

Introduced by Senators Ortiz and Rainey

February 19, 1999

An act to amend Sections 17039, 17052.17, 23036, and 23617 of, and to add Section 23618 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 549, as introduced, Ortiz. Personal income and bank and corporation taxes: credits: child care.

The Personal Income Tax Law and the Bank and Corporation Tax Law provide tax credits with respect to startup expenses for child care programs or constructing a child care facility, costs for child care information and referral services, and costs paid or incurred for contributions to a qualified care plan, as defined.

This bill would, among other things, increase the percentage of costs for which the credit can be claimed from 30% to 70% for facilities serving low-income children, as specified.

The Bank and Corporation Tax Law provides a credit to a bank or financial corporation for the difference between interest income received on specified loans relating to financing farmworker housing and the interest that would have been received had the loan been made at one point above the prime rate or another approved index.

This bill would provide a similar credit in connection with loans financing the purchase, construction, expansion, or rehabilitation of qualified child care and development facilities.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17039 of the Revenue and
2 Taxation Code is amended to read:
3 17039. (a) Notwithstanding any provision in this part
4 to the contrary, for the purposes of computing tax credits,
5 the term “net tax” means the tax imposed under either
6 Section 17041 or 17048 plus the tax imposed under Section
7 17504 (relating to lump-sum distributions) less the credits
8 allowed by Section 17054 (relating to personal exemption
9 credits) and any amount imposed under paragraph (1) of
10 subdivision (d) and paragraph (1) of subdivision (e) of
11 Section 17560. Notwithstanding the preceding sentence,
12 the “net tax” shall not be less than the tax imposed under
13 Section 17504 (relating to the separate tax on lump-sum
14 distributions), if any. Credits shall be allowed against “net
15 tax” in the following order:
16 (1) Credits that do not contain carryover or
17 refundable provisions, except those described in
18 paragraphs (4) and (5).
19 (2) Credits that contain carryover provisions but do
20 not contain refundable provisions.
21 (3) Credits that contain both carryover and
22 refundable provisions.
23 (4) The minimum tax credit allowed by Section 17063
24 (relating to the alternative minimum tax).
25 (5) Credits for taxes paid to other states allowed by
26 Chapter 12 (commencing with Section 18001).
27 (6) Credits that contain refundable provisions but do
28 not contain carryover provisions.
29 The order within each paragraph shall be determined
30 by the Franchise Tax Board.
31 (b) Notwithstanding the provisions of Sections 17053.5
32 (relating to the renter’s credit), 17061 (relating to
33 refunds pursuant to the Unemployment Insurance
34 Code), and 19002 (relating to tax withholding), the



1 credits provided in those sections shall be allowed in the
2 order provided in paragraph (6) of subdivision (a).

3 (c) (1) Notwithstanding any other provision of this
4 part, no tax credit shall reduce the tax imposed under
5 Section 17041 or 17048 plus the tax imposed under Section
6 17504 (relating to the separate tax on lump-sum
7 distributions) below the tentative minimum tax, as
8 defined by Section 17062, except the following credits,
9 but only after allowance of the credit allowed by Section
10 17063:

11 (A) The credit allowed by former Section 17052.4
12 (relating to solar energy).

13 (B) The credit allowed by former Section 17052.5
14 (relating to solar energy).

15 (C) The credit allowed by Section 17052.5 (relating to
16 solar energy).

17 (D) The credit allowed by Section 17052.12 (relating
18 to research expenses).

19 (E) *The credit allowed by Section 17052.17 (relating to*
20 *child care).*

21 (F) The credit allowed by former Section 17052.13
22 (relating to sales and use tax credit).

23 ~~(F)~~

24 (G) The credit allowed by Section 17052.15 (relating
25 to Los Angeles Revitalization Zone sales tax credit).

26 ~~(G)~~

27 (H) The credit allowed by Section 17053.5 (relating to
28 the renter's credit).

29 ~~(H)~~

30 (I) The credit allowed by former Section 17053.8
31 (relating to enterprise zone hiring credit).

32 ~~(I)~~

33 (J) The credit allowed by Section 17053.10 (relating to
34 Los Angeles Revitalization Zone hiring credit).

35 ~~(J)~~

36 (K) The credit allowed by former Section 17053.11
37 (relating to program area hiring credit).

38 ~~(K)~~

39 (L) For each taxable year beginning on or after
40 January 1, 1994, the credit allowed by Section 17053.17



- 1 (relating to Los Angeles Revitalization Zone hiring
- 2 credit).
- 3 ~~(L)~~
- 4 (M) The credit allowed by Section 17053.33 (relating
- 5 to targeted tax area sales or use tax credit).
- 6 ~~(M)~~
- 7 (N) The credit allowed by Section 17053.34 (relating
- 8 to targeted tax area hiring credit).
- 9 ~~(N)~~
- 10 (O) The credit allowed by Section 17053.49 (relating
- 11 to qualified property).
- 12 ~~(O)~~
- 13 (P) The credit allowed by Section 17053.70 (relating to
- 14 enterprise zone sales or use tax credit).
- 15 ~~(P)~~
- 16 (Q) The credit allowed by Section 17053.74 (relating
- 17 to enterprise zone hiring credit).
- 18 ~~(Q)~~
- 19 (R) The credit allowed by Section 17057 (relating to
- 20 clinical testing expenses).
- 21 ~~(R)~~
- 22 (S) The credit allowed by Section 17058 (relating to
- 23 low-income housing).
- 24 ~~(S)~~
- 25 (T) The credit allowed by Section 17061 (relating to
- 26 refunds pursuant to the Unemployment Insurance
- 27 Code).
- 28 ~~(T)~~
- 29 (U) Credits for taxes paid to other states allowed by
- 30 Chapter 12 (commencing with Section 18001).
- 31 ~~(U)~~
- 32 (V) The credit allowed by Section 19002 (relating to
- 33 tax withholding).
- 34 (2) Any credit that is partially or totally denied under
- 35 paragraph (1) shall be allowed to be carried over and
- 36 applied to the net tax in succeeding taxable years, if the
- 37 provisions relating to that credit include a provision to
- 38 allow a carryover when that credit exceeds the net tax.
- 39 (d) Unless otherwise provided, any remaining
- 40 carryover of a credit allowed by a section that has been



1 repealed or made inoperative shall continue to be
2 allowed to be carried over under the provisions of that
3 section as it read immediately prior to being repealed or
4 becoming inoperative.

5 (e) (1) Unless otherwise provided, if two or more
6 taxpayers (other than husband and wife) share in costs
7 that would be eligible for a tax credit allowed under this
8 part, each taxpayer shall be eligible to receive the tax
9 credit in proportion to his or her respective share of the
10 costs paid or incurred.

11 (2) In the case of a partnership, the credit shall be
12 allocated among the partners pursuant to a written
13 partnership agreement in accordance with Section 704 of
14 the Internal Revenue Code, relating to partner's
15 distributive share.

16 (3) In the case of a husband and wife who file separate
17 returns, the credit may be taken by either or equally
18 divided between them.

19 (f) Unless otherwise provided, in the case of a
20 partnership, any credit allowed by this part shall be
21 computed at the partnership level, and any limitation on
22 the expenses qualifying for the credit or limitation upon
23 the amount of the credit shall be applied to the
24 partnership and to each partner.

25 (g) (1) With respect to any taxpayer that directly or
26 indirectly owns an interest in a business entity that is
27 disregarded for tax purposes pursuant to Section 23038
28 and any regulations thereunder, the amount of any credit
29 or credit carryforward allowable for any taxable year
30 attributable to the disregarded business entity shall be
31 limited in accordance with paragraphs (2) and (3).

32 (2) The amount of any credit otherwise allowed under
33 this part, including any credit carryover from prior years,
34 that may be applied to reduce the taxpayer's "net tax," as
35 defined in subdivision (a), for the taxable year shall be
36 limited to an amount equal to the excess of the taxpayer's
37 regular tax (as defined in Section 17062), determined by
38 including income attributable to the disregarded business
39 entity that generated the credit or credit carryover, over
40 the taxpayer's regular tax (as defined in Section 17062),



1 determined by excluding the income attributable to that
2 disregarded business entity. No credit shall be allowed if
3 the taxpayer's regular tax (as defined in Section 17062),
4 determined by including the income attributable to the
5 disregarded business entity, is less than the taxpayer's
6 regular tax (as defined in Section 17062), determined by
7 excluding the income attributable to the disregarded
8 business entity.

9 (3) If the amount of a credit allowed pursuant to the
10 section establishing the credit exceeds the amount
11 allowable under this subdivision in any taxable year, the
12 excess amount may be carried over to subsequent taxable
13 years pursuant to subdivisions (c) and (d).

14 SEC. 2. Section 17052.17 of the Revenue and Taxation
15 Code is amended to read:

16 17052.17. (a) For each taxable year beginning on or
17 after January 1, 1988, and before January 1, 2003, there
18 shall be allowed as a credit against the "net tax" (as
19 defined by Section 17039) an amount equal to the amount
20 determined in subdivision (b).

21 (b) (1) The amount of the credit allowed by this
22 section shall be 30 percent of any of the following:

23 (A) The cost paid or incurred by the taxpayer on or
24 after September 23, 1988, for the startup expenses of
25 establishing a child care program or constructing a child
26 care facility in California, to be used primarily by the
27 children of the taxpayer's employees.

28 (B) For each taxable year beginning on or after
29 January 1, 1993, the cost paid or incurred by the taxpayer
30 for the startup expenses of establishing a child care
31 program or constructing a child care facility in California,
32 to be used primarily by the children of employees of
33 tenants leasing commercial or office space in a building
34 owned by the taxpayer.

35 (C) The cost paid or incurred by the taxpayer on or
36 after September 23, 1988, for contributions to California
37 child care information and referral services, including,
38 but not limited to, those that identify local child care
39 services, offer information describing these resources to
40 the taxpayer's employees, and make referrals of the



1 taxpayer's employees to child care services where there
2 are vacancies.

3 In the case of a child care facility established by two or
4 more taxpayers, the credit shall be allowed to each
5 taxpayer if the facility is to be used primarily by the
6 children of the employees of each of the taxpayers or the
7 children of the employees of the tenants of each of the
8 taxpayers.

9 *(2) If at least 51 percent of the children registered in*
10 *the facility are from households that have incomes below*
11 *75 percent of the local area median income, as published*
12 *by the United States Department of Housing and Urban*
13 *Development, then a credit amount of 70 percent shall be*
14 *substituted for the credit amount of 30 percent provided*
15 *in paragraph (1). However, if the percentage of children*
16 *registered in the facility in any month during the taxable*
17 *year falls below the 51 percent requirement for claiming*
18 *the 70 percent credit provided by this paragraph, then*
19 *the 70 percent credit shall not be permitted to be*
20 *substituted for the 30 percent credit provided in*
21 *paragraph (1).*

22 (3) The amount of the credit allowed by this section
23 shall not exceed fifty thousand dollars (\$50,000) for any
24 taxable year.

25 (c) For purposes of this section, "startup expenses"
26 include, but are not limited to, feasibility studies, site
27 preparation, and construction, renovation or acquisition
28 of facilities for purposes of establishing or expanding
29 onsite or nearsite centers by one or more employers or
30 one or more building owners leasing space to employers.

31 (d) If two or more taxpayers share in the costs eligible
32 for the credit provided by this section, each taxpayer shall
33 be eligible to receive a tax credit with respect to his, her,
34 or its respective share of the costs paid or incurred.

35 (e) (1) In the case where the credit allowed and
36 limited under subdivision (b) exceeds the "net tax," the
37 excess may be carried over to reduce the "net tax" in the
38 following year, and succeeding years if necessary, until
39 the credit has been exhausted. However, the excess from



1 any one year shall not exceed fifty thousand dollars
2 (\$50,000).

3 (2) If the credit carryovers from preceding taxable
4 years allowed under paragraph (1) plus the credit
5 allowed for the taxable year under subdivision (b) would
6 exceed an aggregate total of fifty thousand dollars
7 (\$50,000), then the credit allowed to reduce the “net tax”
8 under this section for the taxable year shall be limited to
9 fifty thousand dollars (\$50,000) and the amount in excess
10 of the fifty thousand dollar (\$50,000) limit may be carried
11 over and applied against the “net tax” in the following
12 year, and succeeding years if necessary, in an amount
13 which, when added to the credit allowed under
14 subdivision (b) for that succeeding taxable year, does not
15 exceed fifty thousand dollars (\$50,000).

16 (f) No deduction shall be allowed as otherwise
17 provided in this part for that portion of expenses paid or
18 incurred for the taxable year which is equal to the amount
19 of the credit allowed under this section attributable to
20 those expenses.

21 (g) In lieu of claiming the tax credit provided by this
22 section, the taxpayer may elect to take depreciation
23 pursuant to Section 17250. In addition, the taxpayer may
24 take depreciation pursuant to that section for the cost of
25 a facility in excess of the amount of the tax credit claimed
26 under this section.

27 (h) The basis for any child care facility for which a
28 credit is allowed shall be reduced by the amount of the
29 credit attributable to the facility. The basis adjustment
30 shall be made for the taxable year for which the credit is
31 allowed.

32 (i) No credit shall be allowed under subparagraph (B)
33 of paragraph (1) of subdivision (b) in the case of any
34 taxpayer that is required by any local ordinance or
35 regulation to provide a child care facility.

36 (j) (1) In order to be eligible for the credit allowed
37 under subparagraph (A) or (B) of paragraph (1) of
38 subdivision (b), the taxpayer shall submit to the
39 Franchise Tax Board upon request a statement certifying
40 that the costs for which the credit is claimed are incurred



1 with respect to the startup expenses of establishing a child
2 care program or constructing a child care facility in
3 California to be used primarily by the children of the
4 taxpayer's employees or the children of the employees of
5 tenants leasing commercial or office space in a building
6 owned by the taxpayer and which will be in operation for
7 at least 60 consecutive months after completion.

8 (2) If the child care center for which a credit is claimed
9 pursuant to this section is disposed of or ceases to operate
10 within 60 months after completion, that portion of the
11 credit claimed which represents the remaining portion of
12 the 60-month period shall be added to the taxpayer's tax
13 liability in the taxable year of that disposition or nonuse.

14 (k) In order to be allowed the credit under
15 subparagraph (A) or (B) of paragraph (1) of subdivision
16 (b), the taxpayer shall indicate, in the form and manner
17 prescribed by the Franchise Tax Board, the number of
18 children that the child care program or facility will be
19 able to legally accommodate.

20 (l) This section shall remain in effect only until
21 December 1, 2003, and as of that date is repealed.

22 SEC. 3. Section 23036 of the Revenue and Taxation
23 Code is amended to read:

24 23036. (a) (1) The term "tax" includes any of the
25 following:

26 (A) The tax imposed under Chapter 2 (commencing
27 with Section 23101).

28 (B) The tax imposed under Chapter 3 (commencing
29 with Section 23501).

30 (C) The tax on unrelated business taxable income,
31 imposed under Section 23731.

32 (D) The tax on S corporations imposed under Section
33 23802.

34 (2) The term "tax" does not include any amount
35 imposed under paragraph (1) of subdivision (e) of
36 Section 24667 or paragraph (2) of subdivision (f) of
37 Section 24667.

38 (b) For purposes of Article 5 (commencing with
39 Section 18661) of Chapter 2, Article 3 (commencing with
40 Section 19031) of Chapter 4, Article 6 (commencing with



1 Section 19101) of Chapter 4, and Chapter 7 (commencing
2 with Section 19501) of Part 10.2, and for purposes of
3 Sections 18601, 19001, and 19005, the term “tax” shall also
4 include all of the following:

5 (1) The tax on limited partnerships, imposed under
6 Section 17935 or Section 23081, the tax on limited liability
7 companies, imposed under Section 17941 or Section
8 23091, and the tax on registered limited liability
9 partnerships and foreign limited liability partnerships
10 imposed under Section 17948 or Section 23097.

11 (2) The alternative minimum tax imposed under
12 Chapter 2.5 (commencing with Section 23400).

13 (3) The tax on built-in gains of S corporations, imposed
14 under Section 23809.

15 (4) The tax on excess passive investment income of S
16 corporations, imposed under Section 23811.

17 (c) Notwithstanding any other provision of this part,
18 credits shall be allowed against the “tax” in the following
19 order:

20 (1) Credits that do not contain carryover provisions.

21 (2) Credits that, when the credit exceeds the “tax,”
22 allow the excess to be carried over to offset the “tax” in
23 succeeding taxable years. The order of credits within this
24 paragraph shall be determined by the Franchise Tax
25 Board.

26 (3) The minimum tax credit allowed by Section 23453.

27 (4) Credits for taxes withheld under Section 18662.

28 (d) Notwithstanding any other provision of this part,
29 each of the following shall be applicable:

30 (1) No credit shall reduce the “tax” below the
31 tentative minimum tax (as defined by paragraph (1) of
32 subdivision (a) of Section 23455), except the following
33 credits, but only after allowance of the credit allowed by
34 Section 23453:

35 (A) The credit allowed by former Section 23601
36 (relating to solar energy).

37 (B) The credit allowed by former Section 23601.4
38 (relating to solar energy).

39 (C) The credit allowed by Section 23601.5 (relating to
40 solar energy).



1 (D) The credit allowed by Section 23609 (relating to
2 research expenditures).

3 (E) The credit allowed by Section 23609.5 (relating to
4 clinical testing expenses).

5 (F) The credit allowed by Section 23610.5 (relating to
6 low-income housing).

7 (G) The credit allowed by former Section 23612
8 (relating to sales and use tax credit).

9 (H) The credit allowed by Section 23612.2 (relating to
10 enterprise zone sales or use tax credit).

11 (I) *The credit allowed by Section 23617 (relating to*
12 *child care).*

13 (J) The credit allowed by Section 23612.6 (relating to
14 Los Angeles Revitalization Zone sales tax credit).

15 ~~(J)~~

16 (K) The credit allowed by former Section 23622
17 (relating to enterprise zone hiring credit).

18 ~~(K)~~

19 (L) The credit allowed by Section 23622.7 (relating to
20 enterprise zone hiring credit).

21 ~~(L)~~

22 (M) The credit allowed by former Section 23623
23 (relating to program area hiring credit).

24 ~~(M)~~

25 (N) For each income year beginning on or after
26 January 1, 1994, the credit allowed by Section 23623.5
27 (relating to Los Angeles Revitalization Zone hiring
28 credit).

29 ~~(N)~~

30 (O) The credit allowed by Section 23625 (relating to
31 Los Angeles Revitalization Zone hiring credit).

32 ~~(O)~~

33 (P) The credit allowed by Section 23633 (relating to
34 targeted tax area sales or use tax credit).

35 ~~(P)~~

36 (Q) The credit allowed by Section 23634 (relating to
37 targeted tax area hiring credit).

38 ~~(Q)~~

39 (R) The credit allowed by Section 23649 (relating to
40 qualified property).



1 (2) No credit against the tax shall reduce the minimum
2 franchise tax imposed under Chapter 2 (commencing
3 with Section 23101).

4 (e) Any credit which is partially or totally denied
5 under subdivision (d) shall be allowed to be carried over
6 to reduce the “tax” in the following year, and succeeding
7 years if necessary, if the provisions relating to that credit
8 include a provision to allow a carryover of the unused
9 portion of that credit.

10 (f) Unless otherwise provided, any remaining
11 carryover from a credit that has been repealed or made
12 inoperative shall continue to be allowed to be carried
13 over under the provisions of that section as it read
14 immediately prior to being repealed or becoming
15 inoperative.

16 (g) Unless otherwise provided, if two or more
17 taxpayers share in costs that would be eligible for a tax
18 credit allowed under this part, each taxpayer shall be
19 eligible to receive the tax credit in proportion to its
20 respective share of the costs paid or incurred.

21 (h) Unless otherwise provided, in the case of an S
22 corporation, any credit allowed by this part shall be
23 computed at the S corporation level, and any limitation
24 on the expenses qualifying for the credit or limitation
25 upon the amount of the credit shall be applied to the S
26 corporation and to each shareholder.

27 (i) (1) With respect to any taxpayer that directly or
28 indirectly owns an interest in a business entity that is
29 disregarded for tax purposes pursuant to Section 23038
30 and any regulations thereunder, the amount of any credit
31 or credit carryforward allowable for any income year
32 attributable to the disregarded business entity shall be
33 limited in accordance with paragraphs (2) and (3).

34 (2) The amount of any credit otherwise allowed under
35 this part, including any credit carryover from prior years,
36 that may be applied to reduce the taxpayer’s “tax,” as
37 defined in subdivision (a), for the income year shall be
38 limited to an amount equal to the excess of the taxpayer’s
39 regular tax (as defined in Section 23455), determined by
40 including income attributable to the disregarded business



1 entity that generated the credit or credit carryover, over
2 the taxpayer's regular tax (as defined in Section 23455),
3 determined by excluding the income attributable to that
4 disregarded business entity. No credit shall be allowed if
5 the taxpayer's regular tax (as defined in Section 23455),
6 determined by including the income attributable to the
7 disregarded business entity is less than the taxpayer's
8 regular tax (as defined in Section 23455), determined by
9 excluding the income attributable to the disregarded
10 business entity.

11 (3) If the amount of a credit allowed pursuant to the
12 section establishing the credit exceeds the amount
13 allowable under this subdivision in any income year, the
14 excess amount may be carried over to subsequent income
15 years pursuant to subdivisions (d), (e), and (f).

16 SEC. 4. Section 23617 of the Revenue and Taxation
17 Code is amended to read:

18 23617. (a) For each income year beginning on or
19 after January 1, 1988, and before January 1, 2003, there
20 shall be allowed as a credit against the "tax" (as defined
21 by Section 23036) an amount equal to the amount
22 determined in subdivision (b).

23 (b) (1) The amount of the credit allowed by this
24 section shall be 30 percent of any of the following:

25 (A) The cost paid or incurred by the taxpayer on or
26 after September 23, 1988, for the startup expenses of
27 establishing a child care program or constructing a child
28 care facility in California, to be used primarily by the
29 children of the taxpayer's employees.

30 (B) For each income year beginning on or after
31 January 1, 1993, cost paid or incurred by the taxpayer for
32 startup expenses of establishing a child care program or
33 constructing a child care facility in California to be used
34 primarily by the children of employees of tenants leasing
35 commercial or office space in a building owned by the
36 taxpayer.

37 (C) The cost paid or incurred by the taxpayer on or
38 after September 23, 1988, for contributions to California
39 child care information and referral services, including,
40 but not limited to, those that identify local child care



1 services, offer information describing these resources to
2 the taxpayer's employees, and make referrals of the
3 taxpayer's employees to child care services where there
4 are vacancies.

5 In the case of a child care facility established by two or
6 more taxpayers, the credit shall be allowed if the facility
7 is to be used primarily by the children of the employees
8 of each of the taxpayers or the children of the employees
9 of tenants of each of the taxpayers.

10 (2) *If at least 51 percent of the children registered in*
11 *the facility are from households that have incomes below*
12 *75 percent of the local area median income, as published*
13 *by the United States Department of Housing and Urban*
14 *Development, then a credit amount of 70 percent shall be*
15 *substituted for the credit amount of 30 percent provided*
16 *in paragraph (1). However, if the percentage of children*
17 *registered in the facility in any month during the income*
18 *year falls below the 51 percent requirement for claiming*
19 *the 70 percent credit provided by this paragraph, then*
20 *the 70 percent credit shall not be permitted to be*
21 *substituted for the 30 percent credit provided in*
22 *paragraph (1).*

23 (3) The amount of the credit allowed by this section
24 shall not exceed fifty thousand dollars (\$50,000) for any
25 income year.

26 (c) For purposes of this section, "startup expenses"
27 include, but are not limited to, feasibility studies, site
28 preparation, and construction, renovation, or acquisition
29 of facilities for purposes of establishing or expanding
30 onsite or nearsite centers by one or more employers or
31 one or more building owners leasing space to employers.

32 (d) If two or more taxpayers share in the costs eligible
33 for the credit provided by this section, each taxpayer shall
34 be eligible to receive a tax credit with respect to its
35 respective share of the costs paid or incurred.

36 (e) (1) In the case where the credit allowed and
37 limited under subdivision (b) for the income year
38 exceeds the "tax," the excess may be carried over to
39 reduce the "tax" in the following year, and succeeding
40 years if necessary, until the credit has been exhausted.



1 However, the excess from any one year shall not exceed
2 fifty thousand dollars (\$50,000).

3 (2) If the credit carryovers from preceding income
4 years allowed under paragraph (1) plus the credit
5 allowed for the income year under subdivision (b) would
6 exceed an aggregate total of fifty thousand dollars
7 (\$50,000), then the credit allowed to reduce the “tax”
8 under this section for the income year shall be limited to
9 fifty thousand dollars (\$50,000) and the amount in excess
10 of the fifty thousand dollar (\$50,000) limit may be carried
11 over and applied against the “tax” in the following year,
12 and succeeding years if necessary, in an amount which,
13 when added to the credit allowed under subdivision (b)
14 for that succeeding income year, does not exceed fifty
15 thousand dollars (\$50,000).

16 (f) No deduction shall be allowed as otherwise
17 provided in this part for that portion of expenses paid or
18 incurred for the income year which is equal to the
19 amount of the credit allowed under this section
20 attributable to those expenses.

21 (g) In lieu of claiming the tax credit provided by this
22 section, the taxpayer may elect to take depreciation
23 pursuant to Section 24371.5. In addition, the taxpayer may
24 take depreciation pursuant to that section for the cost of
25 a facility in excess of the amount of the tax credit claimed
26 under this section.

27 (h) The basis for any child care facility for which a
28 credit is allowed shall be reduced by the amount of the
29 credit attributable to the facility. The basis adjustment
30 shall be made for the taxable year for which the credit is
31 allowed.

32 (i) No credit shall be allowed under subparagraph (B)
33 of paragraph (1) of subdivision (b) in the case of any
34 taxpayer that is required by any local ordinance or
35 regulation to provide a child care facility.

36 (j) (1) In order to be eligible for the credit allowed
37 under subparagraph (A) or (B) of paragraph (1) of
38 subdivision (b), the taxpayer shall submit to the
39 Franchise Tax Board upon request a statement certifying
40 that the costs for which the credit is claimed are incurred



1 with respect to the startup expenses of establishing a child
2 care program or constructing a child care facility in
3 California to be used primarily by the children of the
4 taxpayer's employees or the children of the employees of
5 tenants leasing commercial or office space in a building
6 owned by the taxpayer and which will be in operation for
7 at least 60 consecutive months after completion.

8 (2) If the child care center for which a credit is claimed
9 pursuant to this section is disposed of or ceases to operate
10 within 60 months after completion, that portion of the
11 credit claimed which represents the remaining portion of
12 the 60-month period shall be added to the taxpayer's tax
13 liability in the income year of that disposition or nonuse.

14 (k) In order to be allowed the credit under
15 subparagraph (A) or (B) of paragraph (1) of subdivision
16 (b), the taxpayer shall indicate, in the form and manner
17 prescribed by the Franchise Tax Board, the number of
18 children that the child care program or facility will be
19 able to legally accommodate.

20 (l) This section shall remain in effect only until
21 December 1, 2003, and as of that date is repealed.

22 SEC. 5. Section 23618 is added to the Revenue and
23 Taxation Code, to read:

24 23618. (a) For income years beginning on or after
25 January 1, 1999, there shall be allowed as a credit against
26 the "tax," as defined in Section 23036, for a bank or
27 financial corporation for an amount equal to the qualified
28 amount as determined in subdivision (b).

29 (b) (1) For purposes of this section, the "qualified
30 amount" shall be equal to 50 percent of the difference
31 between the amount of interest income that the bank or
32 financial corporation could have collected had the loan
33 rate been one point above prime and the lesser amount
34 of interest income actually due for the term of the loan to
35 the bank or financial corporation on those portions of
36 loans used to finance expenditures actually paid or
37 incurred to purchase, construct, expand, or rehabilitate a
38 qualified child care or development facility.

39 (2) The credit allowed under this section shall be
40 taken in equal installments over a period equal to the



1 lesser of 10 years or the term of the loan, beginning in the
2 taxpayer's income year during which the qualified child
3 care facility construction is completed and there is initial
4 enrollment of children by the child care or child
5 development program. In the case where the credit
6 allowed by this section exceeds the "tax," the excess may
7 be carried over to reduce the "tax" in the following year,
8 and succeeding years if necessary, until the credit is
9 exhausted.

10 (3) The credit shall not apply to loans with a term of
11 less than three years or to loans funded prior to January
12 1, 1999. The credit shall apply only to interest income
13 from the loan and shall not apply to any other loan fees
14 or other charges collected by the bank or financial
15 corporation with respect to the loan.

16 (c) For purposes of this section:

17 (1) A "qualified facility" means a licensed child care or
18 development facility that meets both of the following
19 requirements:

20 (A) Is operated by child care providers who covenant
21 to a bank or financial institution to provide child care
22 services for the entire term of the loan.

23 (B) Meets one of the following requirements:

24 (i) Is located in low- or moderate-income areas as
25 defined by the Community Reinvestment Act of 1977
26 (Public Law 95-128), as amended.

27 (ii) Is operated by child care providers whose loan
28 covenant with the banking or financial institution
29 provides that not less than 30 percent of the children
30 served by the facility will be from households with
31 incomes at or below 75 percent of the local median
32 income, as published by the United States Department of
33 Housing and Urban Development.

34 (2) Family day care centers are not qualified facilities.

35 (3) This credit shall not apply to loans for purchasing
36 real property or for refinancing existing loans.

37 (d) A taxpayer is disallowed all credit that would
38 accrue after the occurrence of a disallowing event. A
39 disallowing event is one in which the child care provider
40 is either in default of payment for more than 90 days or



1 ceased providing child care in the facility for which the
2 loan was made for more than 90 days, or both, unless the
3 center takes action to accelerate the loan. The state may
4 seek to recapture any credit claimed that is disallowed
5 under this section.

6 (e) This credit may not be claimed for any project
7 receiving funding or subsidy from the Child Care and
8 Development Facilities Loan Guaranty or Direct Loan
9 Funds, as contained in Sections 8277.5 and 8277.6 of the
10 Education Code.

11 (f) (1) Except as provided in paragraph (2), if the
12 bank or financial corporation sells the loan to another
13 bank or financial corporation, the balance of the credit,
14 if any, shall be transferred to the assignee or transferee of
15 the loan, subject to the same conditions and limitations as
16 set forth in this section.

17 (2) A bank or financial corporation may assign, sell, or
18 otherwise transfer the loan to another person or entity
19 and retain the right to claim the credit granted under this
20 section if the bank or financial corporation retains
21 responsibility for servicing the loan.

22 SEC. 6. This act provides for a tax levy within the
23 meaning of Article IV of the Constitution and shall go into
24 immediate effect.

