

2003 SENATE BILL 264

September 29, 2003 – Introduced by Senators PLALE, ROESSLER, LASSA, M. MEYER and SCHULTZ, cosponsored by Representatives JESKEWITZ, ALBERS, BALOW, BOYLE, GUNDERSON, HAHN, HINES, SINICKI, STASKUNAS, TAYLOR and WASSERMAN. Referred to Committee on Homeland Security, Veterans and Military Affairs and Government Reform.

1 **AN ACT to amend** 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34 (1) (g), 71.45 (2)
 2 (a) 10. and 77.92 (4); and **to create** 71.07 (5d), 71.10 (4) (cp), 71.28 (5d), 71.30
 3 (3) (dm), 71.47 (5d) and 71.49 (1) (dm) of the statutes; **relating to:** an income
 4 and franchise tax credit for a business to construct, equip, operate, or provide
 5 a day care center for the children of employees.

Analysis by the Legislative Reference Bureau

This bill creates an income tax and franchise tax credit for a business to construct, equip, operate, or provide a day care center for the children of its employees during work hours. A business may claim as a credit any of the following amounts, but not exceeding \$50,000 a year: 1) 50% of the amount the business paid to construct and equip a day care center that the business owns and operates; 2) 50% of the amount the business paid to operate its own day care center; and 3) if the business does not construct its own day care center, 50% of the amount the business paid to a day care center to provide day care to the children of its employees. The total amount of all such credits, for all businesses, will not exceed \$1,500,000 a year.

Partnerships, limited liability companies, and tax-option corporations compute the credit but pass it on to the partners, members, and shareholders in proportion to their ownership interests. If a business claims a credit that exceeds its tax liability, the state will not issue a refund check, but the business may carry forward any remaining credit to subsequent taxable years.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 71.05 (6) (a) 15. of the statutes is amended to read:

2 71.05 **(6)** (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de),
3 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), ~~and (3s)~~, and (5d) and not passed
4 through by a partnership, limited liability company, or tax-option corporation that
5 has added that amount to the partnership's, company's, or tax-option corporation's
6 income under s. 71.21 (4) or 71.34 (1) (g).

7 **SECTION 2.** 71.07 (5d) of the statutes is created to read:

8 71.07 **(5d)** DAY CARE CENTER CREDIT. (a) In this subsection:

9 1. "Claimant" means a person who files a claim under this subsection.

10 2. "Equipment" means equipment that is depreciable property for income tax
11 or franchise tax purposes.

12 (b) A claimant may claim as a credit against the tax imposed under s. 71.02 any
13 of the following:

14 1. An amount equal to 50% of the amount paid by the claimant during the
15 taxable year to construct, and to purchase equipment for the use at, a licensed day
16 care center under s. 48.65 that is owned and operated by the claimant to care for the
17 children of the claimant's employees during the employees' working hours.

18 2. An amount that is equal to the amount paid by the claimant to operate the
19 claimant's day care center, as described under subd. 1., for the taxable year; minus
20 any amount paid by an employee of the claimant to reimburse the claimant for any
21 amount paid by the claimant under this subdivision; multiplied by 50%. A claimant

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1 may claim and be allocated a credit under this subdivision regardless of whether the
2 claimant has claimed or been allocated a credit under subd. 1.

3 3. An amount that is equal to the amount paid by the claimant during the
4 taxable year to a licensed day care center under s. 48.65, other than a day care center
5 as described under subd. 1., to provide care for the children of the claimant's
6 employees during the employees' working hours; minus any amount paid by an
7 employee of the claimant to reimburse the claimant for any amount paid by the
8 claimant under this subdivision; multiplied by 50%.

9 (c) Except as provided in par. (dm), the amount of the credit under this
10 subsection shall not exceed \$50,000 in a taxable year for each claimant and the total
11 amount of the credit for all claimants under this subsection and ss. 71.28 (5d) and
12 71.47 (5d) shall not exceed \$1,500,000 in a state fiscal year.

13 (d) 1. No credit may be allowed under this subsection unless the claimant files
14 annually an application with the department of revenue on or before March 1 and
15 includes with that application a statement from the department of health and family
16 services that verifies that the day care center under par. (b) is licensed under s. 48.65.
17 A claimant may apply for and be allocated a credit under this subsection before the
18 claimant pays expenses under par. (b), except that, if the claimant does not pay the
19 expenses in the taxable year related to the credit, the claimant shall not receive the
20 credit and the department of revenue may allocate the amount of the credit to
21 another claimant.

22 2. After March 1, the department shall allocate randomly the credits under this
23 subsection and ss. 71.28 (5d) and 71.47 (5d). After the department has allocated the
24 credits, the department shall compile a waiting list of claimants who were not
25 allocated credits and shall allocate randomly any unused credits to the claimants on

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1 the waiting list. No credit may be allowed under this subsection after the
2 department has awarded the total amount of the credit for all claimants under par.
3 (c).

4 (dm) Claimants who jointly construct, equip, or operate a licensed day care
5 center may jointly claim the credit as provided under this subsection, if the claimants
6 file a joint application under par. (d) 1. Claimants who file a joint application and
7 who are allocated a credit under par. (b) may apportion the amount of the credit
8 among the joint claimants in any manner that the joint claimants choose. The total
9 amount of the credit for the joint claimants shall not exceed \$50,000 in a taxable year.

10 (e) Section 71.28 (4) (e), as it applies to the credit under s. 71.28 (4), applies to
11 the credit under this subsection.

12 (f) If a credit computed under this subsection is not entirely offset against
13 income or franchise taxes otherwise due, the unused balance may be carried forward
14 and credited against income or franchise taxes otherwise due for the following 5
15 taxable years to the extent not offset by those taxes otherwise due in all intervening
16 years between the year in which the expense was paid and the year in which the
17 carry-forward credit is claimed.

18 (g) Partnerships, limited liability companies, and tax-option corporations may
19 not claim the credit under this subsection, but the eligibility for, and the amount of,
20 the credit are based on their payment of expenses under par. (b). A partnership,
21 limited liability company, or tax-option corporation shall compute the amount of
22 credit that each of its partners, members, or shareholders may claim and shall
23 provide that information to each of them. Partners, members of limited liability
24 companies, and shareholders of tax-option corporations may claim the credit in
25 proportion to their ownership interest.

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1 (h) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
2 applies to the credit under this subsection.

3 (i) Except as provided under par. (j), if the operation of a day care center under
4 par. (b) 1. ceases within 5 years after the date on which the construction of the day
5 care center is completed, a claimant who receives credits under par. (b) 1. and 2. for
6 the construction and operation of such a day care center shall add to the claimant's
7 liability for taxes imposed under s. 71.02 an amount equal to the total amount of the
8 credits received under par. (b) 1. and 2. multiplied by the following percentage:

9 1. If the operation of the day care center ceases during the first year after the
10 date on which the construction of the day care center is completed, 100%.

11 2. If the operation of the day care center ceases during the 2nd year after the
12 date on which the construction of the day care center is completed, 80%.

13 3. If the operation of the day care center ceases during the 3rd year after the
14 date on which the construction of the day care center is completed, 60%.

15 4. If the operation of the day care center ceases during the 4th year after the
16 date on which the construction of the day care center is completed, 40%.

17 5. If the operation of the day care center ceases during the 5th year after the
18 date on which the construction of the day care center is completed, 20%.

19 (j) Paragraph (i) does not apply to a claimant whose business ceases operation
20 within 5 years after the date on which the construction of the claimant's day care
21 center is completed; or whose day care center ceases operation for not more than 30
22 consecutive days in a taxable year; or who presents evidence to the department of
23 revenue that the majority of the claimant's employees with children who are eligible
24 to enroll in the claimant's day care center do not want to enroll their children in the
25 claimant's day care center.

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1 **SECTION 3.** 71.10 (4) (cp) of the statutes is created to read:

2 71.10 **(4)** (cp) The day care center credit under s. 71.07 (5d).

3 **SECTION 4.** 71.21 (4) of the statutes is amended to read:

4 71.21 **(4)** Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
5 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and (3s),~~ and (5d) and passed through to
6 partners shall be added to the partnership's income.

7 **SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

8 71.26 **(2)** (a) *Corporations in general.* The “net income” of a corporation means
9 the gross income as computed under the Internal Revenue Code as modified under
10 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
11 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
12 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g),~~ and (5d)
13 and not passed through by a partnership, limited liability company, or tax-option
14 corporation that has added that amount to the partnership's, limited liability
15 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
16 the amount of losses from the sale or other disposition of assets the gain from which
17 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
18 otherwise disposed of at a gain and minus deductions, as computed under the
19 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
20 amount equal to the difference between the federal basis and Wisconsin basis of any
21 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
22 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

23 **SECTION 6.** 71.28 (5d) of the statutes is created to read:

24 71.28 **(5d)** DAY CARE CENTER CREDIT. (a) In this subsection:

25 1. “Claimant” means a person who files a claim under this subsection.

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1 2. “Equipment” means equipment that is depreciable property for income tax
2 or franchise tax purposes.

3 (b) A claimant may claim as a credit against the tax imposed under s. 71.23 any
4 of the following:

5 1. An amount equal to 50% of the amount paid by the claimant during the
6 taxable year to construct, and to purchase equipment for the use at, a licensed day
7 care center under s. 48.65 that is owned and operated by the claimant to care for the
8 children of the claimant’s employees during the employees’ working hours.

9 2. An amount that is equal to the amount paid by the claimant to operate the
10 claimant’s day care center, as described under subd. 1., for the taxable year; minus
11 any amount paid by an employee of the claimant to reimburse the claimant for any
12 amount paid by the claimant under this subdivision; multiplied by 50%. A claimant
13 may claim and be allocated a credit under this subdivision regardless of whether the
14 claimant has claimed or been allocated a credit under subd. 1.

15 3. An amount that is equal to the amount paid by the claimant during the
16 taxable year to a licensed day care center under s. 48.65, other than a day care center
17 as described under subd. 1., to provide care for the children of the claimant’s
18 employees during the employees’ working hours; minus any amount paid by an
19 employee of the claimant to reimburse the claimant for any amount paid by the
20 claimant under this subdivision; multiplied by 50%.

21 (c) Except as provided in par. (dm), the amount of the credit under this
22 subsection shall not exceed \$50,000 in a taxable year for each claimant and the total
23 amount of the credit for all claimants under this subsection and ss. 71.07 (5d) and
24 71.47 (5d) shall not exceed \$1,500,000 in a state fiscal year.

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1 (d) 1. No credit may be allowed under this subsection unless the claimant files
2 annually an application with the department of revenue on or before March 1 and
3 includes with that application a statement from the department of health and family
4 services that verifies that the day care center under par. (b) is licensed under s. 48.65.
5 A claimant may apply for and be allocated a credit under this subsection before the
6 claimant pays expenses under par. (b), except that, if the claimant does not pay the
7 expenses in the taxable year related to the credit, the claimant shall not receive the
8 credit and the department of revenue may allocate the amount of the credit to
9 another claimant.

10 2. After March 1, the department shall allocate randomly the credits under this
11 subsection and ss. 71.07 (5d) and 71.47 (5d). After the department has allocated the
12 credits, the department shall compile a waiting list of claimants who were not
13 allocated credits and shall allocate randomly any unused credits to the claimants on
14 the waiting list. No credit may be allowed under this subsection after the
15 department has awarded the total amount of the credit for all claimants under par.
16 (c).

17 (dm) Claimants who jointly construct, equip, or operate a licensed day care
18 center may jointly claim the credit as provided under this subsection, if the claimants
19 file a joint application under par. (d) 1. Claimants who file a joint application and
20 who are allocated a credit under par. (b) may apportion the amount of the credit
21 among the joint claimants in any manner that the joint claimants choose. The total
22 amount of the credit for the joint claimants shall not exceed \$50,000 in a taxable year.

23 (e) Subsection (4) (e), as it applies to the credit under sub. (4), applies to the
24 credit under this subsection.

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1 (f) If a credit computed under this subsection is not entirely offset against
2 income or franchise taxes otherwise due, the unused balance may be carried forward
3 and credited against income or franchise taxes otherwise due for the following 5
4 taxable years to the extent not offset by those taxes otherwise due in all intervening
5 years between the year in which the expense was paid and the year in which the
6 carry-forward credit is claimed.

7 (g) Partnerships, limited liability companies, and tax-option corporations may
8 not claim the credit under this subsection, but the eligibility for, and the amount of,
9 the credit are based on their payment of expenses under par. (b). A partnership,
10 limited liability company, or tax-option corporation shall compute the amount of
11 credit that each of its partners, members, or shareholders may claim and shall
12 provide that information to each of them. Partners, members of limited liability
13 companies, and shareholders of tax-option corporations may claim the credit in
14 proportion to their ownership interest.

15 (h) Subsection (4) (g) and (h), as it applies to the credit under sub. (4), applies
16 to the credit under this subsection.

17 (i) Except as provided under par. (j), if the operation of a day care center under
18 par. (b) 1. ceases within 5 years after the date on which the construction of the day
19 care center is completed, a claimant who receives credits under par. (b) 1. and 2. for
20 the construction and operation of such a day care center shall add to the claimant's
21 liability for taxes imposed under s. 71.23 an amount equal to the total amount of the
22 credits received under par. (b) 1. and 2. multiplied by the following percentage:

23 1. If the operation of the day care center ceases during the first year after the
24 date on which the construction of the day care center is completed, 100%.

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1 2. If the operation of the day care center ceases during the 2nd year after the
2 date on which the construction of the day care center is completed, 80%.

3 3. If the operation of the day care center ceases during the 3rd year after the
4 date on which the construction of the day care center is completed, 60%.

5 4. If the operation of the day care center ceases during the 4th year after the
6 date on which the construction of the day care center is completed, 40%.

7 5. If the operation of the day care center ceases during the 5th year after the
8 date on which the construction of the day care center is completed, 20%.

9 (j) Paragraph (i) does not apply to a claimant whose business ceases operation
10 within 5 years after the date on which the construction of the claimant's day care
11 center is completed; or whose day care center ceases operation for not more than 30
12 consecutive days in a taxable year; or who presents evidence to the department of
13 revenue that the majority of the claimant's employees with children who are eligible
14 to enroll in the claimant's day care center do not want to enroll their children in the
15 claimant's day care center.

16 **SECTION 7.** 71.30 (3) (dm) of the statutes is created to read:

17 71.30 **(3)** (dm) The day care center credit under s. 71.28 (5d).

18 **SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

19 71.34 **(1)** (g) An addition shall be made for credits computed by a tax–option
20 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
21 (3g), and (5d) and passed through to shareholders.

22 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

23 71.45 **(2)** (a) 10. By adding to federal taxable income the amount of credit
24 computed under s. 71.47 (1dd) to (1dx) and (5d) and not passed through by a
25 partnership, limited liability company or tax–option corporation that has added that

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1 amount to the partnership's, limited liability company's or tax-option corporation's
2 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
3 s. 71.47 (1), (3), (4) and (5).

4 **SECTION 10.** 71.47 (5d) of the statutes is created to read:

5 71.47 (5d) DAY CARE CENTER CREDIT. (a) In this subsection:

6 1. "Claimant" means a person who files a claim under this subsection.

7 2. "Equipment" means equipment that is depreciable property for income tax
8 or franchise tax purposes.

9 (b) A claimant may claim as a credit against the tax imposed under s. 71.43 any
10 of the following:

11 1. An amount equal to 50% of the amount paid by the claimant during the
12 taxable year to construct, and to purchase equipment for the use at, a licensed day
13 care center under s. 48.65 that is owned and operated by the claimant to care for the
14 children of the claimant's employees during the employees' working hours.

15 2. An amount that is equal to the amount paid by the claimant to operate the
16 claimant's day care center, as described under subd. 1., for the taxable year; minus
17 any amount paid by an employee of the claimant to reimburse the claimant for any
18 amount paid by the claimant under this subdivision; multiplied by 50%. A claimant
19 may claim and be allocated a credit under this subdivision regardless of whether the
20 claimant has claimed or been allocated a credit under subd. 1.

21 3. An amount that is equal to the amount paid by the claimant during the
22 taxable year to a licensed day care center under s. 48.65, other than a day care center
23 as described under subd. 1., to provide care for the children of the claimant's
24 employees during the employees' working hours; minus any amount paid by an

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1 employee of the claimant to reimburse the claimant for any amount paid by the
2 claimant under this subdivision; multiplied by 50%.

3 (c) Except as provided in par. (dm), the amount of the credit under this
4 subsection shall not exceed \$50,000 in a taxable year for each claimant and the total
5 amount of the credit for all claimants under this subsection and ss. 71.07 (5d) and
6 71.28 (5d) shall not exceed \$1,500,000 in a state fiscal year.

7 (d) 1. No credit may be allowed under this subsection unless the claimant files
8 annually an application with the department of revenue on or before March 1 and
9 includes with that application a statement from the department of health and family
10 services that verifies that the day care center under par. (b) is licensed under s. 48.65.
11 A claimant may apply for and be allocated a credit under this subsection before the
12 claimant pays expenses under par. (b), except that, if the claimant does not pay the
13 expenses in the taxable year related to the credit, the claimant shall not receive the
14 credit and the department of revenue may allocate the amount of the credit to
15 another claimant.

16 2. After March 1, the department shall allocate randomly the credits under this
17 subsection and ss. 71.07 (5d) and 71.28 (5d). After the department has allocated the
18 credits, the department shall compile a waiting list of claimants who were not
19 allocated credits and shall allocate randomly any unused credits to the claimants on
20 the waiting list. No credit may be allowed under this subsection after the
21 department has awarded the total amount of the credit for all claimants under par.
22 (c).

23 (dm) Claimants who jointly construct, equip, or operate a licensed day care
24 center may jointly claim the credit as provided under this subsection, if the claimants
25 file a joint application under par. (d) 1. Claimants who file a joint application and

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1 who are allocated a credit under par. (b) may apportion the amount of the credit
2 among the joint claimants in any manner that the joint claimants choose. The total
3 amount of the credit for the joint claimants shall not exceed \$50,000 in a taxable year.

4 (e) Section 71.28 (4) (e), as it applies to the credit under s. 71.28 (4), applies to
5 the credit under this subsection.

6 (f) If a credit computed under this subsection is not entirely offset against
7 income or franchise taxes otherwise due, the unused balance may be carried forward
8 and credited against income or franchise taxes otherwise due for the following 5
9 taxable years to the extent not offset by those taxes otherwise due in all intervening
10 years between the year in which the expense was paid and the year in which the
11 carry-forward credit is claimed.

12 (g) Partnerships, limited liability companies, and tax-option corporations may
13 not claim the credit under this subsection, but the eligibility for, and the amount of,
14 the credit are based on their payment of expenses under par. (b). A partnership,
15 limited liability company, or tax-option corporation shall compute the amount of
16 credit that each of its partners, members, or shareholders may claim and shall
17 provide that information to each of them. Partners, members of limited liability
18 companies, and shareholders of tax-option corporations may claim the credit in
19 proportion to their ownership interest.

20 (h) Section 71.28 (4) (g) and (h), as it applies to the credit under s. 71.28 (4),
21 applies to the credit under this subsection.

22 (i) Except as provided under par. (j), if the operation of a day care center under
23 par. (b) 1. ceases within 5 years after the date on which the construction of the day
24 care center is completed, a claimant who receives credits under par. (b) 1. and 2. for
25 the construction and operation of such a day care center shall add to the claimant's

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1 liability for taxes imposed under s. 71.43 an amount equal to the total amount of the
2 credits received under par. (b) 1. and 2. multiplied by the following percentage:

3 1. If the operation of the day care center ceases during the first year after the
4 date on which the construction of the day care center is completed, 100%.

5 2. If the operation of the day care center ceases during the 2nd year after the
6 date on which the construction of the day care center is completed, 80%.

7 3. If the operation of the day care center ceases during the 3rd year after the
8 date on which the construction of the day care center is completed, 60%.

9 4. If the operation of the day care center ceases during the 4th year after the
10 date on which the construction of the day care center is completed, 40%.

11 5. If the operation of the day care center ceases during the 5th year after the
12 date on which the construction of the day care center is completed, 20%.

13 (j) Paragraph (i) does not apply to a claimant whose business ceases operation
14 within 5 years after the date on which the construction of the claimant's day care
15 center is completed; or whose day care center ceases operation for not more than 30
16 consecutive days in a taxable year; or who presents evidence to the department of
17 revenue that the majority of the claimant's employees with children who are eligible
18 to enroll in the claimant's day care center do not want to enroll their children in the
19 claimant's day care center.

20 **SECTION 11.** 71.49 (1) (dm) of the statutes is created to read:

21 71.49 (1) (dm) The day care center credit under s. 71.47 (5d).

22 **SECTION 12.** 77.92 (4) of the statutes is amended to read:

23 77.92 (4) "Net business income", with respect to a partnership, means taxable
24 income as calculated under section 703 of the Internal Revenue Code; plus the items
25 of income and gain under section 702 of the Internal Revenue Code, including taxable

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1 state and municipal bond interest and excluding nontaxable interest income or
2 dividend income from federal government obligations; minus the items of loss and
3 deduction under section 702 of the Internal Revenue Code, except items that are not
4 deductible under s. 71.21; plus guaranteed payments to partners under section 707
5 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de),
6 (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (3g), and (3s), and (5d)~~; and plus or
7 minus, as appropriate, transitional adjustments, depreciation differences, and basis
8 differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain,
9 loss, and deductions from farming. “Net business income”, with respect to a natural
10 person, estate, or trust, means profit from a trade or business for federal income tax
11 purposes and includes net income derived as an employee as defined in section 3121
12 (d) (3) of the Internal Revenue Code.

13 **SECTION 13. Initial applicability.**

14 (1) DAY CARE CENTER CREDIT. This act first applies to taxable years beginning
15 on January 1, 2006.

16 (END)