

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.

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## 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

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## 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.

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