

ACT 196

S.B. NO. 451

A Bill for an Act Relating to Child Care Expenses.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. In 1976 the legislature adopted the then latest federal provisions allowing parents to deduct child care expenses from their income taxes. In 1976 Congress changed the child care expenses deduction to a child care expense credit.

The purpose of this Act is to conform the Hawaii income tax law to the latest federal income tax change in the area of child care expenses.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"Sec. 235- Credit for child care services.** (a) Allowance of credit. For each resident taxpayer, who files an individual income tax return for a taxable year, and who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (c)(1)), there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to five per cent of the employment-related expenses (as defined in subsection (c)(2)) paid by such individual during the taxable year.

(b) Application with other credits. The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under this chapter.

(c) Definitions of qualifying individual and employment-related expenses. For purposes of this section:

(1) Qualifying individual. The term "qualifying individual" means:

- (A) A dependent of the taxpayer who is under the age of fifteen and with respect to whom the taxpayer is entitled to a deduction under section 235-54(a),
- (B) A dependent of the taxpayer who is physically or mentally incapable of caring for himself, or
- (C) The spouse of the taxpayer, if he is physically or mentally

incapable of caring for himself.

(2) Employment-related expenses.

(A) In general. The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are one or more qualifying individuals with respect to the taxpayer:

(i) Expenses for household services, and

(ii) Expenses for the care of a qualifying individual.

(B) Exception. Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of a qualifying individual described in paragraph (1)(A).

(d) Dollar limit on amount creditable. The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed:

(1) \$2,000 if there is one qualifying individual with respect to the taxpayer for such taxable year, or

(2) \$4,000 if there are two or more qualifying individuals with respect to the taxpayer for such taxable year.

(e) Earned income limitation.

(1) In general. Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed:

(A) In the case of an individual who is not married at the close of such year, such individual's earned income for such year, or

(B) In the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of his spouse for such years.

(2) Special rule for spouse who is a student or incapable of caring for himself. In the case of a spouse who is a student or a qualified individual described in subsection (c)(1)(C), for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than:

(A) \$166 if subsection (d)(1) applies for the taxable year, or

(B) \$333 if subsection (d)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

(f) Special rules. For purposes of this section:

(1) Maintaining household. An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse).

(2) Married couples must file joint return. If the taxpayer is married at the

- close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.
- (3) Marital status. An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered married.
  - (4) Certain married individuals living apart. If:
    - (A) An individual who is married and who files a separate return:
      - (i) Maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and
      - (ii) Furnishes over half of the cost of maintaining such household during the taxable year, and
    - (B) During the last six months of such taxable year such individual's spouse is not a member of such household,
 such individual shall not be considered as married.
  - (5) Special dependency test in case of divorced parents, etc. If:
    - (A) A child (as defined in section 151(e)(3)) of the Internal Revenue Code of 1954, as amended, who is under the age of fifteen or who is physically or mentally incapable of caring for himself receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement, and
    - (B) Such child is in the custody of one or both of his parents for more than one-half of the calendar year,
 in the case of any taxable year beginning in such calendar year such child shall be treated as being a qualifying individual described in subsection (c)(1)(A) or (B), as the case may be, with respect to that parent who has custody for a longer period during such calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to such other parent.
  - (6) Payments to related individuals.
    - (A) In general. Except as provided in subparagraph (B), no credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual bearing a relationship to the taxpayer described in paragraphs (1) through (8) of section 152(a) of the Internal Revenue Code of 1954, as amended (relating to definition of dependent), or to a dependent described in paragraph (9) of such section.
    - (B) Exception. Subparagraph (A) shall not apply to any amount paid by the taxpayer to an individual with respect to whom, for the taxable year of the taxpayer in which the service is performed, neither the taxpayer nor his spouse is entitled to a deduction under section 235-54(a) (relating to deduction for personal exemptions for dependents), but only if the service with respect to which such amount is paid constitutes employment within the meaning of

section 3121(b) of the Internal Revenue Code of 1954, as amended.

(7) Student. The term "student" means an individual who during each of five calendar months during the taxable year is a full-time student at an educational organization.

(8) Educational organization. The term "educational organization" means a school operated by the department of education or licensed under chapter 298, or a university, college, or community college.

(g) Regulations. The director of taxation shall prescribe such regulations under chapter 91 as may be necessary to carry out the purposes of this section."

SECTION 3. Section 235-2.1, Hawaii Revised Statutes, enacted by Act 218, Session Laws of Hawaii 1976, is repealed.

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include the brackets, the bracketed material, or the underscoring.\*

SECTION 5. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1976.

(Approved June 9, 1977.)

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\*Edited accordingly.