

103D CONGRESS
1ST SESSION

S. 321

To amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide on-site day-care facilities for dependents of their employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. DECONCINI introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a credit against tax for employers who provide on-site day-care facilities for dependents of their employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. ALLOWANCE OF CREDIT FOR EMPLOYER EX-**
4 **PENSES FOR CERTAIN ON-SITE DAY-CARE**
5 **FACILITIES.**

6 (a) IN GENERAL.—Subpart D of part IV of sub-
7 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to business related credits) is amended by
2 adding at the end thereof the following new section:

3 **“SEC. 45A. EMPLOYER ON-SITE DAY-CARE FACILITY**
4 **CREDIT.**

5 “(a) IN GENERAL.—For purposes of section 38, the
6 employer on-site day-care facility credit determined under
7 this section for the taxable year is an amount equal to
8 50 percent of the qualified investment in property placed
9 in service during such taxable year as part of a qualified
10 day-care facility.

11 “(b) LIMITATION.—The credit allowable under sub-
12 section (a) with respect to any qualified day-care facility
13 shall not exceed \$150,000.

14 “(c) DEFINITIONS.—For purposes of this section—

15 “(1) QUALIFIED INVESTMENT.—The term
16 ‘qualified investment’ means the amount paid or in-
17 curred to acquire, construct, rehabilitate, or expand
18 property—

19 “(A) which is to be used as part of a quali-
20 fied day-care facility, and

21 “(B) with respect to which a deduction for
22 depreciation (or amortization in lieu of depre-
23 ciation) is allowable.

24 Such term includes only amounts properly charge-
25 able to capital account.

1 “(2) QUALIFIED DAY-CARE FACILITY.—

2 “(A) IN GENERAL.—The term ‘qualified
3 day-care facility’ means a facility—

4 “(i) operated by an employer to pro-
5 vide dependent care assistance for enroll-
6 ees, at least 30 percent of whom are de-
7 pendents of employees of employers to
8 which a credit under subsection (a) with
9 respect to the facility is allowable,

10 “(ii) the principal use of which is to
11 provide dependent care assistance de-
12 scribed in clause (i),

13 “(iii) located on the premises of such
14 employer,

15 “(iv) which meets the requirements of
16 all applicable laws and regulations of the
17 State or local government in which it is
18 located, including, but not limited to, the
19 licensing of the facility as a day-care facil-
20 ity, and

21 “(v) the use of which (or the eligibility
22 to use) does not discriminate in favor of
23 employees who are highly compensated em-
24 ployees (within the meaning of section
25 414(q)).

1 “(B) MULTIPLE EMPLOYERS.—With re-
 2 spect to a facility jointly operated by more than
 3 1 employer, the term ‘qualified day-care facility’
 4 shall include any facility located on the prem-
 5 ises of 1 employer and within a reasonable dis-
 6 tance from the premises of the other employers.

7 “(d) RECAPTURE OF CREDIT.—

8 “(1) IN GENERAL.—If, as of the close of any
 9 taxable year, there is a recapture event with respect
 10 to any qualified day-care facility, then the tax of the
 11 taxpayer under this chapter for such taxable year
 12 shall be increased by an amount equal to the prod-
 13 uct of—

14 “(A) the applicable recapture percentage,
 15 and

16 “(B) the aggregate decrease in the credits
 17 allowed under section 38 for all prior taxable
 18 years which would have resulted if the qualified
 19 on-site day-care expenses of the taxpayer with
 20 respect to such facility had been zero.

21 “(2) APPLICABLE RECAPTURE PERCENTAGE.—

22 “(A) IN GENERAL.—For purposes of this
 23 subsection, the applicable recapture percentage
 24 shall be determined from the following table:

“If the recapture event occurs in:	The applicable recapture percentage is:
Years 1–3	100
Year 4	85
Year 5	70
Year 6	55
Year 7	40
Year 8	25
Years 9 and 10	10
Years 11 and thereafter	0.

1 “(B) YEARS.—For purposes of subpara-
2 graph (A), year 1 shall begin on the first day
3 of the taxable year in which the qualified day-
4 care facility is placed in service by the taxpayer.

5 “(3) RECAPTURE EVENT DEFINED.—For pur-
6 poses of this subsection, the term ‘recapture event’
7 means—

8 “(A) CESSATION OF OPERATION.—The
9 cessation of the operation of the facility as a
10 qualified day-care facility.

11 “(B) CHANGE IN OWNERSHIP.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in clause (ii), the disposition of a
14 taxpayer’s interest in a qualified day-care
15 facility with respect to which the credit de-
16 scribed in subsection (a) was allowable.

17 “(ii) AGREEMENT TO ASSUME RECAP-
18 TURE LIABILITY.—Clause (i) shall not
19 apply if the person acquiring such interest
20 in the facility agrees in writing to assume

1 the recapture liability of the person dispos-
2 ing of such interest in effect immediately
3 before such disposition. In the event of
4 such an assumption, the person acquiring
5 the interest in the facility shall be treated
6 as the taxpayer for purposes of assessing
7 any recapture liability (computed as if
8 there had been no change in ownership).

9 “(4) SPECIAL RULES.—

10 “(A) TAX BENEFIT RULE.—The tax for
11 the taxable year shall be increased under para-
12 graph (1) only with respect to credits allowed
13 by reason of this section which were used to re-
14 duce tax liability. In the case of credits not so
15 used to reduce tax liability, the carryforwards
16 and carrybacks under section 39 shall be appro-
17 priately adjusted.

18 “(B) NO CREDITS AGAINST TAX.—Any in-
19 crease in tax under this subsection shall not be
20 treated as a tax imposed by this chapter for
21 purposes of determining the amount of any
22 credit under subpart A, B, or D of this part.

23 “(C) NO RECAPTURE BY REASON OF CAS-
24 UALTY LOSS.—The increase in tax under this
25 subsection shall not apply to a cessation of op-

1 eration of the facility as a qualified day-care fa-
2 cility by reason of a casualty loss to the extent
3 such loss is restored by reconstruction or re-
4 placement within a reasonable period estab-
5 lished by the Secretary.

6 “(e) SPECIAL ALLOCATION RULES.—For purposes of
7 this section—

8 “(1) ALLOCATION IN CASE OF MULTIPLE EM-
9 PLOYERS.—In the case of multiple employers jointly
10 operating a qualified day-care facility, the credit al-
11 lowable by this section to each such employer shall
12 be its proportionate share of the qualified on-site
13 day-care expenses giving rise to the credit.

14 “(2) PASS-THRU IN THE CASE OF ESTATES AND
15 TRUSTS.—Under regulations prescribed by the Sec-
16 retary, rules similar to the rules of subsection (d) of
17 section 52 shall apply.

18 “(3) ALLOCATION IN THE CASE OF PARTNER-
19 SHIPS.—In the case of partnerships, the credit shall
20 be allocated among partners under regulations pre-
21 scribed by the Secretary.

22 “(f) NO DOUBLE BENEFIT.—

23 “(1) REDUCTION IN BASIS.—For purposes of
24 this subtitle—

1 “(A) IN GENERAL.—If a credit is deter-
 2 mined under this section with respect to any
 3 property, the basis of such property shall be re-
 4 duced by the amount of the credit so deter-
 5 mined.

6 “(B) CERTAIN DISPOSITIONS.—If during
 7 any taxable year there is a recapture amount
 8 determined with respect to any property the
 9 basis of which was reduced under paragraph
 10 (1), the basis of such property (immediately be-
 11 fore the event resulting in such recapture) shall
 12 be increased by an amount equal to such recap-
 13 ture amount. For purposes of the preceding
 14 sentence, the term ‘recapture amount’ means
 15 any increase in tax (or adjustment in
 16 carrybacks or carryovers) determined under
 17 subsection (d).

18 “(2) OTHER DEDUCTIONS AND CREDITS.—No
 19 deduction or credit shall be allowed under any other
 20 provision of this chapter with respect to the amount
 21 of the credit determined under this section.

22 “(g) TERMINATION.—This section shall not apply to
 23 taxable years beginning after December 31, 1996.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 38(b) of the Internal Revenue Code
2 of 1986 is amended—

3 (A) by striking out “plus” at the end of
4 paragraph (7),

5 (B) by striking out the period at the end
6 of paragraph (8), and inserting in lieu thereof
7 a comma and “plus”, and

8 (C) by adding at the end thereof the fol-
9 lowing new paragraph:
10 “(9) the employer on-site day-care facility credit
11 determined under section 45A.”.

12 (2) The table of sections for subpart D of part
13 IV of subchapter A of chapter 1 is amended by add-
14 ing at the end thereof the following new item:

 “Sec. 45A. Employer on-site day-care facility credit.”.

15 (c) EFFECTIVE DATE.—The amendments made by
16 this section shall apply to taxable years beginning after
17 December 31, 1993.

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