

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 4233

To allow a custodial parent a refundable credit for unpaid child support payments and to require a parent who is chronically delinquent in child support to include the amount of the unpaid obligation in gross income.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 4, 2005

Mr. KENNEDY of Minnesota (for himself and Ms. MILLENDER-McDONALD) introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To allow a custodial parent a refundable credit for unpaid child support payments and to require a parent who is chronically delinquent in child support to include the amount of the unpaid obligation in gross income.

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. SHORT TITLE.**

4 This Act may be cited as the “Child Support Enforce-  
5 ment Act of 2005”.

6 **SEC. 2. NO EFFECT ON RIGHTS AND LIABILITIES.**

7 Nothing in this Act shall be construed to affect—

1           (1) the right of an individual or State to receive  
2           any child support payment; or

3           (2) the obligation of an individual to pay child  
4           support.

5 **SEC. 3. REFUNDABLE CREDIT FOR UNPAID CHILD SUP-**  
6 **PORT PAYMENTS.**

7           (a) IN GENERAL.—Subpart C of part IV of sub-  
8 chapter A of chapter 1 of the Internal Revenue Code of  
9 1986 (relating to refundable credits) is amended by redес-  
10 ignating section 36 as section 37 and inserting after sec-  
11 tion 35 the following new section:

12 **“SEC. 36. UNPAID CHILD SUPPORT.**

13           “(a) IN GENERAL.—In the case of a custodial parent  
14 who, as of the close of the taxable year, is owed child sup-  
15 port, there shall be allowed as a credit against the tax  
16 imposed by this subtitle for the taxable year an amount  
17 equal to the unpaid child support as of the close of the  
18 taxable year.

19           “(b) SUBSEQUENT PAYMENTS.—If any unpaid child  
20 support with respect to which a credit was allowed under  
21 subsection (a) is subsequently paid to the custodial parent,  
22 the amount of such payment shall not be included in the  
23 gross income of the custodial parent, nor shall it be al-  
24 lowed as a deduction to the delinquent debtor. The delin-  
25 quent debtor shall be neither required nor allowed to file

1 an amended return in any subsequent year to reflect the  
2 subsequent payment of unpaid child support.

3 “(c) IDENTIFICATION REQUIREMENTS.—

4 “(1) IN GENERAL.—A qualifying child shall not  
5 be taken into account under subsection (a) unless  
6 the taxpayer includes the name, age, and TIN of the  
7 qualifying child on the return of tax for the taxable  
8 year.

9 “(2) OTHER METHODS.—The Secretary may  
10 prescribe other methods for providing the informa-  
11 tion described in paragraph (1).

12 “(d) INFORMATION RETURNS.—

13 “(1) IN GENERAL.—No amount shall be allowed  
14 as a credit under subsection (a) for a taxable year  
15 unless the custodial parent completes Form 1099-  
16 CS (or such other form as the Secretary may pre-  
17 scribe) and provides such form to the Secretary, and  
18 (if the address is known) to the delinquent debtor,  
19 within 45 days following the close of the taxable year  
20 for which the credit is claimed.

21 “(2) CONTENTS OF FORM.—The Form 1099-  
22 CS (or such other form as the Secretary may pre-  
23 scribe) shall contain—

1           “(A) the total amount of child support  
2 owed (whether or not paid) for such taxable  
3 year,

4           “(B) the total amount of unpaid child sup-  
5 port as of the last day of such taxable year,

6           “(C) the name, address (if known), and  
7 taxpayer identification number of the delin-  
8 quent debtor, and

9           “(D) notice that the delinquent debtor is  
10 required to include such total amount of unpaid  
11 child support in gross income for the delinquent  
12 debtor’s taxable year which includes the last  
13 day of the custodial parent’s taxable year.

14           “(3) DEBTOR’S ADDRESS UNKNOWN.—If the  
15 delinquent debtor’s address is not known to the cus-  
16 todial parent, the Form 1099–CS (or such other  
17 form as the Secretary may prescribe) shall indicate  
18 that fact. In such a case, the Secretary may send  
19 such notice if the address is available to the Sec-  
20 retary, and the notice from the custodial parent to  
21 the delinquent debtor under subparagraph (A) shall  
22 not be required.

23           “(e) DETERMINATION OF WHETHER CHILD SUP-  
24 PORT IS PAID.—

1           “(1) CHILD SUPPORT ENFORCEMENT OFFICE  
2           RECORDS AS CONCLUSIVE EVIDENCE OF PAY-  
3           MENT.—Child support shall be treated as paid if  
4           such payment is recorded by the State office of child  
5           support enforcement in which the custodial parent is  
6           registered.

7           “(2) TIMELY MAILING AS TIMELY PAYMENT.—  
8           A payment received by the State office of child sup-  
9           port enforcement in which the custodial parent is  
10          registered after the last day of the custodial parent’s  
11          taxable year shall be treated for the purpose of this  
12          section as paid on such day if the postmark date  
13          falls on or before such day. The rules of section  
14          7502(f) and regulations issued thereunder shall  
15          apply for purposes of this paragraph.

16          “(f) DEFINITIONS.—For the purposes of this sec-  
17          tion—

18                 “(1) UNPAID CHILD SUPPORT.—The term ‘un-  
19                 paid child support’ means child support that is pay-  
20                 able for months during a custodial parent’s taxable  
21                 year and unpaid as of the last day of such taxable  
22                 year, but only if such unpaid amount as of such day  
23                 equals or exceeds one-half of the total amount of  
24                 child support due to the custodial parent for such  
25                 year.

1           “(2) CHILD SUPPORT.—The term ‘child sup-  
2 port’ means—

3           “(A) any periodic payment of a fixed  
4 amount, or

5           “(B) any payment of a medical education  
6 expense, insurance premium, or other similar  
7 item,

8 which is required to be paid to a custodial parent by  
9 an individual under a support instrument for the  
10 support of any qualifying child of such individual.  
11 The term ‘child support’ does not include any  
12 amount which is described in section 408(a)(3) of  
13 the Social Security Act and which has been assigned  
14 to a State.

15           “(3) CUSTODIAL PARENT.—The term ‘custodial  
16 parent’ means an individual who is entitled to re-  
17 ceive child support and who has registered with the  
18 appropriate State office of child support enforcement  
19 charged with implementing section 454 of the Social  
20 Security Act.

21           “(4) DELINQUENT DEBTOR.—The term ‘delin-  
22 quent debtor’ means a taxpayer who owes unpaid  
23 child support to a custodial parent.

24           “(5) QUALIFYING CHILD.— The term ‘quali-  
25 fying child’ means a child of a custodial parent with

1 respect to whom a dependent deduction is allowable  
2 under section 151 for the taxable year (or would be  
3 so allowable but for section 152(e)(4)).

4 “(6) SUPPORT INSTRUMENT.—The term ‘sup-  
5 port instrument’ means—

6 “(A) a decree of divorce or separate main-  
7 tenance or a written instrument incident to  
8 such a decree,

9 “(B) a written separation agreement, or

10 “(C) a decree (not described in clause (i))  
11 of a court or administrative agency requiring a  
12 parent to make payments for the support or  
13 maintenance of 1 or more children of such par-  
14 ent.”.

15 (b) CONFORMING AND CLERICAL AMENDMENTS.—

16 (1) Paragraph (2) of section 1324(b) of title  
17 31, United States Code, is amended by inserting be-  
18 fore the period “, or from section 36 of such Code”.

19 (2) The table of sections for subpart C of part  
20 IV of chapter 1 of the Internal Revenue Code of  
21 1986 is amended by redesignating the item relating  
22 to section 36 as an item relating to section 37 and  
23 by inserting after the item relating to section 35 the  
24 following new item:

“Sec. 36. Unpaid child support.”.

1 (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2005.

4 **SEC. 4. INCLUSION IN INCOME OF AMOUNT OF UNPAID**  
5 **CHILD SUPPORT.**

6 (a) IN GENERAL.—Section 108 of the Internal Rev-  
7 enue Code of 1986 (relating to discharge of indebtedness  
8 income) is amended by adding at the end the following  
9 new subsection:

10 “(h) UNPAID CHILD SUPPORT.—

11 “(1) IN GENERAL.—For purposes of this chap-  
12 ter, any unpaid child support of a delinquent debtor  
13 for any taxable year shall be treated as amounts in-  
14 cludible in gross income of the delinquent debtor for  
15 the taxable year.

16 “(2) DETERMINATION OF WHETHER CHILD  
17 SUPPORT IS UNPAID.—

18 “(A) IN GENERAL.—Child support shall be  
19 treated as paid if such payment is recorded by  
20 the State office of child support enforcement in  
21 which the custodial parent is registered.

22 “(B) TIMELY MAILING AS TIMELY PAY-  
23 MENT.—A payment received by the State office  
24 of child support enforcement in which the cus-  
25 todial parent is registered after the last day of

1 the custodial parent's taxable year shall be  
2 treated for the purpose of this subsection as  
3 paid on such day if the postmark date falls on  
4 or before such day. The rules of section 7502(f)  
5 and regulations issued thereunder shall apply  
6 for purposes of this subparagraph.

7 “(3) DEFINITIONS.—For the purposes of this  
8 subsection—

9 “(A) CHILD SUPPORT.—The term ‘child  
10 support’ means—

11 “(i) any periodic payment of a fixed  
12 amount, or

13 “(ii) any payment of a medical edu-  
14 cation expense, insurance premium, or  
15 other similar item,

16 which is required to be paid to a custodial par-  
17 ent by an individual under a support instru-  
18 ment for the support of any qualifying child of  
19 such individual. ‘Child support’ does not include  
20 any amount which is described in section  
21 408(a)(3) of the Social Security Act and which  
22 has been assigned to a State.

23 “(B) CUSTODIAL PARENT.—The term ‘cus-  
24 todial parent’ means an individual who is enti-  
25 tled to receive child support and who has reg-

1           istered with the appropriate State office of child  
2           support enforcement charged with implementing  
3           section 454 of the Social Security Act.

4           “(C) DELINQUENT DEBTOR.—The term  
5           ‘delinquent debtor’ means a taxpayer who owes  
6           unpaid child support to a custodial parent.

7           “(D) QUALIFYING CHILD.— The term  
8           ‘qualifying child’ means a child of a custodial  
9           parent with respect to whom a dependent de-  
10          duction is allowable under section 151 for the  
11          taxable year (or would be so allowable but for  
12          section 152(e)(4)).

13          “(E) SUPPORT INSTRUMENT.—The term  
14          ‘support instrument’ means—

15                 “(i) a decree of divorce or separate  
16                 maintenance or a written instrument inci-  
17                 dent to such a decree,

18                 “(ii) a written separation agreement,  
19                 or

20                 “(iii) a decree (not described in clause  
21                 (i)) of a court or administrative agency re-  
22                 quiring a parent to make payments for the  
23                 support or maintenance of 1 or more chil-  
24                 dren of such parent.

1           “(F) UNPAID CHILD SUPPORT.—The term  
2           ‘unpaid child support’ means child support that  
3           is payable for months during a custodial par-  
4           ent’s taxable year and unpaid as of the last day  
5           of such taxable year, provided that such unpaid  
6           amount as of such day equals or exceeds one-  
7           half of the total amount of child support due to  
8           the custodial parent for such year.

9           “(4) COORDINATION WITH OTHER LAWS.—  
10          Amounts treated as income by paragraph (1) shall  
11          not be treated as income by reason of paragraph (1)  
12          for the purposes of any provision of law which is not  
13          an internal revenue law.”.

14 **SEC. 5. TAXPAYER INFORMATION REGARDING CHILD SUP-**  
15 **PORT NOT BASIS FOR AUDIT.**

16          A discrepancy between the tax returns of a custodial  
17          parent and a delinquent debtor concerning whether a pay-  
18          ment of child support has been made may not be used  
19          or relied upon by the Internal Revenue Service in any way  
20          in selecting an individual’s tax return for a general audit.

21 **SEC. 6. EFFECTIVE DATE; IMPLEMENTATION.**

22          The amendments made by the Act shall apply to tax-  
23          able years beginning after December 31, 2004. The Sec-  
24          retary of the Treasury shall publish Form 1099–CS (or  
25          such other form that may be prescribed to comply with

1 section 36(d) of the Internal Revenue Code of 1986 (as  
2 added by this Act)) regulations, if any, that may be  
3 deemed necessary to carry out the purposes of this Act,  
4 not later than 90 days after the date of enactment of this  
5 Act.

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