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SENATE BILL 633

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

PHILLIP J. MALOOF

AN ACT

RELATING TO TAXATION; AMENDING A SECTION OF THE INCOME TAX ACT
TO EXPAND ELIGIBILITY FOR THE DEPENDENT CHILD DAYCARE CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2-18.1 NMSA 1978 (being Laws 1981,
Chapter 170, Section 1, as amended) is amended to read:

"7-2-18.1. CREDIT FOR EXPENSES FOR DEPENDENT CHILD [~~DAY
CARE~~] DAYCARE NECESSARY TO ENABLE GAINFUL EMPLOYMENT TO PREVENT
INDIGENCY. --

A. As used in this section:

(1) "caregiver" means a corporation or an
individual eighteen years of age or over who receives
compensation from the resident for providing direct care,
supervision and guidance to a qualifying dependent of the
resident for less than twenty-four hours daily and includes

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1 related individuals of the resident but does not include a
2 dependent of the resident;

3 (2) "cost of maintaining a household" means the
4 expenses incurred for the mutual benefit of the occupants
5 thereof by reason of its operation as the principal place of
6 abode of such occupants, including property taxes, mortgage
7 interest, rent, utility charges, upkeep and repairs, property
8 insurance and food consumed on the premises. "Cost of
9 maintaining a household" shall not include expenses otherwise
10 incurred, including cost of clothing, education, medical
11 treatment, vacations, life insurance, transportation and
12 mortgages;

13 (3) "dependent" means "dependent" as defined by
14 Section 152 of the Internal Revenue Code, as that section may be
15 amended or renumbered, but also includes any minor child or
16 stepchild of the resident who would be a dependent for federal
17 income tax purposes if the public assistance contributing to the
18 support of the child or stepchild was considered to have been
19 contributed by the resident;

20 (4) "disabled person" means a person who has a
21 medically determinable physical or mental impairment, as
22 certified by a licensed physician, that renders such person
23 unable to engage in gainful employment;

24 (5) "gainfully employed" means working for
25 remuneration for others, either full time or part time, or self-

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1 employment in a business or partnership; and

2 (6) "qualifying dependent" means a dependent
3 under the age of fifteen at the end of the taxable year who
4 receives the services of a caregiver.

5 B. Any resident who files an individual New Mexico
6 income tax return and who is not a dependent of another taxpayer
7 may claim a credit for child [~~day-care~~] daycare expenses
8 incurred and paid to a caregiver in New Mexico during the
9 taxable year by such resident if the resident:

10 (1) singly or together with a spouse furnishes
11 over half the cost of maintaining the household for one or more
12 qualifying dependents for any period in the taxable year for
13 which the credit is claimed;

14 (2) is gainfully employed for any period for
15 which the credit is claimed or, if a joint return is filed, both
16 spouses are gainfully employed or one is disabled for any period
17 for which the credit is claimed;

18 (3) compensates a caregiver for child
19 [~~day-care~~] daycare for a qualifying dependent to enable such
20 resident together with his spouse, if any and if not disabled,
21 to be gainfully employed;

22 (4) is not a recipient of public assistance
23 under a program of aid to families with dependent children
24 during any period for which the credit provided by this section
25 is claimed; and

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1 (5) has a modified gross income, including
2 child support payments, if any, of not more than the annual
3 income that would be derived from earnings at [~~double~~] four
4 times the federal minimum wage.

5 C. The credit provided for in this section shall be
6 forty percent of the actual compensation paid to a caregiver by
7 the resident for a qualifying dependent not to exceed four
8 hundred eighty dollars (\$480) for each qualifying dependent or a
9 total of one thousand two hundred dollars (\$1,200) for all
10 qualifying dependents for a taxable year. For the purposes of
11 computing the credit, actual compensation shall not exceed eight
12 dollars (\$8.00) per day for each qualifying dependent.

13 D. The caregiver shall furnish the resident with a
14 signed statement of compensation paid by the resident to the
15 caregiver for [~~day-care~~] daycare services. Such statements
16 shall specify the dates and the total number of days for which
17 payment has been made.

18 E. If the resident taxpayer has a federal tax
19 liability, the taxpayer shall claim from the state not more than
20 the difference between the amount of the state child care credit
21 for which the taxpayer is eligible and the federal credit for
22 child and dependent care expenses the taxpayer is able to deduct
23 from federal tax liability for the same taxable year; provided,
24 for first year residents only, the amount of the federal credit
25 for child and dependent care expenses may be reduced to an

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1 amount equal to the amount of federal credit for child and
2 dependent care expenses the resident is able to deduct from
3 federal tax liability multiplied by the ratio of the number of
4 days of residence in New Mexico during the resident's taxable
5 year to the total number of days in the resident's taxable year.

6 F. The credit provided for in this section may be
7 deducted from the taxpayer's New Mexico income tax liability for
8 the taxable year. If the credit exceeds the taxpayer's income
9 tax liability, the excess shall be refunded to the taxpayer.

10 G. A husband and wife maintaining a household for
11 one or more qualifying dependents and filing separate returns
12 for a taxable year for which they could have filed a joint
13 return:

14 (1) may each claim only one-half of the credit
15 that would have been claimed on a joint return; and

16 (2) are eligible for the credit provided in
17 this section only if their joint modified gross income,
18 including child support payments, if any, is not more than the
19 annual income that would be derived from earnings at [~~double~~]
20 four times the federal minimum wage. "

21 Section 2. APPLICABILITY. --The provisions of this act
22 apply to taxable years beginning on or after January 1, 1997.

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