

109TH CONGRESS
1ST 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.

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

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.

○