

106TH CONGRESS
1ST SESSION

H. R. 3436

To amend the Internal Revenue Code of 1986 to make the dependent care credit refundable, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 1999

Mrs. MORELLA (for herself and Mr. ALLEN) introduced the following bill;
which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to make the dependent care credit refundable, and for other purposes.

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

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

4 (a) DEPENDENT CARE SERVICES.—Subpart C of
5 part IV of subchapter A of chapter 1 of the Internal Rev-
6 enue Code of 1986 (relating to refundable credits) is
7 amended by redesignating section 35 as section 36 and
8 by inserting after section 34 the following new section:

9 **“SEC. 35. DEPENDENT CARE SERVICES.**

10 “(a) ALLOWANCE OF CREDIT.—

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

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

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

11 “(2) APPLICABLE PERCENTAGE DEFINED.—For
12 purposes of paragraph (1), the term ‘applicable per-
13 centage’ means 50 percent reduced (but not below
14 20 percent) by 1 percentage point for each full
15 \$1,000 amount by which the taxpayer’s adjusted
16 gross income for the taxable year exceeds \$30,000.

17 “(b) EMPLOYMENT-RELATED EXPENSES.—For pur-
18 poses of this section—

19 “(1) DETERMINATION OF ELIGIBLE EX-
20 PENSES.—

21 “(A) IN GENERAL.—The term ‘employ-
22 ment-related expenses’ means amounts paid for
23 the following expenses, but only if such ex-
24 penses are incurred to enable the taxpayer to be
25 gainfully employed for any period for which

1 there are 1 or more qualifying individuals with
2 respect to the taxpayer:

3 “(i) expenses for household services,
4 and
5 “(ii) expenses for the care of a quali-
6 fying individual.

7 Such term shall not include any amount paid
8 for services outside the taxpayer’s household at
9 a camp where the qualifying individual stays
10 overnight and shall not include any respite care
11 expense taken into account under subsection
12 (a).

13 “(B) EXCEPTION.—Employment-related
14 expenses described in subparagraph (A) which
15 are incurred for services outside the taxpayer’s
16 household shall be taken into account only if in-
17 curred for the care of—

18 “(i) a qualifying individual described
19 in subsection (d)(1), or

20 “(ii) a qualifying individual (not de-
21 scribed in subsection (d)(1)) who regularly
22 spends at least 8 hours each day in the
23 taxpayer’s household.

24 “(C) DEPENDENT CARE CENTERS.—Em-
25 ployment-related expenses described in subpara-

1 graph (A) which are incurred for services pro-
2 vided outside the taxpayer's household by a de-
3 pendent care center (as defined in subpara-
4 graph (D)) shall be taken into account only if
5 such center complies with all applicable laws
6 and regulations of a State or unit of local gov-
7 ernment.

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

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

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

19 “(2) DOLLAR LIMIT ON AMOUNT CRED-
20 ITABLE.—

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

1 “(i) \$4,000 if there is 1 qualifying in-
2 dividual with respect to the taxpayer for
3 such taxable year, or

4 “(ii) \$8,000 if there are 2 or more
5 qualifying individuals with respect to the
6 taxpayer for such taxable year.

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

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

17 “(3) EARNED INCOME LIMITATION.—

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

23 “(i) in the case of an individual who
24 is not married at the close of such year,

1 such individual's earned income for such
2 year, or

3 “(ii) in the case of an individual who
4 is married at the close of such year, the
5 lesser of such individual's earned income or
6 the earned income of his spouse for such
7 year.

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

18 “(i) \$200 if paragraph (2)(A)(i) ap-
19 plies for the taxable year, or

20 “(ii) \$400 if paragraph (2)(A)(ii) ap-
21 plies for the taxable year.

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

1 “(c) RESPITE CARE EXPENSES.—For purposes of
2 this section—

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

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

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

8 or

9 “(ii) who is under the age of 13 but
10 has a physical or mental impairment which
11 results in the individual being incapable of
12 caring for himself,

13 during any period when such individual regu-
14 larly spends at least 8 hours each day in the
15 taxpayer’s household, or

16 “(B) care (for not more than 14 days dur-
17 ing the calendar year) of a qualifying individual
18 described in clause (i) or (ii) of subparagraph
19 (A) during any period during which the indi-
20 vidual does not regularly spend at least 8 hours
21 each day in the taxpayer’s household.

22 “(2) DOLLAR LIMIT.—The amount of the res-
23 pite care expenses incurred during any taxable year
24 which may be taken into account under subsection
25 (a) shall not exceed—

1 “(A) \$2,400 if such expenses are incurred
2 with respect to only 1 qualifying individual for
3 the taxable year, or

4 “(B) \$4,800 if such expenses are incurred
5 for 2 or more qualifying individuals for such
6 taxable year.

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

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

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

14 “(3) the spouse of the taxpayer, if the spouse
15 is physically or mentally incapable of caring for him-
16 self.

17 “(e) SPECIAL RULES.—For purposes of this
18 section—

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

1 “(2) MARRIED COUPLES MUST FILE JOINT RE-
2 TURN.—If the taxpayer is married at the close of
3 the taxable year, the credit shall be allowed under
4 subsection (a) only if the taxpayer and his spouse
5 file a joint return for the taxable year.

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

10 “(4) CERTAIN MARRIED INDIVIDUALS LIVING
11 APART.—If—

12 “(A) an individual who is married and who
13 files a separate return—

14 “(i) maintains as his home a house-
15 hold which constitutes for more than one-
16 half of the taxable year the principal place
17 of abode of a qualifying individual, and

18 “(ii) furnishes over half the cost of
19 maintaining such household during the
20 taxable year, and

21 “(B) during the last 6 months of such tax-
22 able year such individual’s spouse is not a mem-
23 ber of such household,
24 such individual shall not be considered as married.

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

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

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

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

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

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

23 “(B) who is a child of the taxpayer (within
24 the meaning of section 151(c)(3)) who has not

1 attained the age of 19 at the close of the tax-
2 able year.

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

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

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

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

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

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

1 In the case of a failure to provide the information
2 required under the preceding sentence, the preceding
3 sentence shall not apply if it is shown that the tax-
4 payer exercised due diligence in attempting to pro-
5 vide the information so required.

6 “(10) COST-OF-LIVING ADJUSTMENTS.—

7 “(A) IN GENERAL.—In the case of a tax-
8 able year beginning in a calendar year after
9 2000, the \$30,000 amount referred to in sub-
10 section (a)(2), the \$2,400 and \$4,800 amounts
11 referred to in subsection (b)(2), and the \$2,400
12 and \$4,800 amounts referred to in subsection
13 (c)(2) shall each be increased by the cost-of-liv-
14 ing adjustment (as defined in section 1(f)(3))
15 for such calendar year determined by sub-
16 stituting “1999” for “1992” in subparagraph
17 (B) of section 1(f)(3).

18 “(B) ROUNDING.—If any increase deter-
19 mined under subparagraph (A) is not a multiple
20 of \$10, such increase shall be rounded to the
21 nearest multiple of \$10 (or if such increase is
22 a multiple of \$15, such increase shall be in-
23 creased to the next highest multiple of \$10).

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

4 (b) CONFORMING AMENDMENTS.—

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

6 (2) Paragraph (1) of section 23(f) of such Code
7 and subparagraph (C) of section 129(a)(2) of such
8 Code are each amended by striking “section 21(e)”
9 and inserting “section 35(e)”.

10 (3) Paragraph (2) of section 129(b) of such
11 Code is amended by striking “section 21(d)(2)” and
12 inserting “section 35(b)(3)(B)”.

13 (4) Paragraph (1) of section 129(e) of such
14 Code is amended by striking “under section 21(b)(2)
15 (relating to expenses for household and dependent
16 care services necessary for gainful employment)”
17 and inserting “or respite care services under section
18 35 (relating to dependent care services)”.

19 (5) Subsection (e) of section 213 of such Code
20 is amended by striking “section 21” and inserting
21 “section 35”.

22 (6) Subparagraph (H) of section 6213(g)(2) of
23 such Code is amended by striking “section 21 (re-
24 lated to expenses for household and dependent care
25 services necessary for gainful employment)” and in-

1 serting “section 35 (relating to dependent care serv-
2 ices)”.

3 (c) TECHNICAL AMENDMENTS.—

4 (1) The table of sections for subpart C of part
5 IV of subchapter A of chapter 1 of such Code is
6 amended by striking the item relating to section 35
7 and inserting the following:

 “Sec. 35. Dependent care services.

 “Sec. 36. Overpayments of tax.”.

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

11 (3) Section 1324(b)(2) of title 31, United
12 States Code, is amended by inserting before the pe-
13 riod “, or from section 35 of such Code”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to taxable years beginning after
16 December 31, 1999.

○