billion in FY92 (Congressional Budget Office, Tax Expenditure Report). This results in a Montana ratio of 0.002329 for the Montana share of total U.S. credit claimed.
4. The projected federal child care credit totals for FY96 and FY97 are \$2.8 billion in each year; applying the Montana share factor to these amounts results in a total Montana credit of \$6,520,000 in these years.
5. Providing a state credit equal to 25% of the federal credit results in a state credit amount of \$1,630,000 in fiscal years 1996 and 1997.
6. Repealing the current law child and dependent care deduction increases revenue an estimated \$30,000 per year (DOR Tax Expenditure Report). This results in a net revenue impact of \$(1,600,000) in each year of the biennium.
7. A new line will need to be added to the individual income tax form, along with associated changes in the Individual Income Tax System at a one time cost of \$7,318, and an ongoing yearly cost of approximately \$2,850.

FISCAL IMPACT:

	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
<u>Expenditures:</u>		
Operating Expenses	\$10,168	\$2,850
<u>Revenues:</u>		
Individual Income Tax	(1,600,000)	(1,600,000)
<u>Net Impact:</u>		
Total	\$(1,610,168)	\$(1,602,850)

  
DAVE LEWIS, BUDGET DIRECTOR DATE  
Office of Budget and Program Planning

  
MIKE FOSTER, PRIMARY SPONSOR DATE  
Fiscal Note for SB0097, as introduced

SB 97 .

1 SENATE BILL NO. 97  
2 INTRODUCED BY FOSTER  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN INCOME TAX CREDIT FOR HOUSEHOLD AND  
5 DEPENDENT CARE SERVICES BASED ON THE INTERNAL REVENUE CODE; ALLOWING A SIMILAR CREDIT  
6 FOR EMPLOYMENT-RELATED EXPENSES CONSIDERED TO HAVE BEEN PAID FOR A CHILD CARED FOR  
7 AT A LICENSED DAY-CARE HOME OPERATED BY THE CHILD'S PARENT; AMENDING SECTION  
8 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE ~~AND~~ A RETROACTIVE  
9 APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION."  
10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
12

13 NEW SECTION. Section 1. Credit for dependent care expenses necessary for employment -- credit  
14 for licensed day-care operator. (1) There is a credit against the tax imposed by 15-30-103 for the expenses  
15 of household and dependent care services equal to 25% of the credit allowed in section 21 of the Internal  
16 Revenue Code.

17 (2) (a) A taxpayer who operates a family day-care home or a group day-care home, as these terms  
18 are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the  
19 ordinary course of business is allowed a credit against the taxes imposed by 15-30-103 equal to 25% of  
20 the credit that would be allowed under section 21 of the Internal Revenue Code for employment-related  
21 expenses considered to have been paid for the care of the child.

22 (b) The amount of employment-related expenses considered to have been paid by the taxpayer is  
23 equal to the amount that the taxpayer charges for the care of a child of the same age for the same number  
24 of hours of care. The employment-related expenses apply regardless of whether any expenses actually have  
25 been paid. Employment-related expenses may not exceed the amounts specified in section 21 of the  
26 Internal Revenue Code.

27 (c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the  
28 credit under this subsection (2).

29 (D) IN THE CASE OF A MARRIED DAY-CARE OPERATOR WHO HAS NO EARNED INCOME, A  
30 FEDERAL HOUSEHOLD AND DEPENDENT CARE CREDIT EQUIVALENT MAY BE DETERMINED BASED ON

1 THE EARNED INCOME OF THE OPERATOR'S SPOUSE.

2 (3) THE CREDIT ALLOWED UNDER THIS SECTION MAY BE CLAIMED BY MARRIED TAXPAYERS  
 3 WHO FILE SEPARATELY ON THE SAME RETURN. THE CREDIT MUST BE DIVIDED EQUALLY BETWEEN  
 4 THE TAXPAYERS.

- 5 ~~(3)~~(4) (a) The credit allowed under this section may not exceed the taxpayer's income tax liability.  
 6 (b) There is no carryback or carryforward of the credit permitted under this section.

7  
 8 **Section 2.** Section 15-30-121, MCA, is amended to read:

9 **"15-30-121. Deductions allowed in computing net income.** In computing net income, there are  
 10 allowed as deductions:

11 (1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b),  
 12 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 are labeled or amended, subject  
 13 to the following exceptions, which are not deductible:

- 14 (a) items provided for in 15-30-123;  
 15 (b) state income tax paid;

16 (2) federal income tax paid within the taxable tax year;

17 ~~(3) expenses of household and dependent care services as outlined in subsections (3)(a) through~~  
 18 ~~(3)(c) and (d) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as~~  
 19 follows:

20 ~~(a) expenses for household and dependent care services necessary for gainful employment incurred~~  
 21 ~~for:~~

22 ~~(i) a dependent under 15 years of age for whom an exemption can be claimed;~~

23 ~~(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross~~  
 24 ~~income do not apply, who is unable to provide self care because of physical or mental illness; and~~

25 ~~(iii) a spouse who is unable to provide self care because of physical or mental illness;~~

26 ~~(b) employment related expenses incurred for the following services, but only if such expenses are~~  
 27 ~~incurred to enable the taxpayer to be gainfully employed:~~

28 ~~(i) household services which are attributable to the care of the qualifying individual; and~~

29 ~~(ii) care of an individual who qualifies under subsection (3)(a);~~

30 ~~(c) expenses incurred in maintaining a household if over half of the cost of maintaining the~~

1 household is furnished by an individual or, if the individual is married during the applicable period, is  
2 furnished by the individual and the individual's spouse;

3 ~~(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following~~  
4 ~~limitations:~~

5 ~~(i) a deduction is allowed under subsection (3)(a) for employment related expenses incurred during~~  
6 ~~the year only to the extent the expenses do not exceed \$4,800;~~

7 ~~(ii) expenses for services in the household are deductible under subsection (3)(a) for~~  
8 ~~employment related expenses only if they are incurred for services in the taxpayer's household, except that~~  
9 ~~employment related expenses incurred for services outside the taxpayer's household are deductible, but~~  
10 ~~only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent~~  
11 ~~the expenses incurred during the year do not exceed:~~

12 ~~(A) \$2,400 in the case of one qualifying individual;~~

13 ~~(B) \$3,600 in the case of two qualifying individuals; and~~

14 ~~(C) \$4,800 in the case of three or more qualifying individuals;~~

15 ~~(e) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the taxable year~~  
16 ~~during which the expenses are incurred, the amount of the employment related expenses incurred must be~~  
17 ~~reduced by one half of the excess of the combined adjusted gross income over \$18,000;~~

18 ~~(f) for purposes of this subsection (3):~~

19 ~~(i) married couples shall file a joint return or file separately on the same form;~~

20 ~~(ii) if the taxpayer is married during any period of the taxable year, employment related expenses~~  
21 ~~incurred are deductible only if:~~

22 ~~(A) both spouses are gainfully employed, in which case the expenses are deductible only to the~~  
23 ~~extent that they are a direct result of the employment; or~~

24 ~~(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);~~

25 ~~(iii) an individual legally separated from the individual's spouse under a decree of divorce or of~~  
26 ~~separate maintenance may not be considered as married;~~

27 ~~(iv) the deduction for employment related expenses must be divided equally between the spouses~~  
28 ~~when filing separately on the same form;~~

29 ~~(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the~~  
30 ~~taxable year and payments made to an individual with respect to whom a deduction is allowable under~~

1 ~~15-30-112(5) are not deductible as employment related expenses;~~

2 ~~4)(3) in the case of an individual, political contributions determined in accordance with the~~  
 3 ~~provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable tax~~  
 4 ~~year ended December 31, 1978;~~

5 ~~5)(4) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which~~  
 6 ~~that was not otherwise deducted in computing taxable income;~~

7 ~~6)(5) contributions to the child abuse and neglect prevention program provided for in 41-3-701,~~  
 8 ~~subject to the conditions set forth in 15-30-156;~~

9 ~~7)(6) premium payments for long-term care insurance with benefits that meet or exceed the~~  
 10 ~~minimum standards as established by the state insurance commissioner; and~~

11 ~~8)(7) contributions to the Montana drug abuse resistance education program provided for in~~  
 12 ~~44-2-702, subject to the conditions set forth in 15-30-159.~~

13 ~~(9) (a) Subject to the conditions of subsection (3), a taxpayer who operates a family day care home~~  
 14 ~~or a group day care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own~~  
 15 ~~child and at least one unrelated child in the ordinary course of business may deduct employment related~~  
 16 ~~expenses considered to have been paid for the care of the child.~~

17 ~~(b) The amount of employment related expenses considered to have been paid by the taxpayer is~~  
 18 ~~equal to the amount the taxpayer charges for the care of a child of the same age for the same number of~~  
 19 ~~hours of care. The employment related expenses apply regardless of whether any expenses actually have~~  
 20 ~~been paid. Employment related expenses may not exceed the amounts specified in subsection (3)(d)(ii).~~

21 ~~(c) Only a day care operator who is licensed and registered as required in 52-2-721 is allowed the~~  
 22 ~~deduction under this subsection (9). (Subsection (8) (7) terminates on occurrence of contingency--sec. 12,~~  
 23 ~~Ch. 808, L. 1991.)"~~

24  
 25 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an  
 26 integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to  
 27 [section 1].

28  
 29 **NEW SECTION. SECTION 4. CONTINGENT VOIDNESS. IN ORDER TO MAINTAIN A BALANCED**  
 30 **BUDGET, BECAUSE [THIS ACT] REDUCES REVENUE, IT MAY NOT BE TRANSMITTED TO THE GOVERNOR**

1 UNLESS A CORRESPONDING IDENTIFIED REDUCTION IN SPENDING IS CONTAINED IN HOUSE BILL NO.  
2 2. IF A CORRESPONDING IDENTIFIED REDUCTION IN SPENDING IS NOT CONTAINED IN HOUSE BILL NO.  
3 2, [THIS ACT] IS VOID.

4

5 NEW SECTION. **Section 5. Effective date -- retroactive applicability.** [This act] is effective on  
6 passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after  
7 December 31, 1994.

8

-END-

## 1 SENATE BILL NO. 97

2 INTRODUCED BY FOSTER

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING AN INCOME TAX CREDIT FOR HOUSEHOLD AND  
5 DEPENDENT CARE SERVICES BASED ON THE INTERNAL REVENUE CODE; ALLOWING A SIMILAR CREDIT  
6 FOR EMPLOYMENT-RELATED EXPENSES CONSIDERED TO HAVE BEEN PAID FOR A CHILD CARED FOR  
7 AT A LICENSED DAY-CARE HOME OPERATED BY THE CHILD'S PARENT; AMENDING SECTION  
8 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND, A RETROACTIVE  
9 APPLICABILITY DATE, AND A CONTINGENT VOIDNESS PROVISION."

10

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
NOT BE REPRINTED. PLEASE REFER TO SECOND  
READING COPY (YELLOW) FOR COMPLETE TEXT.