DESCRIPTION OF H.R. 3300, THE "ECONOMIC MOBILITY ACT OF 2019"

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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 3300, the "Economic Mobility Act of 2019." This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 3300, the "Economic Mobility Act of 2019"* (JCX-28-19), June 18, 2019. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (herein "Code"), unless otherwise stated.

TITLE I ─ EARNED INCOME TAX CREDIT

1. Strengthening the earned income tax credit for individuals with no qualifying children, and certain other changes to the earned income tax credit

Present Law

Overview

Low- and moderate-income workers may be eligible for the refundable earned income tax credit ("EITC"). The amount of the EITC is based on the presence and number of qualifying children in the worker's family, filing status, adjusted gross income ("AGI"), and earned income.

The EITC generally equals a specified percentage of earned income up to a maximum dollar amount. The maximum amount applies over a certain income range and then diminishes to zero over a specified phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the beginning of the phaseout range, the maximum EITC amount is reduced by the phaseout rate multiplied by the amount of earned income (or AGI, if greater) in excess of the beginning of the phaseout range. For taxpayers with earned income (or AGI, if greater) in excess of the end of the phaseout range, no credit is allowed. The specified percentage, maximum dollar amount, and phaseout rate and range vary with filing status and number of children. Four separate credit percentage schedules apply: one for taxpayers with no qualifying children, one for taxpayers with one qualifying child, one for taxpayers with two qualifying children, and one for taxpayers with three or more qualifying children.[2]

An individual is not eligible for the EITC if the aggregate amount of certain investment income, known as disqualified income, of the taxpayer for the taxable year exceeds $3,600 (for 2019). This threshold is indexed for inflation. Disqualified income is the sum of: (1) interest (both taxable and tax exempt); (2) dividends; (3) net rent and royalty income (if greater than zero); (4) capital gains net income; and (5) net passive income that is not self-employment income (if greater than zero).

The EITC may be claimed by a taxpayer if the taxpayer is a U.S. citizen or a resident alien. Individuals who are nonresident aliens for any portion of the taxable year are not eligible to claim the EITC unless an election under section 6013(g) or (h) (relating to individuals who are married to an individual who is either a citizen or resident of the United States at year end) is in effect for the taxable year. In addition, individuals who claim the benefits of section 911 (relating to the income exclusion election available to U.S. citizens or resident aliens living abroad) are not eligible to claim the EITC.

To claim the EITC, the taxpayer must include the taxpayer's valid Social Security number ("SSN") and valid SSN for the qualifying child (and, if married, the spouse's SSN) on his or her tax return. For these purposes, a valid SSN is an SSN issued to an individual, other than an SSN issued to an individual solely for the purpose of applying for or receiving Federally

[2] All income thresholds are indexed for inflation annually.

funded benefits, on or before the due date for filing the return for the tax year.[3] The EITC is a refundable credit, meaning that if the amount of the credit exceeds the taxpayer's Federal income tax liability, the excess is treated as an overpayment of tax payable to the taxpayer.

Filing status

An unmarried individual may claim the EITC if he or she files as a single filer or as a head of household. Married individuals generally may not claim the EITC unless they file jointly. An exception to the joint return filing requirement applies to certain spouses who are separated. Under this exception, a married taxpayer who is separated from his or her spouse for the last six months of the taxable year is not considered to be married (and, accordingly, may file a return as head of household and claim the EITC), provided that the taxpayer maintains a household that constitutes the principal place of abode for a dependent child (including a son, stepson, daughter, stepdaughter, adopted child, or a foster child) for over half the taxable year, and pays over half the cost of maintaining the household in which he or she resides with the child during the year.

Qualifying child

In order for an individual to be a qualifying child for purposes of the EITC, that individual must meet the relationship, age, and residency tests. In addition to meeting all three of these tests, the individual who is being claimed as a qualifying child may not file a joint return for the taxable year.

The relationship test requires that the individual is the taxpayer's son, daughter, adopted child, stepchild, foster child, or a descendant of any of them (*e.g.*, the taxpayer's grandchild). Additionally, the child can be the taxpayer's brother, sister, half-brother, half-sister, stepbrother, stepsister, or a descendant of any of them (*e.g.*, the taxpayer's niece or nephew).

The age test requires that the individual must be either: (1) under the age of 19 at the end of the calendar year; (2) under the age of 24 at the end of the calendar year and a full-time student;[4] or (3) permanently and totally disabled at any time during the calendar year, regardless of age.[5] The residency test requires that the individual has the same principal place of abode as

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[3] Sec. 205(c)(2)(B)(i)(II) (and that portion of sec. 205(c)(2)(B)(i)(III) relating to it) of the Social Security Act.

[4] To qualify as a student, the individual must be, during some part of each of any five calendar months during the calendar year: (1) a full-time student at a school that has a regular teaching staff, course of study, and regular student body at the school, or (2) a student taking a full-time, on-farm training course given by a school described in (1), or a state, county, or local government.

[5] An individual is permanently and totally disabled if he or she cannot engage in any substantial gainful activity because of a physical or mental condition and a doctor determines the condition has lasted or can be expected to last continuously for at least a year or can lead to death.

the taxpayer for more than half of the calendar year and such place must be in the United States. Special rules apply in the case of divorced or separated parents.

If more than one taxpayer lives with a qualifying child, and the taxpayers file separate returns, only one of these taxpayer may claim the qualifying child for purposes of the EITC. Special rules, known as the tiebreaker rules, prescribe which taxpayer may claim that qualifying child for purposes of the EITC.[6] The IRS previously took the position that if more than one individual would be eligible to claim a qualifying child but for the fact that another individual claimed the qualifying child on their return (either because of a decision made among the taxpayers or by operation of law), then that individual may not claim an EITC for the tax year, unless the taxpayer claims the EITC with respect to another qualifying child. The IRS changed this position in proposed regulations, which taxpayers could choose to apply upon publication of the proposed regulations.[7] These proposed regulations provide that if an individual meets the definition of a qualifying child for more than one taxpayer and the individual is not treated as the qualifying child of a taxpayer under the tiebreaker rules, then that taxpayer may claim the EITC for taxpayers without a qualifying child provided that the taxpayer meets the other requirements to claim that credit.

EITC for taxpayers with no qualifying children

Taxpayers with no qualifying children may claim a credit if they are age 25 or older and below age 65, have a principal place of abode in the United States for more than half the year, and cannot be claimed as dependent on anyone else's return. For 2019, the credit is 7.65 percent of earned income up to $6,920, resulting in a maximum credit of $529. The maximum credit is available for those with earned income between $6,920 and $8,650 ($14,450 if married filing jointly). The credit begins to phase out at a rate of 7.65 percent of earned income above $8,650 ($14,450 if married filing jointly) resulting in a $0 credit at $15,570 of earned income ($21,370 if married filing jointly).

Any eligible taxpayer with at least one qualifying child who does not claim the EITC with respect to qualifying children due to failure to meet certain identification requirements with respect to such children (*i.e.*, providing the name, age, and SSN of each of such children) may not claim the EITC for taxpayers without qualifying children.

Description of Proposal

Temporary expansion of EITC for taxpayer with no qualifying children

In general, for two years, the proposal expands eligibility for and the amount of credit for taxpayers with no qualifying children.

For any taxable year beginning in 2019 or 2020, in the case of the credit for a taxpayer with no qualifying children, the minimum age is reduced from age 25 to age 19. Under the

[6] Sec. 152(c)(4).

[7] Prop. Treas. reg. sec. 1.32-2(c)(3)(ii). 82 Fed. Reg. 6370 (Jan. 19, 2017).

proposal, the age reduction does not apply to an individual who is a full-time student (or, in the case of a married individual, if both the individual and the individual's spouse are full-time students). A full-time student means, with respect to a taxable year, an individual who is an eligible student during at least five calendar months during the taxable year. An eligible student is defined in section 25A(b)(3) (relating to the American Opportunity and Lifetime Learning credits) as a student who, with respect to any academic period, meets the requirements of section 484(a)(1) of the Higher Education Act of 1965 and is carrying at least half the normal full-time work load for the course of study the student is pursuing.

For any taxable year beginning in 2019 or 2020, the proposal also increases the upper age limit for the credit for taxpayers with no qualifying children from age 65 to age 66.

Finally, for any taxable year beginning in 2019 or 2020, the proposal increases the amount of the credit for taxpayers with no qualifying children. The proposal increases the credit percentage and phaseout percentage from 7.65 percent to 15.3 percent. In addition, the earned income amount is increased to $9,570, and the phaseout amount is increased to $11,310. These increased amounts are adjusted for inflation after 2019.

The proposal requires the Secretary to develop and implement procedures, as soon as practicable, for checking an individual's claim for the EITC under the proposal for individuals without qualifying children ages 19 to 24 against any information returns made with respect to such individual under section 6050S (returns relating to higher education tuition and related expenses).

Permanent expansions of EITC eligibility

The proposal repeals the provision that an eligible taxpayer with at least one qualifying child who does not claim the EITC with respect to qualifying children due to failure to meet the identification requirements, including the valid SSN requirement, with respect to such child or children may not claim the EITC for taxpayers without qualifying children. Accordingly, such a taxpayer may claim the EITC for a taxpayer without qualifying children under the proposal.

Under the proposal, an otherwise married individual separated from the individual's spouse is treated as not married for purposes of the EITC if a joint return is not filed. Thus the EITC may be claimed by the taxpayer on a separate return. The proposal applies only if the taxpayer lives with a qualifying child of the taxpayer for more than one-half of the taxable year and either (1) does not have the same principal place of abode as the individual's spouse during the last six months of the taxable year or (2) has a decree, instrument, or agreement (other than a decree of divorce) with respect to the individual's spouse and is not a member of the same household with the individual's spouse by the end of the taxable year.

The proposal eliminates the denial of the credit to individuals with disqualified investment income. Thus, the eligibility of individuals to claim the EITC is determined without regard to the amount of their disqualified investment income.

Effective Date

The proposal to temporarily expand the EITC for taxpayers with no qualifying children applies to taxable years beginning after December 31, 2018.

The proposals to permanently expand EITC eligibility apply to taxable years beginning after the date of enactment.

2. Application of earned income tax credit in possessions of the United States

Present Law

Citizens of the United States are generally subject to Federal income tax on their worldwide income, including those citizens in the U.S. possessions or territories. Residents of the U.S. possessions are generally subject to the Federal income tax system based on their status as U.S. citizens or residence in the possessions, with certain special rules for determining residence and source of income specific to the possession. Broadly, a bona fide individual resident of a possession is exempt from U.S. tax on income derived from sources within that possession but is subject to U.S. tax on U.S.-source and non-possession-source income.[8]

The application of the Federal tax rules to the possessions varies from one possession to another. Three possessions, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, are referred to as mirror Code possessions because the Code serves as the internal tax law of those possessions (substituting the particular possession for the United States wherever the Code refers to the United States). A resident of one of those possession generally files a single tax return only with the possession of which the individual is a resident, and not with the United States. American Samoa and Puerto Rico, by contrast, are non-mirror Code possessions. These two possession have their own internal tax laws, and a resident of either American Samoa or Puerto Rico may be required to file income tax returns with both the possession of residence and the United States.

The three mirror Code possessions have, under their mirror Code, an earned income tax credit identical to that in the U.S. Code.[9] Puerto Rico has an earned income tax credit under its internal tax laws. American Samoa does not have an earned income tax credit under its internal tax laws. Each possession that has an earned income tax credit bears the cost of the credit.

Description of Proposal

Under the proposal, the Secretary makes payments to certain possessions that relate to the cost of each of the possession's earned income tax credit.

With respect to Puerto Rico, if Puerto Rico enacts changes to its earned income credit which increase the percentage of earned income allowed as a credit in a manner designed to

[8] See secs. 932, 933, and 937.

[9] For a full discussion of present law and a description of proposals regarding the earned income tax credit with respect to the United States, see the discussion immediately above.

substantially increase workforce participation, the Secretary makes payments to Puerto Rico each calendar year, starting in 2020, of a specified matching amount. The specified matching amount for a calendar year is the lesser of (i) the cost to Puerto Rico of the earned income tax credit for tax years beginning in or with such calendar year over the base amount of such calendar year or (ii) three times the base amount for such calendar year. The base amount is the greater of (i) the cost to Puerto Rico of the earned income tax credit for tax year 2019 (rounded to the nearest multiple of $1 million) or (ii) $200 million; the base amount is indexed to inflation after 2020. For example, if Puerto Rico spends $210 million on the earned income tax credit in 2019 and projects spending $850 million on the earned income tax credit in 2020 (through an appropriate increase in the percentage of earned income allowed as a credit), the base amount is $210 million (the greater of $210 million and $200 million) and the specified matching amount is $630 million (the lesser of (i) $850 million – $210 million = $640 million and (ii) 3 x $210 million = $630 million). For calendar years 2020 through 2024, the Secretary also makes a payment to Puerto Rico of the lesser of (i) Puerto Rico's expenditures for education efforts with respect to taxpayers and tax return preparers regarding the EITC or (ii) $1 million.

Under the proposal, the Secretary determines the cost of the earned income tax credit for Puerto Rico based on the laws of Puerto Rico, but such cost does not include administrative costs with respect to such credit. Puerto Rico must provide annual reports to the Secretary that include an estimate of costs and a statement of costs with respect to the preceding year. The Secretary then makes the payments described above to Puerto Rico after receipt of such annual reports and within a reasonable period of time before the individual income tax filing date in Puerto Rico. Adjustments to such payments are made as soon as practicable after the determination that an estimate was inaccurate. The Secretary will not make any payments if the earned income tax credit as in effect in Puerto Rico for tax year 2019 is modified after the date of enactment of this proposal.

With respect to the Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands, the Secretary makes payments to each mirror Code possession each calendar year, starting in 2020. These payments equal to 75 percent of the cost to such possession of its earned income tax credit each year for taxable years beginning in or with such calendar year. For calendar years 2020 through 2024, the Secretary also makes a payment of the lesser of (i) the possession's expenditures for education efforts with respect to taxpayers and tax return preparers regarding the EITC or (ii) $50,000. The Secretary determines the cost of the credit and provide payments with respect to each possession under rules similar to the rules described above for Puerto Rico. The possessions must provide annual reports to the Secretary that include an estimate of costs and a statement of costs with respect to the preceding year.

With respect to American Samoa, the Secretary makes payments to American Samoa each calendar year that American Samoa has a refundable earned income tax credit designed to substantially increase workforce participation, starting in 2020. These payments equal the lesser of (i) 75 percent of the cost to American Samoa of such credit for taxable years beginning in or with such calendar year or (ii) $12 million, indexed to inflation. For calendar years 2020 through 2024, the Secretary also makes a payment of the lesser of (i) the possession's expenditures for education efforts with respect to taxpayers and tax return preparers regarding the EITC or (ii) $50,000. The Secretary determines the cost of the credit and provide payments with respect to American Samoa under rules similar to the rules described above for Puerto Rico. American

Samoa must provide annual reports to the Secretary that include an estimate of costs and a statement of costs with respect to the preceding year.

Effective Date

The proposal is effective beginning in calendar year 2020.

TITLE II – CHILD TAX CREDIT

1. Child tax credit fully refundable for 2019 and 2020

Present Law

An individual is allowed a tax credit of $2,000 for each qualifying child.[10] The aggregate amount of otherwise allowable child tax credits is phased out for an individual with income over a threshold amount. Specifically, the otherwise allowable child tax credit amount is reduced by $50 for each $1,000 (or fraction thereof) of modified adjusted gross income ("AGI") over $400,000 for joint returns, and $200,000 for all other taxpayers.[11] For purposes of this limitation, modified AGI includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. possessions.

The credit is allowable against both the regular tax and the alternative minimum tax ("AMT").

In some circumstances, all or a portion of the otherwise allowable credit is treated as a refundable credit (the "additional child tax credit"). The amount treated as a refundable credit reduces the amount of the nonrefundable credit. A refundable credit creates an overpayment of income tax to the extent the credit (together with other refundable credits) exceeds the taxpayer's income tax liability (reduced by nonrefundable credits).

The credit is treated as refundable in an amount equal to 15 percent of earned income in excess of $2,500[12] (the "earned income formula"). Earned income is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. Only items taken into account in computing taxable income are treated as earned income.[13] However, combat pay is treated as earned income for these purposes.

A taxpayer with three or more qualifying children may determine the additional child tax credit using the "alternative formula," if this results in a larger additional child tax credit than determined under the earned income formula. Under the alternative formula, the additional child

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[10] For tax years beginning after December 31, 2025, the tax credit amount is $1,000.

[11] For tax years beginning after December 31, 2025, the modified AGI threshold amounts at which the credit begins to phase out are $75,000 for single individuals or heads of households, $110,000 for married individuals filing joint returns, and $55,000 for married individuals filing separate returns.

[12] For tax years beginning after December 31, 2025, the earned income threshold for the refundable child tax credit is $3,000.

[13] Some ministers' parsonage allowances are considered self-employment income, and thus are considered earned income for purposes of computing the EITC, but the allowances are excluded from gross income for income tax purposes, and thus are not considered earned income for purposes of the additional child tax credit since the income is not included in taxable income.

tax credit equals the amount by which the taxpayer's Social Security taxes exceed the taxpayer's EITC.

The maximum amount of the refundable child tax credit may not exceed $1,400 per qualifying child. This $1,400 amount is indexed for inflation, although the amount may not exceed $2,000.[14]

The name and Social Security number ("SSN") of the qualifying child must appear on the return, and the SSN must be issued before the due date for filing the return.[15] The SSN also must be issued to a citizen of the United States or pursuant to a provision of the Social Security Act relating to the lawful admission for employment in the United States.[16] The taxpayer identification number ("TIN") of the taxpayer must also be issued on or before the due date for filing the return.

Qualifying child

Generally, for purposes of the child tax credit, a qualifying child is any individual under the age of 17[17] who is the taxpayer's son, daughter, stepson, stepdaughter, brother, sister, stepbrother, stepsister, or a descendant of any such individual. The child must share the same principal place of abode as the taxpayer for more than one-half of the taxable year, may not have provided over one-half of their own support for the taxable year, and may not file a joint return with a spouse.[18] In order to qualify for the child tax credit, the child must be a U.S. citizen, national, or resident.

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[14] For tax years beginning after December 31, 2025, there is no maximum amount of the refundable child tax credit; however, the refundable credit may not exceed the total amount of the credit, which is $1,000 for tax years beginning after December 31, 2025.

[15] For tax years beginning after December 31, 2025, the child tax credit may be claimed if the TIN of the qualifying child, rather than the SSN of the child, appears on the return.

[16] Sec. 205(c)(2)(B)(i)(I) (or that portion of subclause (III) that relates to subclause (I)) of the Social Security Act.

[17] Sec. 24(c)(1).

[18] Sec. 152(c).

Credit for other dependents

An individual may be claimed as a taxpayer's dependent, if the individual is a qualifying child[19] or a qualifying relative of the taxpayer and meets certain other requirements.[20] An individual is a taxpayer's qualifying relative if such individual (1) bears the appropriate relationship to the taxpayer; (2) has a gross income that does not exceed the personal exemption amount;[21] (3) receives one-half of his or her support from the taxpayer; and (4) is not a qualifying child of the taxpayer. Generally, an individual bears the appropriate relationship to the taxpayer if the individual is the taxpayer's lineal descendent or ancestor, brother, sister, aunt, uncle, niece, or nephew. Some relations by marriage also qualify, including stepmothers, stepfathers, stepbrothers, stepsisters, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law. In addition, an individual bears the appropriate relationship if the individual has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

An individual is allowed a $500 nonrefundable credit for each dependent, other than a qualifying child as defined for purposes of the child tax credit.[22] The SSN requirement does not apply with respect to a qualifying dependent for whom a $500 nonrefundable credit is claimed. In order to claim the $500 nonrefundable credit with respect to any individual, however, the taxpayer must include such individual's TIN on the tax return.[23]

Description of Proposal

Under the proposal, the child tax credit is made fully refundable for any taxable year beginning in 2019 or 2020 for individuals other than nonresident aliens. Thus, the child tax credit is generally refundable up to $2,000 per child, without regard the amount of earned income or Social Security taxes paid. The adjusted gross income limitation on the credit still

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[19] In the context of the dependency rules under section 152, the age requirements differ from the rules for the child tax credit. Under these rules, an individual meets the age requirement either (a) if they are under age 19 or (b) they are a student who is under age 24. Thus, for example, a student who is age 20 and meets the otherwise applicable requirements would not be eligible for the child tax credit, but would still be considered a qualifying child for purposes of the dependency rules. See sec. 152(c)(3).

[20] Sec. 152(d).

[21] For taxable years 2018-2025, the reduction of the personal exemption amount to zero will not be taken into account in determining whether a taxpayer is a qualifying relative under section 152(d)(1)(B). The exemption amount referenced in section 152(d)(1)(B) will be treated as $4,150 (adjusted for inflation after 2018). See Notice 2018-70, 2018-38 I.R.B. 441.

[22] An individual who is a qualifying child for purposes of the dependency rules under section 152, but not a qualifying child for purposes of the child tax credit (*e.g.*, a child who is age 17 or 18, or a student under age 24) is eligible to be a qualifying dependent for purposes of the $500 nonrefundable credit. For tax years beginning after December 31, 2025, there is no tax credit for non-child dependents.

[23] A technical correction may be necessary to reflect this intent.

applies (regardless of refundability), and the $500 credit for dependents other than qualified children remains non-refundable.

Effective Date

The proposal applies to taxable years beginning after December 31, 2018.

2. Payments to possessions relating to the child tax credit

Present Law

Possessions

Citizens of the United States are generally subject to Federal income tax on their worldwide income, including those citizens in the U.S. possessions or territories. Residents of the U.S. possessions are generally subject to the Federal income tax system based on their status as U.S. citizens or residence in the possessions, with certain special rules for determining residence and source of income specific to the possession. Broadly, a bona fide individual resident of a possession is exempt from U.S. tax on income derived from sources within that possession but is subject to U.S. tax on U.S.-source and non-possession-source income.[24]

The application of the Federal tax rules to the possessions varies from one possession to another. Three possessions, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, are referred to as mirror Code possessions because the Code serves as the internal tax law of those possessions (substituting the particular possession for the United States wherever the Code refers to the United States). A resident of one of those possessions generally files a single tax return only with the possession of which the individual is a resident, and not with the United States. American Samoa and Puerto Rico, by contrast, are non-mirror Code possessions. These two possessions have their own internal tax laws, and a resident of either American Samoa or Puerto Rico may be required to file income tax returns with both the possession of residence and the United States.

Child tax credit

An individual is allowed a tax credit of $2,000 for each qualifying child.[25] In some circumstances, all or a portion of the otherwise allowable credit is treated as a refundable credit (the "additional child tax credit"). The amount treated as a refundable credit reduces the amount of the nonrefundable credit. A refundable credit creates an overpayment of income tax to the extent the credit (together with other refundable credits) exceeds the taxpayer's income tax liability (reduced by nonrefundable credits).

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[24] See secs. 932, 933, and 937.

[25] For a full discussion of present law and a description of the proposal regarding the child tax credit with respect to the United States, see the discussion immediately above. For tax years beginning after December 31, 2025, the tax credit amount is $1,000.

The credit is treated as refundable in an amount equal to 15 percent of earned income in excess of $2,500[26] (the "earned income formula"). Earned income is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. A taxpayer with three or more qualifying children may determine the additional child tax credit using the "alternative formula," if this results in a larger additional child tax credit than determined under the earned income formula. Under the alternative formula, the additional child tax credit equals the amount by which the taxpayer's Social Security taxes exceed the taxpayer's EITC.

The maximum amount of the refundable child tax credit may not exceed $1,400 per qualifying child. This $1,400 amount is indexed for inflation, although the amount may not exceed $2,000.[27]

The three mirror Code possessions have, under their mirror Codes, a child tax credit identical to that in the U.S. Code. Each mirror Code possession funds the child tax credit through its own Treasury. Puerto Rico and American Samoa do not have a child tax credit under their internal revenue laws.

In addition, residents of the possessions with three or more qualifying children are, under the alternative formula, eligible for the additional child tax credit under the U.S. Code. The U.S. Treasury makes payments to the possession (or, in the case of Puerto Rico, directly to applicable residents of the possession[28]) to cover the cost of this credit.

Description of Proposal

Under the proposal, the Secretary makes payments to each mirror Code possession that relate to the cost of each possession's child tax credit or approximate such cost.

With respect to mirror Code possessions, for each tax year beginning after 2018, the Secretary makes payments equal to the loss in revenue by reason of the application of the child tax credit to the possession's mirror Code with respect to such tax year. This amount is determined by the Secretary based on information provided by the governments of the respective possessions.

With respect to Puerto Rico and American Samoa, for each tax year beginning after 2018, the Secretary makes payments in an amount estimated by the Secretary as being equal to the aggregate benefits that would have been provided to the residents of each possession from the child tax credit if a mirror Code tax system had been in effect in such possession with respect to

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[26] For tax years beginning after December 31, 2025, the earned income threshold for the refundable child tax credit is $3,000.

[27] For tax years beginning after December 31, 2025, there is no maximum amount of the refundable child tax credit; however, the refundable credit may not exceed the total amount of the credit, which is $1,000 for tax years beginning after December 31, 2025.

[28] Residents of Puerto Rico may claim the additional child tax credit under the alternative formula by filing a Form 1040-SS with the Internal Revenue Service.

such tax year. These payments will not be made unless the possession has a plan approved by the Secretary to promptly distribute the payments to its residents in a manner that replicates to the greatest extent practicable the benefits of the child tax credit that would have been provided to each such resident under a mirror Code.

With respect to residents of the mirror Code possessions, no child tax credit under the U.S. Code is permitted for any person to whom a child tax credit is allowed against income taxes of the possession. Similarly, with respect to the non-mirror Code possessions of Puerto Rico and American Samoa, no child tax credit under the U.S. Code is permitted for any person who is eligible for a payment under the possession's plan for distributing to its residents the payments described above. If a non-mirror Code possession does not have such a plan in place for any taxable year beginning in 2019 or 2020, residents of such possessions may not claim the expanded refundable child tax credit for taxable years beginning in 2019 or 2020 as described above. However, these residents may claim the child tax credit to the extent allowed under present law; for example, residents of Puerto Rico may claim the present law refundable child tax credit under the alternative formula.

Effective Date

The proposal is effective on the date of enactment.

TITLE III ─ DEPENDENT CARE ASSISTANCE

1. Refundability and enhancement of child and dependent care tax credit

Present Law

A taxpayer who maintains a household that includes one or more qualifying individuals may claim a nonrefundable credit against income tax liability for up to 35 percent of a limited amount of employment-related child and dependent care expenses. For this purpose, employment-related expenses are expenses for household services and expenses for the care of a qualifying individual. These expenses must be incurred to enable the taxpayer to be gainfully employed and do not include amounts paid for camps where qualifying individuals stay overnight.

Eligible child and dependent care expenses related to employment are limited to $3,000 if there is one qualifying individual or $6,000 if there are two or more qualifying individuals. Thus, the maximum credit is $1,050 if there is one qualifying individual and $2,100 if there are two or more qualifying individuals. The applicable dollar limit is reduced by any amount excluded from income under an employer-provided dependent care assistance program. The 35-percent credit rate is reduced, but not below 20 percent, by one percentage point for each $2,000 (or fraction thereof) of AGI above $15,000. Thus, for taxpayers with AGI above $43,000, the credit rate is 20 percent. The phaseout threshold and the amount of expenses eligible for the credit are not indexed for inflation.

Generally, a qualifying individual is: (1) a qualifying child of the taxpayer under the age of 13 for whom the taxpayer may claim a dependency exemption, or (2) a dependent or spouse of the taxpayer if the dependent or spouse is physically or mentally incapable of caring for himself or herself, and shares the same principal place of abode with the taxpayer for over one half the year. Married taxpayers must file a joint return in order to claim the credit.

Description of Proposal

The proposal temporarily expands the child and dependent care credit for any taxable year beginning in 2019 or 2020. First, the proposal makes the credit fully refundable for taxpayers other than nonresident aliens. In addition, the proposal increases the maximum credit rate to 50 percent and amends the phaseout threshold to begin at AGI above $120,000. Thus in 2019, for taxpayers with AGI above $178,000, the credit rate is 20 percent. The proposal also doubles the amount of child and dependent care expenses that are eligible for the credit; thus, such expenses are limited to $6,000 for one qualifying individual and $12,000 for two or more qualifying individuals. Finally, the proposal temporarily indexes for inflation the phaseout threshold and the amount of expenses eligible for the credit beginning after 2019.

The proposal to make the credit fully refundable does not apply to residents of the possessions.

Effective Date

The proposal applies to taxable years beginning after December 31, 2018.

2. Increase in exclusion for employer-provided dependent care assistance

Present Law

An annual exclusion[29] from the gross income of an employee is allowed for employer-provided dependent care assistance in an amount up to $5,000 ($2,500 in the case of a separate return by a married individual) if such assistance is provided pursuant to a "dependent care assistance program." Among other requirements, a dependent care assistance program[30] must be a separate written plan of an employer for the exclusive benefit of the employer's employees to provide such employees with dependent care assistance that does not discriminate in favor of highly compensated employees or their dependents as to contributions, benefits, and eligibility.[31]

The amount excludable for any taxable year cannot exceed the earned income of the employee or, if the employee is married, the lesser of the earned income of the employee or the earned income of the employee's spouse.[32]

Amounts attributable to dependent care assistance that are excludible from gross income are also excludible from wages for employment tax purposes.[33]

Description of Proposal

The proposal temporarily increases, for any taxable year beginning in 2020 or 2021, the amount of the exclusion for employer-provided dependent care assistance. The proposal increases such amount from $5,000 to $10,500 (and from $2,500 to $5,250 in the case of a separate return by a married individual). This amount is adjusted for inflation for any taxable year beginning after 2020.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2019.

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[29] Sec. 129(a).

[30] Sec. 129(d).

[31] Sec. 129(d)(2) and (3). The exclusion applies if the contributions or benefits under the program do not discriminate in favor of highly compensated employees, within the meaning of section 414(q), or their dependents, and the program benefits employees under a classification established by the employer found not to be discriminatory in favor or such highly compensated employees or their dependents.

[32] Sec. 129(b). The provisions of section 21(d)(2) apply in determining the earned income of a spouse who is a student or incapable of caring for himself. Sec. 129(b)(2).

[33] Sec. 3121(a)(18).

TITLE IV ─ CERTAIN FRINGE BENEFIT EXPENSES

1. Repeal of inclusion of certain fringe benefit expenses in unrelated business taxable income

Present Law

Tax exemption for certain organizations

Section 501(a) exempts certain organizations from Federal income tax. Such organizations include: (1) tax-exempt organizations described in section 501(c) (including among others section 501(c)(3) charitable organizations and section 501(c)(4) social welfare organizations); (2) religious and apostolic organizations described in section 501(d); and (3) trusts forming part of a pension, profit-sharing, or stock bonus plan of an employer described in section 401(a).

Unrelated business income tax, in general

The unrelated business income tax ("UBIT") generally applies to income derived from a trade or business regularly carried on by the organization that is not substantially related to the performance of the organization's tax-exempt functions.[34] An organization that is subject to UBIT and that has $1,000 or more of gross unrelated business taxable income ("UBTI") must report that income on Form 990-T (Exempt Organization Business Income Tax Return). An organization determines its UBTI by subtracting from its gross unrelated business income the deductions directly connected with the unrelated trade or business.[35]

The UBIT rules apply to most tax-exempt organizations, including: (1) organizations exempt from tax under section 501(a), including organizations described in section 501(c) (except for U.S. instrumentalities and certain charitable trusts); (2) qualified pension, profit-sharing, and stock bonus plans described in section 401(a); and (3) certain State colleges and universities.[36]

Exclusions from UBTI

Certain types of income are specifically excluded from UBTI, such as dividends, interest, royalties, and certain rents,[37] unless derived from debt-financed property or from certain 50-percent controlled subsidiaries.[38] Certain types of activities are not considered unrelated trade or business activities, such as activities in which substantially all the work is performed by

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[34] Secs. 511-514.

[35] Sec. 512(a).

[36] Sec. 511(a)(2).

[37] Sec. 512(b).

[38] Sec. 512(b)(13).

volunteers, which involve the sale of donated goods, or which are carried on for the convenience of members, students, patients, officers, or employees of a charitable organization.[39] Additional activities exempt from UBIT include certain activities of trade shows and State fairs,[40] conducting bingo games,[41] and the distribution of low-cost items incidental to the solicitation of charitable contributions.[42]

Specific deduction against UBTI

In computing UBTI, an exempt organization may take a specific deduction of $1,000. This specific deduction may not be used to create a net operating loss that will be carried back or forward to another year.[43]

In the case of a diocese, province of a religious order, or a convention or association of churches, there is also allowed a specific deduction with respect to each parish, individual church, district, or other local unit. The specific deduction is equal to the lower of $1,000 or the gross income derived from any unrelated trade or business regularly carried on by the local unit.[44]

Increase in UBTI for certain fringe benefits

Under section 512(a)(7), UBTI of a tax-exempt organization is increased to the extent that a deduction is not allowable by reason of section 274 for any item with respect to qualified transportation fringe benefits[45] or any parking facility used in connection with qualified parking.[46] The determination of UBTI associated with providing qualified transportation fringes, including parking facilities used in connection with qualified parking, is consistent with the determination of the deduction disallowance under section 274.

This requirement to increase UBTI does not apply to any item directly connected with an unrelated trade or business that is regularly carried on by the organization. The $1,000 specific deduction available to organizations under section 512(b)(12) may be used to offset UBTI resulting from the provision of transportation fringes.

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[39] Sec. 513(a).

[40] Sec. 513(d).

[41] Sec. 513(f).

[42] Sec. 513(h).

[43] Sec. 512(b)(12).

[44] *Ibid*.

[45] See sec. 132(f).

[46] See sec. 132(f)(5)(C).

Description of Proposal

The proposal repeals the requirement that UBTI be increased by certain fringe benefits.

Effective Date

The proposal is effective for amounts paid or incurred after December 31, 2017.