

Section 17052.6 is adopted to read:

§ 17052.6. Child and Dependent Care Expenses Credit.

(a) Substantiation. A taxpayer claiming a credit for employment-related expenses must maintain adequate records to substantiate entitlement to the Child and Dependent Care Expenses Credit, as provided in this regulation.

(b) Adequate records. A taxpayer must retain:

(1) The qualifying child/dependent's birth certificate and Social Security Account Number card to establish the identity, age, and taxpayer identification number of the taxpayer's qualifying child/dependent.

(2) Medical records that demonstrate the physical or mental incapacity of the qualifying child/dependent, if applicable.

(3) If the care provider is an individual, a combination of at least one document from subsection (b)(3)(A) and one document from subsection (b)(3)(B) to establish the identity and taxpayer identification number of the taxpayer's care provider.

(A) Documents that establish identity:

- (i) U.S. Passport.
- (ii) Driver's license issued by any state within the United States.
- (iii) U.S. Passport Card.
- (iv) Permanent Resident Alien Card.
- (v) Alien Registration Receipt Card (Form I-551).
- (vi) Foreign passport that contains a temporary I-551 stamp.
- (vii) Temporary I-551 printed notation on a machine-readable immigrant visa.
- (viii) Employment Authorization Document that contains a photograph (Form I-766).
- (ix) State-issued ID card with a photograph issued by any state within the United States
- (x) School ID card with a photograph.
- (xi) Native American tribal document.

(B) Documents that establish taxpayer identification number:

- (i) Social Security Account Number card.
- (ii) Individual Taxpayer Identification Number card.

(4) Documents that establish the physical location at which the care was provided, if the care was not provided in the taxpayer's home, such as the provider's California driver's license or identification card reflecting the address at which the care was provided or utility bills in the provider's name for the address at which the care was provided.

(5) Proof of payment, such as canceled checks/money orders, receipts, year-end statements, or invoices, to substantiate the employment-related expenses paid to the care provider by the taxpayer.

(c) Other sufficient evidence. In the event that the taxpayer is not able to acquire or maintain adequate documentation as provided in subsection (b), the taxpayer may produce other such evidence which is sufficient to establish each of the requirements under subsection (b) and entitlement to the Child and Dependent Care Expenses Credit.

(d) Maintenance and retention of records. The records or evidence required by this regulation shall be kept in accordance with Internal Revenue Code section 6001 and the regulations thereunder, such as 26 CFR sections 53.6001-1 and 156.6001-1.

(e) Production of records. Upon the Franchise Tax Board's request, the taxpayer shall produce the records or evidence for inspection by the Franchise Tax Board. If the taxpayer fails to comply with this subsection, the Child and Dependent Care Expenses Credit will be denied.

(f) Examples.

(1) Taxpayer A paid her babysitter, an individual, \$2,500 in cash to provide childcare for A's daughter in A's home so that she could work. A's babysitter did not provide A with receipts for the cash payments made by A. A claimed the Child and Dependent Care Expenses Credit for these expenses and upon request by the Franchise Tax Board, A provided a copy of her qualifying child's birth certificate and Social Security Account Number card, and a copy of her babysitter's U.S. passport and Social Security Account Number card. Since A did not have canceled checks/money orders, receipts, or an invoice for the expenses that she paid, A instead submitted a notarized letter from her babysitter, signed under penalty of perjury, which indicated that A had paid the babysitter \$2,500 to care for A's daughter, as proof of payment required by subsection (b)(5). The notarized letter, signed under penalty of perjury, may be sufficient evidence under subsection (c) to prove entitlement to the credit.

(2) Same facts as Example (1), but upon request by the Franchise Tax Board, A submitted only a completed Form W-10, Dependent Care Provider's Identification and Certification, notarized and signed by the babysitter, with a handwritten statement above the signature stating, "A paid \$2,500 to me for babysitting services." The W-10 may be sufficient evidence under subsection (c) to establish the identity and taxpayer identification number of the care provider as required by subsection (b)(3); however, it is not sufficient to substantiate the amounts paid to the care provider by the taxpayer as required by subsection (b)(5) or the age and identity of the qualifying child/dependent as required by subsection (b)(1).

(3) Taxpayer B paid his babysitter, an individual, \$1,500 by check to provide childcare for B's daughter in the childcare provider's home so that B could work. B claimed the Child and Dependent Care Expenses Credit for these expenses, and upon request by the Franchise Tax Board, B provided a copy of B's qualifying

child's birth certificate and Social Security Account Number card, a copy of his babysitter's U.S. passport and Social Security Account Number card, and copies of the canceled checks made payable to his babysitter. Since the care was not provided in B's home, B submitted a notarized letter, signed under penalty of perjury, from his babysitter which provided the California address at which the babysitter provided the care. The notarized letter, signed under penalty of perjury, may be sufficient evidence under subsection (c) to establish the physical location at which the care was provided, as required by subsection (b)(4), and prove entitlement to the credit.

(4) Same facts as Example (4), except B's babysitter resides in Nevada and provides the care at a location that the babysitter rents in California. Since the care was not provided in B's home, B submitted a notarized letter, signed under penalty of perjury, from his babysitter which provided the California address at which the babysitter provided the care. The notarized letter, signed under penalty of perjury, may be sufficient evidence under subsection (c) to establish the physical location at which the care was provided, as required by subsection (b)(4), and prove entitlement to the credit.

(5) Taxpayer C paid her care provider, an organization, \$3,000 by check to provide childcare for C's son in the organization's California business location so that C could work. C claimed the Child and Dependent Care Expenses Credit for these expenses, and upon request by the Franchise Tax Board, C provided a copy of C's qualifying child's birth certificate and Social Security Account Number card and a copy of the year-end statement (on the organization's letterhead) from the organization detailing the expenses paid by C. The year-end statement on the organization's letterhead may be sufficient evidence under subsection (c) to establish the physical location at which the care was provided, as required by subsection (b)(4), and prove entitlement to the credit.

(g) Effective date.

(1) This section shall apply to records required to be maintained for taxable years beginning on or after January 1, 2013.

(2) This section shall also apply when a taxpayer elects to submit the documentation required by this regulation for taxable years beginning prior to January 1, 2013.

NOTE: Authority cited: Section 19503, Revenue and Taxation Code.

Reference cited: Section 17052.6, Revenue and Taxation Code.