

108TH CONGRESS
2D SESSION

S. 2030

To amend the Internal Revenue Code of 1986 to make the dependent care credit refundable.

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2004

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to make the dependent care credit refundable.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. DEPENDENT CARE TAX CREDIT.**

4 (a) DEPENDENT CARE SERVICES.—Subpart C of
5 part IV of subchapter A of chapter 1 of the Internal Rev-
6 enue Code of 1986 (relating to refundable credits) is
7 amended by redesignating section 36 as section 37 and
8 by inserting after section 35 the following new section:

9 **“SEC. 36. DEPENDENT CARE SERVICES.**

10 **“(a) ALLOWANCE OF CREDIT.—**

1 “(1) IN GENERAL.—In the case of an individual
 2 who maintains a household which includes as a
 3 member 1 or more qualifying individuals, there shall
 4 be allowed as a credit against the tax imposed by
 5 this subtitle for the taxable year an amount equal to
 6 the applicable percentage of the sum of—

7 “(A) the employment-related expenses paid
 8 by such individual during the taxable year, plus

9 “(B) the respite care expenses paid by
 10 such individual during the taxable year.

11 “(2) APPLICABLE PERCENTAGE DEFINED.—

12 “(A) IN GENERAL.—For purposes of para-
 13 graph (1), the term ‘applicable percentage’
 14 means 50 percent reduced (but not below 20
 15 percent) by 1 percentage point for each full
 16 \$1,000 amount by which the taxpayer’s ad-
 17 justed gross income for the taxable year exceeds
 18 \$15,000.

19 “(B) COST-OF-LIVING ADJUSTMENT.—

20 “(i) IN GENERAL.—In the case of a
 21 taxable year beginning in a calendar year
 22 after 2004, subparagraph (A) shall be ap-
 23 plied by increasing the \$15,000 amount
 24 contained therein by the cost-of-living ad-
 25 justment (as defined in section 1(f)(3)) for

such calendar year determined by substituting 2003 for 1992 in subparagraph (B) of section 1(f)(3).

“(ii) ROUNDING.—If any increase determined under clause (i) is not a multiple of \$10, such increase shall be rounded to the nearest multiple of \$10 (or if such increase is a multiple of \$5, such increase shall be increased to the next highest multiple of \$10).

“(b) EMPLOYMENT-RELATED EXPENSES.—For purposes of this section—

“(1) DETERMINATION OF ELIGIBLE 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 1 or more qualifying individuals with respect to the taxpayer:

“(i) expenses for household services, and

“(ii) expenses for the care of a qualifying individual.

1 Such term shall not include any amount paid
2 for services outside the taxpayer's household at
3 a camp where the qualifying individual stays
4 overnight and shall not include any respite care
5 expense taken into account under subsection
6 (a).

7 “(B) EXCEPTION.—Employment-related
8 expenses described in subparagraph (A) which
9 are incurred for services outside the taxpayer's
10 household shall be taken into account only if in-
11 curred for the care of—

12 “(i) a qualifying individual described
13 in subsection (d)(1), or

14 “(ii) a qualifying individual (not de-
15 scribed in subsection (d)(1)) who regularly
16 spends at least 8 hours each day in the
17 taxpayer's household.

18 “(C) DEPENDENT CARE CENTERS.—Em-
19 ployment-related expenses described in subpara-
20 graph (A) which are incurred for services pro-
21 vided outside the taxpayer's household by a de-
22 pendent care center (as defined in subpara-
23 graph (D)) shall be taken into account only if—

1 “(i) such center complies with all ap-
 2 plicable laws and regulations of a State or
 3 unit of local government, and

4 “(ii) the requirements of subpara-
 5 graph (B) are met.

6 “(D) DEPENDENT CARE CENTER DE-
 7 FINED.—For purposes of this paragraph, the
 8 term ‘dependent care center’ means any facility
 9 which—

10 “(i) provides care for more than 6 in-
 11 dividuals (other than individuals who re-
 12 side at the facility), and

13 “(ii) receives a fee, payment, or grant
 14 for providing services for any of the indi-
 15 viduals (regardless of whether such facility
 16 is operated for profit).

17 “(2) DOLLAR LIMIT ON AMOUNT CRED-
 18 ITABLE.—

19 “(A) IN GENERAL.—The amount of the
 20 employment-related expenses incurred during
 21 any taxable year which may be taken into ac-
 22 count under subsection (a) shall not exceed—

23 “(i) \$3,000 if there is 1 qualifying in-
 24 dividual with respect to the taxpayer for
 25 such taxable year, or

1 “(ii) \$6,000 if there are 2 or more
 2 qualifying individuals with respect to the
 3 taxpayer for such taxable year.

4 The amount determined under clause (i) or (ii)
 5 (whichever is applicable) shall be reduced by the
 6 aggregate amount excludable from gross income
 7 under section 129 for the taxable year.

8 “(B) REDUCTION IN LIMIT FOR AMOUNT
 9 OF RESPITE CARE EXPENSES.—The limitation
 10 of subparagraph (A) shall be reduced by the
 11 amount of the respite care expenses taken into
 12 account by the taxpayer under subsection (a)
 13 for the taxable year.

14 “(3) EARNED INCOME LIMITATION.—

15 “(A) IN GENERAL.—Except as otherwise
 16 provided in this paragraph, the amount of the
 17 employment-related expenses incurred during
 18 any taxable year which may be taken into ac-
 19 count under subsection (a) shall not exceed—

20 “(i) in the case of an individual who
 21 is not married at the close of such year,
 22 such individual’s earned income for such
 23 year, or

24 “(ii) in the case of an individual who
 25 is married at the close of such year, the

1 lesser of such individual's earned income or
 2 the earned income of his spouse for such
 3 year.

4 “(B) SPECIAL RULE FOR SPOUSE WHO IS
 5 A STUDENT OR INCAPABLE OF CARING FOR
 6 HIMSELF.—In the case of a spouse who is a
 7 student or a qualified individual described in
 8 subsection (d)(3), for purposes of subparagraph
 9 (A), such spouse shall be deemed for each
 10 month during which such spouse is a full-time
 11 student at an educational institution, or is such
 12 a qualifying individual, to be gainfully employed
 13 and to have earned income of not less than—

14 “(i) \$250 if paragraph (2)(A)(i) ap-
 15 plies for the taxable year, or

16 “(ii) \$500 if paragraph (2)(A)(ii) ap-
 17 plies for the taxable year.

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

21 “(c) RESPITE CARE EXPENSES.—For purposes of
 22 this section—

23 “(1) IN GENERAL.—The term ‘respite care ex-
 24 penses’ means expenses paid (whether or not to en-
 25 able the taxpayer to be gainfully employed) for—

1 “(A) the care of a qualifying individual—

2 “(i) who has attained the age of 13,

3 or

4 “(ii) who is under the age of 13 but

5 has a physical or mental impairment which

6 results in the individual being incapable of

7 caring for himself,

8 during any period when such individual regu-

9 larly spends at least 8 hours each day in the

10 taxpayer’s household, or

11 “(B) the care (for not more than 14 days

12 during the calendar year) of a qualifying indi-

13 vidual described in subparagraph (A) during

14 any period during which the individual does not

15 regularly spend at least 8 hours each day in the

16 taxpayer’s household.

17 “(2) DOLLAR LIMIT.—The amount of the res-

18 pite care expenses incurred during any taxable year

19 which may be taken into account under subsection

20 (a) shall not exceed—

21 “(A) \$1,200 if such expenses are incurred

22 with respect to only 1 qualifying individual for

23 the taxable year, or

1 “(B) \$2,400 if such expenses are incurred
2 for 2 or more qualifying individuals for such
3 taxable year.

4 “(d) QUALIFYING INDIVIDUAL.—For purposes of this
5 section, the term ‘qualifying individual’ means—

6 “(1) a dependent of the taxpayer who is under
7 the age of 13 and with respect to whom the taxpayer
8 is entitled to a deduction under section 151(c),

9 “(2) a dependent of the taxpayer who is phys-
10 ically or mentally incapable of caring for himself, or

11 “(3) the spouse of the taxpayer, if he is phys-
12 ically or mentally incapable of caring for himself.

13 “(e) SPECIAL RULES.—For purposes of this sec-
14 tion—

15 “(1) MAINTAINING HOUSEHOLD.—An indi-
16 vidual shall be treated as maintaining a household
17 for any period only if over half the cost of maintain-
18 ing the household for such period is furnished by
19 such individual (or, if such individual is married
20 during such period, is furnished by such individual
21 and his spouse).

22 “(2) MARRIED COUPLES MUST FILE JOINT RE-
23 TURN.—If the taxpayer is married at the close of
24 the taxable year, the credit shall be allowed under

1 subsection (a) only if the taxpayer and his spouse
2 file a joint return for the taxable year.

3 “(3) MARITAL STATUS.—An individual legally
4 separated from his spouse under a decree of divorce
5 or of separate maintenance shall not be considered
6 as married.

7 “(4) CERTAIN MARRIED INDIVIDUALS LIVING
8 APART.—If—

9 “(A) an individual who is married and who
10 files a separate return—

11 “(i) maintains as his home a house-
12 hold that constitutes for more than one-
13 half of the taxable year the principal place
14 of abode of a qualifying individual, and

15 “(ii) furnishes over half the cost of
16 maintaining such household during the
17 taxable year, and

18 “(B) during the last 6 months of such tax-
19 able year such individual’s spouse is not a mem-
20 ber of such household,

21 such individual shall not be considered as married.

22 “(5) SPECIAL DEPENDENCY TEST IN CASE OF
23 DIVORCED PARENTS, ETC.—If—

1 “(A) paragraph (2) or (4) of section
2 152(e) applies to any child with respect to any
3 calendar year, and

4 “(B) such child is under the age of 13 or
5 is physically or mentally incapable of caring for
6 himself,

7 in the case of any taxable year beginning in such
8 calendar year, such child shall be treated as a quali-
9 fying individual with respect to the custodial parent
10 (within the meaning of section 152(e)(1)), and shall
11 not be treated as a qualifying individual with respect
12 to the noncustodial parent.

13 “(6) PAYMENTS TO RELATED INDIVIDUALS.—
14 No credit shall be allowed under subsection (a) for
15 any amount paid by the taxpayer to an individual—

16 “(A) with respect to whom, for the taxable
17 year, a deduction under section 151(c) (relating
18 to deduction for personal exemptions for de-
19 pendents) is allowable either to the taxpayer or
20 his spouse, or

21 “(B) who is a child of the taxpayer (within
22 the meaning of section 151(c)(3)) who has not
23 attained the age of 19 at the close of the tax-
24 able year.

1 For purposes of this paragraph, the term ‘taxable
2 year’ means the taxable year of the taxpayer in
3 which the service is performed.

4 “(7) STUDENT.—The term ‘student’ means an
5 individual who during each of 5 calendar months
6 during the taxable year is a full-time student at an
7 educational organization.

8 “(8) EDUCATIONAL ORGANIZATION.—The term
9 ‘educational organization’ means an educational or-
10 ganization described in section 170(b)(1)(A)(ii).

11 “(9) IDENTIFYING INFORMATION REQUIRED
12 WITH RESPECT TO SERVICE PROVIDER.—No credit
13 shall be allowed under subsection (a) for any amount
14 paid to any person unless—

15 “(A) the name, address, and taxpayer
16 identification number of such person are in-
17 cluded on the return claiming the credit, or

18 “(B) if such person is an organization de-
19 scribed in section 501(c)(3) and exempt from
20 tax under section 501(a), the name and address
21 of such person are included on the return
22 claiming the credit.

23 In the case of a failure to provide the information
24 required under the preceding sentence, the preceding
25 sentence shall not apply if it is shown that the tax-

1 payer exercised due diligence in attempting to pro-
2 vide the information so required.

3 “(10) IDENTIFYING INFORMATION REQUIRED
4 WITH RESPECT TO QUALIFYING INDIVIDUALS.—No
5 credit shall be allowed under this section with re-
6 spect to any qualifying individual unless the TIN of
7 such individual is included on the return claiming
8 the credit.

9 “(f) REGULATIONS.—The Secretary shall prescribe
10 such regulations as may be necessary to carry out the pur-
11 poses of this section.”.

12 (b) CONFORMING AMENDMENTS.—

13 (1) Section 21 of such Code is repealed.

14 (2) Section 23(f)(1) of such Code, section
15 35(g)(6) of such Code, and section 129(a)(2)(C) of
16 such Code are each amended by striking “section
17 21(e)” and inserting “section 36(e)”.

18 (3) Section 129(b)(2) of such Code is amended
19 by striking “section 21(d)(2)” and inserting “section
20 36(b)(3)(B)”.

21 (4) Section 129(e)(1) of such Code is amended
22 by striking “under section 21(b)(2) (relating to ex-
23 penses for household and dependent care services
24 necessary for gainful employment)” and inserting

1 “or respite care services under section 36 (relating
2 to dependent care services)”.

3 (5) Section 213(e) of such Code is amended by
4 striking “section 21” and inserting “section 36”.

5 (6) Section 6213(g)(2)(H) of such Code is
6 amended by striking “section 21 (related to expenses
7 for household and dependent care services necessary
8 for gainful employment)” and inserting “section 36
9 (relating to dependent care services)”.

10 (7) Section 6213(g)(2)(L) of such Code is
11 amended by striking “section 21” and inserting
12 “section 36”.

13 (c) TECHNICAL AMENDMENTS.—(1) The table of sec-
14 tions for subpart C of part IV of subchapter A of chapter
15 1 of such Code is amended by striking the item relating
16 to section 36 and inserting the following:

“Sec. 36. Dependent care services.
“Sec. 37. Overpayments of tax.”.

17 (2) The table of sections for subpart A of such part
18 IV is amended by striking the item relating to section 21.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply to taxable years beginning after
21 December 31, 2003.

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