DESCRIPTION OF THE CHAIRMAN'S MODIFICATION TO A PROPOSAL TO EXTEND THE TRADE ADJUSTMENT ASSISTANCE PROGRAM AND THE HEALTH COVERAGE TAX CREDIT

Scheduled for Markup
Before the
SENATE COMMITTEE ON FINANCE
on April 22, 2015

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

April 22, 2015
JCX-81-15

CONTENTS

INTRODUCTION

The Senate Committee on Finance has scheduled a markup of a proposal to extend the Trade Adjustment Assistance Program and the health coverage tax credit.[1] This document,[2] prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's modification to the revenue provisions in Chairman's mark.

[1] Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

[2] This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Modification to a Proposal to Extend the Trade Adjustment Assistance Program and the Health Coverage Tax Credit* (JCX-81-15), April 22, 2015. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Child Tax Credit Not Refundable For Taxpayers Electing To Exclude Foreign Earned Income From Tax

Present Law

Child tax credit

An individual may claim a tax credit for each qualifying child under the age of 17. The amount of the credit per child is $1,000.[3] A child who is not a citizen, national, or resident of the United States cannot be a qualifying child.[4]

The aggregate amount of child credits that may be claimed is phased out for individuals with income over certain threshold amounts. Specifically, the otherwise allowable child tax credit is reduced by $50 for each $1,000 (or fraction thereof) of modified adjusted gross income over $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. For purposes of this limitation, modified adjusted gross income includes certain otherwise excludable income earned by U.S. citizens or residents living abroad or in certain U.S. territories, described below.[5]

The credit is allowable against both the regular tax and against the alternative minimum tax ("AMT"). In addition, a taxpayer is allowed an "additional child tax credit" which is refundable to the extent the credit exceeds the taxpayer's income tax (reduced by nonrefundable credits).[6] The additional child tax credit is equal to 15 percent of earned income in excess of a threshold dollar amount (the "earned income" formula).[7] The threshold dollar amount is $3,000 for taxable years beginning before 2018 ($10,000 indexed for inflation since 2001 for taxable years beginning after 2017). For purposes of determining the additional child credit, earned income includes only earned income that is taken into account in determining taxable income. As a result, a citizen living abroad who earns more than the maximum section 911 exclusion (discussed below) will have residual earnings taken into account in determining taxable income, and thus will potentially be eligible for the additional child credit. For example, a married couple with earnings of $113,800 in 2015 would have earnings that exceeded the maximum section 911 exclusion by $13,000, or $10,000 in excess of the additional child credit refundability threshold of $3,000. If they had two qualifying children, the family would be potentially eligible for child credits of $1,800 ($200 of the otherwise allowed child credits is lost due to the income based phase-out of the child credit). The couple faces no U.S. regular income tax liability on the $13,000 against which to claim the credit. However, the couple is eligible for refundable child credits of $1,500 (15 percent of $10,000). In contrast to this couple, a couple

[3] Sec. 24(a).

[4] Sec. 24(c).

[5] Sec. 24(b).

[6] Secs. 24(d) and 6401(b).

[7] Sec. 24(d)(1)(B)(i).

earning less than the maximum section 911 exclusion and who claimed the exclusion would have no earnings taken into account in determining taxable income, and thus would not be eligible for the additional child credit. Thus certain higher income citizens working abroad face lower U.S. tax liabilities than lower income citizens working abroad.

Families with three or more children may determine the additional child tax credit using the "alternative formula," if this results in a larger 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 earned income tax credit ("EITC").

Earned income is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. Combat pay is treated as earned income taken into account in determining taxable income, regardless of whether it is excluded from gross income for other purposes.

<u>Foreign earned income exclusion</u>

A U.S. citizen or resident living abroad may be eligible to elect to exclude from U.S. taxable income certain foreign earned income and foreign housing costs.[8] This exclusion applies regardless of whether any foreign tax is paid on the foreign earned income or housing costs. To qualify for these exclusions, an individual (a "qualified individual") must have his or her tax home in a foreign country and must be either (1) a U.S. citizen[9] who is a bona fide resident of a foreign country or countries for an uninterrupted period that includes an entire taxable year, or (2) a U.S. citizen or resident present in a foreign country or countries for at least 330 full days in any 12-consecutive-month period.

The maximum amount of foreign earned income that an individual may exclude in 2015 is $100,800.[10] The maximum amount of foreign housing costs that an individual may exclude in 2015 is, in the absence of Treasury adjustment for geographic differences in housing costs, $16,128.[11] The combined foreign earned income exclusion and housing cost exclusion may not exceed the taxpayer's total foreign earned income for the taxable year. The taxpayer's foreign tax credit is reduced by the amount of the credit that is attributable to excluded income.

[8] Sec. 911.

[9] Generally, only U.S. citizens may qualify under the bona fide residence test. A U.S. resident alien who is a citizen of a country with which the United States has a tax treaty may, however, qualify for the section 911 exclusions under the bona fide residence test by application of a nondiscrimination provision of the treaty.

[10] Sec. 911(b)(2)(D)(i). This amount is adjusted annually for inflation. The exclusion amount is taken against the lowest marginal tax rates. See sec. 911(f).

[11] Sec. 911(c)(1), (2). The Treasury Secretary has authority to issue guidance making geographic cost-based adjustments. See sec. 911(c)(2)(B). The Secretary has exercised this authority annually. The most recent guidance, Notice 2015-33 (April 14, 2015), includes adjustments for many locations. Under these adjustments, the maximum housing cost exclusion for any geographic area is $114,300 for expenses for housing in Hong Kong, China.

Description of Proposal

The proposal provides that any taxpayer who elects to exclude from gross income for a taxable year any amount of foreign earned income or foreign housing costs may not claim the refundable portion of the child tax credit for the taxable year.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2014.

B. Time for Payment of Corporate Estimated Taxes

Present Law

In general, corporations are required to make quarterly estimated tax payments of their income tax liability.[12] For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15. The amount of any required estimated payment is 25 percent of the required annual payment.[13] The required annual payment is 100 percent of the tax liability for the taxable year or the preceding taxable year. The option to use the preceding taxable year is not available if the preceding taxable year was not a 12-month taxable year or the corporation did not file a return in the preceding taxable year showing a liability for tax. Further, in the case of a corporation with taxable income of at least $1 million in any of the three immediately preceding taxable years, the option to use the preceding taxable year is only available for the first installment of such corporation's taxable year.[14] In addition, in the case of a corporation with assets of at least $1 billion (determined as of the end of the preceding taxable year), payments due in July, August or September of 2017, are increased to 100.25 percent of the payment otherwise due.[15] For each of the periods affected, the next required payment is reduced accordingly (*i.e.*, payments due in October, November, or December of 2017 are reduced to 99.75 percent of the payment otherwise due).

Description of Proposal

In the case of a corporation with assets of at least $1 billion (determined as of the end of the preceding taxable year), the proposal increases the amount of the required installment of estimated tax otherwise due in July, August, or September of 2020 by 2.75 percent of such amount (determined without regard to any increase in such amount not contained in the Internal Revenue Code) (*i.e.*, payments due in July, August or September of 2020, are increased to 102.75 percent of the payment otherwise due). The next required installment is reduced accordingly (*i.e.*, payments due in October, November, or December of 2020 are reduced to 97.25 percent of the payment otherwise due).

Effective Date

The proposal is effective on the date of enactment of the Act.

---

[12] Sec. 6655.

[13] Sec. 6655(d)(1).

[14] Sec. 6655(d)(2) and (g)(2).

[15] See also Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 112th Congress (JCS-2-13)*, February 2013, pp. 230 - 232.