

(3) Property used by tax-exempt entity

In the case of a vehicle the use of which is described in paragraph (3) or (4) of section 50(b) and which is not subject to a lease, the person who sold such vehicle to the person or entity using such vehicle shall be treated as the taxpayer that placed such vehicle in service, but only if such person clearly discloses to such person or entity in a document the amount of any credit allowable under subsection (a) with respect to such vehicle (determined without regard to subsection (c)).

(4) Property used outside United States not qualified

No credit shall be allowable under subsection (a) with respect to any property referred to in section 50(b)(1).

(5) Recapture

The Secretary shall, by regulations, provide for recapturing the benefit of any credit allowable under subsection (a) with respect to any property which ceases to be property eligible for such credit.

(6) Election not to take credit

No credit shall be allowed under subsection (a) for any vehicle if the taxpayer elects to not have this section apply to such vehicle.

(7) Interaction with air quality and motor vehicle safety standards

A motor vehicle shall not be considered eligible for a credit under this section unless such vehicle is in compliance with—

(A) the applicable provisions of the Clean Air Act for the applicable make and model year of the vehicle (or applicable air quality provisions of State law in the case of a State which has adopted such provision under a waiver under section 209(b) of the Clean Air Act), and

(B) the motor vehicle safety provisions of sections 30101 through 30169 of title 49, United States Code.

(Added Pub. L. 110-343, div. B, title II, §205(a), Oct. 3, 2008, 122 Stat. 3835; amended Pub. L. 111-5, div. B, title I, §1141(a), Feb. 17, 2009, 123 Stat. 326.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsecs. (d)(1)(D), (3), (f)(7)(A), is act July 14, 1955, ch. 360, 69 Stat. 322, which is classified generally to chapter 85 (§7401 et seq.) of Title 42, The Public Health and Welfare. Title II of the Act, known as the National Emissions Standards Act, is classified generally to subchapter II (§7521 et seq.) of chapter 85 of Title 42. Section 209(b) of the Act is classified to section 7543(b) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of Title 42 and Tables.

AMENDMENTS

2009—Pub. L. 111-5 amended section generally. Prior to amendment, section provided credit with respect to each new qualified plug-in electric drive motor vehicle placed in service and set forth provisions defining “applicable amount” and “new qualified plug-in electric drive motor vehicle” and stating limitations based on vehicle weight, the number of vehicles eligible for credit, and amount of tax liability.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub.

L. 111-5, set out as a note under section 30B of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110-343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

SUBPART C—REFUNDABLE CREDITS

Sec.	
31.	Tax withheld on wages.
32.	Earned income.
33.	Tax withheld at source on nonresident aliens and foreign corporations.
34.	Certain uses of gasoline and special fuels.
35.	Health insurance costs of eligible individuals.
36.	First-time homebuyer credit.
36A.	Making work pay credit.
37.	Overpayments of tax.

AMENDMENTS

2009—Pub. L. 111-5, div. B, title I, §1001(e)(3), Feb. 17, 2009, 123 Stat. 312, added item 36A.

2008—Pub. L. 110-289, div. C, title I, §3011(b)(4), July 30, 2008, 122 Stat. 2891, added item 36 and redesignated former item 36 as 37.

2002—Pub. L. 107-210, div. A, title II, §201(c)(2), Aug. 6, 2002, 116 Stat. 960, which directed amendment of the table of sections for subpart C of part IV of this chapter by adding items 35 and 36 and striking out the last item, was executed to the table of sections for this subpart which is in part IV of subchapter A of this chapter by adding those items and striking out former item 35 “Overpayments of tax” to reflect the probable intent of Congress.

1984—Pub. L. 98-369, div. A, title IV, §471(b), July 18, 1984, 98 Stat. 826, added subpart C heading and analysis of sections for subpart C consisting of items 31, 32 (formerly 43), 33 (formerly 32), 34 (formerly 39), and 35 (formerly 45). Former subpart C, setting out the rules for computing credit for expenses of work incentive programs, was repealed.

§ 31. Tax withheld on wages**(a) Wage withholding for income tax purposes****(1) In general**

The amount withheld as tax under chapter 24 shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

(2) Year of credit

The amount so withheld during any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(b) Credit for special refunds of social security tax**(1) In general**

The Secretary may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary to be allowable under section 6413(c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402.

(2) Year of credit

Any amount to which paragraph (1) applies shall be allowed as a credit for the taxable

year beginning in the calendar year during which the wages were received. If more than one taxable year begins in the calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(c) Special rule for backup withholding

Any credit allowed by subsection (a) for any amount withheld under section 3406 shall be allowed for the taxable year of the recipient of the income in which the income is received.

(Aug. 16, 1954, ch. 736, 68A Stat. 12; Pub. L. 94-455, title XIX, §1906(b)(13)(D), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-248, title III, §§302(a), 308(a), Sept. 3, 1982, 96 Stat. 585, 591; Pub. L. 97-354, §3(i)(4), Oct. 19, 1982, 96 Stat. 1691; Pub. L. 97-448, title III, §306(b)(1), Jan. 12, 1983, 96 Stat. 2405; Pub. L. 98-67, title I, §§102(a), 104(d)(2), Aug. 5, 1983, 97 Stat. 369, 379; Pub. L. 98-369, div. A, title IV, §471(c), title VII, §714(j)(2), July 18, 1984, 98 Stat. 826, 962.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, §714(j)(2), substituted “as tax under chapter 24” for “under section 3402 as tax on the wages of any individual”.

1983—Pub. L. 98-67 added subsec. (c) and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Pub. L. 97-448 amended subsec. (d) generally. See 1982 Amendment note below.

1982—Pub. L. 97-248, as amended by Pub. L. 97-354 and Pub. L. 97-448, amended section generally, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 [now 1986] [this title] shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1976—Subsec. (b)(1). Pub. L. 94-455 struck out “or his delegate” after “The Secretary” and “(or his delegate)” after “taxpayer or the Secretary”.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 715 of Pub. L. 98-369 provided that: “Any amendment made by this subtitle [subtitle A (§§711-715) of title VII of Pub. L. 98-369, see Tables for classification] shall take effect as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248] to which such amendment relates.”

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 110 of title I of Pub. L. 98-67 provided that: “(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this title [enacting sections 3406 and 6705 of this title, amending this section and sections 274, 275, 643, 661, 3402, 3403, 3502, 3507, 6011, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6652, 6653, 6654, 6676, 6678, 6682, 7205, 7215, 7431, 7654, and 7701 of this title, repealing sections 3451 to 3456 of this title, enacting provisions set out as notes under sections 1, 3451, and 6011 of this title, and repealing provisions set out as a note under section 3451 of this title] shall apply with respect to payments made after December 31, 1983.

“(b) SECTION 102.—The amendments made by section 102 [amending this section and sections 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title, repealing sections 3451 to 3456 of this title, enacting provisions set out as a note under section 3451 of this title, and repealing provisions set out as a note under section 3451 of this title] shall take effect as of the close of June 30, 1983.

“(c) SECTIONS 104(b) AND 107.—The amendments made by sections 104(b) and 107 [amending sections 6682, 7205, and 7431 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1983].”

Section 311(d) of Pub. L. 97-448 provided that: “The amendments made by section 306 [amending this section and sections 48, 55, 263, 291, 312, 338, 401, 501, 1232, 6038A, 6226, 6228, 6679, and 7701 of this title, enacting provisions set out as notes under sections 338 and 1232 of this title, and amending provisions set out as notes under sections 56, 72, 101, 103, 168, 302, 311, 338, 415, 907, and 5701 of this title] shall take effect as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248] to which such amendments relate.”

CONSTRUCTION OF AMENDMENT BY TITLE VII OF DIVISION A OF PUB. L. 98-369

Section 701 of title VII of div. A of Pub. L. 98-369 provided that: “For purposes of applying the amendments made by any title of this Act [see Tables for classification] other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles.”

§ 32. Earned income

(a) Allowance of credit

(1) In general

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the credit percentage of so much of the taxpayer's earned income for the taxable year as does not exceed the earned income amount.

(2) Limitation

The amount of the credit allowable to a taxpayer under paragraph (1) for any taxable year shall not exceed the excess (if any) of—

(A) the credit percentage of the earned income amount, over

(B) the phaseout percentage of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds the phaseout amount.

(b) Percentages and amounts

For purposes of subsection (a)—

(1) Percentages

The credit percentage and the phaseout percentage shall be determined as follows:

(A) In general

In the case of taxable years beginning after 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98
2 or more qualifying children.	40	21.06
No qualifying children	7.65	7.65

(B) Transitional percentages for 1995

In the case of taxable years beginning in 1995:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	34	15.98

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
2 or more qualifying children.	36	20.22
No qualifying children	7.65	7.65

(C) Transitional percentages for 1994

In the case of a taxable year beginning in 1994:

In the case of an eligible individual with:	The credit percentage is:	The phaseout percentage is:
1 qualifying child	26.3	15.98
2 or more qualifying children.	30	17.68
No qualifying children	7.65	7.65

(2) Amounts

(A) In general

Subject to subparagraph (B), the earned income amount and the phaseout amount shall be determined as follows:

In the case of an eligible individual with:	The earned income amount is:	The phaseout amount is:
1 qualifying child	\$6,330	\$11,610
2 or more qualifying children.	\$8,890	\$11,610
No qualifying children	\$4,220	\$5,280

(B) Joint returns

In the case of a joint return filed by an eligible individual and such individual's spouse, the phaseout amount determined under subparagraph (A) shall be increased by—

- (i) \$1,000 in the case of taxable years beginning in 2002, 2003, and 2004,
- (ii) \$2,000 in the case of taxable years beginning in 2005, 2006, and 2007, and
- (iii) \$3,000 in the case of taxable years beginning after 2007.

(3) Special rules for 2009 and 2010

In the case of any taxable year beginning in 2009 or 2010—

(A) Increased credit percentage for 3 or more qualifying children

In the case of a taxpayer with 3 or more qualifying children, the credit percentage is 45 percent.

(B) Reduction of marriage penalty

(i) In general

The dollar amount in effect under paragraph (2)(B) shall be \$5,000.

(ii) Inflation adjustment

In the case of any taxable year beginning in 2010, the \$5,000 amount in clause (i) shall be increased by an amount equal to—

- (I) such dollar amount, multiplied by
- (II) the cost of living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins determined by substituting “calendar year 2008” for “calendar year 1992” in subparagraph (B) thereof.

(iii) Rounding

Subparagraph (A) of subsection (j)(2) shall apply after taking into account any increase under clause (ii).

(c) Definitions and special rules

For purposes of this section—

(1) Eligible individual

(A) In general

The term “eligible individual” means—

- (i) any individual who has a qualifying child for the taxable year, or
- (ii) any other individual who does not have a qualifying child for the taxable year, if—

(I) such individual's principal place of abode is in the United States for more than one-half of such taxable year,

(II) such individual (or, if the individual is married, either the individual or the individual's spouse) has attained age 25 but not attained age 65 before the close of the taxable year, and

(III) such individual is not a dependent for whom a deduction is allowable under section 151 to another taxpayer for any taxable year beginning in the same calendar year as such taxable year.

For purposes of the preceding sentence, marital status shall be determined under section 7703.

(B) Qualifying child ineligible

If an individual is the qualifying child of a taxpayer for any taxable year of such taxpayer beginning in a calendar year, such individual shall not be treated as an eligible individual for any taxable year of such individual beginning in such calendar year.

(C) Exception for individual claiming benefits under section 911

The term “eligible individual” does not include any individual who claims the benefits of section 911 (relating to citizens or residents living abroad) for the taxable year.

(D) Limitation on eligibility of nonresident aliens

The term “eligible individual” shall not include any individual who is a nonresident alien individual for any portion of the taxable year unless such individual is treated for such taxable year as a resident of the United States for purposes of this chapter by reason of an election under subsection (g) or (h) of section 6013.

(E) Identification number requirement

No credit shall be allowed under this section to an eligible individual who does not include on the return of tax for the taxable year—

- (i) such individual's taxpayer identification number, and
- (ii) if the individual is married (within the meaning of section 7703), the taxpayer identification number of such individual's spouse.

(F) Individuals who do not include TIN, etc., of any qualifying child

No credit shall be allowed under this section to any eligible individual who has one

or more qualifying children if no qualifying child of such individual is taken into account under subsection (b) by reason of paragraph (3)(D).

(2) Earned income

(A) The term “earned income” means—

(i) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income for the taxable year, plus

(ii) the amount of the taxpayer’s net earnings from self-employment for the taxable year (within the meaning of section 1402(a)), but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f).

(B) For purposes of subparagraph (A)—

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account,

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account,

(iv) no amount received for services provided by an individual while the individual is an inmate at a penal institution shall be taken into account,

(v) no amount described in subparagraph (A) received for service performed in work activities as defined in paragraph (4) or (7) of section 407(d) of the Social Security Act to which the taxpayer is assigned under any State program under part A of title IV of such Act shall be taken into account, but only to the extent such amount is subsidized under such State program, and

(vi) a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.

(3) Qualifying child

(A) In general

The term “qualifying child” means a qualifying child of the taxpayer (as defined in section 152(c), determined without regard to paragraph (1)(D) thereof and section 152(e)).

(B) Married individual

The term “qualifying child” shall not include an individual who is married as of the close of the taxpayer’s taxable year unless the taxpayer is entitled to a deduction under section 151 for such taxable year with respect to such individual (or would be so entitled but for section 152(e)).

(C) Place of abode

For purposes of subparagraph (A), the requirements of section 152(c)(1)(B) shall be met only if the principal place of abode is in the United States.

(D) Identification requirements

(i) In general

A qualifying child shall not be taken into account under subsection (b) unless the taxpayer includes the name, age, and

TIN of the qualifying child on the return of tax for the taxable year.

(ii) Other methods

The Secretary may prescribe other methods for providing the information described in clause (i).

(4) Treatment of military personnel stationed outside the United States

For purposes of paragraphs (1)(A)(ii)(I) and (3)(C), the principal place of abode of a member of the Armed Forces of the United States shall be treated as in the United States during any period during which such member is stationed outside the United States while serving on extended active duty with the Armed Forces of the United States. For purposes of the preceding sentence, the term “extended active duty” means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

(d) Married individuals

In the case of an individual who is married (within the meaning of section 7703), this section shall apply only if a joint return is filed for the taxable year under section 6013.

(e) Taxable year must be full taxable year

Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) Amount of credit to be determined under tables

(1) In general

The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

(2) Requirements for tables

The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than \$50 each—

(A) for earned income between \$0 and the amount of earned income at which the credit is phased out under subsection (b), and

(B) for adjusted gross income between the dollar amount at which the phaseout begins under subsection (b) and the amount of adjusted gross income at which the credit is phased out under subsection (b).

(g) Coordination with advance payments of earned income credit

(1) Recapture of excess advance payments

If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual’s last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) Reconciliation of payments advanced and credit allowed

Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any

credit (other than the credit allowed by subsection (a)) allowable under this part.

[h) Repealed. Pub. L. 107-16, title III, § 303(c), June 7, 2001, 115 Stat. 55]

(i) Denial of credit for individuals having excessive investment income

(1) In general

No credit shall be allowed under subsection (a) for the taxable year if the aggregate amount of disqualified income of the taxpayer for the taxable year exceeds \$2,200.

(2) Disqualified income

For purposes of paragraph (1), the term “disqualified income” means—

(A) interest or dividends to the extent includible in gross income for the taxable year,

(B) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter,

(C) the excess (if any) of—

(i) gross income from rents or royalties not derived in the ordinary course of a trade or business, over

(ii) the sum of—

(I) the deductions (other than interest) which are clearly and directly allocable to such gross income, plus

(II) interest deductions properly allocable to such gross income,

(D) the capital gain net income (as defined in section 1222) of the taxpayer for such taxable year, and

(E) the excess (if any) of—

(i) the aggregate income from all passive activities for the taxable year (determined without regard to any amount included in earned income under subsection (c)(2) or described in a preceding subparagraph), over

(ii) the aggregate losses from all passive activities for the taxable year (as so determined).

For purposes of subparagraph (E), the term “passive activity” has the meaning given such term by section 469.

(j) Inflation adjustments

(1) In general

In the case of any taxable year beginning after 1996, each of the dollar amounts in subsections (b)(2) and (i)(1) shall be increased by an amount equal to—

(A) such dollar amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined—

(i) in the case of amounts in subsections (b)(2)(A) and (i)(1), by substituting “calendar year 1995” for “calendar year 1992” in subparagraph (B) thereof, and

(ii) in the case of the \$3,000 amount in subsection (b)(2)(B)(iii), by substituting “calendar year 2007” for “calendar year 1992” in subparagraph (B) of such section 1.

(2) Rounding

(A) In general

If any dollar amount in subsection (b)(2)(A) (after being increased under sub-

paragraph (B) thereof), after being increased under paragraph (1), is not a multiple of \$10, such dollar amount shall be rounded to the nearest multiple of \$10.

(B) Disqualified income threshold amount

If the dollar amount in subsection (i)(1), after being increased under paragraph (1), is not a multiple of \$50, such amount shall be rounded to the next lowest multiple of \$50.

(k) Restrictions on taxpayers who improperly claimed credit in prior year

(1) Taxpayers making prior fraudulent or reckless claims

(A) In general

No credit shall be allowed under this section for any taxable year in the disallowance period.

(B) Disallowance period

For purposes of paragraph (1), the disallowance period is—

(i) the period of 10 taxable years after the most recent taxable year for which there was a final determination that the taxpayer’s claim of credit under this section was due to fraud, and

(ii) the period of 2 taxable years after the most recent taxable year for which there was a final determination that the taxpayer’s claim of credit under this section was due to reckless or intentional disregard of rules and regulations (but not due to fraud).

(2) Taxpayers making improper prior claims

In the case of a taxpayer who is denied credit under this section for any taxable year as a result of the deficiency procedures under subchapter B of chapter 63, no credit shall be allowed under this section for any subsequent taxable year unless the taxpayer provides such information as the Secretary may require to demonstrate eligibility for such credit.

(l) Coordination with certain means-tested programs

For purposes of—

(1) the United States Housing Act of 1937,

(2) title V of the Housing Act of 1949,

(3) section 101 of the Housing and Urban Development Act of 1965,

(4) sections 221(d)(3), 235, and 236 of the National Housing Act, and

(5) the Food and Nutrition Act of 2008,

any refund made to an individual (or the spouse of an individual) by reason of this section, and any payment made to such individual (or such spouse) by an employer under section 3507, shall not be treated as income (and shall not be taken into account in determining resources for the month of its receipt and the following month).

(m) Identification numbers

Solely for purposes of subsections (c)(1)(E) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act).

(Added Pub. L. 94-12, title II, §204(a), Mar. 29, 1975, 89 Stat. 30, §43; amended Pub. L. 94-164, §2(c), Dec. 23, 1975, 89 Stat. 971; Pub. L. 94-455, title IV, §401(c)(1)(B), (2), Oct. 4, 1976, 90 Stat. 1557; Pub. L. 95-600, title I, §§104(a)-(e), 105(a), Nov. 6, 1978, 92 Stat. 2772, 2773; Pub. L. 95-615, §202(g)(5), formerly §202(f)(5), Nov. 8, 1978, 92 Stat. 3100, renumbered §202(g)(5) and amended Pub. L. 96-222, title I, §§101(a)(1), (2)(E), 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 194, 195, 223; Pub. L. 97-34, title I, §§111(b)(2), 112(b)(3), Aug. 13, 1981, 95 Stat. 194, 195; Pub. L. 98-21, title I, §124(c)(4)(B), Apr. 20, 1983, 97 Stat. 91; renumbered §32 and amended Pub. L. 98-369, div. A, title IV, §§423(c)(3), 471(c), title X, §1042(a)-(d)(2), July 18, 1984, 98 Stat. 801, 826, 1043; Pub. L. 99-514, title I, §§104(b)(1)(B), 111(a)-(d)(1), title XII, §1272(d)(3), title XIII, §1301(j)(8), Oct. 22, 1986, 100 Stat. 2104, 2107, 2594, 2658; Pub. L. 100-647, title I, §§1001(c), 1007(g)(12), Nov. 10, 1988, 102 Stat. 3350, 3436; Pub. L. 101-508, title XI, §§11101(d)(1)(B), 11111(a), (b), (e), Nov. 5, 1990, 104 Stat. 1388-405, 1388-408, 1388-412, 1388-413; Pub. L. 103-66, title XIII, §13131(a)-(d)(1), Aug. 10, 1993, 107 Stat. 433-435; Pub. L. 103-465, title VII, §§721(a), 722(a), 723(a), 742(a), Dec. 8, 1994, 108 Stat. 5002, 5003, 5010; Pub. L. 104-7, §4(a), Apr. 11, 1995, 109 Stat. 95; Pub. L. 104-193, title IV, §451(a), (b), title IX, §§909(a), (b), 910(a), (b), Aug. 22, 1996, 110 Stat. 2276, 2277, 2351, 2352; Pub. L. 105-34, title I, §101(b), title III, §312(d)(2), title X, §1085(a)(1), (b)-(d), Aug. 5, 1997, 111 Stat. 798, 840, 955, 956; Pub. L. 105-206, title VI, §§6003(b), 6010(p)(1), (2), 6021(a), (b), July 22, 1998, 112 Stat. 791, 816, 817, 823, 824; Pub. L. 106-170, title IV, §412(a), Dec. 17, 1999, 113 Stat. 1917; Pub. L. 107-16, title II, §201(c)(3), title III, §303(a)-(f), (h), June 7, 2001, 115 Stat. 47, 55-57; Pub. L. 107-147, title IV, §416(a)(1), Mar. 9, 2002, 116 Stat. 55; Pub. L. 108-311, title I, §104(b), title II, §205, Oct. 4, 2004, 118 Stat. 1169, 1176; Pub. L. 109-135, title III, §302(a), Dec. 21, 2005, 119 Stat. 2608; Pub. L. 109-432, div. A, title I, §106(a), Dec. 20, 2006, 120 Stat. 2938; Pub. L. 110-234, title IV, §4002(b)(1)(B), (2)(O), May 22, 2008, 122 Stat. 1096, 1097; Pub. L. 110-245, title I, §102(a), June 17, 2008, 122 Stat. 1625; Pub. L. 110-246, §4(a), title IV, §4002(b)(1)(B), (2)(O), June 18, 2008, 122 Stat. 1664, 1857, 1858; Pub. L. 111-5, div. B, title I, §1002(a), Feb. 17, 2009, 123 Stat. 312.)

INFLATION ADJUSTED ITEMS FOR CERTAIN YEARS

For inflation adjustment of certain items in this section, see Revenue Procedures listed in a table under section 1 of this title.

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(2)(B)(v) and (m), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. Sections 205(c)(2)(B)(i) and 407(d)(4), (7) of the Act are classified to sections 405(c)(2)(B)(i) and 607(d)(4), (7), respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The United States Housing Act of 1937, referred to in subsec. (l)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, §201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§1437 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note under section 1437 of Title 42 and Tables.

The Housing Act of 1949, referred to in subsec. (l)(2), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title V of the Act is classified generally to subchapter III (§1471 et seq.) of chapter 8A of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

Section 101 of the Housing and Urban Development Act of 1965, referred to in subsec. (l)(3), is section 101 of Pub. L. 89-117, title I, Aug. 10, 1965, 79 Stat. 451, which enacted section 1701s of Title 12, Banks and Banking, and amended sections 1451 and 1465 of Title 42.

Sections 221(d)(3), 235, and 236 of the National Housing Act, referred to in subsec. (l)(4), are classified to sections 1715l(d)(3), 1715z, and 1715z-1, respectively, of Title 12.

The Food and Nutrition Act of 2008, referred to in subsec. (l)(5), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

PRIOR PROVISIONS

A prior section 32 was renumbered section 33 of this title.

AMENDMENTS

2009—Subsec. (b)(3). Pub. L. 111-5 added par. (3).

2008—Subsec. (c)(2)(B)(vi). Pub. L. 110-245 amended cl. (vi) generally. Prior to amendment, cl. (vi) read as follows: “in the case of any taxable year ending—

“(I) after the date of the enactment of this clause, and

“(II) before January 1, 2008,

a taxpayer may elect to treat amounts excluded from gross income by reason of section 112 as earned income.”

Subsec. (l)(5). Pub. L. 110-246, §4002(b)(1)(B), (2)(O), substituted “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”.

2006—Subsec. (c)(2)(B)(vi)(II). Pub. L. 109-432 substituted “2008” for “2007”.

2005—Subsec. (c)(2)(B)(vi)(II). Pub. L. 109-135 substituted “2007” for “2006”.

2004—Subsec. (c)(1)(C) to (G). Pub. L. 108-311, §205(b)(1), redesignated subpars. (D) to (G) as (C) to (F), respectively, and struck out former subpar. (C) which related to 2 or more claiming qualifying child.

Subsec. (c)(2)(B)(vi). Pub. L. 108-311, §104(b), added cl. (vi).

Subsec. (c)(3). Pub. L. 108-311, §205(a), amended par. (3) generally, substituting subpars. (A) to (D) for former subpars. (A) to (E), relating to qualifying child in general, relationship test, age requirements, identification requirements, and place of abode requirements.

Subsec. (c)(4). Pub. L. 108-311, §205(b)(2), substituted “(3)(C)” for “(3)(E)”.

Subsec. (m). Pub. L. 108-311, §205(b)(3), substituted “(c)(1)(E)” for “(c)(1)(F)”.

2002—Subsec. (g)(2). Pub. L. 107-147 substituted “part” for “subpart”.

2001—Subsec. (a)(2)(B). Pub. L. 107-16, §§303(d)(1), 901, temporarily struck out “modified” before “adjusted gross income”. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2). Pub. L. 107-16, §§303(a)(1), 901, temporarily reenacted par. heading without change, designated existing provisions as subpar. (A), inserted subpar. heading, substituted "Subject to subparagraph (B), the earned" for "The earned", and added subpar. (B). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(1)(C). Pub. L. 107-16, §§303(f), 901, temporarily amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: "If 2 or more individuals would (but for this subparagraph and after application of subparagraph (B)) be treated as eligible individuals with respect to the same qualifying child for taxable years beginning in the same calendar year, only the individual with the highest modified adjusted gross income for such taxable years shall be treated as an eligible individual with respect to such qualifying child." See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2)(A)(i). Pub. L. 107-16, §§303(b), 901, temporarily inserted ", but only if such amounts are includible in gross income for the taxable year" after "other employee compensation". See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(3)(A)(ii). Pub. L. 107-16, §§303(e)(2)(B), 901, temporarily struck out "except as provided in subparagraph (B)(iii)," before "who has". See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(3)(B)(i). Pub. L. 107-16, §§303(e)(1), 901, temporarily reenacted heading, introductory provisions, and subcl. (III) of cl. (i) without change and amended subcls. (I) and (II) generally. Prior to amendment, subcls. (I) and (II) read as follows:

"(I) a son or daughter of the taxpayer, or a descendant of either,

"(II) a stepson or stepdaughter of the taxpayer, or." See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(3)(B)(iii). Pub. L. 107-16, §§303(e)(2)(A), 901, temporarily reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "For purposes of clause (i)(III), the term 'eligible foster child' means an individual not described in clause (i)(I) or (II) who—

"(I) is a brother, sister, stepbrother, or stepsister of the taxpayer (or a descendant of any such relative) or is placed with the taxpayer by an authorized placement agency,

"(II) the taxpayer cares for as the taxpayer's own child, and

"(III) has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year."

See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(3)(E). Pub. L. 107-16, §§303(h), 901, temporarily substituted "subparagraph (A)(ii)" for "subparagraphs (A)(ii) and (B)(iii)(II)". See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(5). Pub. L. 107-16, §§303(d)(2)(A), 901, temporarily struck out heading and text of par. (5), which defined "modified adjusted gross income" as meaning adjusted gross income without regard to certain described amounts and increased by certain described amounts. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (f)(2)(B). Pub. L. 107-16, §§303(d)(2)(B), 901, temporarily struck out "modified" before "adjusted gross income" in two places. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (h). Pub. L. 107-16, §§303(c), 901, temporarily struck out heading and text of subsec. (h). Text read as follows: "The credit allowed under this section for the taxable year shall be reduced by the amount of tax imposed by section 55 (relating to alternative minimum tax) with respect to such taxpayer for such taxable year." See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (j)(1)(B). Pub. L. 107-16, §§303(a)(2), 901, temporarily amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "the cost-of-

living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting 'calendar year 1995' for 'calendar year 1992' in subparagraph (B) thereof." See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (j)(2)(A). Pub. L. 107-16, §§303(a)(3), 901, temporarily substituted "subsection (b)(2)(A) (after being increased under subparagraph (B) thereof)" for "subsection (b)(2)". See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (n). Pub. L. 107-16, §§201(c)(3), 901, temporarily struck out heading and text of subsec. (n), which had increased credit allowable under this section in the case of a taxpayer with respect to whom a child tax credit is allowed under section 24(a), described amount of increase, and set forth provisions relating to coordination with other credits allowable under this part. See Effective and Termination Dates of 2001 Amendment note below.

1999—Subsec. (c)(3)(B)(iii). Pub. L. 106-170 added subcl. (I) and redesignated former subcls. (I) and (II) as (II) and (III), respectively.

1998—Subsec. (c)(1)(F). Pub. L. 105-206, §6021(a), added introductory provisions and struck out former introductory provisions which read as follows: "The term 'eligible individual' does not include any individual who does not include on the return of tax for the taxable year—"

Subsec. (c)(1)(G). Pub. L. 105-206, §6021(b)(2), added subpar. (G).

Subsec. (c)(2)(B)(v). Pub. L. 105-206, §6010(p)(2), inserted "shall be taken into account" before ", but only".

Subsec. (c)(3)(A)(ii) to (iv). Pub. L. 105-206, §6021(b)(3), inserted "and" at end of cl. (ii), substituted a period for ", and" at end of cl. (iii), and struck out cl. (iv) which read as follows: "with respect to whom the taxpayer meets the identification requirements of subparagraph (D)".

Subsec. (c)(3)(D)(i). Pub. L. 105-206, §6021(b)(1), reenacted heading without change and amended text of cl. (i) generally. Prior to amendment, text read as follows: "The requirements of this subparagraph are met if the taxpayer includes the name, age, and TIN of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year."

Subsec. (c)(5)(A). Pub. L. 105-206, §6010(p)(1)(A), inserted "and increased by the amounts described in subparagraph (C)" before period at end.

Subsec. (c)(5)(B). Pub. L. 105-206, §6010(p)(1)(B), (C), inserted "or" at end of cl. (iii) and substituted cl. (iv)(III) and concluding provisions for former cls. (iv)(III), (v), (vi), and concluding provisions which read as follows:

"(III) other trades or businesses

"(v) interest received or accrued during the taxable year which is exempt from tax imposed by this chapter, and

"(vi) amounts received as a pension or annuity, and any distributions or payments received from an individual retirement plan, by the taxpayer during the taxable year to the extent not included in gross income.

For purposes of clause (iv), there shall not be taken into account items which are attributable to a trade or business which consists of the performance of services by the taxpayer as an employee. Clause (vi) shall not include any amount which is not includible in gross income by reason of section 402(c), 403(a)(4), 403(b), 408(d)(3), (4), or (5), or 457(e)(10)."

Subsec. (c)(5)(C). Pub. L. 105-206, §6010(p)(1)(C), added subpar. (C).

Subsecs. (m), (n). Pub. L. 105-206, §6003(b), redesignated subsec. (m), relating to supplemental child credit, as (n) and amended text generally. Prior to amendment, text read as follows:

"(1) IN GENERAL.—In the case of a taxpayer with respect to whom a credit is allowed under section 24 for the taxable year, there shall be allowed as a credit

under this section an amount equal to the supplemental child credit (if any) determined for such taxpayer for such taxable year under paragraph (2). Such credit shall be in addition to the credit allowed under subsection (a).

“(2) SUPPLEMENTAL CHILD CREDIT.—For purposes of this subsection, the supplemental child credit is an amount equal to the excess (if any) of—

“(A) the amount determined under section 24(d)(1)(A), over

“(B) the amount determined under section 24(d)(1)(B).

The amounts referred to in subparagraphs (A) and (B) shall be determined as if section 24(d) applied to all taxpayers.

“(3) COORDINATION WITH SECTION 24.—The amount of the credit under section 24 shall be reduced by the amount of the credit allowed under this subsection.”

1997—Subsec. (c)(2)(B)(v). Pub. L. 105-34, §1085(c), added cl. (v).

Subsec. (c)(4). Pub. L. 105-34, §312(d)(2), struck out “(as defined in section 1034(h)(3))” after “serving on extended active duty” and inserted at end “For purposes of the preceding sentence, the term ‘extended active duty’ means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.”

Subsec. (c)(5)(B). Pub. L. 105-34, §1085(d)(4), inserted at end of concluding provisions “Clause (vi) shall not include any amount which is not includible in gross income by reason of section 402(c), 403(a)(4), 403(b), 408(d)(3), (4), or (5), or 457(e)(10).”

Subsec. (c)(5)(B)(iv). Pub. L. 105-34, §1085(b), substituted “75 percent” for “50 percent” in introductory provisions.

Subsec. (c)(5)(B)(v), (vi). Pub. L. 105-34, §1085(d)(1)–(3), added cls. (v) and (vi).

Subsec. (k). Pub. L. 105-34, §1085(a)(1), added subsec. (k). Former subsec. (k) redesignated (l).

Subsec. (l). Pub. L. 105-34, §1085(a)(1), redesignated subsec. (k) as (l). Former subsec. (l) redesignated (m).

Subsec. (m). Pub. L. 105-34, §1085(a)(1), redesignated subsec. (l) as (m) relating to identification numbers.

Pub. L. 105-34, §101(b), added subsec. (m) relating to supplemental child credit.

1996—Subsec. (a)(2)(B). Pub. L. 104-193, §910(a), inserted “modified” before “adjusted gross income”.

Subsec. (b)(2). Pub. L. 104-193, §909(a)(3), reenacted heading without change and amended text generally. Prior to amendment, text consisted of subpars. (A) and (B) setting out tables for determining the earned income amount for taxable years beginning after 1994 and for taxable years beginning in 1994.

Subsec. (c)(1)(C). Pub. L. 104-193, §910(a), inserted “modified” before “adjusted gross income”.

Subsec. (c)(1)(F). Pub. L. 104-193, §451(a), added subpar. (F).

Subsec. (c)(5). Pub. L. 104-193, §910(b), added par. (5).

Subsec. (f)(2)(B). Pub. L. 104-193, §910(a), inserted “modified” before “adjusted gross income” in two places.

Subsec. (i)(1). Pub. L. 104-193, §909(a)(1), substituted “\$2,200” for “\$2,350”.

Subsec. (i)(2). Pub. L. 104-193, §909(b), added subpars. (D) and (E) and concluding provisions.

Subsec. (j). Pub. L. 104-193, §909(a)(2), reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) IN GENERAL.—In the case of any taxable year beginning after 1994, each dollar amount contained in subsection (b)(2)(A) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting ‘calendar year 1993’ for ‘calendar year 1992’.

“(2) ROUNDING.—If any dollar amount after being increased under paragraph (1) is not a multiple of \$10, such dollar amount shall be rounded to the nearest

multiple of \$10 (or, if such dollar amount is a multiple of \$5, such dollar amount shall be increased to the next higher multiple of \$10).”

Subsec. (l). Pub. L. 104-193, §451(b), added subsec. (l). 1995—Subsecs. (i) to (k). Pub. L. 104-7 added subsec. (i) and redesignated former subsecs. (i) and (j) as (j) and (k), respectively.

1994—Subsec. (c)(1)(E). Pub. L. 103-465, §722(a), added subpar. (E).

Subsec. (c)(2)(B)(iv). Pub. L. 103-465, §723(a), added cl. (iv).

Subsec. (c)(3)(D)(i). Pub. L. 103-465, §742(a), amended heading and text of cl. (i) generally. Prior to amendment, text read as follows: “The requirements of this subparagraph are met if—

“(I) the taxpayer includes the name and age of each qualifying child (without regard to this subparagraph) on the return of tax for the taxable year, and

“(II) in the case of an individual who has attained the age of 1 year before the close of the taxpayer’s taxable year, the taxpayer includes the taxpayer identification number of such individual on such return of tax for such taxable year.”

Subsec. (c)(4). Pub. L. 103-465, §721(a), added par. (4).

1993—Subsec. (a). Pub. L. 103-66, §1313(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: “In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of—

“(1) the basic earned income credit, and

“(2) the health insurance credit.”

Subsec. (b). Pub. L. 103-66, §1313(a), substituted “Percentages and amounts” for “Computation of credit” in heading and amended text generally. Prior to amendment, text related to method of computation of both earned income credit and health insurance credit.

Subsec. (c)(1)(A). Pub. L. 103-66, §1313(b), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: “The term ‘eligible individual’ means any individual who has a qualifying child for the taxable year.”

Subsec. (c)(3)(D)(ii). Pub. L. 103-66, §1313(d)(1), redesignated cl. (iii) as (ii), substituted “clause (i)” for “clause (i) or (ii)”, and struck out heading and text of former cl. (ii). Text read as follows: “In the case of any taxpayer with respect to which the health insurance credit is allowed under subsection (a)(2), the Secretary may require a taxpayer to include an insurance policy number or other adequate evidence of insurance in addition to any information required to be included in clause (i).”

Subsec. (i)(1). Pub. L. 103-66, §1313(c)(1), added par. (1) and struck out text and heading of former par. (1). Text read as follows: “In the case of any taxable year beginning after the applicable calendar year, each dollar amount referred to in paragraph (2)(B) shall be increased by an amount equal to—

“(A) such dollar amount, multiplied by

“(B) the cost-of-living adjustment determined under section 1(f)(3), for the calendar year in which the taxable year begins, by substituting ‘calendar year 1984’ for ‘calendar year 1989’ in subparagraph (B) thereof.”

Subsec. (i)(2), (3). Pub. L. 103-66, §1313(c), redesignated par. (3) as (2) and struck out former par. (2) which defined terms for purposes of the inflation adjustment in par. (1).

1990—Subsec. (a). Pub. L. 101-508, §1111(a), amended subsec. (a) generally. Prior to amendment, subsec. (a) read as follows: “In the case of an eligible individual, there is allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 14 percent of so much of the earned income for the taxable year as does not exceed \$5,714.”

Subsec. (b). Pub. L. 101-508, §1111(a), substituted heading for one which read “Limitation” and amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

“(1) the maximum credit allowable under subsection (a) to any taxpayer, over

“(2) 10 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds \$9,000.

In the case of any taxable year beginning in 1987, paragraph (2) shall be applied by substituting ‘\$6,500’ for ‘\$9,000.’”

Subsec. (c). Pub. L. 101-508, §1111(a), amended subsec. (c) generally, inserting “and special rules” in heading and substituting present provisions for provisions defining “eligible individual” and “earned income”.

Subsec. (i)(1)(B). Pub. L. 101-508, §11101(d)(1)(B), substituted “1989” for “1987”.

Subsec. (i)(2)(A). Pub. L. 101-508, §1111(e)(1), (2), substituted “clause (i) of subparagraph (B)” for “clause (i) or (ii) of subparagraph (B)” in cl. (i) and “clause (ii)” for “clause (iii)” in cl. (ii).

Subsec. (i)(2)(B). Pub. L. 101-508, §1111(e)(3), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “The dollar amounts referred to in this subparagraph are—

“(i) the \$5,714 amount contained in subsection (a),

“(ii) the \$6,500 amount contained in the last sentence of subsection (b), and

“(iii) the \$9,000 amount contained in subsection (b)(2).”

Subsec. (j). Pub. L. 101-508, §1111(b), added subsec. (j).

1988—Subsec. (h). Pub. L. 100-647, §1007(g)(12), struck out “for taxpayers other than corporations” after “alternative minimum tax”.

Subsec. (i)(3). Pub. L. 100-647, §1001(c), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “If any increase determined under paragraph (1) 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 higher multiple of \$10).”

1986—Subsec. (a). Pub. L. 99-514, §111(a), substituted “14 percent” for “11 percent” and “\$5,714” for “\$5,000”.

Subsec. (b). Pub. L. 99-514, §111(b), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

“(1) \$550, over

“(2) 12% percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds \$6,500.”

Subsec. (c)(1)(A)(i). Pub. L. 99-514, §1301(j)(8), substituted “section 7703” for “section 143”.

Pub. L. 99-514, §104(b)(1)(B), substituted “section 151(c)(3)” for “section 151(e)(3)”.

Subsec. (c)(1)(C). Pub. L. 99-514, §1272(d)(4), struck out “or 931” after “911” in heading, and amended text generally. Prior to amendment, text read as follows: “The term ‘eligible individual’ does not include an individual who, for the taxable year, claims the benefits of—

“(i) section 911 (relating to citizens or residents of the United States living abroad),

“(ii) section 931 (relating to income from sources within possessions of the United States).”

Subsec. (d). Pub. L. 99-514, §1301(j)(8), substituted “section 7703” for “section 143”.

Subsec. (f)(2)(A), (B). Pub. L. 99-514, §111(d)(1), added subpars. (A) and (B) and struck out former subpars. (A) and (B) which read as follows:

“(A) for earned income between \$0 and \$11,000, and

“(B) for adjusted gross income between \$6,500 and \$11,000.”

Subsec. (i). Pub. L. 99-514, §111(c), added subsec. (i).

1984—Pub. L. 98-369, §471(c), renumbered section 43 of this title as this section.

Subsec. (a). Pub. L. 98-369, §1042(a), substituted “11 percent” for “10 percent”.

Subsec. (b)(1). Pub. L. 98-369, §1042(d)(1), substituted “\$550” for “\$500”.

Subsec. (b)(2). Pub. L. 98-369, §1042(b), substituted “12% percent” for “12.5 percent” and “\$6,500” for “\$6,000”.

Subsec. (c)(1)(A)(i). Pub. L. 98-369, §423(c)(3)(A), inserted “or would be so entitled but for paragraph (2) or (4) of section 152(e)”.

Subsec. (c)(1)(B). Pub. L. 98-369, §423(c)(3)(B), substituted “as the individual for more than one-half of the taxable year” for “as the individual”.

Subsec. (f)(2)(A). Pub. L. 98-369, §1042(d)(2), substituted “between \$0 and \$11,000” for “between \$0 and \$10,000”.

Subsec. (f)(2)(B). Pub. L. 98-369, §1042(d)(2), substituted “between \$6,500 and \$11,000” for “between \$6,000 and \$10,000”.

Subsec. (h). Pub. L. 98-369, §1042(c), added subsec. (h).

1983—Subsec. (c)(2)(A)(ii). Pub. L. 98-21 inserted before period at end “, but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f)”.

1981—Subsec. (c)(1)(C). Pub. L. 97-34 struck out reference to section 913 in heading, substituted “relating to citizens or residents of the United States living abroad” for “relating to income earned by individuals in certain camps outside the United States” in cl. (i), struck out cl. (ii) which made reference to section 913, and redesignated cl. (iii) as (ii).

1980—Subsec. (c)(1)(C). Pub. L. 96-222, §101(a)(1), in heading substituted “who claims benefit of section 911, 913, or 931” for “entitled to exclude income under section 911” and in text substituted “claims the benefits of” for “is entitled to exclude any amounts from gross income under” and inserted reference to section 913 (relating to deduction for certain expenses of living abroad).

Subsecs. (g), (h). Pub. L. 96-222, §101(a)(2)(E), redesignated subsec. (h) as (g).

1978—Subsec. (a). Pub. L. 95-600, §104(a), substituted “subtitle” for “chapter” and “\$5,000” for “\$4,000”.

Subsec. (b). Pub. L. 95-600, §104(b), substituted provision limiting the allowable credit to an amount not to exceed the excess of \$500 over 12.5 percent of so much of the adjusted gross income for the taxable year as exceeds \$6,000 for provision limiting the allowable credit to an amount reduced by 10 percent of so much of the adjusted gross income for the taxable year as exceeds \$4,000.

Subsec. (c)(1). Pub. L. 95-600, §104(e), amended par. (1) generally, substituting in definition of eligible individual one who is married and is entitled to a deduction under section 151 for a child, provided the child has the same principal abode as the individual and the abode is in the United States, is a surviving spouse, or is a head of household, provided the household is in the United States for one who maintains a household in the United States which is the principal abode of that individual and a child of that individual who meets the requirements of section 151(e)(1)(B) or a child of that individual who is disabled within the meaning of section 72(m)(7) and to whom the individual is entitled to claim a deduction under section 151.

Subsec. (c)(1)(C). Pub. L. 95-615, §202(f)(5), which directed the amendment of subsec. (c)(1)(B) by substituting “(relating to income earned by employees in certain camps)” for “(relating to earned income from sources without the United States)”, was executed to subsec. (c)(1)(C) to reflect the probable intent of Congress and the general amendment of subsec. (c)(1) by Pub. L. 95-600 which enacted provisions formerly contained in subsec. (c)(1)(B) in subsec. (c)(1)(C).

Subsec. (c)(2)(B). Pub. L. 95-600, §104(d), redesignated cls. (ii) to (iv) as (i) to (iii), respectively. Former cl. (i), which provided that amounts be taken into account only if includible in the gross income of the taxpayer for the taxable year, was struck out.

Subsec. (f). Pub. L. 95-600, §104(c), added subsec. (f).

Subsec. (h). Pub. L. 95-600, §105(a), added subsec. (h).

1976—Subsec. (a). Pub. L. 94-455, §401(c)(1)(B), substituted “is allowed” for “shall be allowed” and struck out provisions relating to the application of the six-month rule.

Subsec. (b). Pub. L. 94-455, §401(c)(1)(B), struck out provisions relating to the application of the six-month rule.

Subsec. (c)(1)(A). Pub. L. 94-455, § 401(c)(2), among other changes, substituted “section 44A(f)(1)” for “section 214(b)(3)” and “if such child meets the requirements of section 151(e)(1)(B)” for “with respect to whom he is entitled to claim a deduction under section 151(e)(1)(B)” and inserted reference to a child of that individual who is disabled (within the meaning of section 72(m)(7)) and with respect to whom that individual is entitled to claim a deduction under section 151.

1975—Subsec. (a). Pub. L. 94-164 designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 94-164 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-5, div. B, title I, § 1002(b), Feb. 17, 2009, 123 Stat. 312, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2008.”

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (2)(O) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

Pub. L. 110-245, title I, § 102(d), June 17, 2008, 122 Stat. 1625, provided that: “The amendments made by this section [amending this section and section 6428 of this title] shall apply to taxable years ending after December 31, 2007.”

EFFECTIVE DATE OF 2006 AMENDMENT

Pub. L. 109-432, div. A, title I, § 106(b), Dec. 20, 2006, 120 Stat. 2938, provided that: “The amendment made by this section [amending this section] shall apply to taxable years beginning after December 31, 2006.”

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109-135, title III, § 302(b), Dec. 21, 2005, 119 Stat. 2608, provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 2005.”

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 110-245, title I, § 102(c), June 17, 2008, 122 Stat. 1625, provided that: “Section 105 of the Working Families Tax Relief Act of 2004 [section 105 of Pub. L. 108-311, set out as a note under section 1 of this title] (relating to application of EGTRRA sunset to this title [probably means title I of Pub. L. 108-311, see Tables for classification]) shall not apply to section 104(b) of such Act [amending this section].”

Pub. L. 108-311, title I, § 104(c)(2), Oct. 4, 2004, 118 Stat. 1169, provided that: “The amendments made by subsection (b) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Oct. 4, 2004].”

Amendment by section 205 of Pub. L. 108-311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108-311, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Pub. L. 107-147, title IV, § 416(a)(2), Mar. 9, 2002, 116 Stat. 55, provided that: “The amendment made by this subsection [amending this section] shall take effect as if included in section 474 of the Tax Reform Act of 1984 [Pub. L. 98-369].”

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by section 201(c)(3) of Pub. L. 107-16 applicable to taxable years beginning after Dec. 31, 2000,

see section 201(e)(1) of Pub. L. 107-16, set out as a note under section 24 of this title.

Pub. L. 107-16, title III, § 303(i), June 7, 2001, 115 Stat. 57, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 6213 of this title] shall apply to taxable years beginning after December 31, 2001.

“(2) SUBSECTION (g).—The amendment made by subsection (g) [amending section 6213 of this title] shall take effect on January 1, 2004.”

Amendment by Pub. L. 107-16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Pub. L. 106-170, title IV, § 412(b), Dec. 17, 1999, 113 Stat. 1917, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1999.”

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title VI, § 6021(c), July 22, 1998, 112 Stat. 824, provided that:

“(1) ELIGIBLE INDIVIDUALS.—The amendment made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 451 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [Pub. L. 104-193].

“(2) QUALIFYING CHILDREN.—The amendments made by subsection (b) [amending this section] shall take effect as if included in the amendments made by section 1111 of Revenue Reconciliation Act of 1990 [Pub. L. 101-508].”

Amendment by sections 6003(b) and 6010(p)(1), (2) of Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by section 101(b) of Pub. L. 105-34 applicable to taxable years beginning after Dec. 31, 1997, see section 101(e) of Pub. L. 105-34, set out as an Effective Date note under section 24 of this title.

Amendment by section 312(d)(2) of Pub. L. 105-34 applicable to sales and exchanges after May 6, 1997, with certain exceptions, see section 312(d) of Pub. L. 105-34, set out as a note under section 121 of this title.

Section 1085(e) of Pub. L. 105-34 provided that:

“(1) The amendments made by subsection (a) [amending this section and sections 6213 and 6695 of this title] shall apply to taxable years beginning after December 31, 1996.

“(2) The amendments made by subsections (b), (c), and (d) [amending this section] shall apply to taxable years beginning after December 31, 1997.”

EFFECTIVE DATE OF 1996 AMENDMENT

Section 451(d) of Pub. L. 104-193 provided that: “The amendments made by this section [amending this section and section 6213 of this title] shall apply with respect to returns the due date for which (without regard to extensions) is more than 30 days after the date of the enactment of this Act [Aug. 22, 1996].”

Section 909(c) of Pub. L. 104-193 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.

“(2) ADVANCE PAYMENT INDIVIDUALS.—In the case of any individual who on or before June 26, 1996, has in effect an earned income eligibility certificate for the individual’s taxable year beginning in 1996, the amendments made by this section shall apply to taxable years beginning after December 31, 1996.”

Section 910(c) of Pub. L. 104-193 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.

“(2) ADVANCE PAYMENT INDIVIDUALS.—In the case of any individual who on or before June 26, 1996, has in effect an earned income eligibility certificate for the individual’s taxable year beginning in 1996, the amendments made by this section shall apply to taxable years beginning after December 31, 1996.”

EFFECTIVE DATE OF 1995 AMENDMENT

Section 4(b) of Pub. L. 104-7 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1995.”

EFFECTIVE DATE OF 1994 AMENDMENT

Section 721(d)(1) of Pub. L. 103-465 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994.”

Section 722(b) of Pub. L. 103-465 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1994.”

Section 723(b) of Pub. L. 103-465 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1993.”

Section 742(c) of Pub. L. 103-465 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and section 6109 of this title] shall apply to returns for taxable years beginning after December 31, 1994.

“(2) EXCEPTION.—The amendments made by this section shall not apply to—

“(A) returns for taxable years beginning in 1995 with respect to individuals who are born after October 31, 1995, and

“(B) returns for taxable years beginning in 1996 with respect to individuals who are born after November 30, 1996.”

EFFECTIVE DATE OF 1993 AMENDMENT

Section 13131(e) of Pub. L. 103-66 provided that: “The amendments made by this section [amending this section and sections 162, 213, and 3507 of this title] shall apply to taxable years beginning after December 31, 1993.”

EFFECTIVE DATE OF 1990 AMENDMENT

Amendment by section 11101(d)(1)(B) of Pub. L. 101-508 applicable to taxable years beginning after Dec. 31, 1990, see section 11101(e) of Pub. L. 101-508, set out as a note under section 1 of this title.

Section 11111(f) of Pub. L. 101-508 provided that: “The amendments made by this section [amending this section and sections 162, 213, and 3507 of this title] shall apply to taxable years beginning after December 31, 1990.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by sections 104(b)(1)(B) and 111(a)-(d)(1) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99-514, set out as a note under section 1 of this title.

Amendment by section 1272(d)(4) of Pub. L. 99-514 applicable to taxable years beginning after Dec. 31, 1986,

with certain exceptions and qualifications, see section 1277 of Pub. L. 99-514, set out as a note under section 931 of this title.

Amendment by section 1301(j)(8) of Pub. L. 99-514 applicable to bonds issued after Aug. 15, 1986, except as otherwise provided, see sections 1311 to 1318 of Pub. L. 99-514, set out as an Effective Date; Transitional Rules note under section 141 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(c)(3) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98-369, set out as a note under section 2 of this title.

Section 1042(e) of Pub. L. 98-369 provided that: “The amendments made by this section [amending sections 32 and 3507 of this title] shall apply to taxable years beginning after December 31, 1984.”

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98-21, set out as a note under section 1401 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97-34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 101(b)(1)(A) of Pub. L. 96-222 provided that: “The amendment made by subsection (a)(1) [amending this section] shall apply to taxable years beginning after December 31, 1977.”

Section 201 of Pub. L. 96-222 provided that: “Except as otherwise provided in title I, any amendment made by title I [see Tables for classification] shall take effect as if it had been included in the provision of the Revenue Act of 1978 [Pub. L. 95-600, see Tables for classification] to which such amendment relates.”

EFFECTIVE DATE OF 1978 AMENDMENT

Section 104(f) of Pub. L. 95-600 provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1978.”

Section 105(g)(1) of Pub. L. 95-600 provided that: “The amendments made by subsections (a) and (d) [amending this section and section 6012 of this title] shall apply to taxable years beginning after December 31, 1978.”

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as a note under section 911 of this title.

EFFECTIVE AND TERMINATION DATES OF 1976 AMENDMENT

Section 401(e) of Pub. L. 94-455, as amended by Pub. L. 95-30, title I, §103(c), May 23, 1977, 91 Stat. 139; Pub. L. 95-600, title I, §103(b), Nov. 6, 1978, 92 Stat. 2771, provided that: “The amendments made by subsection (a) [amending sections 43 [now 32] and 6096 of this title] shall apply to taxable years ending after December 31, 1975, and shall cease to apply to taxable years ending after December 31, 1978. The amendments made by subsection (c) [amending this section] shall apply to taxable years ending after December 31, 1975. The amendments made by subsection (b) [amending sections 141 and 6012 of this title] shall apply to taxable years ending after December 31, 1975. The amendments made by subsection (d) [amending section 3402 of this title] shall apply to wages paid after September 14, 1976.”

EFFECTIVE AND TERMINATION DATES OF 1975
AMENDMENTS

Section 2(g) of Pub. L. 94-164, as amended by Pub. L. 94-455, § 402(b), provided that: "The amendments made by this section [amending sections 43 [now 32], 141, 3402, and 6012 of this title and provisions set out as notes under sections 42 and 43 [now 32] of this title] (other than by subsection (d) [enacting provisions set out as a note under this section]) apply to taxable years ending after December 31, 1975, and before January 1, 1978. Subsection (d) applies to taxable years ending after December 31, 1975."

Section 209(b) of Pub. L. 94-12, as amended by Pub. L. 94-164, § 2(f), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94-455, title IV, § 401(c)(1)(A), Oct. 4, 1976, 90 Stat. 1557; Pub. L. 95-30, title I, § 103(b), May 23, 1977, 91 Stat. 139; Pub. L. 95-600, title I, § 103(a), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by section 204 [enacting this section and amending sections 6201 and 6401 of this title] shall apply to taxable years beginning after December 31, 1974."

STUDY ON EARNED INCOME TAX CREDIT CERTIFICATION
PROGRAM

Pub. L. 108-199, div. F, title II, § 206, Jan. 23, 2004, 118 Stat. 319, provided that:

"(a) STUDY.—The Internal Revenue Service shall conduct a study, as a part of any program that requires certification (including pre-certification) in order to claim the earned income tax credit under section 32 of the Internal Revenue Code of 1986, on the following matters:

"(1) The costs (in time and money) incurred by the participants in the program.

"(2) The administrative costs incurred by the Internal Revenue Service in operating the program.

"(3) The percentage of individuals included in the program who were not certified for the credit, including the percentage of individuals who were not certified due to—

"(A) ineligibility for the credit; and

"(B) failure to complete the requirements for certification.

"(4) The percentage of individuals to whom paragraph (3)(B) applies who were—

"(A) otherwise eligible for the credit; and

"(B) otherwise ineligible for the credit.

"(5) The percentage of individuals to whom paragraph (3)(B) applies who—

"(A) did not respond to the request for certification; and

"(B) responded to such request but otherwise failed to complete the requirements for certification.

"(6) The reasons—

"(A) for which individuals described in paragraph (5)(A) did not respond to requests for certification; and

"(B) for which individuals described in paragraph (5)(B) had difficulty in completing the requirements for certification.

"(7) The characteristics of those individuals who were denied the credit due to—

"(A) failure to complete the requirements for certification; and

"(B) ineligibility for the credit.

"(8) The impact of the program on non-English speaking participants.

"(9) The impact of the program on homeless and other highly transient individuals.

"(b) REPORT.—

"(1) PRELIMINARY REPORT.—Not later than July 30, 2004, the Commissioner of the Internal Revenue Service shall submit to Congress a preliminary report on the study conducted under subsection (a).

"(2) FINAL REPORT.—Not later than June 30, 2005, the Commissioner of the Internal Revenue Service shall submit to Congress a final report detailing the findings of the study conducted under subsection (a)."

PROGRAM TO INCREASE PUBLIC AWARENESS

Secretary of the Treasury, or Secretary's delegate, to establish taxpayer awareness program to inform tax-paying public of availability of earned income credit and child health insurance under this section, see section 11114 of Pub. L. 101-508, set out as a note under section 21 of this title.

EMPLOYEE NOTIFICATION

Section 111(e) of Pub. L. 99-514 provided that: "The Secretary of the Treasury is directed to require, under regulations, employers to notify any employee who has not had any tax withheld from wages (other than an employee whose wages are exempt from withholding pursuant to section 3402(n) of the Internal Revenue Code of 1986) that such employee may be eligible for a refund because of the earned income credit."

DISREGARD OF REFUND FOR DETERMINATION OF
ELIGIBILITY FOR FEDERAL BENEFITS OR ASSISTANCE

Section 2(d) of Pub. L. 94-164, as amended by Pub. L. 94-455, title IV, § 402(a), Oct. 4, 1976, 90 Stat. 1558; Pub. L. 95-600, title I, § 105(f), Nov. 6, 1978, 92 Stat. 2776; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that: "Any refund of Federal income taxes made to any individual by reason of section 43 [now 32] of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] (relating to earned income credit), and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall not be taken into account in any year ending before 1980 as income or receipts for purposes of determining the eligibility, for the month in which such refund is made or any month thereafter of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds, but only if such individual (or the family unit of which he is a member) is a recipient of benefits or assistance under such a program for the month before the month in which such refund is made."

[Section 105(g)(3) of Pub. L. 95-600 provided that: "Subsection (f) [amending section 2(d) of Pub. L. 94-164, set out above] shall take effect on the date of enactment of this Act [Nov. 6, 1978]."]

**§ 33. Tax withheld at source on nonresident
aliens and foreign corporations**

There shall be allowed as a credit against the tax imposed by this subtitle the amount of tax withheld at source under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and on foreign corporations).

(Aug. 16, 1954, ch. 736, 68A Stat. 13, § 32; renumbered § 33 and amended Pub. L. 98-369, div. A, title IV, §§ 471(c), 474(j), July 18, 1984, 98 Stat. 826, 832.)

PRIOR PROVISIONS

A prior section 33 was renumbered section 27 of this title.

AMENDMENTS

1984—Pub. L. 98-369, § 471(c), renumbered section 32 of this title as this section.

Pub. L. 98-369, § 474(j), amended section generally, striking out "and on tax-free covenant bonds" after "foreign corporations" in section catchline, and, in text, substituting "as a credit against the tax imposed by this subtitle" for "as credits against the tax imposed by this chapter", and striking out designation "(1)" before "the amount of tax withheld", and ", and (2) the amount of tax withheld at source under subchapter B of chapter 3 (relating to interest on tax-free covenant bonds)" after "on foreign corporations)".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 475(b) of Pub. L. 98-369 provided that: “The amendments made by subsections (j) and (r)(29) [amending this section and sections 12, 164, 1441, 1442, 6049, and 7701 of this title and repealing section 1451 of this title] shall not apply with respect to obligations issued before January 1, 1984.”

§ 34. Certain uses of gasoline and special fuels**(a) General rule**

There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer—

- (1) under section 6420 (determined without regard to section 6420(g)),
- (2) under section 6421 (determined without regard to section 6421(i)),¹ and
- (3) under section 6427 (determined without regard to section 6427(k)).

(b) Exception

Credit shall not be allowed under subsection (a) for any amount payable under section 6421 or 6427, if a claim for such amount is timely filed and, under section 6421(i) or 6427(k), is payable under such section.

(Added Pub. L. 89-44, title VIII, 809(c), June 21, 1965, 79 Stat. 167, §39; amended Pub. L. 91-258, title II, §207(c), May 21, 1970, 84 Stat. 248; Pub. L. 94-455, title XIX, §§1901(a)(3), 1906(b)(8), (9), Oct. 4, 1976, 90 Stat. 1764, 1834; Pub. L. 94-530, §1(c)(1), Oct. 17, 1976, 90 Stat. 2487; Pub. L. 95-599, title V, §505(c)(1), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 95-618, title II, §233(b)(2)(C), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 96-223, title II, §232(d)(4)(A), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97-424, title V, §515(b)(6)(A)-(C), Jan. 6, 1983, 96 Stat. 2181; renumbered §34 and amended Pub. L. 98-369, div. A, title IV, §471(c), title IX, §911(d)(2)(A), July 18, 1984, 98 Stat. 826, 1006; Pub. L. 99-514, title XVII, §1703(e)(2)(F), title XVIII, §1877(a), Oct. 22, 1986, 100 Stat. 2778, 2902; Pub. L. 100-647, title I, §1017(c)(2), Nov. 10, 1988, 102 Stat. 3576; Pub. L. 104-188, title I, §1606(b)(1), Aug. 20, 1996, 110 Stat. 1839; Pub. L. 105-206, title VI, §6023(24)(B), July 22, 1998, 112 Stat. 826; Pub. L. 110-172, §11(a)(4), Dec. 29, 2007, 121 Stat. 2484.)

REFERENCES IN TEXT

Section 6421(i), referred to in subsec. (a)(2), was repealed by Pub. L. 103-66, title XIII, §13241(f)(7), Aug. 10, 1993, 107 Stat. 512.

PRIOR PROVISIONS

A prior section 34, acts Aug. 16, 1954, ch. 736, 68A Stat. 13; June 25, 1959, Pub. L. 86-69, §3(a)(1), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86-779, §10(e), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88-272, title II, §201(a), 78 Stat. 31, related to dividends received by individuals, prior to repeal by Pub. L. 88-272, title II, §201(b), Feb. 26, 1964, 78 Stat. 31, effective with respect to dividends received after Dec. 31, 1964.

AMENDMENTS

2007—Subsec. (a)(1). Pub. L. 110-172, §11(a)(4)(A), struck out “with respect to gasoline used during the taxable year on a farm for farming purposes” before “(determined without regard to section 6420(g))”.

Subsec. (a)(2). Pub. L. 110-172, §11(a)(4)(B), which directed striking out “with respect to gasoline used dur-

ing the taxable year: (A) otherwise than as a fuel in a highway vehicle; or (B) in vehicles while engaged in furnishing certain public passenger land transportation service”, was executed by striking out “with respect to gasoline used during the taxable year (A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service” before “(determined without regard to section 6421(i))”, to reflect the probable intent of Congress.

Subsec. (a)(3). Pub. L. 110-172, §11(a)(4)(C), struck out “with respect to fuels used for nontaxable purposes or resold during the taxable year” before “(determined without regard to section 6427(k))”.

1998—Subsec. (b). Pub. L. 105-206 substituted “section 6421(i)” for “section 6421(j)”.

1996—Subsec. (a)(3). Pub. L. 104-188 amended par. (3) generally. Prior to amendment, par. (3) read as follows: “under section 6427—

“(A) with respect to fuels used for nontaxable purposes or resold, or

“(B) with respect to any qualified diesel-powered highway vehicle purchased (or deemed purchased under section 6427(g)(6)), during the taxable year (determined without regard to section 6427(k)).”

1988—Subsec. (b). Pub. L. 100-647 substituted “section 6421(j) or 6427(k)” for “section 6421(i) or 6427(j)”.

1986—Subsec. (a)(3). Pub. L. 99-514, §1877(a), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(j)).”

Pub. L. 99-514, §1703(e)(2)(F), substituted “6427(k)” for “6427(j)”.

1984—Pub. L. 98-369, §471(c), renumbered section 39 of this title as this section.

Subsec. (a)(3). Pub. L. 98-369, §911(d)(2)(A), which directed the amendment of par. (4) by substituting “6427(j)” for “6427(i)” was executed to par. (3) to reflect the probable intent of Congress and the redesignation of par. (4) as (3) by Pub. L. 97-424.

Subsec. (b). Pub. L. 98-369, §911(d)(2)(A), substituted “6427(j)” for “6427(i)”.

1983—Pub. L. 97-424, §515(b)(6)(C), substituted “and special fuels” for “, special fuels, and lubricating oil” after “gasoline” in section catchline.

Subsec. (a)(2) to (4). Pub. L. 97-424, §515(b)(6)(A), inserted “and” at end of par. (2), redesignated par. (4) as (3), and struck out former (3) which referred to amounts payable to the taxpayer under section 6424 with respect to lubricating oil used during the taxable year for certain nontaxable purposes (determined without regard to section 6424(f)).

Subsec. (b). Pub. L. 97-424, §515(b)(6)(B)(i), substituted “6421 or 6427” for “6421, 6424, or 6427” after “amount payable under”.

Pub. L. 97-424, §515(b)(6)(B)(ii), substituted “6421(i) or 6427(i)” for “6421(i), 6424(f), or 6427(i)” after “and, under”.

1980—Subsec. (a)(4). Pub. L. 96-223 substituted “6427(i)” for “6427(h)”.

Subsec. (b). Pub. L. 96-223 substituted “6427(i)” for “6427(h)”.

1978—Subsec. (a)(3). Pub. L. 95-618 substituted “for certain nontaxable purposes” for “otherwise than in a highway motor vehicle”.

Subsec. (a)(4). Pub. L. 95-599 substituted “6427(h)” for “6427(g)”.

Subsec. (b). Pub. L. 95-599 substituted “6427(h)” for “6427(g)”.

1976—Subsec. (a)(1). Pub. L. 94-455, §1906(b)(8), substituted “6420(g)” for “6420(h)”.

Subsec. (a)(3). Pub. L. 94-455, §1906(b)(9), substituted “6424(f)” for “6424(g)”.

Subsec. (a)(4). Pub. L. 94-530 substituted “6427(g)” for “6427(f)”.

Subsec. (b). Pub. L. 94-530, which directed the amendment of subsec. (c) by substituting “6427(g)” for “6427(f)”, was executed to subsec. (b) to reflect the

¹ See References in Text note below.

probable intent of Congress and the redesignation of subsec. (c) as (b) by Pub. L. 94-455.

Pub. L. 94-455, §1901(a)(3), redesignated subsec. (c) as (b) and substituted “section 6421(i), 6424(f), or 6427(f), is payable” for “section 6421(i), 6424(g) or 6427(f) is payable”. Former subsec. (b), relating to determination of taxpayers first taxable year with respect to tax credit for certain uses of gasoline and lubricating oil, was struck out.

Subsec. (c). Pub. L. 94-455, §1901(a)(3), redesignated subsec. (c) as (b).

1970—Pub. L. 91-258, §207(c)(1), inserted reference to special fuels in section catchline.

Subsec. (a)(4). Pub. L. 91-258, §207(c)(2), added par. (4).

Subsec. (c). Pub. L. 91-258, §207(c)(3), (4), inserted references to sections 6427 and 6427(f), respectively.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-206, title VI, §6023(32), July 22, 1998, 112 Stat. 826, provided that: “The amendments made by this section [amending this section and sections 45A, 59, 72, 142, 501, 512, 543, 871, 1017, 1250, 3121, 3401, 4092, 4221, 4222, 4973, 4975, 6039, 6050R, 6103, 6416, 6421, 6427, 6501, 7434, 7702B, 7872, and 9502 of this title] shall take effect on the date of the enactment of this Act [July 22, 1998].”

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1606(c) of Pub. L. 104-188 provided that: “The amendments made by this section [amending this section and section 6427 of this title] shall apply to vehicles purchased after the date of the enactment of this Act [Aug. 20, 1996].”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1703(e)(2)(F) of Pub. L. 99-514 applicable to gasoline removed (as defined in section 4082 of this title as amended by section 1703 of Pub. L. 99-514) after Dec. 31, 1987, see section 1703(h) of Pub. L. 99-514 set out as a note under section 4081 of this title.

Amendment by section 1877(a) of Pub. L. 99-514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98-369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99-514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 911(d)(2)(A) of Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 515(c) of Pub. L. 97-424 provided that: “The amendments made by this section [amending sections 39 [now 34], 874, 882, 4101, 4102, 4221, 4222, 6201, 6206, 6416, 6421, 6504, 6675, 7210, 7603 to 7605, 7609, and 7610 of this title and repealing sections 4091 to 4094 and 6424 of this title] shall apply with respect to articles sold after the date of the enactment of this Act [Jan. 6, 1983].”

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-223 effective on Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96-223, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 233(d) of Pub. L. 95-618 provided that: “The amendments made by this section [amending sections 39 [now 34], 4041, 4221, 4483, 6416, 6421, 6424, 6427, 6504, and 6675 of this title and amending a provision set out as a

note under section 120 of Title 23, Highways] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Nov. 9, 1978].”

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as a note under section 6427 of this title.

EFFECTIVE DATE OF 1976 AMENDMENTS

Amendment by Pub. L. 94-530 effective on Oct. 1, 1976, see section 1(d) of Pub. L. 94-530, set out as a note under section 4041 of this title.

Amendment by section 1901(a)(3) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment by section 1906(b)(8), (9) of Pub. L. 94-455, to take effect on Feb. 1, 1977, see section 1906(d) of Pub. L. 94-455, set out as a note under section 6013 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-258 applicable with respect to taxable years ending after June 30, 1970, see section 211(b) of Pub. L. 91-258, set out as a note under section 4041 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89-44, set out as an Effective Date of 1965 Amendment note under section 6420 of this title.

§ 35. Health insurance costs of eligible individuals

(a) In general

In the case of an individual, there shall be allowed as a credit against the tax imposed by subtitle A an amount equal to 65 percent (80 percent in the case of eligible coverage months beginning before January 1, 2011) of the amount paid by the taxpayer for coverage of the taxpayer and qualifying family members under qualified health insurance for eligible coverage months beginning in the taxable year.

(b) Eligible coverage month

For purposes of this section—

(1) In general

The term “eligible coverage month” means any month if—

(A) as of the first day of such month, the taxpayer—

(i) is an eligible individual,

(ii) is covered by qualified health insurance, the premium for which is paid by the taxpayer,

(iii) does not have other specified coverage, and

(iv) is not imprisoned under Federal, State, or local authority, and

(B) such month begins more than 90 days after the date of the enactment of the Trade Act of 2002.

(2) Joint returns

In the case of a joint return, the requirements of paragraph (1)(A) shall be treated as met with respect to any month if at least 1 spouse satisfies such requirements.

(c) Eligible individual

For purposes of this section—

(1) In general

The term “eligible individual” means—

- (A) an eligible TAA recipient,
 - (B) an eligible alternative TAA recipient,
- and
- (C) an eligible PBGC pension recipient.

(2) Eligible TAA recipient**(A) In general**

Except as provided in subparagraph (B), the term “eligible TAA recipient” means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

(B) Special rule

In the case of any eligible coverage month beginning after the date of the enactment of this paragraph and before January 1, 2011, the term “eligible TAA recipient” means, with respect to any month, any individual who—

- (i) is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974,
- (ii) would be eligible to receive such allowance except that such individual is in a break in training provided under a training program approved under section 236 of such Act that exceeds the period specified in section 233(e) of such Act, but is within the period for receiving such allowances provided under section 233(a) of such Act, or
- (iii) is receiving unemployment compensation (as defined in section 85(b)) for any day of such month and who would be eligible to receive such allowance for such month if section 231 of such Act were applied without regard to subsections (a)(3)(B) and (a)(5) thereof.

An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.

(3) Eligible alternative TAA recipient

The term “eligible alternative TAA recipient” means, with respect to any month, any individual who—

- (A) is a worker described in section 246(a)(3)(B) of the Trade Act of 1974 who is participating in the program established under section 246(a)(1) of such Act, and
- (B) is receiving a benefit for such month under section 246(a)(2) of such Act.

An individual shall continue to be treated as an eligible alternative TAA recipient during

the first month that such individual would otherwise cease to be an eligible alternative TAA recipient by reason of the preceding sentence.

(4) Eligible PBGC pension recipient

The term “eligible PBGC pension recipient” means, with respect to any month, any individual who—

- (A) has attained age 55 as of the first day of such month, and
- (B) is receiving a benefit for such month any portion of which is paid by the Pension Benefit Guaranty Corporation under title IV of the Employee Retirement Income Security Act of 1974.

(d) Qualifying family member

For purposes of this section—

(1) In general

The term “qualifying family member” means—

- (A) the taxpayer’s spouse, and
- (B) any dependent of the taxpayer with respect to whom the taxpayer is entitled to a deduction under section 151(c).

Such term does not include any individual who has other specified coverage.

(2) Special dependency test in case of divorced parents, etc.

If section 152(e) applies to any child with respect to any calendar year, in the case of any taxable year beginning in such calendar year, such child shall be treated as described in paragraph (1)(B) with respect to the custodial parent (as defined in section 152(e)(4)(A)) and not with respect to the noncustodial parent.

(e) Qualified health insurance

For purposes of this section—

(1) In general

The term “qualified health insurance” means any of the following:

- (A) Coverage under a COBRA continuation provision (as defined in section 9832(d)(1)).
- (B) State-based continuation coverage provided by the State under a State law that requires such coverage.
- (C) Coverage offered through a qualified State high risk pool (as defined in section 2744(c)(2) of the Public Health Service Act).
- (D) Coverage under a health insurance program offered for State employees.
- (E) Coverage under a State-based health insurance program that is comparable to the health insurance program offered for State employees.
- (F) Coverage through an arrangement entered into by a State and—

- (i) a group health plan (including such a plan which is a multiemployer plan as defined in section 3(37) of the Employee Retirement Income Security Act of 1974),
- (ii) an issuer of health insurance coverage,
- (iii) an administrator, or
- (iv) an employer.

(G) Coverage offered through a State arrangement with a private sector health care coverage purchasing pool.

(H) Coverage under a State-operated health plan that does not receive any Federal financial participation.

(I) Coverage under a group health plan that is available through the employment of the eligible individual's spouse.

(J) In the case of any eligible individual and such individual's qualifying family members, coverage under individual health insurance if the eligible individual was covered under individual health insurance during the entire 30-day period that ends on the date that such individual became separated from the employment which qualified such individual for—

(i) in the case of an eligible TAA recipient, the allowance described in subsection (c)(2),

(ii) in the case of an eligible alternative TAA recipient, the benefit described in subsection (c)(3)(B), or

(iii) in the case of any eligible PBGC pension recipient, the benefit described in subsection (c)(4)(B).

For purposes of this subparagraph, the term "individual health insurance" means any insurance which constitutes medical care offered to individuals other than in connection with a group health plan and does not include Federal- or State-based health insurance coverage.

(K) In the case of eligible coverage months beginning before January 1, 2011, coverage under an employee benefit plan funded by a voluntary employees' beneficiary association (as defined in section 501(c)(9)) established pursuant to an order of a bankruptcy court, or by agreement with an authorized representative, as provided in section 1114 of title 11, United States Code.

(2) Requirements for state-based coverage

(A) In general

The term "qualified health insurance" does not include any coverage described in subparagraphs (B) through (H) of paragraph (1) unless the State involved has elected to have such coverage treated as qualified health insurance under this section and such coverage meets the following requirements:

(i) Guaranteed issue

Each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified health insurance costs credit eligibility certificate described in section 7527 and pays the remainder of such premium.

(ii) No imposition of preexisting condition exclusion

No pre-existing condition limitations are imposed with respect to any qualifying individual.

(iii) Nondiscriminatory premium

The total premium (as determined without regard to any subsidies) with respect to a qualifying individual may not be greater than the total premium (as so determined) for a similarly situated individual who is not a qualifying individual.

(iv) Same benefits

Benefits under the coverage are the same as (or substantially similar to) the benefits provided to similarly situated individuals who are not qualifying individuals.

(B) Qualifying individual

For purposes of this paragraph, the term "qualifying individual" means—

(i) an eligible individual for whom, as of the date on which the individual seeks to enroll in the coverage described in subparagraphs (B) through (H) of paragraph (1), the aggregate of the periods of creditable coverage (as defined in section 9801(c)) is 3 months or longer and who, with respect to any month, meets the requirements of clauses (iii) and (iv) of subsection (b)(1)(A); and

(ii) the qualifying family members of such eligible individual.

(3) Exception

The term "qualified health insurance" shall not include—

(A) a flexible spending or similar arrangement, and

(B) any insurance if substantially all of its coverage is of excepted benefits described in section 9832(c).

(f) Other specified coverage

For purposes of this section, an individual has other specified coverage for any month if, as of the first day of such month—

(1) Subsidized coverage

(A) In general

Such individual is covered under any insurance which constitutes medical care (except insurance substantially all of the coverage of which is of excepted benefits described in section 9832(c)) under any health plan maintained by any employer (or former employer) of the taxpayer or the taxpayer's spouse and at least 50 percent of the cost of such coverage (determined under section 4980B) is paid or incurred by the employer.

(B) Eligible alternative TAA recipients

In the case of an eligible alternative TAA recipient, such individual is either—

(i) eligible for coverage under any qualified health insurance (other than insurance described in subparagraph (A), (B), or (F) of subsection (e)(1)) under which at least 50 percent of the cost of coverage (determined under section 4980B(f)(4)) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse, or

(ii) covered under any such qualified health insurance under which any portion of the cost of coverage (as so determined) is paid or incurred by an employer (or former employer) of the taxpayer or the taxpayer's spouse.

(C) Treatment of cafeteria plans

For purposes of subparagraphs (A) and (B), the cost of coverage shall be treated as paid or incurred by an employer to the extent the

coverage is in lieu of a right to receive cash or other qualified benefits under a cafeteria plan (as defined in section 125(d)).

(2) Coverage under Medicare, Medicaid, or SCHIP

Such individual—

(A) is entitled to benefits under part A of title XVIII of the Social Security Act or is enrolled under part B of such title, or

(B) is enrolled in the program under title XIX or XXI of such Act (other than under section 1928 of such Act).

(3) Certain other coverage

Such individual—

(A) is enrolled in a health benefits plan under chapter 89 of title 5, United States Code, or

(B) is entitled to receive benefits under chapter 55 of title 10, United States Code.

(g) Special rules

(1) Coordination with advance payments of credit

With respect to any taxable year, the amount which would (but for this subsection) be allowed as a credit to the taxpayer under subsection (a) shall be reduced (but not below zero) by the aggregate amount paid on behalf of such taxpayer under section 7527 for months beginning in such taxable year.

(2) Coordination with other deductions

Amounts taken into account under subsection (a) shall not be taken into account in determining any deduction allowed under section 162(l) or 213.

(3) Medical and health savings accounts

Amounts distributed from an Archer MSA (as defined in section 220(d)) or from a health savings account (as defined in section 223(d)) shall not be taken into account under subsection (a).

(4) Denial of credit to dependents

No credit shall be allowed under this section to any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

(5) Both spouses eligible individuals

The spouse of the taxpayer shall not be treated as a qualifying family member for purposes of subsection (a), if—

(A) the taxpayer is married at the close of the taxable year,

(B) the taxpayer and the taxpayer's spouse are both eligible individuals during the taxable year, and

(C) the taxpayer files a separate return for the taxable year.

(6) Marital status; certain married individuals living apart

Rules similar to the rules of paragraphs (3) and (4) of section 21(e) shall apply for purposes of this section.

(7) Insurance which covers other individuals

For purposes of this section, rules similar to the rules of section 213(d)(6) shall apply with

respect to any contract for qualified health insurance under which amounts are payable for coverage of an individual other than the taxpayer and qualifying family members.

(8) Treatment of payments

For purposes of this section—

(A) Payments by Secretary

Payments made by the Secretary on behalf of any individual under section 7527 (relating to advance payment of credit for health insurance costs of eligible individuals) shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

(B) Payments by taxpayer

Payments made by the taxpayer for eligible coverage months shall be treated as having been made by the taxpayer on the first day of the month for which such payment was made.

(9) COBRA premium assistance

In the case of an assistance eligible individual who receives premium reduction for COBRA continuation coverage under section 3002(a) of the Health Insurance Assistance for the Unemployed Act of 2009¹ for any month during the taxable year, such individual shall not be treated as an eligible individual, a certified individual, or a qualifying family member for purposes of this section or section 7527 with respect to such month.

(10)² Continued qualification of family members after certain events

In the case of eligible coverage months beginning before January 1, 2011—

(A) Medicare eligibility

In the case of any month which would be an eligible coverage month with respect to an eligible individual but for subsection (f)(2)(A), such month shall be treated as an eligible coverage month with respect to such eligible individual solely for purposes of determining the amount of the credit under this section with respect to any qualifying family members of such individual (and any advance payment of such credit under section 7527). This subparagraph shall only apply with respect to the first 24 months after such eligible individual is first entitled to the benefits described in subsection (f)(2)(A).

(B) Divorce

In the case of the finalization of a divorce between an eligible individual and such individual's spouse, such spouse shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such finalization, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such finalization.

¹ See References in Text note below.

² So in original. There are two pars. designated "(10)".

(C) Death

In the case of the death of an eligible individual—

(i) any spouse of such individual (determined at the time of such death) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that the only qualifying family members who may be taken into account with respect to such spouse are those individuals who were qualifying family members immediately before such death, and

(ii) any individual who was a qualifying family member of the decedent immediately before such death (or, in the case of an individual to whom paragraph (4) applies, the taxpayer to whom the deduction under section 151 is allowable) shall be treated as an eligible individual for purposes of this section and section 7527 for a period of 24 months beginning with the date of such death, except that in determining the amount of such credit only such qualifying family member may be taken into account.

(10)² Regulations

The Secretary may prescribe such regulations and other guidance as may be necessary or appropriate to carry out this section, section 6050T, and section 7527.

(Added Pub. L. 107-210, div. A, title II, §201(a), Aug. 6, 2002, 116 Stat. 954; amended Pub. L. 108-311, title IV, §401(a)(2), Oct. 4, 2004, 118 Stat. 1183; Pub. L. 110-172, §11(a)(5), Dec. 29, 2007, 121 Stat. 2485; Pub. L. 111-5, div. B, title I, §§1899A(a)(1), 1899C(a), 1899E(a), 1899G(a), title III, §3001(a)(14)(A), Feb. 17, 2009, 123 Stat. 423, 424, 426, 430, 465.)

REFERENCES IN TEXT

The date of the enactment of the Trade Act of 2002, referred to in subsec. (b)(1)(B), is the date of enactment of Pub. L. 107-210, which was approved Aug. 6, 2002.

The Trade Act of 1974, referred to in subsec. (c)(2), (3), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978. Chapter 2 of title II of the Act is classified generally to part 2 (§2271 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. Sections 231, 233, 236, and 246 of the Act are classified to sections 2291, 2293, 2296, and 2318 of Title 19, respectively. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The date of the enactment of this paragraph, referred to in subsec. (c)(2)(B), probably means the date of enactment of Pub. L. 111-5, which amended par. (2) generally and which was approved Feb. 17, 2009.

The Employee Retirement Income Security Act of 1974, referred to in subsecs. (c)(4)(B) and (e)(1)(F)(i), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829. Title IV of the Act is classified principally to subchapter III (§1301 et seq.) of chapter 18 of Title 29, Labor. Section 3(37) of the Act is classified to section 1002(37) of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Section 2744(c)(2) of the Public Health Service Act, referred to in subsec. (e)(1)(C), is classified to section 300gg-44(c)(2) of Title 42, The Public Health and Welfare.

The Social Security Act, referred to in subsec. (f)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Parts A and B

of title XVIII of the Act are classified generally to parts A (§1395c et seq.) and B (§1395j et seq.), respectively, of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§1396 et seq.) and XXI (§1397aa et seq.), respectively, of chapter 7 of Title 42. Section 1928 of the Act is classified to section 1396s of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Health Insurance Assistance for the Unemployed Act of 2009, referred to in subsec. (g)(9), was the name of title III of div. B in both the introduced and House engrossed versions of H.R. 1 in the 111th Congress. H.R. 1 was enacted into law as Pub. L. 111-5, but as enacted, it did not include any provision known as the Health Insurance Assistance for the Unemployed Act of 2009 and did not contain a section 3002.

PRIOR PROVISIONS

A prior section 35 was renumbered section 37 of this title.

Another prior section 35, acts Aug. 16, 1954, ch. 736, 68A Stat. 14; Sept. 2, 1958, Pub. L. 85-866, title I, §41(b), 72 Stat. 1639; Feb. 26, 1964, Pub. L. 88-272, title II, §201(d)(2), 78 Stat. 32, related to partially tax-exempt interest received by individuals, prior to repeal by Pub. L. 94-455, title XIX, §1901(a)(2), Oct. 4, 1976, 90 Stat. 1764, effective with respect to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2009—Subsec. (a). Pub. L. 111-5, §1899A(a)(1), inserted “(80 percent in the case of eligible coverage months beginning before January 1, 2011)” after “65 percent”.

Subsec. (c)(2). Pub. L. 111-5, §1899C(a), amended par. (2) generally. Prior to amendment, text read as follows: “The term ‘eligible TAA recipient’ means, with respect to any month, any individual who is receiving for any day of such month a trade readjustment allowance under chapter 2 of title II of the Trade Act of 1974 or who would be eligible to receive such allowance if section 231 of such Act were applied without regard to subsection (a)(3)(B) of such section. An individual shall continue to be treated as an eligible TAA recipient during the first month that such individual would otherwise cease to be an eligible TAA recipient by reason of the preceding sentence.”

Subsec. (e)(1)(K). Pub. L. 111-5, §1899G(a), added subpar. (K).

Subsec. (g)(9), (10). Pub. L. 111-5, §3001(a)(14)(A), added par. (9) and redesignated former par. (9) as (10) relating to continued qualification of family members after certain events.

Pub. L. 111-5, §1899E(a), added par. (9) and redesignated former par. (9) as (10) relating to regulations. Amendment was executed before amendment by Pub. L. 111-5, §3001(a)(14)(A), to reflect the probable intent of Congress, notwithstanding effective date provisions in section 1891 of Pub. L. 111-5. See Effective Date of 2009 Amendment note below.

2007—Subsec. (d)(2). Pub. L. 110-172 struck out “paragraph (2) or (4) of” before “section 152(e)” and substituted “(as defined in section 152(e)(4)(A))” for “(within the meaning of section 152(e)(1))”.

2004—Subsec. (g)(3). Pub. L. 108-311 amended heading and text of par. (3) generally. Prior to amendment, text read as follows: “Amounts distributed from an Archer MSA (as defined in section 220(d)) shall not be taken into account under subsection (a).”

EFFECTIVE DATE OF 2009 AMENDMENT

Except as otherwise provided and subject to certain applicability provisions, amendment by sections 1899A(a)(1), 1899C(a), 1899E(a), and 1899G(a) of Pub. L. 111-5 effective upon the expiration of the 90-day period beginning on Feb. 17, 2009, see section 1891 of Pub. L. 111-5, set out as an Effective and Termination Dates of 2009 Amendment note under section 2271 of Title 19, Customs Duties.

Pub. L. 111-5, div. B, title I, §1899A(b), Feb. 17, 2009, 123 Stat. 424, provided that: “The amendments made by this section [amending this section and section 7527 of this title] shall apply to coverage months beginning on or after the first day of the first month beginning 60 days after the date of the enactment of this Act [Feb. 17, 2009].”

Pub. L. 111-5, div. B, title I, §1899C(b), Feb. 17, 2009, 123 Stat. 425, provided that: “The amendment made by this section [amending this section] shall apply to coverage months beginning after the date of the enactment of this Act [Feb. 17, 2009].”

Pub. L. 111-5, div. B, title I, §1899E(c), Feb. 17, 2009, 123 Stat. 428, provided that: “The amendments made by this section [amending this section and section 2918 of Title 29, Labor] shall apply to months beginning after December 31, 2009.”

Pub. L. 111-5, div. B, title I, §1899G(b), Feb. 17, 2009, 123 Stat. 430, provided that: “The amendments made by this section [amending this section] shall apply to coverage months beginning after the date of the enactment of this Act [Feb. 17, 2009].”

Amendment by section 3001(a)(14)(A) of Pub. L. 111-5 applicable to taxable years ending after Feb. 17, 2009, see section 3001(a)(14)(B) of Pub. L. 111-5, set out as a Premium Assistance for COBRA Benefits note under section 6432 of this title.

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-311 effective as if included in section 1201 of Pub. L. 108-173, see section 401(b) of Pub. L. 108-311, set out as a note under section 26 of this title.

EFFECTIVE DATE

Pub. L. 107-210, div. A, title II, §201(d), Aug. 6, 2002, 116 Stat. 960, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and section 300gg-45 of Title 42, The Public Health and Welfare, amending section 1324 of Title 31, Money and Finance, and renumbering former section 35 of this title as section 36 of this title] shall apply to taxable years beginning after December 31, 2001.

“(2) STATE HIGH RISK POOLS.—The amendment made by subsection (b) [enacting section 300gg-45 of Title 42] shall take effect on the date of the enactment of this Act [Aug. 6, 2002].”

CONSTRUCTION

Nothing in title II of Pub. L. 107-210 or the amendments by that title, other than provisions relating to COBRA continuation coverage and reporting requirements, to be construed as creating a new mandate on any party regarding health insurance coverage, see section 203(f) of Pub. L. 107-210, set out as a Construction of 2002 Amendment note under section 2918 of Title 29, Labor.

SURVEY AND REPORT ON ENHANCED HEALTH COVERAGE TAX CREDIT PROGRAM

Pub. L. 111-5, div. B, title I, §1899I, Feb. 17, 2009, 123 Stat. 431, provided that:

“(a) SURVEY.—

“(1) IN GENERAL.—The Secretary of the Treasury shall conduct a biennial survey of eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) relating to the health coverage tax credit under section 35 of the Internal Revenue Code of 1986 (hereinafter in this section referred to as the ‘health coverage tax credit’).

“(2) INFORMATION OBTAINED.—The survey conducted under subsection (a) shall obtain the following information:

“(A) HCTC PARTICIPANTS.—In the case of eligible individuals receiving the health coverage tax credit (including individuals participating in the health coverage tax credit program under section 7527 of such Code, hereinafter in this section referred to as the ‘HCTC program’)—

“(i) demographic information of such individuals, including income and education levels,

“(ii) satisfaction of such individuals with the enrollment process in the HCTC program,

“(iii) satisfaction of such individuals with available health coverage options under the credit, including level of premiums, benefits, deductibles, cost-sharing requirements, and the adequacy of provider networks, and

“(iv) any other information that the Secretary determines is appropriate.

“(B) NON-HCTC PARTICIPANTS.—In the case of eligible individuals not receiving the health coverage tax credit—

“(i) demographic information of each individual, including income and education levels,

“(ii) whether the individual was aware of the health coverage tax credit or the HCTC program,

“(iii) the reasons the individual has not enrolled in the HCTC program, including whether such reasons include the burden of the process of enrollment and the affordability of coverage,

“(iv) whether the individual has health insurance coverage, and, if so, the source of such coverage, and

“(v) any other information that the Secretary determines is appropriate.

“(3) REPORT.—Not later than December 31 of each year in which a survey is conducted under paragraph (1) (beginning in 2010), the Secretary of the Treasury shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Energy and Commerce of the House of Representatives the findings of the most recent survey conducted under paragraph (1).

“(b) REPORT.—Not later than October 1 of each year (beginning in 2010), the Secretary of the Treasury (after consultation with the Secretary of Health and Human Services, and, in the case of the information required under paragraph (7), the Secretary of Labor) shall report to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Ways and Means, the Committee on Education and Labor, and the Committee on Energy and Commerce of the House of Representatives the following information with respect to the most recent taxable year ending before such date:

“(1) In each State and nationally—

“(A) the total number of eligible individuals (as defined in section 35(c) of the Internal Revenue Code of 1986) and the number of eligible individuals receiving the health coverage tax credit,

“(B) the total number of such eligible individuals who receive an advance payment of the health coverage tax credit through the HCTC program,

“(C) the average length of the time period of the participation of eligible individuals in the HCTC program, and

“(D) the total number of participating eligible individuals in the HCTC program who are enrolled in each category of coverage as described in section 35(e)(1) of such Code,

with respect to each category of eligible individuals described in section 35(c)(1) of such Code.

“(2) In each State and nationally, an analysis of—

“(A) the range of monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the health coverage tax credit, and

“(B) the average and median monthly health insurance premiums, for self-only coverage and for family coverage, for individuals receiving the health coverage tax credit,

with respect to each category of coverage as described in section 35(e)(1) of such Code.

“(3) In each State and nationally, an analysis of the following information with respect to the health insurance coverage of individuals receiving the health

coverage tax credit who are enrolled in coverage described in subparagraphs (B) through (H) of section 35(e)(1) of such Code:

“(A) Deductible amounts.

“(B) Other out-of-pocket cost-sharing amounts.

“(C) A description of any annual or lifetime limits on coverage or any other significant limits on coverage services, or benefits.

The information required under this paragraph shall be reported with respect to each category of coverage described in such subparagraphs.

“(4) In each State and nationally, the gender and average age of eligible individuals (as defined in section 35(c) of such Code) who receive the health coverage tax credit, in each category of coverage described in section 35(e)(1) of such Code, with respect to each category of eligible individuals described in such section.

“(5) The steps taken by the Secretary of the Treasury to increase the participation rates in the HCTC program among eligible individuals, including outreach and enrollment activities.

“(6) The cost of administering the HCTC program by function, including the cost of subcontractors, and recommendations on ways to reduce administrative costs, including recommended statutory changes.

“(7) The number of States applying for and receiving national emergency grants under section 173(f) of the Workforce Investment Act of 1998 (29 U.S.C. 2918(f)), the activities funded by such grants on a State-by-State basis, and the time necessary for application approval of such grants.”

§ 36. First-time homebuyer credit

(a) Allowance of credit

In the case of an individual who is a first-time homebuyer of a principal residence in the United States during a taxable year, there shall be allowed as a credit against the tax imposed by this subtitle for such taxable year an amount equal to 10 percent of the purchase price of the residence.

(b) Limitations

(1) Dollar limitation

(A) In general

Except as otherwise provided in this paragraph, the credit allowed under subsection (a) shall not exceed \$8,000.

(B) Married individuals filing separately

In the case of a married individual filing a separate return, subparagraph (A) shall be applied by substituting “\$4,000” for “\$8,000”.

(C) Other individuals

If two or more individuals who are not married purchase a principal residence, the amount of the credit allowed under subsection (a) shall be allocated among such individuals in such manner as the Secretary may prescribe, except that the total amount of the credits allowed to all such individuals shall not exceed \$8,000.

(D) Special rule for long-time residents of same principal residence

In the case of a taxpayer to whom a credit under subsection (a) is allowed by reason of subsection (c)(6), subparagraphs (A), (B), and (C) shall be applied by substituting “\$6,500” for “\$8,000” and “\$3,250” for “\$4,000”.

(2) Limitation based on modified adjusted gross income

(A) In general

The amount allowable as a credit under subsection (a) (determined without regard to

this paragraph) for the taxable year shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which is so allowable as—

(i) the excess (if any) of—

(I) the taxpayer’s modified adjusted gross income for such taxable year, over

(II) \$125,000 (\$225,000 in the case of a joint return), bears to

(ii) \$20,000.

(B) Modified adjusted gross income

For purposes of subparagraph (A), the term “modified adjusted gross income” means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(3) Limitation based on purchase price

No credit shall be allowed under subsection (a) for the purchase of any residence if the purchase price of such residence exceeds \$800,000.

(4) Age limitation

No credit shall be allowed under subsection (a) with respect to the purchase of any residence unless the taxpayer has attained age 18 as of the date of such purchase. In the case of any taxpayer who is married (within the meaning of section 7703), the taxpayer shall be treated as meeting the age requirement of the preceding sentence if the taxpayer or the taxpayer’s spouse meets such age requirement.

(c) Definitions

For purposes of this section—

(1) First-time homebuyer

The term “first-time homebuyer” means any individual if such individual (and if married, such individual’s spouse) had no present ownership interest in a principal residence during the 3-year period ending on the date of the purchase of the principal residence to which this section applies.

(2) Principal residence

The term “principal residence” has the same meaning as when used in section 121.

(3) Purchase

(A) In general

The term “purchase” means any acquisition, but only if—

(i) the property is not acquired from a person related to the person acquiring such property (or, if married, such individual’s spouse), and

(ii) the basis of the property in the hands of the person acquiring such property is not determined—

(I) in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or

(II) under section 1014(a) (relating to property acquired from a decedent).

(B) Construction

A residence which is constructed by the taxpayer shall be treated as purchased by

the taxpayer on the date the taxpayer first occupies such residence.

(4) Purchase price

The term “purchase price” means the adjusted basis of the principal residence on the date such residence is purchased.

(5) Related persons

A person shall be treated as related to another person if the relationship between such persons would result in the disallowance of losses under section 267 or 707(b) (but, in applying section 267(b) and (c) for purposes of this section, paragraph (4) of section 267(c) shall be treated as providing that the family of an individual shall include only his spouse, ancestors, and lineal descendants).

(6) Exception for long-time residents of same principal residence

In the case of an individual (and, if married, such individual’s spouse) who has owned and used the same residence as such individual’s principal residence for any 5-consecutive-year period during the 8-year period ending on the date of the purchase of a subsequent principal residence, such individual shall be treated as a first-time homebuyer for purposes of this section with respect to the purchase of such subsequent residence.

(d) Exceptions

No credit under subsection (a) shall be allowed to any taxpayer for any taxable year with respect to the purchase of a residence if—

- (1) the taxpayer is a nonresident alien,
- (2) the taxpayer disposes of such residence (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer’s spouse)) before the close of such taxable year,
- (3) a deduction under section 151 with respect to such taxpayer is allowable to another taxpayer for such taxable year, or
- (4) the taxpayer fails to attach to the return of tax for such taxable year a properly executed copy of the settlement statement used to complete such purchase.

(e) Reporting

If the Secretary requires information reporting under section 6045 by a person described in subsection (e)(2) thereof to verify the eligibility of taxpayers for the credit allowable by this section, the exception provided by section 6045(e) shall not apply.

(f) Recapture of credit

(1) In general

Except as otherwise provided in this subsection, if a credit under subsection (a) is allowed to a taxpayer, the tax imposed by this chapter shall be increased by 6 $\frac{2}{3}$ percent of the amount of such credit for each taxable year in the recapture period.

(2) Acceleration of recapture

If a taxpayer disposes of the principal residence with respect to which a credit was allowed under subsection (a) (or such residence ceases to be the principal residence of the taxpayer (and, if married, the taxpayer’s spouse)) before the end of the recapture period—

(A) the tax imposed by this chapter for the taxable year of such disposition or cessation shall be increased by the excess of the amount of the credit allowed over the amounts of tax imposed by paragraph (1) for preceding taxable years, and

(B) paragraph (1) shall not apply with respect to such credit for such taxable year or any subsequent taxable year.

(3) Limitation based on gain

In the case of the sale of the principal residence to a person who is not related to the taxpayer, the increase in tax determined under paragraph (2) shall not exceed the amount of gain (if any) on such sale. Solely for purposes of the preceding sentence, the adjusted basis of such residence shall be reduced by the amount of the credit allowed under subsection (a) to the extent not previously recaptured under paragraph (1).

(4) Exceptions

(A) Death of taxpayer

Paragraphs (1) and (2) shall not apply to any taxable year ending after the date of the taxpayer’s death.

(B) Involuntary conversion

Paragraph (2) shall not apply in the case of a residence which is compulsorily or involuntarily converted (within the meaning of section 1033(a)) if the taxpayer acquires a new principal residence during the 2-year period beginning on the date of the disposition or cessation referred to in paragraph (2). Paragraph (2) shall apply to such new principal residence during the recapture period in the same manner as if such new principal residence were the converted residence.

(C) Transfers between spouses or incident to divorce

In the case of a transfer of a residence to which section 1041(a) applies—

- (i) paragraph (2) shall not apply to such transfer, and
- (ii) in the case of taxable years ending after such transfer, paragraphs (1) and (2) shall apply to the transferee in the same manner as if such transferee were the transferor (and shall not apply to the transferor).

(D) Waiver of recapture for purchases in 2009 and 2010

In the case of any credit allowed with respect to the purchase of a principal residence after December 31, 2008—

- (i) paragraph (1) shall not apply, and
- (ii) paragraph (2) shall apply only if the disposition or cessation described in paragraph (2) with respect to such residence occurs during the 36-month period beginning on the date of the purchase of such residence by the taxpayer.

(E) Special rule for members of the armed forces, etc.

(i) In general

In the case of the disposition of a principal residence by an individual (or a ces-

sation referred to in paragraph (2)) after December 31, 2008, in connection with Government orders received by such individual, or such individual's spouse, for qualified official extended duty service—

(I) paragraph (2) and subsection (d)(2) shall not apply to such disposition (or cessation), and

(II) if such residence was acquired before January 1, 2009, paragraph (1) shall not apply to the taxable year in which such disposition (or cessation) occurs or any subsequent taxable year.

(ii) Qualified official extended duty service

For purposes of this section, the term “qualified official extended duty service” means service on qualified official extended duty as—

(I) a member of the uniformed services, (II) a member of the Foreign Service of the United States, or

(III) an employee of the intelligence community.

(iii) Definitions

Any term used in this subparagraph which is also used in paragraph (9) of section 121(d) shall have the same meaning as when used in such paragraph.

(5) Joint returns

In the case of a credit allowed under subsection (a) with respect to a joint return, half of such credit shall be treated as having been allowed to each individual filing such return for purposes of this subsection.

(6) Return requirement

If the tax imposed by this chapter for the taxable year is increased under this subsection, the taxpayer shall, notwithstanding section 6012, be required to file a return with respect to the taxes imposed under this subtitle.

(7) Recapture period

For purposes of this subsection, the term “recapture period” means the 15 taxable years beginning with the second taxable year following the taxable year in which the purchase of the principal residence for which a credit is allowed under subsection (a) was made.

(g) Election to treat purchase in prior year

In the case of a purchase of a principal residence after December 31, 2008, a taxpayer may elect to treat such purchase as made on December 31 of the calendar year preceding such purchase for purposes of this section (other than subsections (b)(4), (c), (f)(4)(D), and (h)).

(h) Application of section

(1) In general

This section shall only apply to a principal residence purchased by the taxpayer on or after April 9, 2008, and before May 1, 2010.

(2) Exception in case of binding contract

In the case of any taxpayer who enters into a written binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010, paragraph (1) shall be

applied by substituting “July 1, 2010” for “May 1, 2010”.

(3) Special rule for individuals on qualified official extended duty outside the United States

In the case of any individual who serves on qualified official extended duty service (as defined in section 121(d)(9)(C)(i)) outside the United States for at least 90 days during the period beginning after December 31, 2008, and ending before May 1, 2010, and, if married, such individual's spouse—

(A) paragraphs (1) and (2) shall each be applied by substituting “May 1, 2011” for “May 1, 2010”, and

(B) paragraph (2) shall be applied by substituting “July 1, 2011” for “July 1, 2010”.

(Added Pub. L. 110-289, div. C, title I, §3011(a), July 30, 2008, 122 Stat. 2888; amended Pub. L. 111-5, div. B, title I, §1006(a)-(c), (d)(2), (e), Feb. 17, 2009, 123 Stat. 316, 317; Pub. L. 111-92, §§11(a)-(g), 12(a)-(c), Nov. 6, 2009, 123 Stat. 2989-2992.)

PRIOR PROVISIONS

A prior section 36 was renumbered section 37 of this title.

Another prior section 36, acts Aug. 16, 1954, ch. 736, 68A Stat. 15; Oct. 4, 1976, Pub. L. 94-455, title V, §501(b)(2), title X, §1011(c), title XIX, §1901(b)(1)(A), 90 Stat. 1558, 1611, 1790, directed that credits provided by section 32 not be allowed if an individual elects under section 144 to take standard deduction, prior to repeal by Pub. L. 95-30, title I, §§101(d)(3), 106(a), May 23, 1977, 91 Stat. 133, 141, applicable to taxable years beginning after Dec. 31, 1976.

AMENDMENTS

2009—Subsec. (b)(1)(A). Pub. L. 111-5, §1006(b)(1), substituted “\$8,000” for “\$7,500”.

Subsec. (b)(1)(B). Pub. L. 111-5, §1006(b), substituted “\$4,000” for “\$3,750” and “\$8,000” for “\$7,500”.

Subsec. (b)(1)(C). Pub. L. 111-5, §1006(b)(1), substituted “\$8,000” for “\$7,500”.

Subsec. (b)(1)(D). Pub. L. 111-92, §11(c)(1), added subpar. (D).

Subsec. (b)(2)(A)(i)(II). Pub. L. 111-92, §11(c)(2), substituted “\$125,000 (\$225,000)” for “\$75,000 (\$150,000)”.

Subsec. (b)(3). Pub. L. 111-92, §11(d), added par. (3).

Subsec. (b)(4). Pub. L. 111-92, §12(a)(1), added par. (4).

Subsec. (c)(3)(A)(i). Pub. L. 111-92, §12(c), inserted “(or, if married, such individual's spouse)” after “person acquiring such property”.

Subsec. (c)(6). Pub. L. 111-92, §11(b), added par. (6).

Subsec. (d). Pub. L. 111-5, §1006(d)(2), (e), redesignated pars. (3) and (4) as (1) and (2), respectively, and struck out former pars. (1) and (2) which read as follows:

“(1) a credit under section 1400C (relating to first-time homebuyer in the District of Columbia) is allowable to the taxpayer (or the taxpayer's spouse) for such taxable year or any prior taxable year,

“(2) the residence is financed by the proceeds of a qualified mortgage issue the interest on which is exempt from tax under section 103.”

Subsec. (d)(3). Pub. L. 111-92, §11(g), added par. (3).

Subsec. (d)(4). Pub. L. 111-92, §12(b), added par. (4).

Subsec. (f)(4)(D). Pub. L. 111-92, §11(a)(2), inserted “and 2010” after “2009” in heading and struck out “, and before December 1, 2009” after “December 31, 2008” in introductory provisions.

Pub. L. 111-5, §1006(c)(1), added subpar. (D).

Subsec. (f)(4)(E). Pub. L. 111-92, §11(e), added subpar. (E).

Subsec. (g). Pub. L. 111-92, §12(a)(2), inserted “(b)(4),” before “(c)”.

Pub. L. 111-92, §11(a)(3), amended subsec. (g) generally. Prior to amendment, text read as follows: “In the case of a purchase of a principal residence after December 31, 2008, and before December 1, 2009, a taxpayer may elect to treat such purchase as made on December 31, 2008, for purposes of this section (other than subsections (c) and (f)(4)(D)).”

Pub. L. 111-5, §1006(a)(2), (c)(2), substituted “December 1, 2009” for “July 1, 2009” and “subsections (c) and (f)(4)(D)” for “subsection (c)”.

Subsec. (h). Pub. L. 111-92, §11(a)(1), substituted “May 1, 2010” for “December 1, 2009”, designated existing provisions as par. (1), inserted heading, and added par. (2).

Pub. L. 111-5, §1006(a)(1), substituted “December 1, 2009” for “July 1, 2009”.

Subsec. (h)(3). Pub. L. 111-92, §11(f), added par. (3).

EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-92, §11(j)(1)–(3), Nov. 6, 2009, 123 Stat. 2991, provided that:

“(1) IN GENERAL.—The amendments made by subsections (b), (c), (d), and (g) [amending this section] shall apply to residences purchased after the date of the enactment of this Act [Nov. 6, 2009].

“(2) EXTENSIONS.—The amendments made by subsections (a) [amending this section], (f) [amending this section], and (i) [amending section 1400C of this title] shall apply to residences purchased after November 30, 2009.

“(3) WAIVER OF RECAPTURE.—The amendment made by subsection (e) [amending this section] shall apply to dispositions and cessations after December 31, 2008.”

Pub. L. 111-92, §12(e), Nov. 6, 2009, 123 Stat. 2992, provided that:

“(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending this section and section 6213 of this title] shall apply to purchases after the date of the enactment of this Act [Nov. 6, 2009].

“(2) DOCUMENTATION REQUIREMENT.—The amendments made by subsection (b) [amending this section] shall apply to returns for taxable years ending after the date of the enactment of this Act [Nov. 6, 2009].

“(3) TREATMENT AS MATHEMATICAL AND CLERICAL ERRORS.—The amendments made by subsection (d) [amending section 6213 of this title] shall apply to returns for taxable years ending on or after April 9, 2008.”

Pub. L. 111-5, div. B, title I, §1006(f), Feb. 17, 2009, 123 Stat. 317, provided that: “The amendments made by this section [amending this section and section 1400C of this title] shall apply to residences purchased after December 31, 2008.”

EFFECTIVE DATE

Section applicable to residences purchased on or after Apr. 9, 2008, in taxable years ending on or after such date, see section 3011(c) of Pub. L. 110-289, set out as an Effective Date of 2008 Amendment note under section 26 of this title.

§ 36A. Making work pay credit

(a) Allowance of credit

In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the lesser of—

- (1) 6.2 percent of earned income of the taxpayer, or
- (2) \$400 (\$800 in the case of a joint return).

(b) Limitation based on modified adjusted gross income

(1) In general

The amount allowable as a credit under subsection (a) (determined without regard to this paragraph and subsection (c)) for the taxable

year shall be reduced (but not below zero) by 2 percent of so much of the taxpayer’s modified adjusted gross income as exceeds \$75,000 (\$150,000 in the case of a joint return).

(2) Modified adjusted gross income

For purposes of subparagraph (A),¹ the term “modified adjusted gross income” means the adjusted gross income of the taxpayer for the taxable year increased by any amount excluded from gross income under section 911, 931, or 933.

(c) Reduction for certain other payments

The credit allowed under subsection (a) for any taxable year shall be reduced by the amount of any payments received by the taxpayer during such taxable year under section 2201, and any credit allowed to the taxpayer under section 2202, of the American Recovery and Reinvestment Tax Act of 2009.

(d) Definitions and special rules

For purposes of this section—

(1) Eligible individual

(A) In general

The term “eligible individual” means any individual other than—

- (i) any nonresident alien individual,
- (ii) any individual with respect to whom a deduction under section 151 is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual’s taxable year begins, and
- (iii) an estate or trust.

(B) Identification number requirement

Such term shall not include any individual who does not include on the return of tax for the taxable year—

- (i) such individual’s social security account number, and
- (ii) in the case of a joint return, the social security account number of one of the taxpayers on such return.

For purposes of the preceding sentence, the social security account number shall not include a TIN issued by the Internal Revenue Service.

(2) Earned income

The term “earned income” has the meaning given such term by section 32(c)(2), except that such term shall not include net earnings from self-employment which are not taken into account in computing taxable income. For purposes of the preceding sentence, any amount excluded from gross income by reason of section 112 shall be treated as earned income which is taken into account in computing taxable income for the taxable year.

(e) Termination

This section shall not apply to taxable years beginning after December 31, 2010.

(Added Pub. L. 111-5, div. B, title I, §1001(a), Feb. 17, 2009, 123 Stat. 309.)

REFERENCES IN TEXT

Sections 2201 and 2202 of the American Recovery and Reinvestment Tax Act of 2009, referred to in subsec. (c),

¹ So in original. Probably should be “paragraph (1),”.

are sections 2201 and 2202 of Pub. L. 111-5, which are set out as notes under section 6428 of this title.

EFFECTIVE DATE

Pub. L. 111-5, div. B, title I, §1001(f), Feb. 17, 2009, 123 Stat. 312, provided that: “This section [enacting this section, amending sections 6211 and 6213 of this title and section 1324 of Title 31, Money and Finance, and enacting provisions set out as notes under this section], and the amendments made by this section, shall apply to taxable years beginning after December 31, 2008.”

TREATMENT OF POSSESSIONS

Pub. L. 111-5, div. B, title I, §1001(b), Feb. 17, 2009, 123 Stat. 310, provided that:

“(1) PAYMENTS TO POSSESSIONS.—

“(A) MIRROR CODE POSSESSION.—The Secretary of the Treasury shall pay to each possession of the United States with a mirror code tax system amounts equal to the loss to that possession by reason of the amendments made by this section [enacting this section and amending sections 6211 and 6213 of this title and section 1324 of Title 31, Money and Finance] with respect to taxable years beginning in 2009 and 2010. Such amounts shall be determined by the Secretary of the Treasury based on information provided by the government of the respective possession.

“(B) OTHER POSSESSIONS.—The Secretary of the Treasury shall pay to each possession of the United States which does not have a mirror code tax system amounts estimated by the Secretary of the Treasury as being equal to the aggregate benefits that would have been provided to residents of such possession by reason of the amendments made by this section for taxable years beginning in 2009 and 2010 if a mirror code tax system had been in effect in such possession. The preceding sentence shall not apply with respect to any possession of the United States unless such possession has a plan, which has been approved by the Secretary of the Treasury, under which such possession will promptly distribute such payments to the residents of such possession.

“(2) COORDINATION WITH CREDIT ALLOWED AGAINST UNITED STATES INCOME TAXES.—No credit shall be allowed against United States income taxes for any taxable year under section 36A of the Internal Revenue Code of 1986 (as added by this section) to any person—

“(A) to whom a credit is allowed against taxes imposed by the possession by reason of the amendments made by this section for such taxable year, or

“(B) who is eligible for a payment under a plan described in paragraph (1)(B) with respect to such taxable year.

“(3) DEFINITIONS AND SPECIAL RULES.—

“(A) POSSESSION OF THE UNITED STATES.—For purposes of this subsection, the term ‘possession of the United States’ includes the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands.

“(B) MIRROR CODE TAX SYSTEM.—For purposes of this subsection, the term ‘mirror code tax system’ means, with respect to any possession of the United States, the income tax system of such possession if the income tax liability of the residents of such possession under such system is determined by reference to the income tax laws of the United States as if such possession were the United States.

“(C) TREATMENT OF PAYMENTS.—For purposes of section 1324(b)(2) of title 31, United States Code, the payments under this subsection shall be treated in the same manner as a refund due from the credit allowed under section 36A of the Internal Revenue Code of 1986 (as added by this section).”

REFUNDS DISREGARDED IN THE ADMINISTRATION OF FEDERAL PROGRAMS AND FEDERALLY ASSISTED PROGRAMS

Pub. L. 111-5, div. B, title I, §1001(c), Feb. 17, 2009, 123 Stat. 311, provided that: “Any credit or refund allowed

or made to any individual by reason of section 36A of the Internal Revenue Code of 1986 (as added by this section) or by reason of subsection (b) of this section [set out as a note above] shall not be taken into account as income and shall not be taken into account as resources for the month of receipt and the following 2 months, for purposes of determining the eligibility of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds.”

§ 37. Overpayments of tax

For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

(Aug. 16, 1954, ch. 736, 68A Stat. 16, §38; renumbered §39, Pub. L. 87-834, §2(a), Oct. 16, 1962, 76 Stat. 962; renumbered §40, Pub. L. 89-44, title VIII, §809(c), June 21, 1965, 79 Stat. 167; renumbered §42, Pub. L. 92-178, title VI, §601(a), Dec. 10, 1971, 85 Stat. 553; renumbered §43, Pub. L. 94-12, title II, §203(a), Mar. 29, 1975, 89 Stat. 29; renumbered §44, Pub. L. 94-12, title II, §204(a), Mar. 29, 1975, 89 Stat. 30; renumbered §45, Pub. L. 94-12, title II, §208(a), Mar. 29, 1975, 89 Stat. 32; renumbered §35, Pub. L. 98-369, div. A, title IV, §471(c), July 18, 1984, 98 Stat. 826; renumbered §36, Pub. L. 107-210, div. A, title II, §201(a), Aug. 6, 2002, 116 Stat. 954; renumbered §37, Pub. L. 110-289, div. C, title I, §3011(a), July 30, 2008, 122 Stat. 2888.)

PRIOR PROVISIONS

A prior section 37 was renumbered section 22 of this title.

SUBPART D—BUSINESS RELATED CREDITS

- Sec. 38. General business credit.
- 39. Carryback and carryforward of unused credits.
- 40. Alcohol, etc., used as fuel.
- 40A. Biodiesel and renewable diesel used as fuel.
- 41. Credit for increasing research activities.
- 41.¹ Employee stock ownership credit.
- 42. Low-income housing credit.
- 43. Enhanced oil recovery credit.
- 44. Expenditures to provide access to disabled individuals.
- [44A-H. Renumbered, Repealed.]
- 45. Electricity produced from certain renewable resources, etc.
- 45A. Indian employment credit.
- 45B. Credit for portion of employer social security taxes paid with respect to employee cash tips.
- 45C. Clinical testing expenses for certain drugs for rare diseases or conditions.
- 45D. New markets tax credit.
- 45E. Small employer pension plan startup costs.
- 45F. Employer-provided child care credit.
- 45G. Railroad track maintenance credit.
- 45H. Credit for production of low sulfur diesel fuel.
- 45I. Credit for producing oil and gas from marginal wells.
- 45K.² Credit for producing fuel from a nonconventional source.
- 45J. Credit for production from advanced nuclear power facilities.
- 45L. New energy efficient home credit.

¹ Section 41 repealed by Pub. L. 99-514 without corresponding amendment of subpart analysis.

² So in original. Probably should follow item 45J.