

SB BILL NO. 199

INTRODUCED BY D. Herby

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 100% 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 100% 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).

(d) In the case of a married day-care operator who has no earned income, a federal household and dependent care credit equivalent may be determined based on the earned income of the operator's spouse.

1 (3) The credit allowed under this section may be claimed by married taxpayers who file separately  
2 on the same return.

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

4 (b) There is no carryback or carryforward of the credit permitted under this section.  
5

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

7 "**15-30-121. Deductions allowed in computing net income.** In computing net income, there are  
8 allowed as deductions:

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

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

13 (b) state income tax paid;

14 (c) one-half of premium payments for medical care as provided in subsection ~~(9)~~ (8);

15 (2) federal income tax paid within the tax year;

16 ~~(3) expenses of household and dependent care services as outlined in subsections (3)(a) through~~  
17 ~~(3)(e) and (9) and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f), as~~  
18 follows:

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

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

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

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

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

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

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

29 ~~(c) expenses incurred in maintaining a household if over half of the cost of maintaining the~~  
30 ~~household is furnished by an individual or, if the individual is married during the applicable period, is~~

- 1 furnished by the individual and the individual's spouse;
- 2 ~~(d) the amounts deductible in subsections (3)(a) through (3)(c), subject to the following limitations:~~
- 3 ~~(i) a deduction is allowed under subsection (3)(a) for employment related expenses incurred during~~
- 4 ~~the year only to the extent that the expenses do not exceed \$4,800;~~
- 5 ~~(ii) expenses for services in the household are deductible under subsection (3)(a) for~~
- 6 ~~employment related expenses only if they are incurred for services in the taxpayer's household, except that~~
- 7 ~~employment related expenses incurred for services outside the taxpayer's household are deductible, but~~
- 8 ~~only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent~~
- 9 ~~that the expenses incurred during the year do not exceed:~~
- 10 ~~(A) \$2,400 in the case of one qualifying individual;~~
- 11 ~~(B) \$3,600 in the case of two qualifying individuals; and~~
- 12 ~~(C) \$4,800 in the case of three or more qualifying individuals;~~
- 13 ~~(e) if the combined adjusted gross income of the taxpayers exceeds \$18,000 for the tax year~~
- 14 ~~during which the expenses are incurred, the amount of the employment related expenses incurred, to be~~
- 15 ~~reduced by one half of the excess of the combined adjusted gross income over \$18,000;~~
- 16 ~~(f) for purposes of this subsection (3):~~
- 17 ~~(i) married couples shall file a joint return or file separately on the same form;~~
- 18 ~~(ii) if the taxpayer is married during any period of the tax year, employment related expenses~~
- 19 ~~incurred are deductible only if:~~
- 20 ~~(A) both spouses are gainfully employed, in which case the expenses are deductible only to the~~
- 21 ~~extent that they are a direct result of the employment; or~~
- 22 ~~(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);~~
- 23 ~~(iii) an individual legally separated from the individual's spouse under a decree of divorce or of~~
- 24 ~~separate maintenance may not be considered as married;~~
- 25 ~~(iv) the deduction for employment related expenses must be divided equally between the spouses~~
- 26 ~~when filing separately on the same form;~~
- 27 ~~(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax~~
- 28 ~~year and payments made to an individual with respect to whom a deduction is allowable under~~
- 29 ~~16-30-112(5) are not deductible as employment related expenses;~~
- 30 ~~(4)(3) in the case of an individual, political contributions determined in accordance with the~~

1 provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the tax year ended  
2 December 31, 1978;

3 ~~(5)~~(4) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 that  
4 was not otherwise deducted in computing taxable income;

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

7 ~~(7)~~(6) one-half of premium payments, except premiums deducted in determining Montana adjusted  
8 gross income, for:

9 (a) insurance for medical care made directly by the taxpayer; and

10 (b) long-term care insurance with benefits that meet or exceed the minimum standards as  
11 established by the state insurance commissioner; and

12 ~~(8)~~(7) contributions to the Montana drug abuse resistance education program provided for in  
13 44-2-702, subject to the conditions set forth in 15-30-159.

14 ~~(9)~~(8) For the purpose of subsection ~~(7)~~(a) ~~(6)~~(a), deductible medical insurance premiums are those  
15 premiums that provide payment for medical care as defined by 26 U.S.C. 213(d).

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

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

24 ~~(c) Only a day care operator who is licensed and registered as required in 52-2-721 is allowed the~~  
25 ~~deduction under this subsection (10). (Subsection ~~(8)~~ (7) terminates on occurrence of contingency--sec.~~  
26 12, Ch. 808, L. 1991.)"

27

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



STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB 0199, 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 child and dependent care credit applies to tax years beginning after December 31, 1996.
2. The credit is equal to 100% of the credit allowed in section 21 of the Internal Revenue Code.
3. Montanans claimed a total of \$5,916,070 in federal child and dependent care credits on 19,343 returns in tax year 1995 (IRS' Midwest Automated Compliance System).
4. The total state child and dependent care credit that is expected to be claimed in fiscal years 1998 and 1999 is \$2,100,000 per year. This figure is based on the distribution of the federal tax credit across income groups (Joint Committee on Taxation) and the ratio of Montana tax liability to federal tax liability by income group (DOR).
5. Repealing the current law child and dependent care deduction increases revenue an estimated \$63,000 per year (DOR Biennial Report 1994-1996).
6. Administrative costs include the addition of a new credit line on the income tax form, the deletion of a deduction line, edits and keypunch costs. Personnel services expenses would be \$7,600 (0.25 FTE) in FY98 and \$1,000 (0.10 FTE) in FY99. Operating expenses would total \$8,243 in FY98 and \$1,850 in FY99. Ongoing administrative costs would be \$1,850 per year for storage and \$1,000 per year for keypunching.

FISCAL IMPACT:


	<u>FY 98</u>	<u>FY 99</u>
<u>Expenditures:</u>		
FTE	0.25	0.10
Personnel Services		
Programming	\$7,100	
Keypunch (ongoing)	500	\$1,000
Operating Expenses		
Programming (one-time)	\$7,318	
Storage (ongoing)	<u>925</u>	<u>1,850</u>
Total	<u>\$15,843</u>	<u>\$2,850</u>

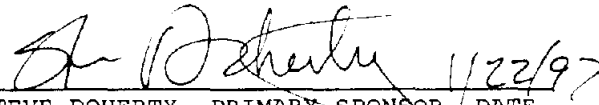
Revenues:

Individual Income Tax		
Repeal Deduction	\$63,000	\$63,000
Credit	(\$2,100,000)	(\$2,100,000)

Net Impact:

Total (General Fund)	(\$2,052,843)	(\$2,039,850)
----------------------	---------------	---------------

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

  
STEVE DOHERTY, PRIMARY SPONSOR      DATE