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La Costa Rickford  
Operator's Signature

10/2/03  
Date

2003 HOUSE FINANCE AND TAXATION  
HB 1289

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1289**

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 21, 2003

Tapc Number	Side A	Side B	Meter #
1	X		5.2
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

**REP. WESLEY BELTER, CHAIRMAN** Called the hearing to order.

**REP. BYRON CLARK, DIST. 24, FARGO** Introduced the bill. See attached written testimony.

**REP. BELTER** Because of the fairness of the issue, what is in this particular piece of legislation which would give the benefit to those families who are employees of the company, where one of the parents stays home with the children, or are being taken care of by a grandmother, how are those people dealt with?

**REP. CLARK** Whenever someone chooses to stay home with their child, it is certainly their choice to do so. I certainly don't begrudge anyone who chooses to do that. The reality for most young families, it is a very tough choice for them to make. Giving up that income, is hard for young families to do. This is an incentive to give some employers the idea to start offering help with the child care. Not everybody has grandmothers around.

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*10/2/03*  
Date

Page 2

House Finance and Taxation Committee

Bill/Resolution Number HB 1289

Hearing Date January 21, 2003

**REP. BELTER** My question would be though then, that family that chooses to have one of the parents to stay home, they are, in a sense, making a financial sacrifice to their own personal income, but they are also paying taxes and contributing to a tax grant like you are giving, so, those families are experiencing a double wamnee, due to your program. It is a real issue with me, that if we will do programs like this, there should be compensation given to those people within that organization that aren't using the day care.

**REP. CLARK** For those individuals, it is a choice issue. In America, we are a land of choices. That is something I think I can live with. Related to his sister who has one child and expecting another one, for her to work in that family, they only come out about ten thousand dollars ahead after child care. It would be a huge benefit for her, if the employer was offering some kind of child care incentive to help alleviate the cost of child care.

**REP. WINRICH** In your testimony, you state, if the employer is eligible for federal deductions for providing the service, they are ineligible for tax credits on the state level. I believe the applicable portion of the bill, in Lines 16 through 18, page 2, as I read that, it means that, they can still get the credit, but they can't include the deductible expenses, as part of the cost of providing the service.

**REP. CLARK** Stated it was the impression he got, when he spoke to the legislative council.

**REP. IVERSON** Asked if this is on-site child care at the business, or could they contract with a local provider.

**REP. CLARK** Just on site.

**REP. PAM GULLESON, DIST. 26.** Testified in support of the bill. She stated she sees this bill as being pro business, pro employee, and pro family. Good child care programs can prove

Page 3

House Finance and Taxation Committee

Bill/Resolution Number HB 1289

Hearing Date January 21, 2003

children's chance of long term success in school, and increase their odds in involvement with crime and violence. Employers who offer child care attract more highly qualified applicants, with greater loyalty.

**REP. BRUCE ECKRE, WAHPETON.** Testified in support of the bill. He stated Wahpeton is the most industrialized city in North Dakota. There are several factories that have six to eight hundred people working for them. If all of the people who worked in Wahpeton, lived there, the population would be doubled. We have a shortage of employees, because the shifts go twenty four hours per day, and it is hard for the females because of child care.

**JIM OLIVER, EXECUTIVE DIRECTOR FOR THE WAHPETON CHAMBER OF COMMERCE** Testified in support of the bill. He stated this is the third session he has appeared at the legislature with this bill. It is of great importance to the industry in Wahpeton. He stated they currently, have 240 job openings within the Wahpeton area, for the industry of manufacturing of food processing plant, which they are unable to fill. He felt this would be another tool for the growth of North Dakota, to help people come in. He stated, their community came up with \$60,000 to help implement this program, to get people to come and want to be in Wahpeton, ND. We have seen substantial growth in the industry, and yet, the population dropped, over the last ten years. He stated that less than a month ago, an engineer was going to work for a local contractor, he would have gotten paid very well, but chose to live in Fergus Falls, Minnesota, because the North Dakota taxes were too high, and another reason being child care. This tool will help Wahpeton build and implement a new child care facility this coming year.

Page 4

House Finance and Taxation Committee

Bill/Resolution Number HB 1289

Hearing Date January 21, 2003

**REP. BELTER** Is there any effort under way for businesses, to give some type of contribution to get this facility going?

**JIM OLIVER** They were, at the last go, when the bill didn't pass last time, it slowed it down to the point of pretty well killing it. The problem is still there. We need the help because it is so difficult to get the providers. It is seven days a week, because of the type of jobs there are.

**REP. SCOT KELSH, DIST. 11, FARGO** Testified in support of the bill. This is a very visionary piece of legislation. It will help the changing family situations in North Dakota.

**BARB ARNOLD-TENGESDAL, EXECUTIVE DIRECTOR, VOICES FOR NORTH DAKOTA'S CHILDREN** Testified in support of the bill. See attached written testimony and handout relating to rural children and families.

**REP. IVERSON** You stated other states are doing this, do you have anything to back this up because looking at the fiscal note, we don't know, he asked for information that she had relating to that.

**BARB ARNOLD-TENGESDAL** Stated she did have information and would submit it.

**REP. IVERSON** Asked whether she approached any corporations or businesses, if this passed, whether they would be providing this care for children?

**BARB ARNOLD-TENGESDAL** We have seen a great deal of interest from businesses. We aren't about to tell them something that hasn't happened, or might not happen.

**BRIAN WALTERS, PRESIDENT OF THE FARGO-CASS COUNTY ECONOMIC DEVELOPMENT CORPORATION**, Submitted written testimony, but did not appear before the committee. See attached testimony.

Page 5  
House Finance and Taxation Committee  
Bill/Resolution Number HB 1289  
Hearing Date January 21, 2003

**JUDY MILAVETZ, PRESIDENT OF THE NORTH DAKOTA ASSOCIATION FOR**

**THE EDUCATION OF YOUNG CHILDREN.** Did not appear at the hearing but submitted written testimony. See attached copy.

**RENIE PARKS, DAY CARE IN MINOT, ND** Testified in support of the bill. She stated they have operated an on-site day care for eleven years in Minot. It is considered part of an employee benefit package. They are open from a quarter to six in the morning to eleven thirty at night, Monday through Saturday. They service approximately ninety five families who work for Trinity Hospital. Only about ten families do not work for Trinity. That adds up to about one hundred and twenty five children cared for. She stated they were the second employee based day care in the state, Merit Care was the first.

**REP. BELTER** What benefit package do they give, if there is an employee who has children but does not use the day care, are you giving them any type of benefit?

**RENIE PARKS** No, that is their choice if they do not choose to use the day care. We are less expensive then the rest of the child care centers in town.

**LINDA REINICKE, PROGRAM DIRECTOR, CHILD CARE RESOURCE &**

**REFERRAL IN WESTERN NORTH DAKOTA** Testified in support of the bill. See attached written testimony.

**REP. BELTER** Asked where her organization gets their operating money?

**LINDA REINICKE** Stated they get their operating funds from the federal child care development funds, block grants for child care in the state, and United Way funds, etc.

**COURTNEY KOEBELE, ON BEHALF OF THE YMCA OF NORTH DAKOTA,**

Testified in support of the bill. See attached written testimony.

Page 6

House Finance and Taxation Committee

Bill/Resolution Number HB 1289

Hearing Date January 21, 2003

**COLETTE KRUCKENBERG, STUDENT** Testified in support of the bill. She is going to nursing school in Bismarck and is an independent mother of three. She stated there is a shortage of week-end child care, which is needed in the occupation of nursing. She stated a concern of hers as she is searching for a job, child care is going to be an important factor in the job she chooses and what area she will choose to live. She stated she has worked as a CNA and her wage as a CNA is twelve hundred dollars, and her child care for a month is about thirteen hundred dollars. She had to rely on child care assistance through the Welfare Program.

**JOE BECKER, STATE TAX DEPARTMENT** Testified in a neutral position. He stated there are some technical things that need to be worked out if the bill continues on course. Starting in 2002, the federal government will now have a employer child care credit on the books. The maximum credit is one hundred fifty thousand dollars per employer. Twenty five percent of their expenditures for child care, which includes, building a facility, operating a facility, and they also have a ten percent credit for resource and referral type services.

**REP. BELTER** This is a corporate tax credit?

**JOE BECKER** I believe it is for an employer, I don't know if it is limited.

**REP. BELTER** In the area of the federal income tax, as far as personal income tax, is there a federal credit for child care expense?

**JOE BECKER** Yes, there is. There is a child dependent care expense credit. Employees who are provided services of this kind, normally, that would be compensation to them, but there is a five thousand dollar exclusion for that, if the employer has a written plan for that.

**REP. BELTER** For individuals who are not earning enough to pay income tax, is there some other type of credit that they can receive on their federal filing?



Page 7

House Finance and Taxation Committee

Bill/Resolution Number HB 1289

Hearing Date January 21, 2003

**JOE BECKER** Specific to child care, I don't think so. I think you do have to be working to get that.

**REP. WINRICH** The federal employer tax credit which you described, would be a credit on the federal income tax, would it not, that does not affect the state?

**JOE BECKER** That is correct.

**REP. KELSH** Does the state of North Dakota recognize the federal individual tax credit for child care expenses?

**JOE BECKER** No

With no further testimony, the hearing was closed.

**COMMITTEE ACTION** 2-4-03, Tape #1, Side A, Meter #0.7

**REP. CLARK** Presented amendments to committee members stating the amendments basically, took care of the tax department's concern.

**REP. CLARK** Made a motion to adopt the amendments #30539.0102 as presented.

**REP. DROVDAL** Second the motion. Motion carried by voice vote.

**REP. BELTER** Presented amendments 30539.0101, which would not entitle an employer a tax credit unless he offers a benefit of comparable worth to employees who do not use the child care program.

**REP. CLARK** Made a motion to adopt the amendments.

**REP. DROVDAL** Second the motion. Motion carried by voice vote.

**REP. WINRICH** Questioned how comparable worth would be determined.

**REP. CLARK AND DROVDAL** withdrew their motions until the questions were answered.

Page 8  
House Finance and Taxation Committee  
Bill/Resolution Number HB 1289  
Hearing Date January 21, 2003

**REP. BELTER** Decided to check with the tax department regarding the determination of comparable worth before acting on the bill. The bill would be acted on later in the day.

**LATER IN THE DAY 2-4-03, Tape #1, Side A, Meter #19.9**

**REP. BELTER** Reported that he had visited with John Walstad at the legislative council, he stated that the amendments would not change the fiscal note. The tax credit would only be taken on the cost of the day care deduction.

**REP. CLARK** Made a motion to adopt amendment #30539.0101 as presented.

**REP. DROYDAL** Second the motion. Motion carried by voice vote, with one no vote.

**REP. WINRICH** Commented that he was still questioning how they will determine comparable worth, and if an employer provides health care for employees, is that considered a benefit of comparable worth.

**REP. BELTER** Comparable worth is a decision an employer will make.

**REP. IVERSON** Made a motion for a **DO PASS AS AMENDED**.

**REP. KELSH** Second the motion. **MOTION CARRIED**

7 YES      5 NO      2 ABSENT

**REP. WINRICH** Was given the floor assignment.

*La Costa Rickford*  
Operator's Signature

*10/3/03*  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1289

House Finance and Taxation Committee

☐ Conference Committee

Hearing Date February 10, 2003

Tape Number	Side A	Side B	Meter #
1		X	6.5
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

**COMMITTEE ACTION**

**REP. DROVDAL** Made a motion to reconsider the action by which the bill was passed out of committee.

**REP. WEILER** Second the motion. Motion carried.

**REP. WINRICH** Submitted an e-mail message to all committee members which he received from Joe Becker of the State Tax Department, which stated that some of the amendments to the bill made the bill hard to administer. The biggest problem were the amendments which gave benefits of comparable worth. See copy of e-mail.

**REP. CLARK** Made a motion to strip the amendments from the bill which pertained to comparable worth benefits.

**REP. WINRICH** Second the motion. Motion failed.

**REP. DROVDAL** Made a motion for a **DO NOT PASS AS AMENDED**.

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Operator's Signature

*10/3/03*  
Date

Page 2  
House Finance and Taxation Committee  
Bill/Resolution Number HB 1286  
Hearing Date February 10, 2003

**REP. GROSZ** Second the motion **MOTION CARRIED**

7 YES                  6 NO                  1 ABSENT

**REP. WINRICH** Was given the floor assignment.

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Operator's Signature

10/2/03  
Date

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**FISCAL NOTE**  
**Requested by Legislative Council**  
01/14/2003

Bill/Resolution No.: HB 1289

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

HB 1289 provides income tax credits to employers in support of childcare programs for dependents of employees. It is unknown to what degree employers would utilize the provisions of the bill. The fiscal impact cannot be determined.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Kathryn L. Strombeck	Agency:	Tax Dept.
Phone Number:	328-3402	Date Prepared:	01/20/2003

*De Costa Rickford*  
Operator's Signature

*10/2/03*  
Date

Date: 2-4-03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1289

House FINANCE & TAXATION

☐ Check here for Conference Committee

Reconsidered - 2-10-03 Committee

Legislative Council Amendment Number

30539. 0102 and

Action Taken

Do Pass as amended

Motion Made By

Rep. Iverson

Seconded By

Rep. Kelsh

Representatives	Yes	No	Representatives	Yes	No
BELTER, CHAIRMAN		✓			
DROVDAL, VICE-CHAIR	✓				
CLARK	✓				
FROELICH	A				
GROSZ		✓			
HEADLAND	✓				
IVERSON	✓				
KELSH	✓				
KLEIN		✓			
NICHOLAS	✓				
SCHMIDT	A				
WEILER		✓			
WIKENHEISER		✓			
WINRICH	✓				

Total (Yes) 7 No 5

Absent 2

Floor Assignment Rep. Winrich

If the vote is on an amendment, briefly indicate intent:

Lu Costa Rickford  
Operator's Signature

10/2/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
February 5, 2003 11:21 a.m.

Module No: HR-22-1699  
Carrier: Winrich  
Insert LC: 30539.0103 Title: .0200

**REPORT OF STANDING COMMITTEE**

**HB 1289: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 5 NAYS, 2 ABSENT AND NOT VOTING). HB 1289 was placed on the Sixth order on the calendar.**

Page 1, line 10, replace "twenty-five" with "the amount of the employer-provided child care credit allowed to that employer under Internal Revenue Code section 45F [26 U.S.C. 45F], which is attributable to amounts paid or incurred to or for qualified child care facilities in this state.

2. An employer is not entitled to the credit under this section unless the employer offers a benefit of comparable worth to its employees who do not use the employer's employee child care program or child care contribution."

Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 27

Renumber accordingly

*Mr. Costa Rickford*  
Operator's Signature

*10/3/03*  
Date

Date: 7-10-03  
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1289

House FINANCE & TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Strip Amend .0101

Motion Made By Rep. Clark Seconded By Rep. Winrich

Representatives	Yes	No	Representatives	Yes	No
BELTER, CHAIRMAN		✓			
DROVDAL, VICE-CHAIR		✓			
CLARK	✓				
FROELICH	✓				
GROSZ		✓			
HEADLAND		✓			
IVERSON		A			
KELSH		✓			
KLEIN		✓			
NICHOLAS	✓	✓			
SCHMIDT	✓				
WEILER		✓			
WIKENHEISER		✓			
WINRICH	✓				

Total (Yes) 5 No 8

Absent \_\_\_\_\_

Floor Assignment 1

If the vote is on an amendment, briefly indicate intent:

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Sh. Costa Rickford 10/3/03  
Operator's Signature Date



Date: 2-10-03  
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1289

House FINANCE & TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30539. 0103

Action Taken Do Not Pass 05 Amended

Motion Made By Rep. Drovdal Seconded By Rep. Grosz

Representatives	Yes	No	Representatives	Yes	No
BELTER, CHAIRMAN	✓				
DROVDAL, VICE-CHAIR	✓				
CLARK		✓			
FROELICH		✓			
GROSZ	✓				
HEADLAND	✓				
IVERSON	✓				
KELSH		✓			
KLEIN	✓				
NICHOLAS		✓			
SCHMIDT		✓			
WEILER	✓				
WIKENHEISER	✓				
WINRICH		✓			

Total (Yes) 7 No 6

Absent 1

Floor Assignment Rep. Belter Winrich

If the vote is on an amendment, briefly indicate intent:

Ja Costa Rickford  
Operator's Signature

10/3/03  
Date

REPORT OF STANDING COMMITTEE (410)  
February 10, 2003 12:54 p.m.

Module No: HR-25-2110  
Carrier: Belter  
Insert LC: 30539.0103 Title: .0200

**REPORT OF STANDING COMMITTEE**

**HB 1289: Finance and Taxation Committee (Rep. Belter, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO NOT PASS (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING). HB 1289 was placed on the Sixth order on the calendar.**

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Page 1, remove lines 11 through 24

Page 2, remove lines 1 through 27

Renumber accordingly

2003 TESTIMONY

HB 1289

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Lu Costa Rickford  
Operator's Signature

10/3/03  
Date

Rep. Clark

Chairman Belter and members of the committee:

HB 1289 is a bill which would give employers of working families a tax credit for contributions to child care programs for their employees.

In this bill, an employer operating a program for their employees would be eligible for a tax credit equal to 25% of their expense for providing the service. For employers that supplement child care programs for their employees, the credit is limited to a maximum of 50 % of their contributions. In addition it is capped in that no tax credit allowed for any employer providing or contributing to programs under this bill shall exceed a total of twenty thousand dollars. Furthermore, if the employer is eligible for federal deductions for providing this service, they are ineligible for tax credits on the state level.

Mr. Chairman and members of the committee this is a good bill!

I sponsored this legislation because modern working families are changing the face of North Dakota. More families than ever before have two working parents, and child care expense for working families is one of the most significant impacts on a families budget.

Although North Dakotas family wages have been increasing, they are not increasing at the same pace as in other areas of the country. As a result, the expendable income margins are squeezed more heavily when ever the parents face an expense like child care, making it harder to swallow. More often that not the fiscal realities requiring parents to limit the number of children that they have. I myself know several young families which have had to resort to one parent that stopped working because they can not afford the sole cost of the care for their children. Although it is their choice to do so, the real result is a step backward in lost income potential and in reality it adds another dependent on a sole income.

This bill seeks to limit that impact on families, by encouraging employers to contribute to child care programs for their families, or better yet, provides them with incentives to provide child care on site for their employees. Some times you need a carrot to get a mule moving. That is what I am seeking to provide in this bill. If we can incentivize employers to pick up the banner, we in reality are going to help out young families and prove that we are a child care friendly state.

Certainly we would not be alone in this venture. Twenty eight states have already recognized the impact that this haves on working families and have passed similar legislation already. Indiana is also considering legislation on this topic this year.

I believe that we need to pass legislation like this to assist our families in the quality of life issues that make this state a great place to live and raise children. Mr. Chairman, and members of the committee I will now stand for questions.



"Anne Cooper"  
<anne.cooper@us.ing.  
com>

To: bolark@state.nd.us  
cc:  
Subject: HB 1289 -- letter of support from Minot business

01/17/2003 05:42 PM

Hello Rep. Byron Clark--

My name is Anne Cooper and I am the Human Resources Director and Facilities Manager at ING in Minot. I am writing in support of HB 1289, establishing tax credits for businesses offering child care support for their employees. I'm sorry that I can't be in Bismarck to testify in person, but I'll be in Hartford, CT on business. Please share my comments with the committee.

The ING Service Center in Minot has an on-site child care center, and we consider ourselves very fortunate to have this service available for our 750 employees. Our child care center is run by Children's Home Society of Minnesota (CHSM). Our company owns and maintains the facility on our property--and CHSM staffs the center. We subsidize the center in two ways: 1) we cover the expenses associated with the building/facility, keeping costs lower; and 2) we give our employees an additional reduction in child care fees (as compared to the fees for non-ING children).

Our child care center functions as an early childhood development center and can accommodate up to 68 children, infants through first day of first grade. We have excellent ratios of caregivers to children, certified early childhood development instructors in the pre-school, a secure building with key-card access, an outdoor playground and indoor gym, and a full-service kitchen. At this time we have two-thirds of the children belonging to our employees and one-third to community members.

Thanks to the quality of this child care center, we have a wonderful reputation in the community. We are the employer of choice in Minot, due in part to our progressive approach to establishing work/life balance for our employees. The child care center has been a great recruiting tool and has helped us gain some much needed name recognition when our company located in Minot in 1999. Even those employees without young children love having the child care center on site. The children come over to our center for a Halloween parade each year, we have their artwork on our walls, and we enjoy seeing them in their group strollers throughout our outdoor campus.

While we went ahead and established the child care center without the incentive of employer tax credits, I believe that many employers would be encouraged to investigate the benefits of on-site child care with this added incentive. In combination with other economic development incentives that employers have available, HB1289 could really begin to make an impact in the lives of our citizens.

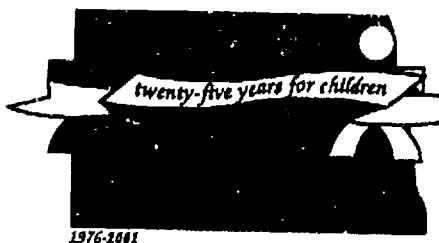
Thank you for the opportunity to share my opinion.

Anne Cooper  
Human Resources  
ING Minot Service Center  
701-858-2011

*La Costa Rickford*  
Operator's Signature

*10/3/03*  
Date

VOICES FOR NORTH DAKOTA'S CHILDREN



CENTER FOR EARLY CHILDHOOD LEADERSHIP & ADVOCACY

**To: Wesley Belter, Chairman, House Finance and Taxation Committee**

**From: Barb Arnold-Tengesdal, Executive Director, Voices for North Dakota's Children**

**Date: January 21, 2003**

**Re: Testimony in support of HB 1289**

*Voices for North Dakota's Children* is a collaborative advocacy effort of early childhood education professional organizations. It is made up of the North Dakota Head Start Association, North Dakota Association for the Education of Young Children, NDCCPI (North Dakota Child Care Providers Incorporated), Child Care Resource & Referral Network, Children's Caucus, North Dakota Professional Development leadership team, Children's Services Coordinating Committee's and tribal early childhood partners.

We urge your support of HB 1289 because it is good for children. It is good for working families. It is good for communities. It is good for state economic development. It is good for businesses.

Economic development efforts will not be successful without community infrastructure to support the needs of employees. Child care is a fundamental piece to job development in both rural and urban areas of our state (*A Rural Road: Exploring Economic Opportunities. The Great Plains Collaborative Project- North Dakota Data Center 2001*). North Dakota is second in the nation with two parents working. These families often are piecing together several low wage jobs. Child care can be a substantial expense for these households.

The latest study by the NMLC showed 28 states have enacted employer tax credits for child care. The fiscal impact on states has been far less than expected for several reasons. Many corporations have little state tax liability to apply against a credit. In 18 or 20 states that were studied, five or fewer corporations claimed the tax credit. In 5 of the 18 states, no corporations claimed the credit. So why do it? If it is taken by businesses, it has a significant impact on families. We believe even one business in a rural area will make a significant difference to the community. There are several on-site child care programs working in our state, making a difference in the recruiting and retention of workers to those businesses.

HB 1289 will:

- > Give parents more choices of quality, reliable child care that they can afford.
- > Increase worker productivity due to fewer child care disruptions and higher morale among employees.
- > Encourage employers to offer benefits to attract and retain a young workforce.
- > Give North Dakota a competitive edge in economic development with other states who offer child care incentives.
- > Create business and community partnerships that will strengthen the child care infrastructure.
- > Create more child care openings in much needed areas of the state.

*Grow North Dakota.... Invest in Children.*

*Child care keeps families working!*

410 E. Thayer Avenue, Suite 2 ♦ Bismarck, ND 58501 ♦ Phone: 701-224-1445 ♦ Toll Free: 1-866-204-3322 ♦ Fax: 701-255-0848

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*Y. Costa Rickford*  
Operator's Signature

*10/3/03*  
Date

Barb Arnold Tergeed  
HB 1289

A Rural Road: Exploring Economic Opportunity,  
Social Networks, Services and Supports That  
Affect Rural Families -  
The Rural Great Plains Collaborative Project  
12/2001

## A Look at Rural Children and Families

Two major themes were identified in the area of Services and Supports. They are child care and medical care. Both require employment benefits or insurance to help pay the costs. The map on the Income Maintenance Payments Per Capita in Nebraska, North Dakota and South Dakota by County: 1999 (page 32) shows that most of the counties in the three states have maintenance payments of less than \$300. Counties with the highest proportions of income maintenance payments and poverty tend to be the Native American reservation areas. Realize that income maintenance programs help sustain a current level of income, but do not necessarily bring recipients up to a higher level of income.

### Childcare

One of the more frustrating obstacles to employment for rural parents is the lack of high-quality and affordable child care. Participants express concern that they are being required to work, but there is no place to leave their children. The Women with Children Under 6 Years: Percent in the Labor Force in Nebraska, North Dakota and South Dakota by County: 1990 map (page 33) illustrates that the counties with the highest proportion of women in the labor force with preschool age children tend to be fairly dispersed. It is noteworthy that counties with a high proportion of women in the labor force do not tend to be those with a high average wage per job. One participant mimicked, "Get out and work, get out and work, but are they helping us to get the quality of daycare that we need?" Others stated, "You know, we have zero daycare it seems like. I quit my job



just for the simple fact that daycare is scarce in our community," and, "Over half my paycheck goes to childcare each week but I know they're going to be OK when I'm gone...It's not affordable but it's good. The ones you can afford you don't really want to leave them there."

Access to affordable and high quality childcare is a serious concern for many focus group participants. They note an additional concern that confusion about child care licensing requirements has prompted some providers to shut their doors.

Another barrier for parents is that children with disabilities or health problems are very difficult to place into any childcare facility. Childcare providers cite higher costs of insurance and lack of staff training as reasons they cannot take children with special needs.

The requirement for childcare during nontraditional hours is also viewed as a challenge to many families, "One of the things is that there are no day care places that are open from 10 pm to 6 am." Parents who work less traditional hours must rely on friends, relatives, and at times other less reliable childcare.

Programs that prepare children for school, such as preschool and Head Start are not available for many children. Parents feel that their young children are missing out on an important educational building block that affects readiness for school.

Operator's Signature Y. Costa Rickford

Date 10/3/03

## A Look at Rural Children and Families

As with focus group participants, many key informants are very frustrated with the lack of available, affordable, high quality childcare in their areas. Key informants also see that, in addition to limited childcare resources, programs that specialize in child development like Head Start are filled to the limit. One key informant observes, *"Families are beginning to understand quality child care as opposed to dropping children at a depository."*

The high cost of childcare, when combined with low wages, can impact the feasibility of parents' seeking employment. When there is serious concern about the quality of care available to their children, parents experience stress, which may influence job retention and satisfaction. The situation becomes more complicated for families with special needs children, for whom childcare resources and provider training are extremely limited.

### Medical

Another area of great concern to focus group participants throughout all three states is the issue of medical care. Medical care included hospital or clinic care, dental care, and eye care. One participant voices a concern heard at many of the focus groups, *"Now, everything's being consolidated and you've got the transportation issue; you've increased numbers being served in one place."* Another stated, *"We do not have access to enough doctors - we don't have any kind of emergency room services... we have to come to town for that... which is kind of scary when you think about that."*

During the discussions, a myriad of problems associated with medical care arose. Most concerns centered on the access to care, continuity of care, and the difficulty of getting and keeping medical insurance.

Access to medical care was a serious concern. *"I think in the rural communities that a key point is that the services aren't there. I mean we travel over 100 miles each way to take our kids to therapy."*

Focus group participants often have to travel great distances to see a medical professional, only to be referred to a larger community with more specialists. Community or regional facilities often operate on a limited basis with patients seeing nurses or physicians assistants in most cases. Many of the available facilities operate during limited hours and days. Individuals without access to reliable transportation have very few health care options and few communities have specialty medical care, such as dentists and eye doctors. Once again, considerable travel is often required to get these kinds of special services. Said one participant, *"they can't keep the doctors and dentists."* Residents of rural communities also sense that the number of medical personnel who choose to practice in rural areas are affected by rural isolation, as one participant wryly notes *"...they say 'oh my gosh we're at the end of the world.'"*

Continuity of care is also a concern. Focus group participants express concern about the high turnover rate of health professionals in rural areas. *"I think one of the biggest problems we have is the big turnaround. My son has had 5 or 6 different counselors, they either quit or move on."* Mergers and takeovers of small medical centers have reduced the number of physicians and the doctor-patient relationship has suffered.



Dear Representative Kelsh:

Please accept this correspondence as support for House Bill 1289. Generally, I would support bills endorsed by the Greater North Dakota Association and the Fargo-Moorhead Chamber of Commerce. These organizations do a great job of supporting legislation that improves the business climate of North Dakota.

I know several states have passed legislation to encourage the development of employee child care programs. These programs appear to help working families with improved access to child care and benefit employers with a more focused, productive workforce.

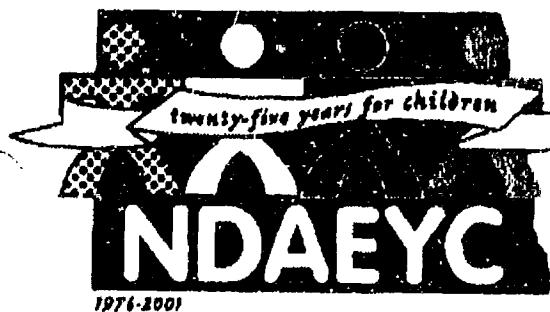
I'm sorry I cannot be in Bismarck today and that I have not had time to better understand the impact of employer tax credit programs for child care. Thank you for your efforts to enhance the business climate and standard of living in North Dakota. As always, please do not hesitate to call me if I can be of assistance.

Respectfully,

Brian Walters  
President  
Fargo-Cass County Economic Development Corporation  
(701) 364-1917  
brian@fedc.com

La Costa Rickford  
Operator's Signature

10/3/03  
Date



## North Dakota Association for the Education of Young Children

*submitted but did not testify*

To: Wesley Belter, Chairman, House Finance and Taxation Committee  
From: Judy Milavetz, President, North Dakota Association for the Education of Young Children  
Date: January 21, 2003  
RE: Testimony in support of HB 1289

The North Dakota Association for the Education of Young Children strongly urges your support of HB 1289 to address critical child care and workforce challenges in our state. Over the last decade, North Dakota has simultaneously maintained low unemployment and one of the highest rates of working mothers in the nation, with approximately three quarters of children under six with all parents in the workforce. (*Children's Defense Fund, 2002*) As a result, availability of suitable child care is a crucial issue for young families making employment decisions. In a recent local study, 16.1% of parents surveyed indicated that it was difficult to find child care. In-depth interviews confirmed the struggle faced by many families in obtaining safe, reliable care for their children. (*Child Care Arrangements in Grand Forks, 2000*)

Studies substantiate the role that child care plays in bolstering the workforce and in helping families attain self-sufficiency. Research by the National Conference of State Legislatures determined lack of access to child care to be a serious impediment for single parents leaving welfare. (*NCSL, 1998*) A report by the federal JOBS program found that parents with poor quality child care were more likely to terminate employment than those with good quality care. (*Financing Child Care, The David and Lucile Packard Foundation, 1996*) HB 1289 could provide parents greater access to quality child care at affordable prices.

Investment in child care has proven advantages to the labor force that extend beyond those individuals receiving direct benefits. Analysts estimate \$3 billion in annual nationwide business losses due to absenteeism, turnover, and lost productivity related to child care disruptions. (*CO Commission on Child Care Financing, 1995*) In one study, 25% of mothers had experienced child care breakdowns in just a three month period of time. (*Legislator's Guide to Child Care Policy, 1997*) Nearly half the parents interviewed in a local survey reported that child care problems had created some problems for them in their workplace. (*Child Care Arrangements in Grand Forks, 2000*) The U.S. Department of the Treasury purports that public-private initiatives promote quality, affordability, and availability of child care not only for a particular group of employees, but for the broader community. (*Investing in Child Care, 1998*)

Provision of high quality child care offers extensive savings for all taxpayers. The groundbreaking Perry Preschool Project cites a \$7.16 return on the dollar, realized through lower rates of special education, school drop-outs, unemployment, social welfare, and crime. (*Significant Benefits, High/Scope Press, 1993*) The Abecedarian Project demonstrated that children in high quality child care beginning in infancy achieved greater academic success through age 21. (*Early Learning, Later Success, 2000*) Another ongoing study has noted that resources for training caregivers improves children's outcomes. (*National Institute on Child Health and Human Development Study of Early Child Care and Youth Development, 2002*)

HB 1289 gives incentives for businesses to make a commitment to North Dakota's children and families that reaches beyond consumers of child care. As economists have noted, the child care market cannot operate on a normal supply and demand basis due to the high cost of services relative to parent income. (*Financing Child Care, 1996*) Attracting employer support would maximize the use of public funding. As you make tough decisions on allocation of resources, please consider the significant economic, social, and educational rewards from investing in child care and workforce development.

*"Dedicated to collaborative efforts enhancing quality care and education for all young children."*

*LaCosta Rickford*  
Operator's Signature

*10/2/03*  
Date

Comments of Linda Reinicke  
House Finance and Taxation Committee  
Regarding House bill 1289  
January 21, 2003

Chairman Belter and Members of the Committee:

I am Linda Reinicke, Program Director for Child Care Resource & Referral in western ND. I represent the statewide Network of Child Care Resource and Referral agencies. Child Care Resource & Referral (CCR&R) offices are located in non-profit agencies in Minot, Devils Lake, Grand Forks, Fargo, Jamestown, and Bismarck. The Federal Child Care Development Fund, foundation grants, and community resources fund CCR&R.

In 2002, CCR&R helped 3,926 parents search for child care. We talk with parents about the various child care options and send a list of providers that match their specific care needs. We give them questions to ask, things to look for in the interview process and inform them how to check references on potential child care providers. Our database includes 1,597 licensed child care providers. In addition to our work with parents, we support the start of center and home-based child care businesses, train child care providers, and work with employers and communities to address their child care needs.

Our work with parents, providers, and communities affords us a comprehensive picture of child care throughout the state. The current child care system does not provide an adequate supply of quality of child care necessary to ensure children are well cared for so that parents can work without distraction. The child care industry struggles with:

- **High costs.** The labor-intensive nature of child care keeps costs high. 73% of center income is spent on salaries. Center employees, however, receive an average of \$ 5.50 per hour.

- **The availability of care.** North Dakota has approximately 1,500 family providers and 120 centers. Yet, finding care, particularly infant or odd-hour care is challenging. Recent calls to the Bismarck CCR&R office are the norm for the rest of the state. From January 1 – 15 of this year, our Bismarck office received 32 calls for infant care (6 weeks to 12 months) in the Bismarck/Mandan area. There are, however 28 openings.
- **The quality of programming.** The turnover, in center and family child, impacts the quality of care available. Last year 19% of family child care providers and 36% center staff left the field.
- **Recruitment and training good staff.** Maintaining a competent and professional staff is difficult when the ability to recruit and retain staff is minimized by low salaries, no benefits and often-stressful working conditions.
- **Inadequate funding.** Parents are the primary financial support of child care operations, yet the average family pays \$ 4,000-\$5,000 a year for child care. Monthly child care expenses rival house payments.

Parents can't do it alone. Families that cannot afford to pay for good care make one of several choices; they work fewer hours, buy lower quality care, leave their children unattended, or they drop out of the labor force altogether.

Some North Dakota businesses are supporting child care in a variety of ways:

- ING of Minot built on-site child care for their employees.
- Jamestown businesses donate supplies, equipment and cash to child care programs

- Main street business in Parshall converted a vacant house owned by the city into a child care facility
- Fargo and Grand forks employers work with CCR&R to conduct workplace seminars on understanding the childcare market and to provide enhanced referrals improving employee's ability to find child care.

This bill for employer tax credits is not going to, single handedly, solve the child care dilemmas. It will, however, bring another resource to table and encourage employers to work with their communities to address local child care needs. The right mix of funding and support can make quality child care available for all parents who need it, give employees ability to be at work confident their child is well cared for, and employers the ability to recruit and retain employees.

Thank you

Shirley Costa Rickford  
Operator's Signature

10/3/03  
Date

January 21, 2003

HOUSE FINANCE & TAXATION COMMITTEE  
HB 1289

REPRESENTATIVE BELTER AND COMMITTEE MEMBERS:

My name is Courtney Koebele. I am appearing today on behalf of the YMCAs of North Dakota. We strongly support HB 1289 and urge your favorable consideration.

Day care needs are growing in North Dakota beyond anyone's comprehension. In Bismarck, the YMCA just completed a multi-million dollar addition to its building primarily designed for day care for infants and toddlers as well as other youngsters. We currently have a waiting list for enrollment.

This type of legislation has been successful in other states. It proves helpful to employers, since it makes it easier for them to recruit and keep a happy, productive workforce. It helps families, since it allows varied work schedules. And, it helps children find a better and more structured care environment than simply having a babysitter coming into the home.

The Tax Department was unable to produce a fiscal note because of the uncertainties involved with this proposal. I don't believe you will see a mad rush of employers using this tool. Rather, it will be used selectively as employers see how it will assist them and their employees.

We respectfully urge a "do pass" from this committee.

If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

*La Costa Rickford*  
Operator's Signature

*10/3/03*  
Date



HB 1289

# Memo

**To:** Rep. Wes Belter, Chairman, House Finance and Tax Committee

**From:** Joseph Becker, Auditor III/Research Specialist  
Individual Income Tax Section, 16th Floor

Phone: 8-3451

E-mail: jbecker@state.nd.us

**Date:** Tuesday, January 21, 2003

**Re:** House Bill 1289 (Employer-provided child care credit)

Chairman Belter:

This memo addresses the following two items:

- **Item 1:** Your question about the scope of the new federal employer-provided child care credit: Does it apply only to corporations, or does it apply to other entities as well?
- **Item 2:** Information about the new federal employer-provided child care credit. (I believe that Rep. Iverson was interested in knowing more about it.)

For **Item 1** above, the new federal employer child care credit (which is very much like House Bill 1289 in its concept and workings) is available to all "employers," regardless of the type of tax entity. Therefore, it is available to an individual (operating a sole proprietorship), regular corporation, S corporation, partnership, etc.

For **Item 2** above, I've attached the following two documents:

- 2002 Form 8882, the new federal form that an employer must complete and attach to the applicable federal income tax return to claim the credit. The instructions to the form provide a quick look at the basic provisions.
- The text of Internal Revenue Code Section 45F, the federal income tax law providing for the new employer-provided child care credit. This section was created in 2001 as part of the Economic Growth and Tax Relief Reconciliation Act of 2001. I've attached this for two reasons: (1) The law is new, so the text of the law itself provides the best source for details; and, (2) The instructions to Form 8882 refer to the law for the details.

As a footnote to your inquiry about any child care credits allowed to individuals with children, the federal child and dependent care credit (on Form 2241) that I mentioned was also changed by the Economic Growth and Tax Relief Reconciliation Act of 2001. The maximum amount of the credit was increased from 30% to 35% of eligible expenses (this percentage is phased down to a minimum of 20% as the amount of adjusted gross income increases), and the maximum amount of eligible expenses to which this rate is applied was increased from \$2,400 per child (\$4,800, if two or more children) to \$3,000 and \$6,000, respectively.

If I can be of further assistance, Chairman Belter, do not hesitate to contact me.

*La Costa Rick David*  
Operator's Signature

10/2/03  
Date

Form **8882**Department of the Treasury  
Internal Revenue Service  
Name(s) shown on return**Credit for Employer-Provided Child Care  
Facilities and Services**

▶ Attach to your tax return.

OMB No. 1545-1809

**2002**Attachment  
Sequence No. **131**

Identifying number

**Part I Current Year Credit** (Members of controlled groups or businesses under common control, see instructions.)

1	Qualified child care facility expenditures paid or incurred (see instructions)	1			
2	Enter 25% (.25) of line 1	2			
3	Qualified child care resource and referral expenditures paid or incurred	3			
4	Enter 10% (.10) of line 3	4			
5	Form 8882 credits from pass-through entities:				
	If you are a—	Then enter the total of the Form 8882 credits from—			
	a Shareholder	Schedule K-1 (Form 1120S) lines 12d, 12e, or 13			
	b Partner	Schedule K-1 (Form 1065) lines 12c, 12d, or 13			
	c Beneficiary	Schedule K-1 (Form 1041) line 14			
6	Add lines 2, 4, and 5	6			
7	Current year credit. Enter the smaller of line 6 or \$150,000 (S corporations, partnerships, estates, and trusts, see instructions)	7			

**Part II Allowable Credit** (See Who must file Form 3800 to find out if you complete Part II or file Form 3800.)

8	Regular tax before credits:				
	• Individuals. Enter the amount from Form 1040, line 42				
	• Corporations. Enter the amount from Form 1120, Schedule J, line 3; or the applicable line of your return				
	• Estates and trusts. Enter the sum of the amounts from Form 1041, Schedule G, lines 1a and 1b, or the amount from the applicable line of your return				
9	Alternative minimum tax:				
	• Individuals. Enter the amount from Form 6251, line 35				
	• Corporations. Enter the amount from Form 4626, line 15				
	• Estates and trusts. Enter the amount from Form 1041, Schedule I, line 56				
10	Add lines 8 and 9				
11a	Foreign tax credit	11a			
b	Credit for child and dependent care expenses (Form 2441, line 11)	11b			
c	Credit for the elderly or the disabled (Schedule R (Form 1040), line 24)	11c			
d	Education credits (Form 8863, line 18)	11d			
e	Credit for qualified retirement savings contributions (Form 8880, line 14)	11e			
f	Child tax credit (Form 1040, line 50)	11f			
g	Mortgage interest credit (Form 8396, line 11)	11g			
h	Adoption credit (Form 8839, line 18)	11h			
i	District of Columbia first-time homebuyer credit (Form 8859, line 11)	11i			
j	Possessions tax credit (Form 5735, line 17 or 27)	11j			
k	Credit for fuel from a nonconventional source	11k			
l	Qualified electric vehicle credit (Form 8834, line 20)	11l			
m	Add lines 11a through 11l	11m			
12	Net income tax. Subtract line 11m from line 10. If zero, skip lines 13 through 16 and enter -0- on line 17	12			
13	Net regular tax. Subtract line 11m from line 8. If zero or less, enter -0-	13			
14	Enter 25% (.25) of the excess, if any, of line 13 over \$25,000 (see instructions)	14			
15	Tentative minimum tax (see instructions):	15			
	• Individuals. Enter the amount from Form 6251, line 33				
	• Corporations. Enter the amount from Form 4626, line 13				
	• Estates and trusts. Enter the amount from Form 1041, Schedule I, line 54				
16	Enter the greater of line 14 or line 15	16			
17	Subtract line 16 from line 12. If zero or less, enter -0-	17			
18	Credit allowed for the current year. Enter the smaller of line 7 or line 17 here and on Form 1040, line 53; Form 1120, Schedule J, line 6d; Form 1120-A, Part I, line 2a; Form 1041, Schedule G, line 2c; or the applicable line of your return. If line 17 is smaller than line 7, see instructions	18			

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 33438Y

Form 8882 (2002)

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Operator's Signature

La Costa Rickford

10/3/03

Date



**Estates and trusts.** The credit on line 7 is allocated between the estate or trust and the beneficiaries in proportion to the income allocable to each. On the dotted line next to line 7, the estate or trust should enter its part of the total credit. Label it "1041 Portion" and use this amount in Part II (or Form 3800, if required) to figure the credit to claim on Form 1041.

## Part II—Allowable Credit

The credit allowed for the current year may be limited based on your tax liability. Use Part II to figure the allowable credit unless you must file Form 3800, General Business Credit.

**Who must file Form 3800.** You must file Form 3800 if you have:

- A credit for employer-provided child care facilities and services from a passive activity,
- More than one of the credits included in the general business credit (other than a credit from Form 8844 or 8884), or
- A carryback or carryforward of any of those credits.

See the instructions for Form 3800 to find out which credits are included in the general business credit. If you must file Form 3800, enter the credit from line 7 of this form on Form 3800, line 1a.

### Line 14

See section 38(c)(4) for special rules that apply to married couples filing separate returns, controlled corporate groups, estates, and trusts.

### Line 15

Although you may not owe the alternative minimum tax (AMT), you generally must still compute the tentative minimum tax (TMT) to figure your allowable credit. For a small corporation exempt from the AMT under section 55(e), enter zero. Otherwise, complete and attach the applicable AMT form or schedule and enter the TMT on line 15.

### Line 18

If you cannot use all of your credit because of the tax liability limit (line 17 is smaller than line 7), carry the unused credit back 1 year then forward up to 20 years. See the instructions for Form 3800 for details.

**Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue law of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping . . . . . 8 hr., 7 min.

Learning about the law or the form . . . . . 42 min.

Preparing and sending the form to the IRS . . . . . 51 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.

**Internal Revenue Code**

**Sec. 45F. Employer-provided Child Care Credit**

**Sec. 45F. Employer-provided Child Care Credit**

**(a) In General.--**

For purposes of section 38, the employer-provided child care credit determined under this section for the taxable year is an amount equal to the sum of--

- (1) 25 percent of the qualified child care expenditures, and
- (2) 10 percent of the qualified child care resource and referral expenditures, of the taxpayer for such taxable year.

**(b) Dollar Limitation.--**

The credit allowable under subsection (a) for any taxable year shall not exceed \$150,000.

**(c) Definitions.--**

For purposes of this section--

**(1) Qualified Child Care Expenditure.--**

**(A) In General. -**

The term 'qualified child care expenditure' means any amount paid or incurred--

- (i) to acquire, construct, rehabilitate, or expand property--
  - (I) which is to be used as part of a qualified child care facility of the taxpayer,
  - (II) with respect to which a deduction for depreciation (or amortization in lieu of depreciation) is allowable, and
  - (III) which does not constitute part of the principal residence (within the meaning of section 121) of the taxpayer or any employee of the taxpayer,
- (ii) for the operating costs of a qualified child care facility of the taxpayer, including costs related to the training of employees, to scholarship programs, and to the providing of increased compensation to employees with higher levels of child care training, or
- (iii) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer.

**(B) Fair Market Value. --**

The term 'qualified child care expenditures' shall not include expenses in excess of the fair market value of such care.

(2) Qualified Child Care Facility.--

(A) In General.--

The term 'qualified child care facility' means a facility--

- (i) the principal use of which is to provide child care assistance, and
- (ii) which meets the requirements of all applicable laws and regulations of the State or local government in which it is located, including the licensing of the facility as a child care facility. Clause (i) shall not apply to a facility which is the principal residence (within the meaning of section 121) of the operator of the facility.

(B) Special Rules With Respect To A Taxpayer.--

A facility shall not be treated as a qualified child care facility with respect to a taxpayer unless--

- (i) enrollment in the facility is open to employees of the taxpayer during the taxable year,
- (ii) if the facility is the principal trade or business of the taxpayer, at least 30 percent of the enrollees of such facility are dependents of employees of the taxpayer, and
- (iii) the use of such facility (or the eligibility to use such facility) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

(3) Qualified Child Care Resource And Referral Expenditure.--

(A) In General.--

The term 'qualified child care resource and referral expenditure' means any amount paid or incurred under a contract to provide child care resource and referral services to an employee of the taxpayer.

(B) Nondiscrimination.--

The services shall not be treated as qualified unless the provision of such services (or the eligibility to use such services) does not discriminate in favor of employees of the taxpayer who are highly compensated employees (within the meaning of section 414(q)).

(d) Recapture Of Acquisition And Construction Credit.--

(1) In General.--

If, as of the close of any taxable year, there is a recapture event with respect to any qualified child care facility of the taxpayer, then the tax of the taxpayer under this chapter for such taxable year shall be increased by an amount equal to the product of--

- (A) the applicable recapture percentage, and
- (B) the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted if the qualified child care expenditures of the taxpayer described in subsection (c)(1)(A) with respect to such facility had been zero.

(2) Applicable Recapture Percentage.--

(A) In General.--

For purposes of this subsection, the applicable recapture percentage 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.

(B) Years.--

For purposes of subparagraph (A), year 1 shall begin on the first day of the taxable year in which the qualified child care facility is placed in service by the taxpayer.

(3) Recapture Event Defined.--

For purposes of this subsection, the term 'recapture event' means--

(A) Cessation Of Operation.--

The cessation of the operation of the facility as a qualified child care facility.

(B) Change In Ownership.--

(i) In General.--

Except as provided in clause (ii), the disposition of a taxpayer's interest in a qualified child care facility with respect to which the credit described in subsection (a) was allowable.

(ii) Agreement To Assume Recapture Liability.--

Clause (i) shall not apply if the person acquiring such interest in the facility agrees in writing to assume the recapture liability of the person disposing of such interest in effect immediately before such disposition. In the event of such an assumption, the person acquiring the interest in the facility shall be treated as the taxpayer for purposes of assessing any recapture liability (computed as if there had been no change in ownership).

(4) Special Rules.--

(A) Tax Benefit Rule.--

The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

(B) No Credits Against Tax.--

Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

(C) No Recapture By Reason Of Casualty Loss.--

The increase in tax under this subsection shall not apply to a cessation of operation of the facility as a qualified child care facility by reason of a casualty loss to the extent such loss is restored by reconstruction or replacement within a reasonable period established by the Secretary.

(e) Special Rules.--

For purposes of this section--

(1) Aggregation Rules.--

All persons which are treated as a single employer under subsections (a) and (b) of section 52 shall be treated as a single taxpayer.

(2) Pass-thru In The Case Of Estates And Trusts.--

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(3) Allocation In The Case Of Partnerships.--

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

(f) No Double Benefit.--

(1) Reduction In Basis.--

For purposes of this subtitle--

(A) In General.--

If a credit is determined under this section with respect to any property by reason of expenditures described in subsection (c)(1)(A), the basis of such property shall be reduced by the amount of the credit so determined.

(B) Certain Dispositions.--

If, during any taxable year, there is a recapture amount determined with respect to any property the basis of which was reduced under subparagraph (A), the basis of such property (immediately before the event resulting in such recapture) shall be increased by an amount equal to such recapture amount. For purposes of the preceding sentence, the term 'recapture amount' means any increase in tax (or adjustment in carrybacks or carryovers) determined under subsection (d).

(2) Other Deductions And Credits.--

No deduction or credit shall be allowed under any other provision of this chapter with respect to the amount of the credit determined under this section.

(Added by Pub. L. 107-16, title II, Sec. 205(a), June 7, 2001, 115 Stat. 38; amended by Pub. L. 107-147, title IV, Sec. 411(d)(1), Mar. 9, 2002, 116 Stat. 21.)

**Background Notes for Sec. 45F**

**Amendments**

2002 - Subsec. (d)(4)(B). Pub. L. 107-147, Sec. 411(d)(1), amended subpar. (B) by substituting "this chapter or for purposes of section 55" for "subpart a, B, or D of this part".

**Effective Date of 2002 Amendment**

Amendment by Sec. 411(d)(1) of Pub. L. 107-147 effective as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107-16, Sec. 205] to which they relate.

**EFFECTIVE DATE**

Effective for taxable years beginning after December 31, 2001.

Section 901 (Sunset of Provisions of Act) of Pub. L. 107-16, as amended by Pub. L. 107-358, provided that:

"(a) IN GENERAL.--All provisions of, and amendments made by, this Act shall not apply--

(1) to taxable, plan, or limitation years beginning after December 31, 2010, or

"(2) in the case of title V, to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2010.

"(b) APPLICATION OF CERTAIN LAWS.--The Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 shall be applied and administered to years, estates, gifts, and transfers described in subsection (a) as if the provisions and amendments described in subsection (a) had never been enacted.

"(c) EXCEPTION.--Subsection (a) shall not apply to section 803 (relating to no federal income tax on restitution received by victims of the Nazi regime or their heirs or estates)."

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1/21/2003

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*La Costa Rickford*  
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*10/2/03*  
Date



"Becker, Joe J."  
<jbecker@state.nd.us>  
>

To: "Winrich, Lonny B." <lwinrich@state.nd.us>  
cc:

Subject: Your question about "comparable worth" in the amendment to  
House Bill 1289

02/06/2003 01:42 PM

Rep. Winrich:

The amendment to HB 1289 (employer-provided child care credit) that requires the employer to provide a benefit of comparable worth to those employees who do not use the child care services will be problematic to employers and our office. Following are some of the areas of concern that come to mind:

- The terms "benefits" and "comparable worth" are not defined.

What kinds of benefits are permitted to meet this criteria? Does it matter if the benefits are taxable or nontaxable to the employee? What form must the benefits be in—that is, cash or noncash, or both? If the benefit consists of property other than cash, how is the property's value to be determined—its actual cost or its fair market value? If fair market value, is an appraisal required? Does the Tax Department have to accept the appraisal? Can the employer fulfill this requirement by providing inventory items or services of some other kind?

For purposes of determining comparable worth, how is this to be determined by the employer? This value depends on the value of child care benefits provided to those employees who use the child care services; the value of child care services may differ from one employee to the next. Is the value to be determined on an aggregate child care cost basis and prorated to all employees using the child care services? Do all of the employees have to receive the same amount of benefits? How are the comparable worth benefits to be doled out to the employees not using the child care services? How does the employer make sure that the benefits given to each group of employees is equal (or fair)?

Employers will need to have clear answers to these (and I'm sure other) questions. If this is too complicated, it just makes it cumbersome for the employer to take advantage of the credit.

- There will be additional bookkeeping for employers.

The bookkeeping and management duties will increase for employers. They'll need to keep adequate records to account for the employees who use and do not use the child care services, and to calculate the value of child care services provided to them (either individually or in the aggregate, depending on how the benefit value is supposed to be determined). The Tax Department's need for the information necessary to ensure that employers have satisfied the comparable worth benefit criteria may result in a more complex tax return, which again makes the process more cumbersome for employers.

- There may be additional cost to employers.

It is not clear from the language of the amendment whether the comparable worth benefit criteria requires the employer to incur additional costs to satisfy it. If the employer provides cash or some other additional fringe benefit to those employees not using child care services, there may be additional costs that the employer must absorb. Or, depending on what other kinds of benefits are allowable, perhaps the employer can provide benefits in the form of inventory items, services, etc., that do not necessarily require an additional cash outlay. (Here, again, there is the problem of ascertaining the value of the inventory item or service.)

- The comparable worth benefit requirement undermines the simplicity of piggy-backing off of the federal tax credit.

One of the main reasons for piggy-backing off of the federal tax credit was to make it as easy as possible for the employer to take advantage of the credit. It also simplifies the administration of the credit by the Tax Department. The comparable worth benefit criteria certainly complicates the

*La Costa Rickford*  
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*10/3/03*  
Date

process for employers, particularly those employers who do not currently provide child care services, and it will make the Tax Department's administration more difficult.

These are the items that immediately come to mind. If you need anything more, Rep. Winrich, do not hesitate to contact me by phone or e-mail.

Joseph J. Becker  
ND Office of State Tax Commissioner  
Phone: 8-3451  
E-mail: jbecker@state.nd.us

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