PRESENT LAW AND BACKGROUND OF INDIVIDUAL REFUNDABLE INCOME TAX CREDITS AND A DESCRIPTION OF MODIFICATIONS TO REFUNDABLE CREDITS INCLUDED IN H.R. 6800, AS PASSED BY THE HOUSE OF REPRESENTATIVES

Scheduled for a Public Hearing
Before the
SUBCOMMITTEE ON SELECT REVENUE MEASURES
of the
HOUSE COMMITTEE ON WAYS AND MEANS
on June 18, 2020

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

June 16, 2020
JCX-17-20

CONTENTS

Page

INTRODUCTION 1

I. BACKGROUND AND PRESENT LAW ON INDIVIDUAL REFUNDABLE INCOME TAX CREDITS 2

A. General Background on Individual Refundable Income Tax Credits 2
B. Earned Income Tax Credit 7
C. Additional Child Tax Credit 14
D. American Opportunity Tax Credit 19
E. Premium Assistance Credit 25
F. Health Coverage Tax Credit 31
G. 2020 Recovery Rebates for Individuals 35
H. Expired Refundable Income Tax Credits 41

II. DESCRIPTION OF INDIVIDUAL REFUNDABLE CREDIT PROVISIONS IN THE HEALTH AND ECONOMIC RECOVERY OMNIBUS EMERGENCY SOLUTIONS ACT (H.R. 6800) 43

III. DISCUSSION 58

IV. DATA 65

APPENDIX 69

INTRODUCTION

The Subcommittee on Select Revenue Measures of the House Committee on Ways and Means has scheduled a hearing on June 18, 2020, regarding legislative proposals and the tax law relating to individual refundable income tax credits of the Internal Revenue Code. This document,[1] prepared by the staff of the Joint Committee on Taxation, (1) provides an overview of present law and recently expired individual refundable income tax credits, (2) describes provisions in a recent legislative proposal, the Health and Economic Recovery Omnibus Emergency Solutions Act or HEROES Act, H.R. 6800, to expand certain individual refundable credits, and (3) discusses policy considerations and data regarding these credits.

---

[1] This document may be cited as follows: Joint Committee on Taxation, *Present Law and Background of Individual Refundable Income Tax Credits and a Description of Modifications to Refundable Credits in H.R. 6800, as Passed by the House of Representatives* (JCX-17-20), June 16, 2020. This document can 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. All references to the Secretary herein are to the Secretary of the Treasury, unless otherwise stated.

I. BACKGROUND AND PRESENT LAW ON INDIVIDUAL REFUNDABLE INCOME TAX CREDITS

A. General Background on Individual Refundable Income Tax Credits

Overview

An individual may reduce his or her income tax liability by available income tax credits. In some instances, a credit is wholly or partially refundable. That is, if the amount of a taxpayer's refundable income tax credits exceeds the taxpayer's income tax liability (net of other nonrefundable credits), these credits create an overpayment, which may generate a refund or be credited against any other internal revenue tax liability.[2] A refund or credit is authorized for a taxable year only if an overpayment exists, that is, if the amounts paid or deemed paid exceed the tax liability for that year.[3]

Income tax credits are listed in part IV of subchapter A of chapter 1 of the Code, and those that are refundable are listed in subpart C thereof.[4] Generally, tax refunds are paid from the permanent indefinite tax refund appropriation authorized under 31 U.S.C. section 1324. Thus, refundable credits must be specifically listed in the appropriations statute so that a refund may be issued.[5]

The individual refundable income tax credits that are discussed in this document are provided to taxpayers who meet certain criteria related to income, family status, or employment or who have made certain expenditures. These are distinct from refundable income tax credits for wage withholding in excess of income tax liability[6] or other withholding or payment of tax.[7]

Dependents

Many of the individual refundable income tax credits incorporate the definitions of dependent and qualifying child (sometimes with modifications) in section 152 of the Code. Under that section, a taxpayer's dependents include both the taxpayer's qualifying children and

---

[2] See secs. 37, 6401, 6402.

[3] See sec. 6402(a).

[4] Secs. 31-37.

[5] See 31 U.S.C. sec. 1324(b)(2).

[6] Sec. 31.

[7] See secs. 33 and 34.

the taxpayer's qualifying relatives.[8] A dependent must be a citizen, national,[9] or resident of the United States, or a resident of a country contiguous to the United States.[10]

Generally, a qualifying child of a taxpayer is any individual who (1) meets the age test[11] and (2) is the taxpayer's son, daughter, stepson, stepdaughter, adopted child, foster child, brother, sister, stepbrother, stepsister, or a descendant of any such individual.[12] The individual (3) must share the same principal place of abode as the taxpayer for more than one-half of the taxable year,[13] (4) may not have provided over one-half of his or her own support for the taxable year,[14] and (5) may not file a joint return with a spouse.[15] The age test requires that the qualifying child must be either: (1) under the age of 19 at the end of the calendar year;[16] (2) under the age of 24 at the end of the calendar year and a full-time student;[17] or (3) permanently and totally disabled at any time during the calendar year, regardless of age.[18]

A qualifying relative of a taxpayer is any individual who (1) bears the appropriate relationship to the taxpayer;[19] (2) has gross income for the taxable year that does not exceed the personal exemption amount;[20] (3) receives over one-half of his or her support from the

---

[8] Sec. 152.

[9] Non-citizen U.S. nationals include (i) individuals born in American Samoa or (ii) certain individuals born in the Commonwealth of the Northern Marianas who have chosen to be U.S. nationals instead of U.S. citizens. See 8 U.S.C. sec. 1408; *Tuaua v. United States*, 788 F.3d 300 (D.C. Cir. 2015); Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, Article III.

[10] Sec. 152(b)(3). There are special rules for certain adopted children.

[11] Sec. 152(c)(1)(C), (c)(3).

[12] Sec. 152(c)(1)(A), (c)(2), (f)(1).

[13] Sec. 152(c)(1)(B).

[14] Sec. 152(c)(1)(D).

[15] Sec. 152(c)(1)(E); *see also* sec. 152(b)(2).

[16] Sec. 152(c)(3)(A)(i).

[17] Sec. 152(c)(3)(A)(ii). To qualify as a student, the individual must be, during five calendar months during a 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. Sec. 152(f)(2).

[18] Sec. 152(c)(3)(B). 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. Sec. 22(e)(3).

[19] Sec. 152(d)(1)(A), (d)(2).

[20] Sec. 152(d)(1)(B). For taxable years beginning in 2018 through 2025, the reduction of the personal exemption amount to zero under section 151(d)(5) will not be taken into account in determining whether an

taxpayer;[21] and (4) is not a qualifying child of the taxpayer.[22] A qualifying relative who files a joint return with a spouse does not qualify as a dependent.[23]

For purposes of the definition of qualifying relative, 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.[24] 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.[25]

Identification number requirements

Many of the individual refundable income tax credits require a taxpayer to include either a Taxpayer Identification Number ("TIN") or Social Security Number ("SSN") for specified individuals when claiming the credit. A taxpayer is required to include a TIN when filing a U.S. tax return. Generally, an individual taxpayer's TIN is his or her SSN.[26]

SSNs are issued to United States citizens and nationals. In addition, noncitizens may be eligible to receive SSNs. The Social Security Administration ("SSA") is authorized to issue an SSN to a noncitizen for certain purposes including (1) for purposes relating to the lawful admission for employment in the United States or (2) for claiming a benefit financed in whole or in part from Federal funds.[27]

An individual who has a U.S. tax filing obligation but who is not eligible to receive an SSN must apply to the IRS for an individual taxpayer identification number ("ITIN") for use in

---

individual 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 for taxable years beginning after 2018). See Prop. Treas. Reg. sec. 1.152-3(c)(3); Notice 2018-70, 2018-38 I.R.B. 441. The personal exemption amount for this purpose is $4,300 for taxable years beginning in 2020. Rev. Proc. 2019-44, 2019-47 I.R.B. 1093.

[21] Sec. 152(d)(1)(C).

[22] Sec. 152(d)(1)(D).

[23] Sec. 152(b)(2).

[24] Sec. 152(d)(2).

[25] Sec. 152(d)(2)(H).

[26] Sec. 6109(a); Treas. Reg. sec. 301.6109-1(a)(1)(ii)(A).

[27] See Section 205(c)(2)(B)(i)(I), (II) of the Social Security Act, 42 U.S.C. sec. 405(c)(2)(B)(i)(I), (II). The SSA is also authorized to issue SSNs to individuals who could have been but were not assigned SSNs for either of these purposes, if certain other conditions are met. Section 205(c)(2)(B)(i)(IIII) of the Social Security Act, 42 U.S.C. sec. 405(c)(2)(B)(i)(III).

connection with the individual's tax filing obligation.[28] An individual who is eligible to receive an SSN may not apply for an ITIN.[29] An ITIN does not provide eligibility to work in the United States or allow the ITIN holder to claim Social Security benefits.

Refundable credits and Federal programs

Under section 6409, refundable credits are disregarded in the administration of Federal programs and Federally assisted programs. Any refund due to the credit, including any advance payment of the credit, is not taken into account as income and is not taken into account as resources for a period of 12 months from receipt for purposes of determining eligibility for benefits or assistance under any Federal program or under any State or local program financed with Federal funds.

The territories

The United States territories may offer individual refundable income tax credits to their residents under their own tax laws. In addition, residents of the territories may be entitled to individual refundable income tax credits from the U.S. Treasury under the Code.

Citizens of the United States are generally subject to Federal income tax on their U.S. and foreign income regardless of whether they live in a U.S. State, a foreign country, or a U.S. territory. Residents of the U.S. territories are generally subject to the Federal income tax system based on their status as U.S. citizens or residents of the territories, with certain special rules for determining residence and source of income specific to the territory. Broadly, a bona fide individual resident of a territory is exempt from U.S. tax on income derived from sources within that territory but is subject to U.S. tax on U.S.-source and non-territory-source income.[30]

The application of the Federal tax rules to the territories varies from one territory to another. Three territories, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, are referred to as mirror Code territories because the Code serves as the internal tax law of those territories (substituting the particular territory for the United States wherever the Code refers to the United States). Thus, for example, there is a mirror Code version of the earned income tax credit under the internal revenue laws of each mirror Code territory. A resident of one of those territories generally files a single tax return only with the territory of which the individual is a resident, and not with the United States.[31]

American Samoa and Puerto Rico, by contrast, are non-mirror Code territories. These two territories have their own internal tax laws, and a resident of either American Samoa or

---

[28] Treas. Reg. Sec. 301.6109-1(a)(1)(ii)(B), (d)(3).

[29] Treas. Reg. Sec. 301.6109-1(d)(3)(ii).

[30] See secs. 932, 933, and 937; see also former sec. 935 (1986), which remains in effect pursuant to Pub. L. No. 99-514, the Tax Reform Act of 1986, sec. 1277(b), October 22, 1986, and the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, sec. 601(c).

[31] Sec. 932 and former sec. 935.

Puerto Rico may be required to file income tax returns with both the territory of residence and the United States.

B. Earned Income Tax Credit

Present Law

Overview

Low- and moderate-income workers may be eligible for the refundable earned income tax credit ("EITC").[32] 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.

Earned income for purposes of the EITC generally is defined as the sum of wages, salaries, tips, and other taxable employee compensation, if such amounts are includible in gross income, plus net self-employment earnings.[33] A taxpayer may elect to treat nontaxable combat pay as earned income for these purposes.

The EITC generally equals a specified percentage of earned income up to a maximum dollar amount, known as the earned income amount.[34] 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.[35]

Table 1 below shows the calculation of the credit depending on the taxpayer's number of children.

---

[32] Sec. 32.

[33] Sec. 32(c)(2).

[34] Sec. 32(a), (b).

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

Table 1.−2020 EITC Schedule[1]

	Credit percentage	Earned income amount	Maximum credit	Phaseout range: Single, head of household	Phaseout range: Joint filers	Phaseout percentage
Childless	7.65%	$7,030	$538	$8,790 - $15,820	$14,680 - $21,710	7.65%
1 qualifying child	34%	$10,540	$3,584	$19,330 - $41,756	$25,220 - $47,646	15.98%
2 qualifying children	40%	$14,800	$5,920	$19,330 - $47,440	$25,220 - $53,330	21.06%
3 or more qualifying children	45%	$14,800	$6,660	$19,330 - $50,954	$25,220 - $56,844	21.06%

[1] Rev. Proc. 2019-44, 2019-47 I.R.B. 1093.

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 $3,650 (for 2020).[36] This threshold is indexed for inflation. Disqualified income is the sum of: (1) interest income (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.[37] 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. [38]

To claim the EITC, the taxpayer must include the taxpayer's valid SSN and a valid SSN for the qualifying child (and, if the taxpayer is married, the spouse's SSN) on his or her tax return.[39] For these purposes, a valid SSN is an SSN issued to an individual, other than an SSN

[36] Sec. 32(i), Rev. Proc. 2019-44, 2019-47 I.R.B. 1093.

[37] Sec. 32(c)(1)(D).

[38] Sec. 32(c)(1)(C).

[39] Sec. 32(c)(1)(E), (c)(3)(D), (m).

issued to an individual solely for the purpose of applying for or receiving Federally funded benefits, on or before the due date for filing the return for the tax year.[40]

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.[41] For this purpose, marital status is determined under section 7703.

Section 7703 has an exception for certain married 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, provided that the taxpayer maintains a household that constitutes the principal place of abode for a dependent 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.[42] Accordingly, if the exception applies, the taxpayer may file a return as head of household and claim the EITC.

Qualifying child

For an individual to be a qualifying child for purposes of the EITC, that individual must meet the relationship, age, and residency tests as defined in section 152.[43] 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.

If more than one taxpayer lives with a qualifying child, and the taxpayers file separate returns, only one of these taxpayers 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.[44] The Internal Revenue Service ("IRS") previously took the position that in a certain case where multiple taxpayers such as, for example, Taxpayers A and B, were eligible to claim a qualifying child but for the fact that Taxpayer A claimed the qualifying child (either because of a decision made among the taxpayers or by operation of law), then Taxpayer B may not claim an EITC for the tax year (*i.e.*, the childless EITC), unless Taxpayer B claims the EITC with respect to another qualifying child. The IRS changed its position in proposed regulations.[45] These

---

[40] 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, 42 U.S.C. sec. 405(c)(2)(B)(i)(II), (III).

[41] Sec. 32(d).

[42] Sec. 7703(b).

[43] Secs. 32(c)(3), 152(c). See the discussion of the definition of dependents in section I.A. above.

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

[45] Prop. Treas. Reg. sec. 1.32-2(c)(3)(ii), 82 Fed. Reg. 6370, January 19, 2017. The proposed regulations allowed taxpayers to elect to apply the regulations beginning on the date of publication.

proposed regulations provide that if an individual meets the definition of a qualifying child for more than one taxpayer and is not treated as the qualifying child of Taxpayer B under the tiebreaker rules, then Taxpayer B may claim the childless EITC (described below) provided that the taxpayer meets the other requirements to claim that credit.

EITC for taxpayers with no qualifying children

A taxpayer with no qualifying children may claim the EITC, also known as the childless EITC, if the taxpayer is age 25 or older and below age 65, has a principal place of abode in the United States for more than half the year, and cannot be claimed as a dependent on anyone else's return.[46] The EITC for taxpayers with no qualifying children has a lower credit percentage, maximum dollar amount, and phaseout range than the EITC for taxpayers with children, as shown Table 1 above.

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.*, not providing the name, age, and SSN of each of such children) may not claim the childless EITC.[47]

Disallowance for prior fraudulent, reckless, or improper claims

The EITC is disallowed for certain periods after a taxpayer has made a fraudulent, reckless, or other improper claim for the credit.[48] If there is a final determination that a taxpayer's claim of the EITC is fraudulent, the taxpayer is not allowed the EITC for the 10 taxable years after the year of the fraudulent claim. If there is a final determination that a taxpayer's claim of the EITC is due to reckless or intentional disregard of rules and regulations, the taxpayer is not allowed the EITC for the two taxable years after the reckless claim. If a taxpayer makes an EITC claim that is not determined to be fraudulent or reckless but that is denied under the deficiency procedures of subchapter B of chapter 63 of the Code, the taxpayer is not allowed the EITC for any subsequent year unless the taxpayer provides any information that the Secretary may require to demonstrate eligibility for the credit.

---

[46] Sec. 32(c)(1)(A)(ii).

[47] Sec. 32(c)(2)(F).

[48] Sec. 32(k).

Application of earned income tax credit in territories of the United States[49]

Each of the three mirror Code territories have, under their respective mirror Codes, an EITC identical to that in the U.S. Code.[50] Puerto Rico has an EITC under its internal tax laws.[51] American Samoa does not have an EITC under its internal tax laws.[52] Each territory that has an EITC bears the cost of the credit.

Background

The EITC was originally passed as a one-year measure in the Tax Reduction Act of 1975.[53] It was conceived of as a "work bonus plan" that would supplement the wages of low-income workers, help offset the effect of Social Security taxes, and encourage work so as to move people off of welfare.[54] The credit was equal to 10 percent of the first $4,000 in earned income for a maximum credit amount of $400.[55] The credit phased out between income levels of $4,000 and $8,000. Only a taxpayer with one or more children for whom the taxpayer could claim a personal exemption deduction was eligible for the EITC.

Congress extended the credit several times before making it permanent and increasing the amount of the credit in the Revenue Act of 1978.[56] In addition, the Revenue Act of 1978

---

[49] A general discussion of the taxation of the territories is found in section I.A. of this document.

[50] But see Northern Marianas Laws, Title 4, Division 1, Chapter 7, § 1709 (imposing an additional tax in the amount of any earned income tax credit); see also *Simpao v. Guam*, No. 04-00049 (D. Guam 2005) (holding that the mirror Code jurisdiction of Guam must either pay an earned income tax credit to its residents or change its tax code to a non-Mirror code).

[51] Sección 1052.01 del Código de Rentas Internas de Puerto Rico de 2011.

[52] Am. Samoa Code Ann. sec. 11.0530.

[53] Pub. L. No. 94-12, sec. 204(a), March 29, 1975.

[54] Senate Finance Committee Report to accompany the Tax Reduction Act of 1975, S. Rep. No. 94-36, March 17, 1975, pp. 11, 32-35 ("This new refundable credit will provide relief to families who currently pay little or no income tax. These people have been hurt the most by rising food and energy costs. Also, in almost all cases, they are subject to the social security payroll tax on their earnings. Because it will increase their after-tax earnings, the new credit, in effect, provides an added bonus or incentive for low-income people to work, and therefore, should be of importance in inducing individuals with families receiving Federal assistance to support themselves. Moreover, the refundable credit is expected to be effective in stimulating the economy because the low-income people are expected to spend a large fraction of their increased disposable incomes."). See also U.S. Congressional Research Service, Library of Congress, *The Earned Income Tax Credit (EITC): An Overview*, 7-5700 (2018) at 3.

[55] See Appendix Table A-1 for a historical table of the EITC parameters from 1975 through 2020. Note that the inflation adjustment to 2020 dollars for the maximum credit uses the ratio of the consumer price index ("CPI") from January 2020 to January of the base year. This is not the same as the inflation adjustment in the Code which uses the ratio of annual average of CPI (or chained consumer price index ("C-CPI")) between the prior year and the base year. See sec. 1(f)(3).

[56] Pub. L. No. 95-600, sec. 103(a), November 6, 1978. See also Joint Committee on Taxation, *General Explanation of the Revenue Act of 1978* (JSC-7-79), March 1979, p. 51 ("The Congress believed that the earned

allowed a taxpayer to receive a portion of the EITC through reduced income tax withholding from paychecks during the year. This paycheck-based (rather than return-filing-based) credit was known as the Advance EITC.[57] Excess advance payments were subject to recapture at the time the taxpayer filed the taxpayer's return. Concern about low take-up of the Advance EITC as well as noncompliance with the program's requirements led Congress to discontinue the Advance EITC in 2010.[58]

The Omnibus Budget Reconciliation Act ("OBRA") of 1990 restructured the EITC to vary based on family size.[59] Under this restructuring, families with one child had a lower credit percentage than those with two or more children, meaning for any given level of income that qualified for the EITC, the credit amount was higher for families with two or more children. In addition, OBRA created the relationship, age, and residency tests that determined whether a child was a qualifying child.

In 1993, Congress created a credit for childless adults. The Omnibus Budget Reconciliation Act of 1993 extended EITC eligibility to childless workers aged 25 to 64.[60] Childless workers had a lower specified credit percentage and a lower maximum dollar amount than taxpayers with children.

In the mid-1990s, Congress passed several measures designed to restrict EITC eligibility and improve EITC compliance. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 expanded the definition of disqualified investment income and denied eligibility for the EITC to taxpayers without an SSN.[61] The Taxpayer Relief Act of 1997 created penalties for taxpayers who claimed the EITC recklessly or fraudulently and penalties for income tax preparers who did not fulfill due diligence requirements in determining a taxpayer's EITC eligibility.[62]

In 2001, the Economic Growth and Tax Relief Reconciliation Act ("EGTRRA") enacted several simplification measures, including modifying the definition of earned income, modifying the definition of income used to phase out the credit, and changing the tiebreaker rules for

---

income credit is an effective way to provide work incentives and relief from income and Social Security taxes to low-income families who might otherwise need large welfare payments.").

[57] Pub. L. No. 95-600, sec. 105(b), November 6, 1978.

[58] Pub. L. No. 111-226, sec. 219, August 10, 2010. *See, e.g.*, U.S. Government Accountability Office, *Advance Earned Income Tax Credit: Low Use and Small Dollars Paid Impede IRS's Efforts to Reduce High Noncompliance*, GAO-07-1110 (2007).

[59] Pub. L. No. 101-508, sec. 11111(a), November 5, 1990.

[60] Pub. L. No. 103-66, sec. 13131(a) and (b), August 10, 1993.

[61] Pub. L. No. 104-193, secs. 909(a) and 451(a), August 22, 1996.

[62] Pub. L. No. 105-34, sec. 1085(a), August 5, 1997.

qualifying children.[63] EGTRRA also reduced the EITC "marriage penalty" by increasing the threshold at which the credit began to phase out for taxpayers filing jointly to ensure that married couples did not receive a lower EITC than unmarried couples received.[64] Finally, EGTRRA repealed a provision that reduced the EITC by the amount of an individual's alternative minimum tax ("AMT"). The American Recovery and Reinvestment Act ("ARRA") of 2009 temporarily increased the threshold for taxpayers filing jointly further.[65] ARRA also temporarily provided a larger credit for taxpayers with three or more children.

The American Taxpayer Relief Act of 2012 extended for five years the ARRA EITC provisions—the larger credit for taxpayers with three or more children and the higher phaseout threshold for taxpayers filing jointly.[66] Congress made both modifications permanent in 2015 in the Protecting Americans from Tax Hikes Act ("PATH Act").[67] The PATH Act also added certain measures intended to improve compliance.

Natural disasters

Congress has at times, in response to natural disasters, allowed certain taxpayers whose principal place of abode was in the disaster zone or disaster area to elect to calculate their EITC for the taxable year on the basis of their earned income from the prior year.[68]

---

[63] Pub. L. No. 107-16, sec. 303, June 7, 2001.

[64] Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 107th Congress* (JCS 01-03), January 2003, p. 31.

[65] Pub. L. No. 111-5, sec. 1002(a), February 17. 2009.

[66] Pub. L. No. 112-240, sec. 103(c), January 2. 2013.

[67] Pub. L. No. 114-113, secs. 103, 201, and 204, December 18, 2015.

[68] See, e.g., Pub. L. No. 115-123, sec. 20104(c), February 9, 2018 (certain California wildfires); Pub. L. No. 115-64, sec. 504(c), September 29, 2017 (hurricanes Harvey, Irma, Maria), former sec. 1400S(d) (hurricanes Katrina, Rita, and Wilma), repealed by Pub. L. No. 115-141, March 23, 2018. Congress also has allowed taxpayers to calculate their additional child tax credit for the taxable year on the basis of their prior-year earned income.

C. Additional Child Tax Credit

Present Law

Taxpayers are allowed a child tax credit of $2,000 for each qualifying child.[69] For taxable years beginning after December 31, 2025, the tax credit amount is reduced to $1,000 for each qualifying child. The aggregate amount of otherwise allowable child tax credit is phased out for taxpayers 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 AGI over $400,000 for taxpayers filing jointly, and $200,000 for all other taxpayers.[70] For purposes of this limitation, modified AGI means AGI increased by any amount excluded from gross income under section 911 (foreign earned income exclusion), 931 (exclusion for a bona fide resident of American Samoa), or 933 (exclusion for a bona fide resident of Puerto Rico).[71]

The credit is allowable against both the regular tax and the AMT.

To be allowed the credit, the name and SSN of the qualifying child must appear on the return, and the SSN must be issued before the due date for filing the return.[72] 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.[73] The TIN of the taxpayer must also be issued on or before the due date for filing the return.

Calculation of additional child tax credit

In some circumstances, all or a portion of the otherwise allowable credit is treated as a refundable credit (the "additional child tax credit").[74] The amount treated as a refundable credit reduces the amount of the nonrefundable credit.

---

[69] Sec. 24.

[70] For taxable 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.

[71] Sec. 24(b)(1).

[72] Sec. 24(h)(7). For taxable 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. Sec. 24(e).

[73] Sec. 205(c)(2)(B)(i)(I) (or that portion of subclause (III) that relates to subclause (I)) of the Social Security Act, 42 U.S.C. sec. 405(c)(2)(B)(i)(I), (III).

[74] Sec. 24(d).

The credit is treated as refundable in an amount equal to 15 percent of earned income in excess of $2,500[75] (the "earned income formula"). Earned income generally has the same definition as for purposes of the EITC and is defined as the sum of wages, salaries, tips, and other taxable employee compensation plus net self-employment earnings. For purposes of the additional child tax credit, only items taken into account in computing taxable income are treated as earned income.[76] Nontaxable 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 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 is $1,400 per qualifying child. This $1,400 threshold is indexed for inflation, although the amount may not exceed the amount of the nonrefundable child tax credit ($2,000).[77]

Qualifying child

Generally, for purposes of the child tax credit, a qualifying child is a qualifying child under section 152 who is under the age of 17.[78] Only a child who is a U.S. citizen, national, or resident may be a qualifying child; citizens of contiguous countries are ineligible.

Credit for other dependents

An individual is allowed a $500 nonrefundable credit for each dependent of the taxpayer as defined in section 152, other than a qualifying child as defined for purposes of the child tax credit.[79] The SSN requirement that applies for purposes of the child tax credit does not apply with respect to a qualifying dependent for whom a $500 nonrefundable credit is claimed. In

---

[75] Sec. 24(h)(6). For taxable years beginning after December 31, 2025, the earned income threshold for the refundable child tax credit is $3,000.

[76] Some ministers' parsonage allowances are considered self-employment income, see section 1402(a)(8), and thus are considered earned income for purposes of computing the EITC, but they are excluded from gross income for income tax purposes and thus are not considered earned income for purposes of the additional child tax credit.

[77] Sec 24(h)(5). For taxable years beginning after December 31, 2025, there is no separately stated 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 taxable years beginning after December 31, 2025.

[78] Sec. 24(c).

[79] 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 full-time student under age 24) is eligible to be a qualifying dependent for purposes of the $500 nonrefundable credit for other dependents. For taxable years beginning after December 31, 2025, there is no tax credit for other dependents.

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.[80]

Disallowance for prior fraudulent, reckless, or improper claims

The child tax credit is disallowed for certain periods after a taxpayer has made a fraudulent, reckless, or other improper claim for the credit.[81] If there is a final determination that a taxpayer's claim of the child tax credit is fraudulent, the taxpayer is not allowed the child tax credit for the 10 taxable years after the year of the fraudulent claim. If there is a final determination that a taxpayer's claim of the child tax credit is due to reckless or intentional disregard of rules and regulations, the taxpayer is not allowed the child tax credit for the two taxable years after the reckless claim. If a taxpayer makes a child tax credit claim that is not determined to be fraudulent or reckless but that is denied under the deficiency procedures of subchapter B of chapter 63 of the Code, the taxpayer is not allowed the child tax credit for any subsequent year unless the taxpayer provides such information that the Secretary may require to demonstrate eligibility for the credit.

Application of child tax credit in territories of the United States[82]

The three mirror Code territories (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) have, under their mirror Codes, a child tax credit identical to that in the U.S. Code. Each mirror Code territory funds the child tax credit through its own Treasury. The non-mirror Code territories (Puerto Rico and American Samoa) do not have a child tax credit under their internal revenue laws.

In addition, residents of the territories with three or more qualifying children are, under the alternative formula, eligible for the additional child tax credit under the Internal Revenue Code. The U.S. Treasury makes payments to the territory (or, in the case of Puerto Rico, directly to applicable residents of the territory[83]) to cover the cost of this credit.

Background

The child tax credit was enacted as part of the Taxpayer Relief Act of 1997 as a $500 per child credit ($400 in 1998) and included a refundable component.[84] Under that Act, only taxpayers with three or more children were eligible for the additional child tax credit. The additional child tax credit was calculated exclusively under the alternative formula, which set the

---

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

[81] Sec. 24(g).

[82] A general discussion of the taxation of the territories is found in section I.A. of this document.

[83] 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.

[84] Pub. L. No. 105-34, sec. 101, August 5, 1997.

credit amount equal to the excess of the taxpayer's Social Security taxes over their EITC and was reduced by the taxpayer's AMT.

Congress expanded the additional child tax credit in EGTRRA.[85] EGTRRA added the earned income formula for determining the amount of the credit, and it allowed the refundable credit for any taxpayer with at least one child. For taxable years 2001 through 2004, the formula set the refundable portion of the credit at 10 percent of a taxpayer's earned income in excess of $10,000 up to the maximum credit amount, with the refundable rate increasing to 15 percent for taxable years 2005 through 2010.[86] The $10,000 threshold was indexed to inflation. EGTRRA also repealed the reduction of the additional child tax credit by a taxpayer's AMT. All EGTRRA provisions were set to expire at the end of 2010.

Congress temporarily expanded the additional child tax credit further in 2008 and 2009. In 2008, the Emergency Economic Stabilization Act reduced the refundability threshold to $8,500 for taxable year 2008.[87] In 2009, ARRA reduced the refundability threshold further, to $3,000, for taxable years 2009 and 2010.[88]

The EGTRRA and the ARRA child tax credit provisions were set to expire at the end of 2010. Congress extended both provisions through the end of 2012 in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.[89] In the American Taxpayer Relief Act of 2012, Congress made the EGTRRA changes permanent and extended ARRA's $3,000 refundability threshold through the end of 2017.[90] Congress made the ARRA provisions permanent in 2015 as part of the PATH Act.[91] The PATH Act also added to the disallowance rules for taxpayers who make fraudulent, reckless, or improper child tax credit claims.[92]

Public Law 115-97 doubled the child tax credit from $1,000 to $2,000 and expanded the additional child tax credit, increasing the maximum refundable credit from $1,000 per qualifying child to $1,400, adjusting that amount for inflation, and lowering the refundability threshold from $3,000 to $2,500.[93] It also created the nonrefundable $500 credit for other dependents. It

---

[85] Pub. L. No. 107-16, sec. 201, June 7, 2001.

[86] The Working Families Tax Relief Act of 2004 changed this schedule so that the refundability rate increased to 15% for 2004 as well as for 2005 onward. Pub. L. No. 108-311, sec. 102, October 4, 2004.

[87] Pub. L. No. 110-343, Division A, sec. 501, October 3, 2008.

[88] Pub. L. No. 111-5, sec. 1003, February 17, 2009.

[89] Pub. L. No. 111-312, sec. 103, December 17, 2010.

[90] Pub. L. No. 112-240, sec. 103, January 2, 2013.

[91] Pub. L. No. 114-113, Division Q, sec. 101, December 18, 2015.

[92] *Ibid.*, sec. 208(a)(1).

[93] Pub. L. No. 115-97, sec. 11022, December 22, 2017.

also required taxpayers to provide an SSN relating to lawful admission for employment in the U.S. for any qualifying child. These provisions expire at the end of 2025.

D. American Opportunity Tax Credit

Present Law

In general

The American Opportunity Tax Credit ("AOTC") is a partially refundable income tax credit for certain costs associated with postsecondary education. The amount of the AOTC is 100 percent of the first $2,000 of qualifying expenses and 25 percent of the next $2,000 of these expenses.

The AOTC is determined on a per-student basis, with a maximum credit of $2,500 for any single eligible student.[94] As an example of the per-student calculation, a taxpayer who pays $4,000 or more of qualified expenses for each of two eligible students may, subject to other AOTC rules, be allowed a credit of $5,000.

Expenses for which the credit are allowed are qualified tuition and related expenses that an individual pays in the taxable year for education furnished in any academic period that begins in that year to an eligible student for whom an election is in effect for the year.[95]

Qualified tuition and related expenses are tuition, fees, and course materials required for the taxpayer's, the taxpayer's spouse's, or the taxpayer's dependent's enrollment or attendance at an eligible educational institution for courses of instruction.[96] Qualified tuition and related expenses do not, however, include (1) expenses for any course or other education involving sports, games, or hobbies unless the course or other education is part of the individual's degree program or (2) student activity fees, athletic fees, insurance expenses, or other expenses unrelated to an individual's academic course of instruction.[97] Examples of non-qualifying expenses are room and board and transportation expenses.[98]

Income-based phaseout and refundability

The AOTC is reduced or eliminated for taxpayers with incomes above certain levels. For a taxpayer other than a married individual filing a joint return, the amount of the AOTC otherwise allowed is reduced ratably over a $10,000 phaseout range by the excess of the taxpayer's modified AGI over $80,000. For a taxpayer that does not file a joint return, therefore,

---

[94] See Treas. Reg. sec. 1.25A-3(b).

[95] Sec. 25A(a)(1), (b)(1). A taxpayer claims the credit on IRS Form 8863. Treas. Reg. sec. 1.25A-1(d). The requirement that the academic period begin during the year of payment of the qualified tuition and related expenses is modified by a special prepayment rule described below.

[96] Sec. 25A(f)(1)(A), (D).

[97] Sec. 25A(f)(1)(B), (C).

[98] See Treas. Reg. sec. 1.25A-2(d)(3).

the credit is fully phased out at $90,000 of modified AGI. The phaseout range for a married taxpayer filing a joint return is $160,000 to $180,000 of modified AGI.[99] For purposes of the phaseout, modified AGI means AGI increased by any amount excluded from gross income under section 911 (foreign earned income exclusion), section 931 (exclusion for a bona fide resident of American Samoa), or section 933 (exclusion for a bona fide resident of Puerto Rico).[100]

Forty percent of the amount of the AOTC otherwise determined (after application of any income-based reduction) is treated as a refundable credit except in the case of a taxpayer who is a child to whom the section 1(g) "kiddie tax" applies.[101]

Restrictions

The AOTC is subject to several restrictions in addition to the dollar limitations and the income-based phaseout. The credit may be claimed in respect of an eligible student for only for four taxable years.[102] The AOTC is allowed for a taxable year in respect of the qualified tuition and related expenses of an individual only if the individual is an eligible student for at least one academic period that starts during that year. The AOTC is allowed for a taxable year in respect of an eligible student's qualified tuition and related expenses only if the student has not already completed (before the beginning of the year) the first four years of post-secondary education at an eligible educational institution. The credit is not allowed for qualified tuition and related expenses for a student's enrollment or attendance for any academic period if the student has been convicted of a Federal or State felony drug possession or distribution offense before the end of the taxable year with or within which the academic period ends.

A taxpayer who is a married individual (within the meaning of section 7703) may claim the AOTC in a taxable year only if the taxpayer and the taxpayer's spouse file a joint return for that year.[103] A taxpayer who is a nonresident alien individual for any portion of the taxable year may claim the AOTC for that year only if the individual is treated as a resident alien for the year because an election is made under section 6013(g) or (h) (resident alien election for certain married individuals).[104]

The AOTC is allowed only if certain identification requirements related to the taxpayer, the student, and the educational institution are satisfied and only if the taxpayer receives a payee

[99] Sec. 25A(d)(1).

[100] Sec. 25A(d)(3).

[101] Sec. 25A(i).

[102] Sec. 25A(b)(2).

[103] Sec. 25A(g)(6).

[104] Sec. 25A(g)(7).

statement from the educational institution to which the qualified tuition and related expenses are paid.[105]

Rules for eligible students and eligible educational institutions

For purposes of the rules for determining the amount of the AOTC and the rules limiting the AOTC, an eligible student is, for any academic period, a student who carries at least half the normal full-time work load for the course of study the student is pursuing and who satisfies certain requirements prescribed by the Higher Education Act of 1965 for eligibility for Federal grants, loans, and work assistance.[106]

An eligible educational institution is an institution that is described in section 481 of the Higher Education Act of 1965[107] as in effect on August 5, 1997 (generally all accredited public, nonprofit, and private postsecondary institutions) and that participates or is eligible to participate in a Federal financial aid program under title IV of the Higher Education Act of 1965.[108]

Special rule for prepayments

Generally, the AOTC is allowed only for qualified tuition and related expenses that are paid for an academic period that begins in the year of payment.[109] For example, under this rule the credit would not be allowed for a payment in December 2020 for a winter semester beginning in January 2021. Under a separate rule, if a taxpayer pays qualified tuition and related expenses during a year for an academic period that starts in the first three months of the next year, that academic period is treated as beginning during the earlier year of payment.[110]

Disallowance for prior fraudulent, reckless, or improper claims

The AOTC is disallowed for certain periods after a taxpayer has made a fraudulent, reckless, or other improper claim for the credit.[111] If there is a final determination that a taxpayer's claim of the AOTC is fraudulent, the taxpayer is not allowed the AOTC for the 10 taxable years after the year of the fraudulent claim. If there is a final determination that a taxpayer's claim of the AOTC is due to reckless or intentional disregard of rules and regulations, the taxpayer is not allowed the AOTC for the two taxable years after the reckless claim. If a

[105] See sec. 25A(g)(1), (g)(8). Payee statements generally are provided on a Form 1098-T. Prop. Treas. Reg. sec. 1.25A-1(f); Treas. Reg. sec. 1.6050S-1(b)(2).

[106] Sec. 25A(b)(3).

[107] 20 U.S.C. sec. 1088.

[108] Sec. 25A(f)(2); Treas. Reg. sec. 1.25A-2(b)(1).

[109] Sec. 25A(b)(1)(A).

[110] Sec. 25A(g)(4).

[111] Sec. 25A(b)(4).

taxpayer makes an AOTC claim that is not determined to be fraudulent or reckless but that the IRS denies by notice of deficiency, the taxpayer is not allowed the AOTC for any subsequent year unless the taxpayer provides such information that the Secretary may require to demonstrate eligibility for the credit.

Coordination with deductions, other credits, and excludable amounts

The Lifetime Learning Credit (also in section 25A) generally allows a taxpayer a 20-percent credit for up to $10,0000 in qualified tuition and related expenses that the taxpayer pays during a taxable year for education furnished in an academic period beginning that year.[112] Qualified tuition and related expenses taken into account for the AOTC may not be taken into account for determining the Lifetime Learning Credit.[113]

The AOTC is not allowed for any expense for which a deduction is allowed under any other provision of chapter 1 of the Code.[114]

For the purpose of determining the amount of the AOTC, qualified tuition and related expenses that may be taken into account for an individual for any academic period must be reduced by the amount of tax-free educational assistance that is paid for the benefit of that individual and is allocable to that period.[115] For this purpose, tax-free educational assistance means a qualified scholarship that is excludable from gross income under section 117; a veterans or member-of-the-armed-forces educational assistance allowance under certain provisions of the U.S. Code; employer-provided educational assistance that is excludable from income under section 127; or any other educational assistance that is excludable from gross income (other than as a gift, bequest, devise, or inheritance within the meaning of section 102(a)).[116]

If a taxpayer claims the AOTC for an individual's qualified tuition and related expenses, no taxpayer is allowed a deduction for those expenses.[117]

---

[112] Sec. 25A(a)(2), (c). In contrast with the AOTC, the Lifetime Learning Credit is a per-taxpayer (rather than per-student) credit. As a consequence, the maximum Lifetime Learning Credit is $2,000. In contrast with the AOTC, qualified tuition and related expenses for the Lifetime Learning Credit do not include course materials. See sec. 25A(f)(1)(A), (D). In addition, solely for purposes of the Lifetime Learning Credit, qualified tuition and related expenses include required tuition and fees with respect to any course of instruction at an eligible educational institution to acquire or improve job skills of the individual. Sec. 25A(c)(2)(B).

[113] Sec. 25A(c)(2)(A).

[114] Sec. 25A(g)(5).

[115] Sec. 25A(g)(2); Treas. Reg. sec. 1.25A-5(c).

[116] Treas. Reg. sec. 1.25A-5(c)(1).

[117] Sec. 222(c)(2)(A). A taxpayer may elect not to claim the AOTC. Sec. 25A(e).

Application of AOTC in territories of the United States[118]

The Secretary is required to pay to each mirror Code U.S. territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) amounts equal to the loss of revenue to that territory by reason of the 40-percent refundability rule. The amounts required to be paid to a territory are determined by the Secretary based on information provided by the government of that territory.[119]

The Secretary is required to pay to each non-mirror Code U.S. territory (American Samoa and Puerto Rico) amounts estimated by the Secretary as being equal to the aggregate benefits that would have been provided to residents of that territory by reason of the application of the 40-percent refundability rule if a mirror Code tax system had been in effect in that territory. The Secretary is not required to make payments to a territory under this rule unless the territory has a plan that has been approved by the Secretary under which the territory will promptly distribute the payments to residents of the territory.

Background

HOPE tax credit

The AOTC was originally enacted as the nonrefundable HOPE tax credit in the Taxpayer Relief Act of 1997.[120] The House Ways and Means Committee report accompanying the House-passed version of the bill included the following description of the rationale for the credit:

> To assist low- and middle-income families and students in paying for the costs of post-secondary education, the Committee believes that taxpayers should be allowed to claim a credit against Federal income taxes for certain tuition and related expenses incurred during a student's first two years of attendance (on at least a half-time basis) at a college, university, or certain vocational schools.[121]

As enacted in 1997, the HOPE credit was a per-student 100-percent credit for the first $1,000 of qualified tuition and related expenses and a 50-percent credit for the next $1,000 of these expenses, for a maximum credit of $1,500 for any one eligible student. The credit phased out ratably in a modified AGI range of $40,000 to $50,000 (or $80,000 to $100,000 for joint filers). The maximum credit amounts and the modified AGI phaseout ranges were indexed for inflation starting in 2001.

---

[118] A general discussion of the taxation of the territories is found in section I.A. of this document.

[119] ARRA, Pub. L. No. 111-5, Division B, sec. 1004(c), February 17, 2009.

[120] Pub. L. No. 105-34, sec. 201(a), August 5, 1997. The Lifetime Learning Credit was also enacted as part of the same provision.

[121] House Committee on the Budget Report to Accompany H.R. 2014, the Revenue Reconciliation Act of 1997, H.R. Rep. No. 105-148, June 24, 1997, p. 316.

The HOPE credit was allowed only for the first two years of an eligible student's post-secondary education. The present law rule barring the credit when a student has been convicted of a felony drug offense was included in the original HOPE credit.

<u>Certain significant changes since enactment</u>

ARRA made several significant changes to the HOPE credit and gave the credit its current name, the AOTC.[122] It increased the maximum credit amount to its current limits (100 percent of the first $2,000 of qualified tuition and related expenses and 25 percent of the next $2,000 of these expenses); increased the modified AGI phaseout ranges to their current AOTC levels ($80,000 to $90,000 for non-joint-filers and $160,000 to $180,000 for joint filers); expanded the credit to its current coverage of the first four years of an eligible student's post-secondary education; added required course materials to the expenses allowed to be taken into account in the computation of the credit; and added the current credit's 40-percent refundability rule. These changes initially applied only for a taxable year beginning in 2009 or 2010.

ARRA also included the present law rules compensating the governments of the U.S. territories for their outlays associated with the new refundable portion of the AOTC.[123]

The ARRA changes, including the provisions compensating the U.S. territory governments, were extended twice, through 2017.[124]

The PATH Act made the ARRA changes, including the special rules for the U.S. territories, permanent.[125] The PATH Act also added to the AOTC the present law identification requirements and special disallowance rules for taxpayers who make fraudulent, reckless, or improper AOTC claims.[126]

In 2018, section 25A (which includes both the AOTC and the Lifetime Learning Credit) was restructured, without substantive change, so that the provision bears its present law form.[127] The restructuring included deletion of all prior law statutory references to the HOPE credit.

---

[122] Pub. L. No. 111-5, Division B, sec. 1004(a), February 17, 2009.

[123] *Ibid.*, sec. 1004(c).

[124] Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, sec. 103(a), Dec. 17, 2010; American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, sec. 103(a), Jan. 2, 2013.

[125] Pub. L. No. 114-113, Division Q, sec. 102, December 18, 2015.

[126] *Ibid.*, secs. 206, 208(a)(2). See also Code section 25A(b)(4), (g)(1).

[127] See Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, Division U, sec. 101(l), March 23, 2018.

E. Premium Assistance Credit

Present Law

In general

A refundable tax credit (the "premium assistance credit") is provided for eligible individuals and families to subsidize the purchase of health insurance plans through an American Health Benefit Exchange ("Exchange") created by the Patient Protection and Affordable Care Act ("PPACA"),[128] referred to as qualified health plans.[129] In general, advance payments with respect to the premium assistance credit are made during the year directly to the insurer, as discussed below.[130] However, eligible individuals may choose to pay their total health insurance premiums without advance payments and to claim the credit at the end of the taxable year.

The premium assistance credit is generally available for individuals (single or joint filers) with household incomes between 100 percent and 400 percent of the Federal poverty level ("FPL") for the applicable family size.[131] Household income is defined as the sum of (1) the individual's modified AGI, plus (2) the aggregate modified AGI of all other individuals taken into account in determining the individual's family size (but only if the other individuals are required to file a tax return for the taxable year).[132] Modified AGI is defined as AGI increased by (1) any amount excluded from gross income for citizens or residents living abroad,[133] (2) any tax-exempt interest received or accrued during the tax year, and (3) the portion of the individual's Social Security benefits not included in gross income.[134] To be eligible for the premium assistance credit, individuals who are married must file a joint return. Individuals who are listed as dependents on a return are not eligible for the premium assistance credit.

---

[128] Pub. L. No. 111-148, March 23, 2010.

[129] Sec. 36B. Qualified health plans generally must meet certain requirements. Secs. 1301 and 1302 of the PPACA , 42 U.S.C. sec 18021 and 18022.

[130] Sec. 1412 of the PPACA, 42 U.S.C sec. 18082.

[131] Sec. 36(c)(1). Federal poverty level refers to the most recently published poverty guidelines determined by the Secretary of Health and Human Services ("HHS"). Levels for 2020 and previous years are available at https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-refister-references.

Under sec. 36B(c)(1)(B), a taxpayer with household income less than 100% of FPL that is an alien lawfully present but is ineligible for Medicaid under title XIX of the Social Security Act by reason of such alien status may be treated as an applicable taxpayer with a household income equal to 100% of FPL.

[132] Sec. 36B(d)(2).

[133] Sec. 911.

[134] Under section 86, only a portion of an individual's Social Security benefits are included in gross income.

An individual who is eligible for minimum essential coverage from a source other than the individual insurance market generally is not eligible for the premium assistance credit.[135] However, an individual who is offered minimum essential coverage under an employer-sponsored health plan may be eligible for the premium assistance credit if (1) an employee's share of the premium for self-only coverage under the plan exceeds 9.78 percent (for 2020) of the employee's household income ("affordability"), or the plan's share of total allowed costs of plan benefits is less than 60 percent of such costs ("minimum value"), and (2) the individual declines the employer-offered coverage. An individual who enrolls in an employer-sponsored health plan generally is ineligible for the premium assistance credit even if the coverage is considered unaffordable or does not provide minimum value.

Amount of credit

The premium assistance credit amount is generally the lower of (1) the premium for the qualified health plan in which the individual or family enrolls and (2) the premium for the second lowest cost silver plan in the rating area where the individual resides, reduced by the individual's or family's share of premiums.[136] As shown in Table 2 below, an individual's or a family's share of premiums is a certain percentage of household income. For 2020, the share of premiums is 2.06 percent of household income up to 133 percent of FPL and is determined on a sliding scale in a linear manner up to 9.78 percent as household income rises from 133 percent of FPL to 400 percent of FPL.

[135] Sec. 36B(c)(2). Minimum essential coverage is defined in section 5000A(f).

[136] Sec. 36B(b). The amount of the premium assistance credit is determined on a monthly basis, and the amount of the credit for a year is the sum of the monthly amounts.

Table 2.−Household's Share of Premiums (for 2020)[1]

Household income (expressed as a percent of FPL)	Initial percentage of household income	Final percentage of household income
100% up to 133%	2.06	2.06
133% up to 150%	3.09	4.12
150% up to 200%	4.12	6.49
200% up to 250%	6.49	8.29
250% up to 300%	8.29	9.78
300% up to and including 400%	9.78	9.78

[1] Rev. Proc. 2019-29, 2019-32 I.R.B. 620. The percentages are indexed to the excess of premium growth over income growth for the preceding calendar year. After 2018, if the aggregate amount of premium assistance credits (and cost-sharing reductions under section 1402 of PPACA) exceeds 0.504 percent of the gross domestic product for that year, the percentage of household income is also adjusted to reflect the excess (if any) of premium growth over the rate of growth in the Consumer Price Index for the preceding calendar year. Such an adjustment was not required for 2020.

Advance payments of the premium assistance credit

As part of the process of enrollment in a qualified health plan through an Exchange, an individual may apply and be approved for advance payments with respect to a premium assistance credit ("advance payments").[137] The individual must provide information on income, family size, changes in marital or family status or income, and citizenship or lawful presence status.[138] Eligibility for advance payments is generally based on the individual's income for the taxable year ending two years prior to the enrollment period. The Exchange process is administered by the Department of Health and Human Services ("HHS") and includes a system through which information provided by the individual is verified using information from the IRS and certain other sources.[139] If an individual is approved for advance payments, the Secretary

[137] Secs. 1411 and 1412 of PPACA, 42 U.S.C. secs. 18081 and 18082. Under section 1402 of PPACA, 42 U.S.C section 18071, certain individuals eligible for advance premium assistance payments also are eligible for a reduction in their share of medical costs, such as deductibles and copays, under the plan, referred to as reduced cost-sharing. Eligibility for reduced cost-sharing is also determined as part of the Exchange enrollment process. HHS is responsible for rules relating to Exchanges and the eligibility determination process.

[138] Under section 1312(f)(3) of PPACA, 42 U.S.C. sec 18032(f)(3), an individual may not enroll in a qualified health plan through an Exchange if the individual is not a citizen or national of United States or an alien lawfully present in the United States. Thus, such an individual is not eligible for the premium assistance credit.

[139] Under section 6103, returns and return information are confidential and may not be disclosed, except as authorized by the Code, by IRS employees, other Federal employees, State employees, and certain others having

pays the advance amount directly to the issuer of the health plan in which the individual is enrolled. The individual then pays to the issuer of the plan the difference between the advance payment amount and the total premium charged for the plan.

An individual on whose behalf advance payments of the premium assistance credit for a taxable year are made is required to file an income tax return to reconcile the advance payments with the credit to which the individual is entitled for the taxable year.[140]

If the advance payments of the premium assistance credit exceed the amount of credit to which the individual is entitled, the excess ("excess advance payments") is treated as an additional tax liability on the individual's income tax return for the taxable year (referred to as "recapture"), subject to a limit on the amount of additional liability in some cases. For an individual with household income below 400 percent of FPL, liability for the excess advance payments for a taxable year is limited to a specific dollar amount (the "applicable dollar amount") as shown in Table 3 below. One-half of the applicable dollar amount shown in Table 3 applies to an unmarried individual who is not a surviving spouse or filing as a head of household.

---

access to such information. Under section 6103(l)(21), upon written request of the Secretary of HHS, the IRS is permitted to disclose certain return information for use in determining an individual's eligibility for advance premium assistance payments, reduced cost-sharing, or certain other State health subsidy programs, including a State Medicaid program under title XIX of the Social Security Act, 42 U.S.C. secs. 1396-1 through 1396w-5, a State's Children's Health Insurance Program under title XXI of the Social Security Act, 42 U.S.C. secs. 1397aa though 1397mm, and a Basic Health Program under section 1331 of PPACA , 42 U.S.C. sec. 18051.

[140] Under section 6055, health insurance issuers are required to report to the IRS and to the individual the months during a year for which the individual was covered by minimum essential coverage issued by the insurer. In Notice 2019-63, however, the IRS announced that for 2019 it will not assess penalties for the failure to provide the required statement to individuals if certain conditions are met, following the reduction of the individual shared responsibility payment in section 5000A to $0. 2019-51 I.R.B. 1390. In addition, under section 36B(f)(3), an Exchange is required to report to the IRS and to the individual the months during a year for which the individual was covered by a qualified health plan purchased through the Exchange, the premiums paid by the individual, and, if applicable, advance premium assistance payments made on behalf of the individual.

Table 3.−Reconciliation Limit on Additional Tax Liability (for 2020)[1]

Household income (expressed as a percent of FPL)	Applicable Dollar Amount
Less than 200%	$650
At least 200% but less than 300%	$1,600
At least 300% but less than 400%	$2,700

[1] Rev. Proc. 2019-44, 2019-47 I.R.B. 1093. The applicable dollar amounts are indexed to reflect cost-of-living increases, with the amount of any increase rounded down to the next lowest multiple of $50.

If the advance payments of the premium assistance credit for a taxable year are less than the amount of the credit to which the individual is entitled, the additional credit amount is also reflected on the individual's income tax return for the year.

Application of premium assistance credit in territories of the United States[141]

The five U.S. territories have not set up Exchanges, and therefore bona fide residents of the territories are not eligible for the premium assistance credit.[142]

Background

PPACA, enacted in 2010, created the Exchanges, which serve as marketplaces for the purchase of private health insurance.[143] The premium assistance credit was enacted as part of PPACA to assist low- and middle-income individuals and families with the purchase of health insurance through Exchanges. The premium assistance credit became effective for taxable years ending after December 31, 2013.

The premium assistance credit has been subject to several amendments since its enactment. The Medicare and Medicaid Extenders Act of 2010 and the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act included provisions to modify the reconciliation limits on additional tax liability in the case of advance payments, both of which were enacted prior to when the premium assistance credit became

[141] A general discussion of the taxation of the territories is found in section I.A. of this document.

[142] Under section 1323 of the PPACA, 42 U.S.C. sec. 18043, each territory could elect to either set up an Exchange or receive additional Medicaid funds.

[143] Pub. L. No. 111-148, Title I, sec. 1401, March 23, 2010. The PPACA was modified by the Healthcare and Education Reconciliation Act of 2010 ("HCERA"), Pub. L. No. 111-152, Title I, sec. 1001, March 30, 2010. PPACA and HCERA are referred to collectively as the Affordable Care Act ("ACA").

effective.[144] Public Law 112-56 revised the definition of modified AGI to include Social Security benefits that are excluded from gross income.[145] Finally, the 21st Century Cures Act added rules to coordinate the premium assistance credit with newly-enacted qualified small employer health reimbursement arrangements.[146]

---

[144] Pub. L. No. 111-309, Title II, sec. 208, December 15, 2010; Pub. L. No. 112-9, sec. 4, April 14, 2011.

[145] Pub. L. No. 112-56, Title IV, sec. 401, November 21, 2011.

[146] Pub. L. No.114-225, Title XVIII, sec. 18001, December 13, 2016.

F. Health Coverage Tax Credit

Present Law

In general

For months beginning before January 1, 2021, an eligible individual is allowed a refundable tax credit equal to 72.5 percent of the individual's premiums for qualified health insurance for the individual and qualifying family members for each eligible coverage month beginning in the taxable year.[147] The credit is commonly referred to as the health coverage tax credit. The credit is available only with respect to amounts paid by the individual for qualified health insurance. An individual may elect to have advance payments of the credit paid on the individual's behalf directly to the health plan administrator.[148]

Eligibility for the credit is determined on a monthly basis. In general, an eligible coverage month is any month if (1) the month begins before January 1, 2021, and (2) as of the first day of the month, the individual (i) is an eligible individual; (ii) is covered by qualified health insurance for which the individual pays the premium; (iii) does not have other specified coverage; and (iv) is not imprisoned under Federal, State, or local authority. In the case of a joint return, the eligibility requirements are met if at least one spouse satisfies the requirements.

Eligible individuals

An eligible individual is an individual who is (1) an eligible Trade Adjustment Assistance ("TAA") recipient, (2) an eligible alternative TAA recipient or an eligible reemployment TAA recipient, or (3) an eligible Pension Benefit Guaranty Corporation ("PBGC") pension recipient. In general, an individual is an eligible TAA recipient for a month if (1) the individual receives for any day of the month a trade readjustment allowance under the Trade Act of 1974,[149] (2) the individual would be eligible to receive such an allowance but for a break in training that exceeds a specified period (but is within the period for receiving such allowances), or (3) the individual is receiving unemployment compensation for any day of such month and would be eligible to receive such an allowance if the requirements that the individual first exhaust unemployment benefits and be enrolled in certain training programs did not apply. An individual is an eligible alternative TAA recipient or an eligible reemployment TAA recipient for a month if the individual participates in certain programs under the Trade Act of 1974 providing wage supplements and receives a related benefit for the month.[150] Generally, an individual is an

---

[147] Qualifying family members are the individual's spouse and any dependent for whom the individual is entitled to claim a dependency exemption. Any individual who has certain specified coverage is not a qualifying family member.

[148] Sec. 7527.

[149] 19 U.S.C. secs. 2101-2497b.

[150] ARRA amended the Trade Act of 1974 to establish the Reemployment Trade Adjustment Assistance program in place of the Alternative Trade Adjustment Assistance program.

eligible PBGC pension recipient for any month if the individual (1) is age 55 or over as of the first day of the month, and (2) receives a benefit for the month, any portion of which is paid by the PBGC. An individual who may be claimed as a dependent on another individual's tax return is not an eligible individual. In addition, an otherwise eligible individual is not eligible for the credit for a month if, as of the first day of the month, the individual has certain specified coverage, such as certain employer-provided coverage or coverage under certain governmental health programs.

Qualified health insurance

Qualified health insurance in respect of which the credit is allowed is: (1) coverage under a COBRA[151] continuation provision;[152] (2) State-based continuation coverage provided by the State under a State law that requires such coverage; (3) coverage offered through a qualified State high risk pool; (4) coverage under a health insurance program offered to State employees or a comparable program; (5) coverage through an arrangement entered into by a State and a group health plan, an issuer of health insurance coverage, an administrator, or an employer; (6) coverage offered through a State arrangement with a private sector health care coverage purchasing pool; (7) coverage under a State-operated health plan that does not receive any Federal financial participation; (8) coverage under a group health plan that is available through the employment of the eligible individual's spouse; (9) coverage under individual health insurance[153] (other than coverage purchased through an Exchange);[154] and (10) coverage under an employee benefit plan funded by a voluntary employees' beneficiary association ("VEBA")[155] established pursuant to an order of a bankruptcy court (or by agreement with an authorized representative).[156]

Qualified health insurance does not include any State-based coverage (*i.e.*, coverage described in (2)-(7) in the preceding paragraph) unless the State has elected to have such coverage treated as qualified health insurance and such coverage meets certain consumer-protection requirements.[157] Such State coverage must provide that each qualifying individual is guaranteed enrollment if the individual pays the premium for enrollment or provides a qualified

---

[151] Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99–272, April 7, 1986.

[152] As defined in section 9832(d)(1).

[153] For this purpose, "individual health insurance" means any insurance that constitutes medical care offered to individuals other than in connection with a group health plan. Such term does not include Federal- or State-based health insurance coverage.

[154] The premium assistance credit is provided for eligible individuals and families who purchase health insurance through an Exchange. See sec. 36B.

[155] As defined in section 501(c)(9).

[156] See 11 U.S.C. sec. 1114.

[157] For guidance on how a State elects a health program to be qualified health insurance for purposes of the credit, see Rev. Proc. 2004-12, 2004-1 C.B. 528.

health insurance costs eligibility certificate and pays the remainder of the premium. In addition, the State-based coverage cannot impose any pre-existing condition limitation with respect to qualifying individuals. State-based coverage cannot require a qualifying individual to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual who is not a qualified individual. Finally, benefits under the State-based coverage must be the same as (or substantially similar to) benefits provided to similarly situated individuals who are not qualifying individuals.

A qualifying individual for purposes of determining eligibility of State-based coverage is an eligible individual who seeks to enroll in the State-based coverage and who has aggregate periods of creditable coverage[158] of three months or longer, does not have other specified coverage, and is not imprisoned.

Qualified health insurance does not include coverage under a flexible spending or similar arrangement or any insurance if substantially all of the coverage is for excepted benefits.

Background

The health coverage tax credit was enacted as part of the Trade Act of 2002.[159] As originally enacted, the credit applied to 65 percent of the individual's premiums for qualified health insurance of the individual and qualifying family members, and the credit did not have an expiration date.

The credit has been modified numerous times since enactment. In 2004, the Working Families Tax Relief Act[160] modified the credit to provide that amounts distributed from a health savings account are not taken into account for purposes of the credit. ARRA[161] made several changes, including an increase in the amount of the credit to 80 percent of the individual's premiums. It also modified the definition of eligible TAA recipient; amended the credit to provide for continued eligibility for two years for spouses and other dependents in the event of divorce, death, or Medicare eligibility of the eligible individual; and expanded the definition of qualified health insurance to include coverage under an employee benefit plan funded by a VEBA.[162]

---

[158] Creditable coverage is determined under section 9801(c).

[159] Pub. L. No. 107-210, sec. 201, August 6, 2002.

[160] Pub. L. No. 108-311, sec. 401, October 4, 2004.

[161] Pub. L. No. 111-5, sec. 1899, February 17, 2009.

[162] Under ARRA, these changes were set to expire on December 31, 2010. The Omnibus Trade Act of 2010, Pub. L. No. 111-344, sec. 101, December 29, 2010, extended the expiration date to February 13, 2011.

In 2011, the Trade Adjustment Assistance Extension Act[163] amended the credit to provide that the credit expired with respect to months beginning on or after January 1, 2014.[164] It also decreased the amount of the credit to 72.5 percent of the individual's premiums.

The Trade Preferences Extension Act of 2015[165] reauthorized the credit for months beginning before January 1, 2020. It also amended the credit to coordinate with the premium assistance credit and added the requirement that the individual health insurance not be purchased through an Exchange.

Most recently, the Further Consolidated Appropriations Act, 2020[166] extended the credit to months beginning before January 1, 2021.

---

[163] Pub. L. No. 112-40, sec. 241, October 21, 2011.

[164] The changes made under ARRA that were set to expire on February 13, 2011 were also extended to January 1, 2014.

[165] Pub. L. No. 114-27, sec. 407, June 29, 2015.

[166] Pub. L. No. 116-94, Division Q, sec. 146, December 20, 2019.

G. 2020 Recovery Rebates for Individuals

<u>Present Law</u>

<u>In general</u>

The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act") provides a one-year refundable income tax credit for 2020, referred to as the 2020 recovery rebates.[167] Most taxpayers received the rebate as an advance refund before filing a 2020 income tax return.

An eligible individual is allowed a refundable income tax credit for the first taxable year beginning in 2020 equal to the sum of:

- $1,200 ($2,400 in the case of a joint return), and
- $500 for each qualifying child of such individual.

An eligible individual is any individual other than: (1) a nonresident alien; (2) an estate or trust; or (3) a dependent.[168] For these purposes, the child tax credit definition of a qualifying child applies (*i.e.*, a qualifying child as defined in section 152 and under the age of 17).

The amount of the credit is phased out at a rate of five percent of AGI above certain income levels.[169] The beginning point of this phaseout range is $150,000 of AGI for joint filers, $112,500 of AGI for head of household filers, and $75,000 of AGI for all other filers.[170] Thus, the credit is fully phased-out (*i.e.*, reduced to zero) for joint filers with no children at $198,000 of AGI and for a single filer at $99,000 of AGI.

<u>Identification number requirement</u>

No credit is allowed to an individual who does not include a valid identification number on the individual's income tax return.[171] In the case of a joint return that does not include valid identification numbers for both spouses, no credit is allowed. In addition, a qualifying child is not taken into account in determining the amount of the credit if a valid identification number for the child is not included on the return. For purposes of this requirement, a valid identification number is an SSN as defined for purposes of the child tax credit in section 24(h)(7), which

---

[167] Sec. 6428. Pub L. No. 116-136, March 27, 2020.

[168] Sec. 6428(d).

[169] Sec. 6428(c).

[170] For example, a married couple that files jointly with two qualifying children and has an AGI below the phaseout range would be entitled to a recovery rebate credit of $3,400 ($2,400 + $500 + $500). If that couple's AGI was $175,000, the credit would be $2,150 ($3,400 - .05 * ($175,000 - $150,000)). The credit would be fully phased out for this taxpayer at $218,000 of AGI.

[171] Sec. 6428(g).

means that it must be issued by SSA before the due date of the return (including extensions) and 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.[172] Two exceptions to this requirement are provided. First, an adoption identification number is considered a valid identification number in the case of a qualifying child who is adopted or placed for adoption. Second, in the case of a joint return, only one spouse is required to provide a valid identification number where at least one spouse was a member of the Armed Forces of the United States during the taxable year for which the return is filed.

The failure to provide a correct valid identification number is treated as a mathematical or clerical error. Any credit amount allowed for a qualifying child in the case of a taxpayer claiming an individual as a qualifying child but providing an SSN for the individual associated with an individual too old to be a qualifying child is treated as a mathematical or clerical error.

Advance payments of the recovery rebate credit

A taxpayer may receive the recovery rebate credit as an advance refund in the form of a direct deposit to their bank account or as a check issued by the Secretary during calendar year 2020.[173] The amount of the advance refund is computed in the same manner as the recovery rebate credit, except that the calculation is made on the basis of the income tax return filed for 2019 (instead of 2020), if available, or otherwise on the basis of the income tax return filed for 2018.[174] Accordingly, the advance refund amount generally is based on a taxpayer's filing status, number of qualifying children, and AGI as reported for 2019 or 2018.

If a taxpayer has not filed an income tax return for 2019 or 2018, in administering the advance refund the Secretary may use information with respect to that taxpayer that is provided on a 2019 Form SSA-1099, Social Security Benefit Statement, or a 2019 Form RRB-1099, Social Security Equivalent Benefit Statement.[175] Recipients of these forms include Social Security retirement, disability, and survivor benefit recipients and railroad retirees who are not otherwise required to file a Federal income tax return. Such recipients automatically receive a

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

[173] To the extent practicable, Treasury generally uses an individual's most recent direct deposit information to expedite delivery of these amounts rather than mailing the rebate checks. Treasury has created an online portal for individuals to provide direct deposit information to the IRS for this purpose where the IRS may not have such information. IRS, "Treasury, IRS unveil online application to help with Economic Impact Payments; Get My Payment allows people to provide direct deposit information and gives payment date," IR-2020-72 (April 15, 2020), available at https://www.irs.gov/newsroom/treasury-irs-unveil-online-application-to-help-with-economic-impact-payments.

[174] Sec. 6428(f).

[175] Sec. 6428(f)(5)(B).

$1,200 payment per person but generally do not receive an additional amount for any qualifying children.[176] The Secretary is directed to issue advance refund amounts as rapidly as possible.

In addition, Supplemental Security Income ("SSI") recipients and recipients of compensation and benefit payments from the Department of Veterans Affairs ("VA") receive $1,200 payments automatically, despite not having filed an income tax return for 2019 or 2018.[177] Other taxpayers who do not have a return-filing obligation may register to receive the advance refund amount using a web tool developed by the IRS or may use a simplified Federal income tax return filing procedure for taxable year 2019.[178]

On the taxpayer's 2020 income tax return, a taxpayer may reconcile the recovery rebate amount (using 2020 information) with any advance refund amount received during 2020 (using 2019 or 2018 information).[179] If the recovery rebate amount less the advance refund amount is a positive number (because, for example, a qualifying child was born to the taxpayer during 2020), the taxpayer is allowed that amount as a refundable credit against 2020 income tax liability. If, however, the result is negative (because, for example, the taxpayer's AGI was higher in 2020 and was in the phaseout range), the taxpayer's 2020 tax liability is not increased by that negative amount. In addition, a taxpayer that does not receive any advance refund amount may claim the recovery rebate amount on his or her 2020 income tax return. Failure to reduce the recovery rebate amount by an advance refund amount is treated as a mathematical or clerical error. Otherwise, the advance refund amount has no effect on income tax returns filed for 2020; the

---

[176] IRS, "Economic impact payments: what you need to know," IR-2020-61 (March 30, 2020), available at https://www.irs.gov/newsroom/economic-impact-payments-what-you-need-to-know.

[177] IRS, "Supplemental Security Income recipients will receive automatic Economic Impact Payments," IR-2020-73 (April 15, 2020), available at https://www.irs.gov/newsroom/supplemental-security-income-recipients-will-receive-automatic-economic-impact-payments-step-follows-work-between-treasury-irs-social-security-administration; IRS, "Veterans Affairs recipients will receive automatic Economic Impact Payments," IR-2020-75 (April 17, 2020), available at https://www.irs.gov/newsroom/veterans-affairs-recipients-will-receive-automatic-economic-impact-payments-step-follows-work-between-treasury-irs-va.

[178] Rev. Proc. 2020-28, 2020-19 I.R.B. 792; IRS, "Treasury, IRS launch new tool to help non-filers register for Economic Impact Payments," IR-2020-69 (April 10, 2020), available at https://www.irs.gov/newsroom/treasury-irs-launch-new-tool-to-help-non-filers-register-for-economic-impact-payments. Recipients of Social Security benefits, railroad retirement benefits, SSI benefits, and VA benefits also may use the web tool for non-filers to enter information regarding any qualifying children to claim the additional $500 per child payment as an advance refund if they do so prior to the issuance of the $1,200 payment. IRS, "SSA, RRB recipients with eligible children need to act by Wednesday to quickly add money to their automatic Economic Impact Payment," IR-2020-76 (April 20, 2020), available at https://www.irs.gov/newsroom/ssa-rrb-recipients-with-eligible-children-need-to-act-by-wednesday-to-quickly-add-money-to-their-automatic-economic-impact-payment-irs-asks-for-help-in-the-plus-500-push.

Under the CARES Act, the Secretary (or the Secretary's delegate) is directed to conduct a public awareness campaign, in coordination with the Commissioner of Social Security and the heads of other relevant Federal agencies, to provide information regarding the availability of the recovery rebate credit, including information with respect to individuals who may not have filed a tax return for 2019 or 2018.

[179] Sec. 6428(e).

amount is not includible in gross income, and it does not reduce withholding by employers on wages.

The Secretary may not issue an advance refund amount after December 31, 2020. Within 15 days of distribution of the advance refund amount, the Secretary is required to send a notice by mail to the taxpayer's last known address that indicates the method by which the payment was made, the amount of such payment, and a phone number at the IRS to report any failure to receive such payment.

Application of recovery rebates in territories of the United States[180]

The CARES Act directs the Secretary to make payments to each mirror Code territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) that relate to the cost (if any) of each territory's recovery rebate credit. The Secretary is further directed to make similar payments to each non-mirror Code territory (American Samoa and Puerto Rico).

The CARES Act requires the Secretary to pay to each mirror Code territory amounts equal to the aggregate amount of the credits allowable by reason of the CARES Act to that territory's residents against its income tax. Such amounts will be determined by the Secretary based on information provided by the government of the respective territory.

To each non-mirror Code territory, the CARES Act requires the Secretary to pay amounts estimated by the Secretary as being equal to the aggregate credits that would have been allowed to residents of that territory if a mirror Code tax system had been in effect in that territory. Accordingly, the amount of each payment to a non-mirror Code territory is an estimate of the aggregate amount of the credits that would be allowed to the territory's residents if the credit provided by the CARES Act to U.S. residents were provided by the territory to its residents. This payment will not be made to any U.S. territory unless it has a plan that has been approved by the Secretary under which the territory will promptly distribute the payment to its residents.

No credit against U.S. income taxes is permitted under the CARES Act for any person to whom a credit is allowed against territory income taxes as a result of the CARES Act (*e.g.*, under that territory's mirror income tax). Similarly, no credit against U.S. income taxes is permitted for any person who is eligible for a payment under a non-mirror Code territory's plan for distributing to its residents the payment described above from the U.S. Treasury.

Exception from refund or offset

Any overpayment resulting from the recovery rebate credit or from related payments to the U.S. territories is not subject to reduction or offset by other assessed Federal taxes that would otherwise be subject to levy or collection. In addition, such overpayments are not subject to offset for other taxes or non-tax debts owed to the Federal government or State governments.

---

[180] A general discussion of the taxation of the territories is found in section I.A. of this document.

As an exception to the above rule, an overpayment resulting from the recovery rebate credit is subject to the offset against overpayments of the amount of any past-due support.[181] The term past-due support means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child (whether or not a minor), or of a child (whether or not a minor) and the parent with whom the child is living.[182] The State must have notified the Secretary of the taxpayer's delinquency in order for the offset to apply. If the offset applies, the Secretary remits the offset amount to the State collecting such support and notifies the taxpayer of the remittance.

The offset of past-due child support applies before any other reductions allowed by law and before the crediting of the overpayment to the taxpayer's future tax liability.

An overpayment resulting from the recovery rebate credit may be subject to claims by the taxpayer's creditors under applicable State law or Federal bankruptcy law.

Background

The 2020 recovery rebate income tax credit is similar in structure to a prior one-time recovery rebate income tax credit for 2008 enacted as part of the Economic Stimulus Act of 2008.[183] That credit also was refundable, and most taxpayers received advance refunds before filing their 2008 Federal income tax returns. As with the 2020 recovery rebate credit, the Economic Stimulus Act of 2008 required the Secretary to make payments to the U.S. territories to compensate them for the cost of the 2008 recovery rebate credit.

The 2008 rebate credit was the sum of two components, a basic component and a qualifying child component. Eligible individuals[184] were allowed a basic component equal to the greater of:

- Net income tax liability,[185] not to exceed $600 ($1,200 in the case of a joint return), or
- $300 ($600 in the case of a joint return) if the eligible individual had (1) qualifying income[186] of at least $3,000 or (2) a net income tax liability of at least $1 and gross

[181] Sec. 6402(c).

[182] Sec. 464(c) of the Social Security Act, 42 U.S.C. sec. 664(c).

[183] Pub. L. No. 110-185, sec. 101, February 13, 2008. The 2008 recovery rebate, codified as section 6428, was later repealed as deadwood in Pub. L. No. 113-295, sec. 221(a)(112)(A), December 19, 2014.

[184] An eligible individual was any individual other than: (1) a nonresident alien; (2) an estate or trust; or (3) a dependent.

[185] Net income tax liability was defined as the excess of the sum of the individual's regular tax liability and alternative minimum tax over the sum of all nonrefundable credits (other than the child tax credit).

[186] Qualifying income was defined as the sum of the eligible individual's: (a) earned income; (b) Social Security benefits; and (c) veteran's payments. The definition of earned income had the same meaning as the

income greater than the sum of the applicable basic standard deduction amount and one personal exemption (two personal exemptions for a joint return).

If an individual was eligible for the basic component, the individual also may have been eligible for the qualifying child component of $300 for each qualifying child of such individual. The amount of the credit was phased out above certain income levels, at a rate of five percent of AGI above $75,000 ($150,000 in the case of joint returns).

To be eligible for the credit, taxpayers—including both married spouses filing a joint return—had to provide an SSN. In addition, any qualifying child had to have an SSN to qualify for purposes of the qualifying child credit component.

Advance payments of recovery rebate

Most taxpayers were allowed the recovery rebate credit in the form of an advance refund amount during 2008, issued either as a direct deposit or as a check from the Secretary.[187] The amount of the advance refund was computed in the same manner as the credit, except that it was done on the basis of tax returns filed for 2007 (instead of 2008). Taxpayers that did not file a 2007 income tax return did not receive the advance refund amount but could claim the recovery rebate amount on their 2008 income tax returns.[188]

On their 2008 income tax returns, taxpayers could reconcile the recovery rebate amount (using 2008 information) with any advance refund amount received during 2008 (using 2007 information). If the recovery rebate amount less the advance refund amount was a positive number (because, for example, the taxpayer paid no tax in 2007 but paid tax in 2008), the taxpayer could claim that amount as a refundable credit against 2008 tax liability. If, however, the result was negative (because, for example, the taxpayer paid tax in 2007 but owed no tax for 2008), that negative amount did not increase the taxpayer's tax liability in 2008.

---

definition for purposes of the earned income tax credit at that time, except that it did not include net earnings from self-employment that are not taken into account in computing taxable income.

[187] The IRS issued more than $96 billion in advance payments to more than 119 million individuals during 2008. In addition, it issued more than $8.5 billion in recovery rebate credits (claimed on taxpayers' 2008 tax returns) to almost 21 million taxpayers as of April 17, 2009. Treasury Inspector General for Tax Administration, "Evaluation of the Planning, Computation, and Issuance of the Recovery Rebate Credit" (Sept. 9, 2009), available at https://www.treasury.gov/tigta/auditreports/2009reports/200940129fr.pdf.

[188] Notice 2008-28 created a mechanism for certain individuals not otherwise required to file an income tax return to receive an advance refund amount. 2008-10 I.R.B. 546. Such taxpayers were instructed to file a Form 1040A with specific information entered to allow the IRS to compute the advance refund amount. Revenue Procedure 2008-21 provided additional guidance regarding how to electronically file the form. 2008-12 I.R.B. 657.

H. Expired Refundable Income Tax Credits

Congress has periodically enacted temporary individual refundable income tax credits. Three such recent credits are described below.

Making Work Pay Credit

ARRA included a temporary refundable income tax credit, which it called the making work pay credit (former section 36A), that was equal to the lesser of 6.2 percent of an eligible individual's earned income or $400 (or $800 in the case of a joint return).[189] The definition of earned income was a modified version of the definition for purposes of the EITC. The credit was phased out at a rate of two percent of the eligible individual's modified AGI above $75,000 (or $150,000 in the case of a joint return). The amount of the making work pay credit that a taxpayer was otherwise allowed was reduced by the amount of any payment that the taxpayer received under other ARRA provisions providing payments to certain veterans, government retirees, railroad retirees, and Social Security recipients. The making work pay credit rules included payments to the U.S. territory governments for their costs related to the credit.

ARRA directed the Secretary to prescribe revised income tax withholding tax tables as a way to accelerate delivery of the making work pay credit.

The making work pay credit was allowed for 2009 and 2010.

First-Time Homebuyer Credit

In 2008 Congress enacted a refundable income tax credit (former section 36) for any taxpayer who was a first-time homebuyer.[190] The credit was equal to the lesser of $7,500 (or $3,750 for a married individual filing separately) or 10 percent of the purchase price of a principal residence. The credit was allowed for the taxable year in which the taxpayer purchased the home.

The first-time homebuyer credit generally was recaptured by means of an increase in the taxpayer's income tax liability in each year of a 15-year period starting two years after the home purchase for which the credit was allowed. The annual increase in tax liability generally was 6 2/3 percent of the amount of the credit. Recapture was not required in certain circumstances including after the taxpayer's death or following certain involuntary conversions of a residence. Recapture generally was accelerated if a taxpayer sold a principal residence with respect to which the credit had been allowed.

---

[189] Pub. L. No. 111-5, Division B, sec. 1001, Feb. 17, 2009.

[190] Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, Division C, sec. 3011, July 30, 2008. A taxpayer was considered a first-time homebuyer if the individual had no ownership interest in a principal residence in the United States during the three-year period before the purchase of the home for which the credit was allowed.

In its original form, the credit phased out for individual taxpayers with AGI between $75,000 and $95,000 (or $150,000 and $170,000 for joint filers) for the year of purchase.

As originally enacted, the first-time homebuyer credit was effective for home purchases on or after April 9, 2008 and before July 1, 2009.

Congress made significant modifications to the first-time homebuyer credit, including extending the credit and increasing the income ranges for the phaseout of the credit, in three laws enacted in 2009 and 2010.[191] As modified, the credit generally expired for home purchases made after April 30, 2010.

Adoption Credit

Present law includes a nonrefundable credit against income tax for certain expenses related to the adoption of an individual who is under the age of 18 or is physically or mentally incapable of caring for himself or herself.[192] For any single adoption, the maximum amount of the credit in 2020 is $14,300. The credit is phased out over a $40,000 income range starting at modified AGI (in 2020) of $214,520. There are special rules for adoptions of children with special needs.

The Ways and Means Committee report accompanying the bill in which a predecessor version of the adoption credit was enacted includes the following description of the reason for the credit:

> The Committee believes that the financial costs of the adoption process should not be a barrier to adoptions. In addition, the Committee wishes to encourage further the adoption of special needs children. Therefore, the tax credit is allowed in addition to any grant money received for the adoption expenses associated with the adoption of special needs children.[193]

The adoption credit was made refundable for 2010 and 2011 (and was redesignated as section 36C for those years).[194]

---

[191] For descriptions of these changes, see Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 111th Congress* (JCS-2-11), March 2011, pp. 29-31, 158-62, 416-19.

[192] Sec. 23. The nonrefundable adoption tax credit was enacted in the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, sec. 1807, Aug. 20, 1996. An accompanying provision, present law section 137, allows a limited exclusion from gross income of an employee for certain adoption-related expenses paid by the employer under an adoption assistance program. *Ibid.*

[193] House Ways & Means Committee Report to accompany H.R. 3286, Adoption Promotion and Stability Act of 1996, H. Rep. No. 104-542, part 2, May 3, 1996, pp. 17-18.

[194] PPACA, Pub. L. No. 111-148, sec. 10909, Mar. 23, 2010.

II. DESCRIPTION OF INDIVIDUAL REFUNDABLE CREDIT PROVISIONS IN THE HEALTH AND ECONOMIC RECOVERY OMNIBUS EMERGENCY SOLUTIONS ACT (H.R. 6800)

On May 15, 2020, the House of Representatives passed the HEROES Act.[195] Title I of Division B of the bill makes changes regarding refundability to several individual credit provisions of the Code as described below.

TITLE I – ECONOMIC STIMULUS

A. 2020 Recovery Rebate Improvements[196]

1. Dependents taken into account in determining credits and rebates (sec. 20101 of the bill and sec. 6428 of the Code)

Description of Provision

The provision broadens the group of individuals for whom a taxpayer may claim the additional $500 recovery rebate amount, which is currently allowed for each qualifying child of the taxpayer under age 17. Under the provision, a taxpayer who is an eligible individual may claim an additional $500 recovery rebate amount for each dependent of such individual, including qualifying children of the individual over the age of 16 and qualifying relatives of the individual.

Effective Date

The provision applies as if included in Section 2201 of the CARES Act (Pub. L. No. 116–136), which was effective on the date of enactment of the CARES Act, March 27, 2020.

2. Individuals providing taxpayer identification numbers taken into account in determining credits and rebates (sec. 20102 of the bill and sec. 6428 of the Code)

Description of Provision

The provision changes the identification number requirement for purposes of the 2020 recovery rebate credit from a work-eligible SSN to a TIN requirement. Thus, under the provision all SSNs and ITINs would count as valid identification numbers.

Under the provision, a taxpayer must include a TIN in order to claim a recovery rebate credit with respect to such taxpayer. In the case of a joint return, if the TIN of only one spouse is included the amount of the rebate is limited to $1,200 (rather than $2,400). The taxpayer must

---

[195] H.R. 6800.

[196] The present law description relating to the 2020 recovery rebate income tax credit is found in Section I of this document.

also include the TIN of any dependent in order to claim the recovery rebate credit with respect to such dependent.

Effective Date

The provision applies as if included in Section 2201 of the CARES Act (Pub. L. No. 116–136), which was effective on the date of enactment of the CARES Act, March 27, 2020.

3. Recovery rebates not subject to reduction or offset with respect to past-due support (secs. 20103 of the bill and sec. 6428 of the Code)

Description of Provision

Under the provision, an overpayment resulting from the recovery rebate credit or from related payments to the U.S. territories is not subject to offset for past-due child support.

Effective Date

The provision applies with respect to credits and refunds allowed or made after the date of enactment.

4. Protection of 2020 recovery rebates (sec. 20104 of the bill and sec. 6428 of the Code)

Description of Provision

The provision provides that overpayments resulting from the recovery rebate credit are not subject to transfer, assignment, execution, levy, attachment, garnishment, or other legal process, or the operation of any bankruptcy or insolvency law, to the same extent as payments descripted in section 207 of the Social Security Act.[197] The provision directs the Secretary to encode payments that are paid electronically as a result of any applicable overpayment with a unique identifier that allows the financial institution maintaining the account to identify the payment as protected.

Effective Date

The provision is effective on the date of enactment.

5. Payments to representative payees and fiduciaries (sec. 20105 of the bill and sec. 6428 of the Code)

Description of Provision

The provision provides that with respect to an individual for whom the Secretary receives information from the SSA, the Railroad Retirement Board, or the Secretary of the VA in order to administer the advance refund of the recovery rebate credit, the payment of the advance refund

---

[197] 42 U.S.C. sec. 407.

may be made to the individual's representative payee or fiduciary. The entire payment then must be provided to the individual or used for the benefit of the individual. Enforcement provisions apply to prevent the misuse of the payment.[198]

Effective Date

The provision applies as if included in Section 2201 of the CARES Act (Pub. L. No. 116–136), which was effective on the date of enactment of the CARES Act, March 27, 2020.

6. Application to taxpayers with respect to whom advance payment has already been made (sec. 20106 of the bill and sec. 6428 of the Code)

Description of Provision

The provision provides that, for any taxpayer who already has received an advance refund of the 2020 recovery rebate credit, the Secretary shall determine the advance refund amount separately with respect to the excess of (1) the advance refund amount as determined by taking into account the amendments to the recovery rebate credit made by Subtitle A of the bill (described above) and (2) the advance refund amount as determined without taking into account the amendments.

Effective Date

The provision is effective on the date of enactment of the bill.

B. Additional Recovery Rebates to Individuals[199]

1. Additional recovery rebates to individuals (sec. 20111 and prop. sec. 6428A of the Code)

Description of Provision

In general

The provision provides an additional one-time recovery rebate income tax credit for taxable years beginning in 2020. The credit is refundable, and taxpayers may receive an advance refund before filing a 2020 income tax return.

An eligible individual is allowed a refundable income tax credit for the first taxable year beginning in 2020 equal to the sum of:

- $1,200 ($2,400 in the case of a joint return), and

---

[198] See 42 U.S.C. sec. 1320a-8(a)(3) (for SSA payees), 45 U.S.C. sec. 231*l* (for Railroad Retirement Board payees, 38 U.S.C. secs. 5502, 6106, and 6108 (for VA payees).

[199] The description of the present law 2020 recovery rebates credit is found in Section I of this document.

- $1,200 for each dependent of such individual, up to three dependents.[200]

An eligible individual is any individual other than: (1) a nonresident alien, (2) an estate or trust, or (3) a dependent as defined in section 152.

The amount of the credit is phased out at a rate of five percent of modified AGI above certain income levels. The beginning point of this phaseout range is $150,000 of modified AGI for joint filers, $112,500 of modified AGI for head of household filers, and $75,000 of AGI for all other filers. Thus, the credit is fully phased-out (*i.e.*, reduced to zero) for joint filers with no children at $198,000 of modified AGI and for a single filer at $99,000 of AGI. For purposes of the phaseout, modified AGI means AGI increased by any amount excluded from gross income under section 911 (foreign earned income exclusion), section 931 (exclusion for a bona fide resident of American Samoa), or section 933 (exclusion for a bona fide resident of Puerto Rico).[201]

Identification number requirement

No credit is allowed to an individual who does not include a TIN on the individual's income tax return.[202] In the case of a joint return that does not include a TIN for both spouses, a credit is only allowed with respect to the spouse for which the TIN is included.[203] In addition, a dependent shall not be taken into account in determining the amount of the credit if a TIN for the dependent is not included on the return.

Advance payments of the additional recovery rebate credit

As with the recovery rebate credit under section 6428, a taxpayer may receive the additional recovery rebate credit as an advance refund in the form of a direct deposit to their bank account or as a check issued by Treasury during calendar year 2020. The amount of the advance refund is computed in the same manner as the additional recovery rebate credit, except that the calculation is made on the basis of the income tax return filed for 2019 (instead of 2020), if available, or otherwise on the basis of the income tax return filed for 2018. Accordingly, the

[200] In contrast, the recovery rebate credit under section 6428 provides a $500 additional credit amount for each qualifying child of the eligible individual under the age of 17, with no limitation on the number of qualifying children taken into account. Section 20101 of the bill, described above, extends the $500 additional amount to all dependents of the eligible individual.

[201] In contrast, the recovery rebate credit under section 6428 is determined with regard to those exclusions.

[202] In contrast, the recovery rebate credit under section 6428 imposes an SSN requirement instead of a TIN requirement. Section 20102 of the bill, described above, changes the recovery rebate credit rule to a TIN requirement.

[203] A taxpayer is required to provide a TIN for the taxpayer and the taxpayer's spouse (if applicable) when filing an income tax return. Sec. 6109(a)(1).

advance refund amount generally is based on a taxpayer's filing status, number of dependents, and modified AGI as reported for 2019 or 2018.

If a taxpayer has not filed an income tax return for 2019 or 2018, in administering the advance refund the Secretary may use information with respect to that taxpayer that is provided (1) in the case of a specified Social Security or SSI recipient, by SSA, (2) in the case of a specified railroad retirement beneficiary, by the Railroad Retirement Board, and (3) in the case of a specified veterans beneficiary, by the VA. The Secretary is directed to issue advance refund amounts as rapidly as possible. If information to determine an advance refund amount is not otherwise available, the Secretary is to provide taxpayers the opportunity to provide such information.

With respect to an individual for whom the Secretary receives information from SSA, the Railroad Retirement Board, or the VA in order to administer the advance refund of the additional recovery rebate credit, the payment of the advance refund may be made to the individual's representative payee or fiduciary.[204] The entire payment must be provided to the individual or used for the benefit of the individual. Enforcement provisions apply to prevent the misuse of the payment.[205]

On the 2020 income tax return, a taxpayer may reconcile the additional recovery rebate amount (using 2020 information) with any advance refund amount received during 2020 (using 2019 or 2018 information).[206] If the additional recovery rebate amount less the advance refund amount is a positive number (because, for example, a qualifying child was born to the taxpayer during 2020), the taxpayer could claim that amount as a refundable credit against 2020 income tax liability. If, however, the result is negative (because, for example, the taxpayer's modified AGI was higher in 2020 and was in the phaseout range), the taxpayer's 2020 tax liability is not increased by that negative amount. In addition, a taxpayer that does not receive any advance refund amount may claim the additional recovery rebate amount on his or her 2020 income tax return. Failure to reduce the additional recovery rebate amount by any advance refund amount is treated as a mathematical or clerical error. Otherwise, the advance refund amount has no effect on income tax returns filed for 2020; the amount is not includible in gross income, and it does not reduce withholding by employers on wages.

The Secretary may not issue an advance refund amount after December 31, 2020. Within 15 days of distribution of the advance refund amount the Secretary is required to send a notice by mail to the taxpayer's last known address that indicates the method by which the payment was made, the amount of such payment, and a phone number at the IRS to report any failure to

---

[204] Section 20105 of the bill would introduce a similar rule with respect to the recovery rebate credit under section 6428.

[205] See 42 U.S.C. sec. 1320a-8(a)(3) (for SSA payees), 45 U.S.C. sec. 231*l* (for Railroad Retirement Board payees, 38 U.S.C. secs. 5502, 6106, and 6108 (for VA payees).

[206] Sec. 6428(e).

receive such payment. The Secretary is also required to carry out a robust and comprehensive outreach program regarding availability of and assistance in applying for advance refunds.

Application of additional recovery rebates in territories of the United States[207]

Under the provision, the Secretary is directed to make payments to each mirror Code territory (Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands) that relate to the cost (if any) of each territory's additional recovery rebate credit. The Secretary is further directed to make similar payments to each non-mirror Code territory (American Samoa and Puerto Rico).

The Secretary must pay to each mirror Code territory amounts equal to the aggregate amount of the credits allowable by reason of the provision to that territory's residents against its income tax. The Secretary determines these amounts based on information provided by the government of the respective territory.

The Secretary must pay to each non-mirror Code territory amounts estimated by the Secretary as being equal to the aggregate credits that would have been allowed to residents of that territory if a mirror Code tax system had been in effect in that territory. Accordingly, the amount of each payment to a non-mirror Code territory will be an estimate of the aggregate amount of the credits that would be allowed to the territory's residents if the credit provided by the provision to U.S. residents were provided by the territory to its residents. This payment will not be made to any U.S. territory unless it has a plan that has been approved by the Secretary under which the territory will promptly distribute the payment to its residents.

No credit against U.S. income taxes is permitted under the provision for any person to whom a credit is allowed against territory income taxes as a result of the provision (*e.g.*, under that territory's mirror income tax). Similarly, no credit against U.S. income taxes is permitted for any person who is eligible for a payment under a non-mirror Code territory's plan for distributing to its residents the payment described above from the U.S. Treasury.

Exception from refund or offset

Any overpayment resulting from the additional recovery rebate credit or from related payments to the U.S. territories is not subject to reduction or offset by other assessed Federal taxes that would otherwise be subject to levy or collection. In addition, such overpayments are not subject to offset for other taxes or non-tax debts owed to the Federal government or State governments, including the offset for certain claims for delinquent child support payments.[208]

---

[207] A general discussion of the taxation of the territories is found in section I.A. of this document.

[208] In contrast, the recovery rebate credit under section 6428 is subject to the offset for delinquent child support payments. Section 20103 of the bill changes that treatment such that the recovery rebate credit is not subject to the offset for delinquent child support payments.

The provision provides that overpayments resulting from the additional recovery rebate credit are not subject to transfer, assignment, execution, levy, attachment, garnishment, or other legal process, or the operation of any bankruptcy or insolvency law,[209] to the same extent as payments described in section 207 of the Social Security Act.[210] The provision directs the Secretary to encode payments that are paid electronically as a result of any applicable overpayment with a unique identifier that allows the financial institution maintaining the account to identify the payment as protected.

Effective Date

The provision is effective on the date of enactment of the bill.

C. Earned Income Tax Credit[211]

1. Strengthening the earned income tax credit for individuals with no qualifying children (sec. 20121 and sec. 32 of the Code)

Description of Provision

For taxable years beginning in 2020, the provision expands eligibility for and the amount of credit for taxpayers with no qualifying children.

Changes to minimum and maximum age

For any taxable year beginning 2020, in the case of the credit for a taxpayer with no qualifying children, the minimum age is reduced from 25 to 19. Under the provision, 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 AOTC) 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 2020, the minimum age is further reduced to 18 for any qualified former foster youth or qualified homeless youth. A qualified former foster youth is an individual who, at the age of 14 or older, was in foster care provided under the supervision or administration of a State or tribal agency administering (or eligible to administer) a plan under

---

[209] Section 20105 of the bill would introduce a similar rule with respect to the recovery rebate credit under section 6428.

[210] 42 U.S.C. sec. 407.

[211] The relevant present law relating to the EITC is found in Section I of this document.

part B[212] or part E[213] of the Social Security Act. A qualified former foster youth must provide consent for the applicable State or tribal entity to disclose to the Secretary information related to the taxpayer's status as a qualified former foster youth.

A qualified homeless youth is an individual who, with respect to a taxable year, is certified by a local educational agency or a financial aid administrator during such taxable year as being either (1) an unaccompanied youth who is a homeless child or youth or (2) unaccompanied, at risk of homelessness, and self-supporting.[214] A qualified homeless youth must provide consent for the applicable educational agency or financial aid administrator to disclose to the Secretary information related to the taxpayer's status as a qualified homeless youth.

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

The provision requires the Secretary to develop and implement procedures, as soon as practicable, for checking an individual's claim for the childless EITC and status as a full-time student against any information returns made with respect to such individual under section 6050S (returns relating to higher education tuition and related expenses).

<u>Changes to the credit percentage, earned income amount, and phaseout amount</u>

For any taxable year beginning in 2020, the provision increases the amount of the credit for taxpayers with no qualifying children. The provision increases the credit percentage and phaseout percentage from 7.65 percent to 15.3 percent. In addition, the earned income amount is increased to $9,720, and the beginning of the phaseout range for non-joint filers is increased to $11,490. The maximum amount of the credit is $1,487.

Effective Date

The provision applies with respect to taxable years beginning after December 31, 2019.

2. Taxpayer eligible for childless earned income credit in case of qualifying children who fail to meet certain identification requirements (sec. 20122 and sec. 32 of the Code)

Description of Provision

The provision repeals the existing rule 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

---

[212] 42 U.S.C. sec. 621-628b.

[213] 42 U.S.C. sec. 670-679c.

[214] See section 480(d)(1) of the Higher Education Act of 1965, 20 U.S. Code § 1087vv, for the meaning of terms used in this definition.

child or children may not claim the childless EITC.[215] Accordingly, such a taxpayer may claim the childless EITC.

Effective Date

The provision applies to taxable years beginning after the date of enactment of the bill.

3. Credit allowed in the case of certain separated spouses (sec. 20123 and sec. 32 of the Code)

Description of Provision

The provision changes the exception under which an otherwise married individual may claim the EITC on a separate return. Under the provision, 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. The provision 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.

Effective Date

The provision applies with respect to taxable years beginning after the date of enactment of the bill.

4. Elimination of disqualified income test (sec. 20124 and sec. 32 of the Code)

Description of Provision

The provision eliminates the denial of the credit to individuals with disqualified investment income above the threshold amount. Thus, the eligibility of individuals to claim the EITC is determined without regard to the amount of their disqualified investment income. However, as under present law, the EITC amount phases out based on the greater of earned income or AGI, which includes investment income.

Effective Date

The provision applies with respect to taxable years beginning after the date of enactment of the bill.

---

[215] Sec. 32(c)(1)(F).

5. Application of earned income tax credit in possessions of the United States (sec. 20125 and prop. sec. 7530 of the Code)

<u>Description of Provision</u>

Under the provision, the Secretary makes payments to the territories that relate to the cost of each of the territory's EITC.

<u>Puerto Rico</u>

With respect to Puerto Rico, if Puerto Rico enacts changes to its EITC which increase the percentage of earned income allowed as a credit in a manner designed to substantially increase workforce participation, the Secretary makes payments to Puerto Rico each calendar year, starting in 2021, of a specified matching amount. The specified matching amount for a calendar year is the lesser of (1) the cost to Puerto Rico of the EITC for taxable years beginning in or with such calendar year over the base amount of such calendar year or (2) three times the base amount for such calendar year. The base amount is the greater of (1) the cost to Puerto Rico of the EITC for taxable years beginning in or with calendar year 2019 (rounded to the nearest multiple of $1 million) or (2) $200 million; the base amount is indexed to inflation for calendar years after 2020. For example, if Puerto Rico spends $210 million on the EITC in 2019 and projects spending $850 million on the EITC in 2021 (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 (1) $850 million – $210 million = $640 million and (2) 3 x $210 million = $630 million). For calendar years 2021 through 2025, the Secretary also makes a payment to Puerto Rico of the lesser of (1) Puerto Rico's expenditures for education efforts with respect to taxpayers and tax return preparers regarding the EITC or (2) $1 million.

Under the provision, the Secretary determines the cost of the EITC 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 the costs of its EITC for the current year and a statement of the 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 EITC as in effect in Puerto Rico for taxable years beginning in or with calendar year 2019 is modified after the date of enactment of this provision. The intent of this rule is to prevent Puerto Rico from making changes to its EITC for the purpose of manipulating the base amount. For example, if, after enactment of this provision, Puerto Rico amended its EITC for taxable years beginning in or with calendar year 2019 such that the cost of the EITC for such taxable years is $300 million, Puerto Rico would not be eligible for payments under the provision.

Mirror Code territories

With respect to Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, the Secretary makes payments to each mirror Code territory each calendar year, starting in 2020. These payments equal 75 percent of the cost to each territory of its EITC each year. For calendar years 2020 through 2024, the Secretary also makes a payment of the lesser of (1) the territory's expenditures for education efforts with respect to taxpayers and tax return preparers regarding the EITC or (2) $50,000. The Secretary determines the cost of the credit and provides payments with respect to each possession under rules similar to the rules described above for Puerto Rico. The territories must provide annual reports to the Secretary that include an estimate of their costs of their EITC for the current year and a statement of the costs with respect to the preceding year.

American Samoa

With respect to American Samoa starting in 2020, the Secretary makes payments to American Samoa each calendar year that American Samoa has a refundable EITC designed to substantially increase workforce participation. These payments equal the lesser of (1) 75 percent of the cost to American Samoa of such credit each year or (2) $12 million, indexed to inflation. For calendar years 2020 through 2024, the Secretary also makes a payment of the lesser of (1) American Samoa's expenditures for education efforts with respect to taxpayers and tax return preparers regarding the EITC or (2) $50,000. The Secretary determines the cost of the credit and provides 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 its costs of its EITC for the current year and a statement of its costs with respect to the preceding year.

Effective Date

The provision is effective on the date of enactment of the bill.

6. Temporary special rule for determining earned income for purposes of the earned income tax credit (sec. 20126 and sec. 32 of the Code)

Description of Provision

The provision permits taxpayers to elect to calculate their earned income credit for taxable years beginning in 2020 using their earned income from the preceding taxable year if the taxpayers' earned income in 2020 is less than in the preceding year.[216]

[216] The provision does not allow taxpayers to make an election with respect to the additional child tax credit. However, section 20131 of the bill, discussed below, makes the child tax credit fully refundable for taxable years beginning in 2020, without regard to earned income.

For purposes of the provision, in the case of a joint return, the earned income which is attributable to the taxpayer for the preceding taxable year is the sum of the earned income which is attributable to each spouse for such preceding taxable year.

For administrative purposes, the incorrect use on a return of earned income pursuant to an election under this provision is treated as a mathematical or clerical error. An election under the provision is disregarded for purposes of calculating gross income in the election year.

With respect to the mirror Code territories (Guam, the Commonwealth of the Northern Marianas Islands, and the U.S. Virgin Islands), the Secretary makes payments equal to the loss in revenue by reason of the application of the provision with respect to taxable years beginning in 2020. This amount is determined by the Secretary based on information provided by the governments of the respective territories.

With respect to the non-mirror Code territories (Puerto Rico and American Samoa), 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 the territory from the provision if a mirror Code tax system had been in effect in the territory in 2020. These payments will not be made unless the territory has a plan approved by the Secretary to promptly distribute the payments to its residents.

Effective Date

The provision is effective on the date of enactment of the bill.

D. Child Tax Credit[217]

1. Child tax credit improvements for 2020 (sec. 20131 and sec. 24 and prop. sec. 7527A of the Code)

Description of Provision

Under the provision, for taxable years beginning in 2020, the credit is increased to $3,000, and qualifying children who have not attained the age of 18 (instead of the age of 17) at the close of the calendar year are eligible for the credit. In the case of a qualifying child who has not attained the age of 6 as of the close of the calendar year, the credit is increased to $3,600.

Additionally, the child tax credit is made fully refundable for taxable years beginning in 2020. Thus, the child tax credit is generally refundable up to $3,000 (or $3,600) per child, without regard to the amount of earned income or Social Security taxes paid. The AGI limitation on the credit still applies (regardless of refundability), and the $500 credit for dependents other than qualified children remains nonrefundable.

Finally, the provision directs the Secretary, as soon as practicable after the date of enactment of the bill, to create a process for the advance payment of the child tax credit on a

[217] The relevant present law relating to the child tax credit is found in Section I of this document.

monthly basis, or as frequently as administratively feasible. The amount of the child tax credit is reduced by any advance payments. If the taxpayer receives advance payments in excess of the taxpayer's allowable child tax credit, the taxpayer's tax liability is increased by the excess amount. The advance payment process only applies with respect to taxable years beginning in 2020.

Effective Date

The provision applies to taxable years beginning after December 31, 2019.

2. Application of child tax credit in possessions (sec. 20132 and sec. 24 of the Code)

Description of Provision

Under the provision, the Secretary makes payments to each territory that relate to the cost of each territory's child tax credit or approximate such cost.

Mirror Code territories

With respect to Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands, for each taxable year beginning after 2019, the Secretary makes payments equal to the loss in revenue by reason of the application of the child tax credit to the territory's mirror Code with respect to such taxable year. This amount is determined by the Secretary based on information provided by the governments of the respective territories. Because of their mirror Codes, the changes to the child tax credit made by section 20131 of the bill (described in the preceding section) will apply to these territories for taxable years beginning in 2020.

No child tax credit under the Internal Revenue Code is permitted for any resident of a mirror Code territory with respect to whom a child tax credit is allowed against income taxes of the territory.

Puerto Rico

The Secretary will not make payments to Puerto Rico. Instead, bona fide residents[218] of Puerto Rico continue to be eligible for the child tax credit from the U.S. Treasury under the Internal Revenue Code, generally in the same manner as it is determined for non-territory U.S. taxpayers.

For taxable years beginning in 2020, the child tax credit is made fully refundable for bona fide residents of Puerto Rico, without regard to Social Security taxes paid. For taxable years beginning in 2021 through 2025, the child tax credit is refundable for bona fide residents of Puerto Rico up to the maximum amount of refundable child tax credit for U.S. residents.[219] For

[218] As determined under section 937 of the Code.

[219] See sec. 24(h)(5). The maximum amount of the refundable child tax credit is $1,400 per qualifying child. This $1,400 amount is indexed for inflation, although the amount may not exceed $2,000.

taxable years beginning in 2026 or later, the child tax credit is made fully refundable for bona fide residents of Puerto Rico, without regard to Social Security taxes paid.[220]

American Samoa

For each taxable year beginning after 2019, the Secretary makes payments to American Samoa in an amount estimated by the Secretary as being equal to the aggregate benefits that would have been provided to the residents of American Samoa from the child tax credit if a mirror Code tax system had been in effect in American Samoa with respect to such taxable year. This includes, for taxable years beginning in 2020, the changes made by section 20131 of the bill (described in the preceding section).

These payments will not be made unless American Samoa has a plan approved by the Secretary to promptly distribute the payments to its residents in a manner that replicates to the greatest degree practicable the benefits of the child tax credit that would have been provided to each such resident under a mirror Code. For tax years with respect to which American Samoa has an approved plan, no child tax credit under the Internal Revenue Code is permitted for any person who is eligible for a payment under the plan. If American Samoa does not have a plan in place with respect to a taxable year, a bona fide resident[221] of American Samoa may claim a child tax credit from the U.S. Treasury under the Internal Revenue Code, under rules similar to those for Puerto Rico, described above.

Effective Date

The provision applies to taxable years beginning after December 31, 2019.

E. Dependent Care Assistance

1. Refundability and enhancement of child and dependent care tax credit (sec. 20141 and sec. 21 of the Code)

Present Law

A taxpayer who maintains a household that includes one or more qualifying individuals may claim a nonrefundable income tax credit 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.

---

[220] Under current law, for taxable years beginning in 2026 or later, the child tax credit will be decreased to $1,000 and be fully refundable. See sec. 24(h)(1), (2), (5).

[221] As determined under section 937 of the Code.

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.[222] 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 limitation on the amount of expenses eligible for the credit and the phaseout threshold are not indexed for inflation.

Generally, a qualifying individual is: (1) a dependent of the taxpayer under section 152 under the age of 13, or (2) a dependent (regardless of age) 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.

The child and dependent care tax credit may be claimed by any taxpayer, regardless of citizenship or residency, if the requirements for claiming the credit are met.

Description of Provision

The provision temporarily expands the child and dependent care tax credit for taxable years beginning in 2020. First, the provision makes the credit fully refundable for taxpayers other than nonresident aliens. In addition, the provision increases the maximum credit rate to 50 percent and amends the phaseout threshold to begin at AGI above $120,000. Thus, for taxable years beginning in 2020, for taxpayers with AGI above $178,000, the credit rate is 20 percent. The provision 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.

The provision to make the credit fully refundable does not apply to residents of the territories, but residents of the territories may still be eligible to claim the nonrefundable credit pursuant to existing rules.

Effective Date

The provision applies to taxable years beginning after December 31, 2019.

[222] See sec. 129.

III. DISCUSSION

In general

The primary purpose of a tax system is to raise revenue to fund government expenditures. To this end, analysts generally judge a tax system as a way of raising a given amount of revenue and in terms of how well the tax system promotes or hinders economic efficiency and growth, how fair the tax system is, and how simple and administrable the tax system is.

However, some have argued that a tax system can be efficiently used as a tool for redistribution or poverty relief. Certain uses of the tax system for redistribution may blur the lines between taxing and spending, but the same general criteria for assessing a tax system with a revenue goal can be applied to a tax system with both redistributive and revenue-raising goals. Furthermore, policymakers may be interested in designing the system of government net transfers to individuals in a comprehensive manner and via a single system rather than with a piecemeal approach, improving the overall efficiency of the system.

A negative income tax, popularized by Milton Friedman[223] among others,[224] is one prominent example of a tax proposal intended to address distributional concerns. A negative income tax provides each taxpayer with a cash grant in the form of an income tax refund that is reduced as income increases.[225] The cash grant is reduced in such a manner that as a taxpayer earns more income, the total amount of after-tax income increases, thus generally retaining an incentive to work.[226] While Congress has not enacted an explicit negative income tax, Congress

---

[223] Milton Friedman, *Capitalism and Freedom*, Chicago: University of Chicago Press, 1962. Friedman proposed the negative income tax as a replacement to all existing welfare programs. He argued that providing cash rather than in-kind assistance is more useful to families, as families can use cash to purchase what they need with no restrictions. Further he argued replacing "old age assistance, social security benefit payments, aid to dependent children, general assistance, farm price support programs, public housing, etc" with a negative income tax would provide poverty relief at less cost than those programs in sum and also reduce total administrative burden.

[224] Both Republican and Democratic presidential candidates in the 1972 election had at some point proposed versions of a negative income tax, the "Family Assistance Plan" from President Nixon and the "Fair Share Plan" from Senator McGovern. These proposals did not replace all existing welfare programs.

Robert J. Lampman, "Nixon's Family Assistance Plan," *Institute for Research on Poverty Discussion Paper*, University of Wisconsin, November 1969. https://www.irp.wisc.edu/publications/dps/pdfs/dp5769.pdf.

Jeremy S. Bluhm, "Are you kidding, George? $1000 a Person?," *Harvard Crimson*, June 14, 1973. https://www.thecrimson.com/article/1973/6/14/are-you-kidding-george-1000-a/.

[225] For example, each taxpayer could be given an amount of $20,000 with a negative income tax rate of 50 percent. Under such a system a taxpayer with no earnings would have refund of $20,000 for $20,000 in after-tax income, a taxpayer with $20,000 in earnings would have a refund of $20,000 - .5*$20,000 = $10,000 for $30,000 in after-tax income, and a taxpayer with $40,000 in earnings would have a refund of $20,000-.5*$40,000 = $0 for $40,000 in after-tax income.

[226] In a basic model of labor supply, individuals choose a combination of income (generated from hours of work) and leisure (hours not worked). The introduction of a negative income tax could allow certain individuals to choose a combination of more income and more leisure, or a combination of less income but much more leisure,

has enacted certain tax provisions such as the earned income tax credit with a purpose of addressing distributional concerns.[227] The EITC is similar to the negative income tax in that after-tax income increases with earned income throughout the range of both the credit and the grant. Also, the credit is reduced in the phaseout range of the EITC just as the cash grant in the negative income tax is reduced as earned income increases, but, in contrast to a negative income tax, the EITC does not provide any benefit to taxpayers without earned income; the credit phases in as earned income increases from zero.

Some believe that a tax system should not be unnecessarily complicated by targeted benefits and that benefits may be provided through other means. There are several reasons why the current tax system may not be well suited to efficiently provide targeted benefits to individuals and families. First, there may be high levels of benefit overpayment.[228] The current tax system relies on voluntary compliance and the IRS does not have a general system to prescreen individuals' eligibility for tax benefits before providing benefits.[229] Second, providing timely assistance may be difficult as interactions between the IRS and taxpayers are generally limited to annually filed tax returns. Finally, it is challenging to provide in-kind benefits through the tax system. The tax system generally provides benefits through a reduction in tax liability and payments of refunds in excess of liability, generally taken in the form of cash.[230]

Some believe that a tax system can be properly designed to efficiently address distributional concerns by providing cash payments to individuals and families with relatively low administrative and compliance costs. For taxpayers that currently file tax returns, providing additional information on a return may be less time consuming than applying for a benefit via a

---

both resulting in a reduction in hours of work, even though all individuals would still receive more income for more work. For a discussion of the labor supply effects of a negative income tax see Robert A. Moffit, "The Negative Income Tax and the Evolution of U.S. Welfare Policy," *Journal of Economic Perspectives*, Summer 2003, pp. 119-140.

[227] Margot L. Crandall-Hollick, Congressional Research Service, *The Earned Income Tax Credit (EITC): A Brief Legislative History* (Report R44825), March 20, 2018.

[228] Policymakers are often concerned with the how the design and implementation of refundable credits relate to the size of improper payments. For example, see Subcommittee on Oversight of the Committee on Ways and Means U.S. House of Representatives Hearing, "Improper payments in the administration of refundable tax credits," May 25, 2011; IRS, *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns* (Publication 5162), August 2014; and Government Accountability Office, *Refundable tax credits* (GAO-16-475), May 2016.

[229] Specific systems have been established for certain tax provisions such as the advance payment of the premium assistance credit, although this is administered by HHS. See sec. 36B and PPACA sec. 1412, 42 U.S.C. sec. 18082. Some corporate income tax provisions such as the new market tax credit (sec. 45D) also require a precredit application, but this is administered by the Community Development Financial Institutions Fund. Setting up these programs within the tax system is costly, and implementing benefits in this way is similar to how the government provides certain nontax benefits, raising the question as to why these programs should be set up as tax benefits in the first place.

[230] The premium assistance credit, see sec. 36B, may be considered at least in part an in-kind benefit, as some amount of the credit may be paid directly to the health insurer rather than reimbursing the taxpayer.

different application process with an additional government agency. For the government, processing additional information on a tax return may be less costly than administering additional application and screening processes for potential beneficiaries.

Tax incentives

Tax policies are often designed to encourage or discourage certain behavior.[231] Economics provides a theoretical framework of "externalities" in the consumption or production of certain goods that may serve as a rationale for government intervention in certain markets. Externalities exist when, in the consumption or production of a good, there is a difference between the cost (or benefit) to individuals consuming or producing the good and the cost (or benefit) to society as a whole. These externalities lead to "market failures" wherein the mismatch between individual and social costs (or benefits) result in the purely market-based outcome providing either too little or too much of certain economic activity, relative to what is socially optimal. Thus, in certain settings, tax preferences that encourage increased or decreased consumption or production, as appropriate, can help to achieve an increase in economic efficiency by moving consumption or production toward the socially optimal level.

Individual income tax preferences target many behaviors including retirement savings, educational attainment, the provision of health insurance, and labor force participation. Such incentives may be rationalized by policymakers if individuals undertake these activities at a lower than socially optimal level.

These tax preferences may take the form of deductions, exclusions, or credits against income tax. With deductions and exclusions from income, the incentive effect depends on both the size of the tax preference and the marginal tax rate the taxpayer faces, since deductions and exclusions reduce the amount of income subject to tax. That is, the same sized deduction generally is worth more to taxpayers with more income since statutory income tax rates increase with income. This income-dependent feature of deductions differs from credits. The same size credit is worth the same amount of dollars to taxpayers with different amounts of income since credits reduce tax liability directly (that is, a $100 credit reduces tax liability dollar-for-dollar, irrespective of a taxpayer's level of income).

An important caveat to the discussion of the incentive effect of tax preferences is that deductions, exclusions, and credits against income tax provide reduced or no incentive if a taxpayer does not have enough tax liability to fully offset with tax preferences. Deductions and exclusions do not reduce tax liability below zero, and credits only do so if they are refundable. Thus, refundable credits are a way to provide tax incentives to taxpayers with little or no income tax liability.

Advance payments

Individual income tax returns are generally filed once a year. Although tax is collected in more frequent intervals (for example, through bi-weekly or monthly wage withholding or quarterly estimated tax payments), income tax refunds are generally received annually and after

---

[231] Tax policies may also unintentionally change certain behavior.

the applicable year has ended. Advance payment of a tax credit is a mechanism to provide the credit before the tax return for the applicable year has been filed. Taxpayers who have positive income tax liability for the taxable year and who are employees may adjust wage withholding to receive the benefit of the credit before filing the tax return for the year. Perhaps for this reason, discussions of advance payment of credits are generally in the context of refundable credits.

Allowing a refundable credit to be claimed as advance payments introduces additional considerations for design, including certain tradeoffs between desired features of the policy. For example, policy design tradeoffs include the timing and targeting of benefit payments, the level of improper claims and measures to address taxpayer uncertainty about recapture, and the administrative costs imposed on taxpayers and the government.

One feature of advance payments is the speed at which tax benefits are delivered. Advance credits deliver tax benefits sooner than credits for which advance payments are not allowed. Some argue that providing taxpayers with little or no tax liability with advance credits will assist them with liquidity issues by allowing them to avoid alternative and costly debt options.[232] On the other hand, a problem with advance credits is that year-end attributes, such as marital status, number of children, or earned income, on which a credit calculation is based, may not be known at the time of advance payment.[233] Thus, while advance credits may be provided to taxpayers earlier, they may be more inaccurately targeted than credits paid after the close of a taxable year.

This inaccurate targeting may lead to improper payments, which as discussed above, are a concern of policymakers with regard to refundable credits generally. One design that may reduce improper payments is to require reconciliation and recapture of any excess advance payment amount at the end of the taxable year. However, requiring reconciliation and repayment of excess advance payment amounts may reduce the benefit to the taxpayers of advance credits, particularly if uncertainty about the level of repayment causes taxpayers to not use or not elect to receive advance payments. In addition, some taxpayers may fail to reconcile. Alternatively, recapture of excess advance payments could be reduced or eliminated through limitation on the amount that must be repaid by the taxpayer, but this design may not alleviate concerns about targeting, and overpayments and may lead to increased tax planning.

Implementing a system to provide for an advance payment of credits may raise administrative costs for both taxpayers and the government. Administrative costs for taxpayers may take the form of time spent compiling and sending additional information to the IRS to apply for or to elect advance payments, or time spent predicting the final credit amount for purposes of reducing excess advance payments that must be recaptured.[234] On the government

---

[232] While a taxpayer with income tax withholding may accelerate a credit for which advance payments are not allowed by reducing income tax withholding, a taxpayer with little or no withholding before application of a credit may have little or no benefit from withholding adjustments.

[233] For example, a taxpayer's projected 2020 AGI as of January 2020 might differ greatly from the taxpayer's actual 2020 AGI.

[234] Taxpayers may incur estimation costs for nonrefundable credits and other tax benefits as well.

side, the IRS may have to conduct targeted outreach to individuals eligible for a credit if, for example, those individuals have no filing obligations and have not previously filed tax returns. The IRS, which is structured as a tax collection agency, also may have to create and maintain systems for making periodic payments and for recapturing improper payments.

Prior experience with advance payment of certain individual refundable income tax credits

The design of the Advance EITC is thought to have led to low usage rates of the advance credit. The Advance EITC was based on the same factors as the EITC for each taxable year. In addition, the Advance EITC required a reconciliation and recapture of excess advance payments. However, taxpayers receiving advance payments had lower refunds at the time of tax filing. Taxpayers may prefer the forced savings aspect of larger refunds, may dislike making tax payments at the time of tax filing, or may have inertia from prior withholding decisions.[235] For the 2018 taxable year, over 70 percent of individual tax filers received refunds[236] which indicates that many taxpayers with and without positive tax liability over-withheld income tax throughout the year. A study from the Government Accountability Office ("GAO") on the Advance EITC found suggestive evidence that many potential recipients were concerned about owing money when filing their returns and this uncertainty about repayment may have been one reason for the low take-up of the advance payment feature.[237]

The CARES Act 2020 recovery rebate[238] also highlights several design issues with advance payment of refundable credits, including the speed of payments, targeting of benefits, and taxpayer concerns regarding uncertainty.

In order to allow the IRS to provide advance rebate amounts quickly, the advance rebate amount is not based on the taxpayer's 2020 return information, but rather the taxpayer's 2019 (or 2018) return information or other relevant prior year information.[239] This design allowed 159 million payments worth more than $267 billion to be paid out as of June 3, 2020,[240] just over two months after the CARES Act was signed into law on March 27, 2020.

---

[235] Taxpayers may be unwilling to adjust withholding. See Damon Jones, "Inertia and Overwithholding: Explaining the Prevalence of Income tax Refunds," *American Economic Journal: Economic Policy*, 2012, 4(1), pp 158-185.

[236] The average refund amount for the 2018 taxable year was $2,869. IRS, Filing season statistics for week ending December 27, 2019, https://www.irs.gov/newsroom/filing-season-statistics-for-week-ending-december-27-2019.

[237] Government Accountability Office, *Advance Earned Income Tax Credit* (GAO-07-1100), August 2007.

[238] Sec. 6428.

[239] Sec. 6428(f).

[240] Department of Treasury press release, June 3, 2020, https://home.treasury.gov/news/press-releases/sm1025.

While the credit is allowed based on a taxpayer's 2020 filing status, number of qualifying children, and AGI, to generally eliminate taxpayer uncertainty with respect to repayment, if the calculation based on these 2020 factors results in a credit that is less than the taxpayer's advance rebate amount, the credit is not reduced below zero.[241] In other words, generally no amount of the credit may be recaptured due to a change in these factors in 2020 as compared to prior-year factors used to determine the advance rebate amount (although an increase in the credit amount is allowed). This policy design may provide an incentive for recipients to spend the payment as an economic stimulus, one of the policy goals, without concerns of recapture.

Generally, individual income tax credits for a given taxable year are based on a taxpayer's situation and actions in that taxable year, so a 2020 credit would be based on a taxpayer's 2020 factors. Due to the lack of recapture, the 2020 recovery rebates could be considered imperfectly targeted as some taxpayers will receive a larger credit than their 2020 attributes would otherwise allow. For example, the same qualifying child properly claimed by two different taxpayers in different years, one taxpayer in 2019 and another in 2020, may generate $500 of credit to the taxpayer claiming the child in 2020 and $500 of credit to the taxpayer claiming the child in 2019 for a total of $1,000. If the same taxpayer claimed the child in 2020 and 2019, only $500 total would be paid with respect to the qualifying child. Additionally, a taxpayer that died in 2019 may be issued an advance refund amount although their estate would not be eligible for a credit in 2020. Furthermore, with no recapture, the calculation of advance rebate amount based on a 2018 return in cases where a 2019 return was not filed creates an incentive for a taxpayer to delay filing a 2019 return if the calculation based on 2018 factors, as opposed to 2019 factors, would generate a higher credit.

These examples illustrate some targeting and incentive effects resulting from the design of the 2020 recovery rebate, which allows advance rebate amounts to be calculated on prior-year return information without full recapture. However, this design allowed the IRS to make payments rapidly and provided taxpayers with certainty that they would not have to repay excess credit amounts. Policymakers decided that this was an appropriate tradeoff for this credit, given the economic circumstances. Future policy design of advanceable and refundable tax credits will require similar deliberation.

Recent legislative proposals regarding advanceable, refundable income tax credits

To further illustrate the tradeoff between administrative burden, targeting, timing, and repayment in the design of advance payments of credits, several recently introduced bills are briefly discussed below.

The Cost-of-Living Refund Act of 2019[242] ("COLA Act") increases the generosity of the EITC and allows up to $500 to be paid in advance for eligible employees after six months of employment during the calendar year. Advance payments are provided by employers to employees upon receiving self-certification from employees that they qualify for the credit. This proposal allows for full recapture of advance payments and does not require the IRS to set up a

[241] Sec. 6428(e).

[242] H.R. 1431, 116th Congress and S. 527, 116th Congress.

new payment system since it is administered by employers. Thus, the COLA Act could be viewed as compromising the size and speed of advance payments and placing a new administrative cost on employers in order to reduce taxpayer recapture and administrative burden on the IRS to administer the reconciliation and recapture.

The LIFT the Middle Class Act[243] ("LIFT Act") creates a new refundable credit with a structure similar to the EITC and allows the credit to be advanceable, paid monthly throughout the taxable year. The credit amount for this proposal is based on earned income, filing status, and AGI from the preceding taxable year. This design allows for sizeable advance payments and generally eliminates repayments at the expense of arguably imperfect targeting, as the credit is not based on current year factors. This proposal imposes an administrative cost by requiring the IRS to set up a new system to allow taxpayers to elect and receive monthly payments.

The Advancing Support for Working Families Act[244] ("ASWF Act") provides an elective credit in the year of birth or adoption of a qualifying child of up to $5,000. The proposal directs the Secretary to allow taxpayers to claim and receive this credit as soon as practicable after birth or adoption of a qualifying child. An electing taxpayer's tax liability is increased in subsequent years by a ratable amount of the credit over an offset period of up to 15 years. This design allows for a sizable advance payment by requiring full repayment. This proposal imposes an administrative cost by requiring the IRS to set up a new system to verify births, send out one-time payments outside of its normal annual refund process, and to track offsets to electing taxpayers for up to 15 years.

[243] S. 4, 116th Congress. Also introduced in the House as the Building Our Opportunities to Survive and Thrive Act of 2019, H.R. 3590, 116th Congress.

[244] H.R. 5296, 116th Congress and S. 2976, 116th Congress.

IV. DATA

Table 4 presents the distribution for 2019 of four individual refundable income tax credits by economic income,[245] separately and combined: (1) the earned income tax credit, (2) the child tax credit, (3) the American opportunity tax credit, and (4) the premium assistance credit. A distribution of the health coverage tax credit is not provided due to the relatively small number of claims and dollars.[246] The table shows the number of returns and dollars split between amounts claimed as credit and outlay. For comparison, recent data on spending and number of recipients of several nontax programs is provided: in fiscal year 2018, the Temporary Assistance for Needy Families ("TANF") program spent $3.2 billion[247] on basic assistance for three million individuals;[248] in fiscal year 2019, the Supplemental Nutritional Assistance Program ("SNAP") spent $55.6 billion on benefits for 36 million individuals;[249] in award year 2018, the Federal Pell Grant Program spent $28.7 billion providing grants to 7.1 million recipients;[250] and in fiscal year 2018, the Federal portion of Medicaid payments was $386 billion for a monthly average of 76 million individuals.[251]

[245] Economic income includes the annual flow of all resources at the command of an individual and represents an individual's total well-being. As a practical matter, the income concept used in distributional analyses needs to balance the goal of a measure that accurately reflects economic well-being with a measure that can be accurately constructed using available data sources. The concept developed by the Joint Committee staff for this purpose expanded income, which is the sum of AGI, tax-exempt interest, employer contributions for health plans and life insurance, the employer share of payroll taxes, workers' compensation, nontaxable Social Security benefits, value of Medicare benefits in excess of premiums paid, minimum tax preferences, individual share of business taxes, and excluded income of U.S. citizens living abroad. For a detailed discussion of expanded income, see Joint Committee on Taxation, *Overview of the Definition of Income Used by the Staff of the Joint Committee on Taxation in Distributional Analyses*, (JCX-15-12), February 8, 2012.

[246] In 2019 the health coverage tax credit was claimed on 29,000 returns and totaled $73 million, split between $44 million claimed as credits and $29 million as outlays.

[247] Table A. 1, TANF Financial Data - FY 2018, U.S. Department of Health and Human Services, Office of Family Assistance, https://www.acf.hhs.gov/sites/default/files/ofa/tanf_financial_data_fy_2018_8719.xlsx. Retrieved June 9, 2020.

[248] Table 1, Characteristics and Financial Circumstances of TANF Recipients - FY 2018, U.S. Department of Health and Human Services, Office of Family Assistance, https://www.acf.hhs.gov/sites/default/files/ofa/fy18_characteristics_web.xlsx. Retrieved June 9, 2020.

[249] Participation and Costs, 1969-2019, SNAP data tables, U.S. Department of Agriculture, Food and Nutrition Service, https://www.fns.usda.gov/sites/default/files/resource-files/SNAPsummary-5.xls. Retrieved June 9, 2020.

[250] Award year 2018 is July 1, 2017 through June 30, 2018. Table 1, Federal Pell Grant Program Data Book, 2017-2018, https://www2.ed.gov/finaid/prof/resources/data/pell-data.html. Retrieved June 15, 2020.

[251] State and Federal spending on these 76 million individuals totaled $616 billion in fiscal year 2018. Exhibits 10 and 16, MACStats Medicaid and CHIP Data Book, December 2019, https://www.macpac.gov/wp-content/uploads/2020/01/MACStats-Medicaid-and-CHIP-Data-Book-December-2019.pdf. Retrieved June 15, 2020.

Table 4.–Distributional Effects of Four Refundable Tax Credits

Calendar Year 2020

INCOME CATEGORY (1)	Earned Income Tax Credit			Child Tax Credit			American Opportunity Tax Credit			Premium Assistance Credit			Combined Refundable Tax Credits		
	Number of Returns	Amount as Credit (2)	Amount as Outlay	Number of Returns	Amount as Credit	Amount as Outlay	Number of Returns (3)	Amount as Credit	Amount as Outlay	Number of Returns	Amount as Credit	Amount as Outlay	Number of Returns	Amount as Credit	Amount as Outlay
	Millions	$Billions	$Billions	Millions	$Billions	$Billions	Millions	$Billions	$Billions	Millions	$Billions	$Billions	Millions	$Billions	$Billions
Less than $10,000..................	4.1	0.5	3.5	1.2	(5)	0.7	0.5	(5)	0.5	0.3	(5)	2.3	4.6	0.5	7.0
$10,000 to $20,000..............	8.0	3.7	19.4	4.8	0.1	7.1	1.1	(5)	0.9	1.0	0.1	6.5	9.3	3.9	33.8
$20,000 to $30,000..............	5.0	1.8	18.0	5.1	1.3	8.5	1.0	(5)	0.8	1.5	0.7	8.8	7.5	3.8	36.1
$30,000 to $40,000..............	3.7	1.1	10.0	4.1	2.8	6.3	0.7	0.1	0.5	1.2	0.7	7.3	5.6	4.8	24.1
$40,000 to $50,000..............	3.0	0.8	5.5	3.8	4.4	5.1	0.6	0.2	0.3	1.0	0.6	5.9	4.9	6.0	16.9
$50,000 to $75,000..............	2.7	0.4	3.8	7.3	12.6	6.5	1.1	0.5	0.5	1.2	0.9	7.4	8.5	14.4	18.3
$75,000 to $100,000.............	0.3	0.1	0.3	5.3	12.1	2.3	0.8	0.5	0.2	0.3	0.3	1.4	5.5	13.0	4.3
$100,000 to $200,000...........	(4)	(5)	(5)	11.8	32.4	0.8	1.8	1.7	0.1	0.1	0.1	0.3	12.0	34.2	1.3
$200,000 to $500,000...........	(4)	(5)	(5)	5.0	14.7	0.1	0.3	0.2	0.0	(4)	(5)	(5)	5.1	14.8	0.1
$500,000 to $1,000,000........	(4)	(5)	(5)	0.1	0.1	(5)	(4)	(5)	(5)	(4)	(5)	(5)	0.1	0.1	(5)
$1,000,000 and over.............	---	---	---	0.0	(5)	(5)	---	---	---	---	---	---	(4)	(5)	(5)
Total, All Taxpayers.................	26.9	8.4	60.6	48.4	80.6	37.4	7.9	3.1	3.8	6.5	3.3	40.0	63.0	95.5	141.8

Source: Joint Committee on Taxation

Details may not add to total due to rounding.

----

(1) The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, [3] employer share of FICA tax, [4] workers' compensation, [5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] alternative minimum tax preference items, [8] individual share of business taxes, and [9] excluded income of U.S. citizens living abroad. Categories are measured at 2020 levels.

(2) Includes amounts of the earned income tax credit that offset nonincome taxes appearing on Form 1040 such as SECA taxes.

(3) Includes returns claiming the American Opportunity Credit who are ineligible to claim the credit as a refundable credit.

(4) Returns less than 50,000.

(5) Amounts less than $50 million.

Table 5 presents an estimated distribution for 2020 of the CARES Act 2020 recovery rebate by economic income. Table 6 presents an estimated distribution for 2020 of selected refundable credits as modified or enacted in the House-passed HEROES bill. Note that the Joint Committee staff sets its baseline distribution of taxpayers by income group to be consistent with the macroeconomic forecast and baseline provided by the Congressional Budget Office ("CBO") in January of each year. The distributional analysis provided here classifies taxpayers by income as forecast for January 2020.

Table 5.–Distributional Effects of the 2020 Recovery Rebates for Individuals

Calendar Year 2020

INCOME CATEGORY (1)	Number of Returns	Amount as Credit (2)	Amount as Outlay
	Millions	$Billions	$Billions
Less than $10,000..................................	15.5	---	23.0
$10,000 to $20,000..............................	16.8	---	27.5
$20,000 to $30,000..............................	19.9	---	32.3
$30,000 to $40,000..............................	16.1	---	26.4
$40,000 to $50,000..............................	14.1	---	24.2
$50,000 to $75,000..............................	27.5	---	49.9
$75,000 to $100,000............................	17.4	---	34.7
$100,000 to $200,000..........................	27.1	---	65.0
$200,000 to $500,000..........................	4.2	---	5.8
$500,000 to $1,000,000........................	---	---	---
$1,000,000 and over.............................	---	---	---
Total, All Taxpayers..........................	158.5	---	288.8

Source: Joint Committee on Taxation

Details may not add to total due to rounding.

----

(1) The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, [3] employer share of FICA, [4] workers' compensation [5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] altrernative minimum tax preference items, [8] individual share of business taxes, and [9] excluded income of U.S. citizens living abroad. Categories are measured at 2020 levels.

(2) All recovery rebates are considered as outlays for this analysis, consistent with anaylsis performed by Treasury and Congressional Budget Office.

Table 6.–Distributional Effects of HEROES Individual Refundable Income Tax Credits

Calendar Year 2020

INCOME CATEGORY (1)	Recovery Rebate Improvements			Additional Recovery Rebates			Earned Income Tax Credit Expansion			Child Tax Credit Expansion			Child and Dependent Care Tax Credit Expansion		
	Number of Returns (2)	Amount as Credit (3)	Amount as Outlay	Number of Returns	Amount as Credit (3)	Amount as Outlay	Number of Returns	Amount as Credit (4)	Amount as Outlay	Number of Returns	Amount as Credit	Amount as Outlay	Number of Returns	Amount as Credit	Amount as Outlay
	Millions	$Billions	$Billions	Millions	$Billions	$Billions	Millions	$Billions	$Billions	Millions	$Billions	$Billions	Millions	$Billions	$Billions
Less than $10,000.................	---	---	2.0	16.2	---	27.0	3.9	0.3	1.8	1.3	---	4.5	(5)	---	(6)
$10,000 to $20,000..............	---	---	2.5	17.3	---	36.9	5.6	0.7	4.9	4.8	---	18.3	0.1	---	0.1
$20,000 to $30,000..............	---	---	3.1	20.5	---	42.6	3.5	0.1	1.4	4.5	---	15.1	0.3	---	0.3
$30,000 to $40,000..............	---	---	2.4	16.6	---	34.3	0.5	(6)	0.3	3.4	(6)	9.3	0.3	---	0.4
$40,000 to $50,000..............	---	---	2.3	14.5	---	31.7	0.3	(6)	0.2	3.1	(6)	7.8	0.4	(6)	0.4
$50,000 to $75,000..............	---	---	3.9	28.0	---	63.8	0.3	(6)	0.2	5.6	0.6	12.8	0.8	(6)	0.9
$75,000 to $100,000............	---	---	2.1	17.6	---	44.0	(5)	(6)	(6)	3.9	1.5	7.7	0.6	0.1	0.6
$100,000 to $200,000...........	---	---	3.5	27.5	---	84.8	(5)	(6)	(6)	9.1	12.9	8.2	2.0	1.5	0.8
$200,000 to $500,000...........	---	---	0.6	5.0	---	10.7	---	---	---	4.0	9.4	0.2	0.8	0.5	(6)
$500,000 to $1,000,000........	---	---	---	---	---	---	---	---	---	0.1	0.3	---	0.1	0.1	---
$1,000,000 and over.............	---	---	---	---	---	---	---	---	---	---	---	---	(5)	(6)	---
Total, All Taxpayers..........	---	---	22.4	163.2	---	375.8	14.2	1.2	8.9	39.9	24.8	83.8	5.4	2.2	3.4

Source: Joint Committee on Taxation

Details may not add to total due to rounding.

---

(1) The income concept used to place tax returns into income categories is adjusted gross income (AGI) plus: [1] tax-exempt interest, [2] employer contributions for health plans and life insurance, [3] employer share of FICA tax, [4] workers' compensation, [5] nontaxable Social Security benefits, [6] insurance value of Medicare benefits, [7] alternative minimum tax preference items, [8] individual share of business taxes, and [9] excluded income of U.S. citizens living abroad. Categories are measured at 2020 levels.

(2) Number of returns are not available for this provision.

(3) All recovery rebates are considered as outlays for this analysis, consistent with anaylsis performed by Treasury and Congressional Budget Office.

(4) Includes amounts of the earned income tax credit that offset nonincome taxes appearing on Form 1040 such as SECA taxes.

(5) Returns less than 50,000.

(6) Amounts less than $50 million.

APPENDIX: Table A-1.–EITC Parameters, 1975-2020

Year	Credit Percentage	Earned Income Amount	Maximum Credit	Maximum Credit (2020 Dollars) [1]	Phaseout Percentage	Phaseout Start: Single, head of household	Phase End: Single, head of household	Phaseout Start: Joint filers	Phase End: Single, Joint filers
Families with children:									
1975	10.0%	$4,000	$400	$1,981	10.00%	$4,000	$8,000	$4,000	$8,000
1976	10.0%	$4,000	$400	$1,856	10.00%	$4,000	$8,000	$4,000	$8,000
1977	10.0%	$4,000	$400	$1,764	10.00%	$4,000	$8,000	$4,000	$8,000
1978	10.0%	$4,000	$400	$1,651	10.00%	$4,000	$8,000	$4,000	$8,000
1979	10.0%	$5,000	$500	$1,889	12.50%	$6,000	$10,000	$6,000	$10,000
1980	10.0%	$5,000	$500	$1,658	12.50%	$6,000	$10,000	$6,000	$10,000
1981	10.0%	$5,000	$500	$1,483	12.50%	$6,000	$10,000	$6,000	$10,000
1982	10.0%	$5,000	$500	$1,368	12.50%	$6,000	$10,000	$6,000	$10,000
1983	10.0%	$5,000	$500	$1,319	12.50%	$6,000	$10,000	$6,000	$10,000
1984	10.0%	$5,000	$500	$1,266	12.50%	$6,000	$10,000	$6,000	$10,000
1985	10.0%	$5,000	$500	$1,223	12.22%	$6,500	$11,000	$6,500	$11,000
1986	10.0%	$5,000	$500	$1,177	12.22%	$6,500	$11,000	$6,500	$11,000
1987	14.0%	$6,080	$851	$1,974	10.00%	$6,920	$15,432	$6,920	$15,432
1988	14.0%	$6,240	$874	$1,949	10.00%	$9,840	$18,576	$9,840	$18,576
1989	14.0%	$6,500	$910	$1,939	10.00%	$10,240	$19,340	$10,240	$19,340
1990	14.0%	$6,810	$953	$1,930	10.00%	$10,730	$20,264	$10,730	$20,264
Families with one child:									
1991 [2]	16.7%	$7,140	$1,192	$2,285	11.93%	$11,250	$21,250	$11,250	$21,250
1992 [2]	17.6%	$7,520	$1,324	$2,473	12.57%	$11,840	$22,370	$11,840	$22,370
1993 [2]	18.5%	$7,750	$1,434	$2,594	13.21%	$12,200	$23,050	$12,200	$23,050
1994	26.3%	$7,750	$2,038	$3,596	15.98%	$11,000	$23,750	$11,000	$23,750
1995	34.0%	$6,150	$2,094	$3,594	15.98%	$11,290	$24,396	$11,290	$24,396
1996	34.0%	$6,350	$2,152	$3,596	15.98%	$11,650	$25,100	$11,650	$25,100
1997	34.0%	$6,500	$2,210	$3,583	15.98%	$11,950	$25,800	$11,950	$25,800
1998	34.0%	$6,650	$2,271	$3,625	15.98%	$12,300	$26,500	$12,300	$26,500
1999	34.0%	$6,800	$2,312	$3,630	15.98%	$12,500	$26,950	$12,500	$26,950
2000	34.0%	$6,900	$2,353	$3,596	15.98%	$12,700	$27,450	$12,700	$27,450
2001	34.0%	$7,100	$2,428	$3,577	15.98%	$13,100	$28,300	$13,100	$28,300
2002	34.0%	$7,350	$2,506	$3,650	15.98%	$13,550	$29,250	$14,550	$30,250
2003	34.0%	$7,490	$2,547	$3,616	15.98%	$13,730	$29,666	$14,730	$30,666
2004	34.0%	$7,660	$2,604	$3,627	15.98%	$14,040	$30,338	$15,040	$31,338
2005	34.0%	$7,830	$2,662	$3,601	15.98%	$14,370	$31,030	$16,370	$33,030
2006	34.0%	$8,080	$2,747	$3,574	15.98%	$14,810	$32,001	$16,810	$34,001
2007	34.0%	$8,390	$2,853	$3,636	15.98%	$15,390	$33,241	$17,390	$35,241
2008	34.0%	$8,580	$2,917	$3,565	15.98%	$15,740	$33,995	$18,740	$36,995
2009	34.0%	$8,950	$3,043	$3,718	15.98%	$16,420	$35,463	$21,420	$40,463
2010	34.0%	$8,970	$3,050	$3,631	15.98%	$16,450	$35,535	$21,460	$40,545
2011	34.0%	$9,100	$3,094	$3,624	15.98%	$16,690	$36,052	$21,770	$41,132
2012	34.0%	$9,320	$3,169	$3,607	15.98%	$17,090	$36,920	$22,300	$42,130
2013	34.0%	$9,560	$3,250	$3,641	15.98%	$17,530	$37,870	$22,870	$43,210
2014	34.0%	$9,720	$3,305	$3,645	15.98%	$17,830	$38,511	$23,260	$43,941
2015	34.0%	$9,880	$3,359	$3,708	15.98%	$18,110	$39,131	$23,630	$44,651
2016	34.0%	$9,920	$3,373	$3,673	15.98%	$18,190	$39,296	$23,740	$44,846
2017	34.0%	$10,000	$3,400	$3,612	15.98%	$18,340	$39,617	$23,930	$45,207
2018	34.0%	$10,180	$3,461	$3,602	15.98%	$18,660	$40,320	$24,350	$46,010
2019	34.0%	$10,370	$3,526	$3,613	15.98%	$19,030	$41,094	$24,820	$46,884
2020	34.0%	$10,540	$3,584	$3,584	15.98%	$19,330	$41,756	$25,220	$47,646

Table A-1.–EITC Parameters, 1975-2020 (Cont'd)

Year	Credit Percentage	Earned Income Amount	Maximum Credit	Maximum Credit (2020 Dollars) [1]	Phaseout Percentage	Phaseout Start: Single, head of household	Phase End: Single, head of household	Phaseout Start: Joint filers	Phase End: Single, Joint filers
Families with at least two children:									
1991 [2]	17.3%	$7,140	$1,235	$2,367	12.36%	$11,250	$23,122	$11,250	$23,122
1992 [2]	18.4%	$7,520	$1,384	$2,585	13.14%	$11,840	$22,370	$11,840	$22,370
1993 [2]	19.5%	$7,750	$1,511	$2,733	13.93%	$12,200	$23,050	$12,200	$23,050
1994	30.0%	$8,425	$2,528	$4,461	17.86%	$11,000	$25,300	$11,000	$25,300
1995	36.0%	$8,600	$3,110	$5,338	20.22%	$11,290	$26,673	$11,290	$26,673
1996	40.0%	$8,890	$3,556	$5,941	21.06%	$11,650	$28,495	$11,650	$28,495
1997	40.0%	$9,100	$3,656	$5,928	21.06%	$11,950	$29,290	$11,950	$29,290
1998	40.0%	$9,350	$3,756	$5,996	21.06%	$12,300	$30,095	$12,300	$30,095
1999	40.0%	$9,500	$3,816	$5,992	21.06%	$12,500	$30,580	$12,500	$30,580
2000	40.0%	$9,700	$3,888	$5,942	21.06%	$12,700	$31,152	$12,700	$31,152
2001	40.0%	$10,000	$4,008	$5,905	21.06%	$13,100	$32,121	$13,100	$32,121
2002	40.0%	$10,350	$4,140	$6,030	21.06%	$13,550	$33,150	$14,550	$34,150
2003	40.0%	$10,510	$4,204	$5,969	21.06%	$13,730	$33,666	$14,730	$34,666
2004	40.0%	$10,750	$4,300	$5,990	21.06%	$14,040	$34,458	$15,040	$35,458
2005	40.0%	$11,000	$4,400	$5,952	21.06%	$14,370	$35,263	$16,370	$37,263
2006	40.0%	$11,340	$4,536	$5,901	21.06%	$14,810	$36,348	$16,810	$38,348
2007	40.0%	$11,790	$4,716	$6,010	21.06%	$15,390	$37,783	$17,390	$39,783
2008	40.0%	$12,060	$4,824	$5,896	21.06%	$15,740	$38,646	$18,740	$41,646
2009	40.0%	$12,570	$5,028	$6,143	21.06%	$16,420	$40,295	$21,420	$45,295
2010	40.0%	$12,590	$5,036	$5,995	21.06%	$16,450	$40,363	$21,460	$45,373
2011	40.0%	$12,780	$5,112	$5,988	21.06%	$16,690	$40,964	$21,770	$46,044
2012	40.0%	$13,090	$5,236	$5,959	21.06%	$17,090	$41,952	$22,300	$47,162
2013	40.0%	$13,430	$5,372	$6,018	21.06%	$17,530	$43,038	$22,870	$48,378
2014	40.0%	$13,650	$5,460	$6,021	21.06%	$17,830	$43,756	$23,260	$49,186
2015	40.0%	$13,870	$5,548	$6,124	21.06%	$18,110	$44,454	$23,630	$49,974
2016	40.0%	$13,930	$5,572	$6,067	21.06%	$18,190	$44,648	$23,740	$50,198
2017	40.0%	$14,040	$5,616	$5,966	21.06%	$18,340	$45,007	$23,930	$50,597
2018	40.0%	$14,290	$5,716	$5,949	21.06%	$18,660	$45,802	$24,350	$51,492
2019	40.0%	$14,570	$5,828	$5,973	21.06%	$19,030	$46,703	$24,820	$52,493
2020	40.0%	$14,800	$5,920	$5,920	21.06%	$19,330	$47,440	$25,220	$53,330
Families with three or more children:									
2009	45.0%	$12,570	$5,657	$6,912	21.06%	$16,420	$43,279	$21,420	$48,279
2010	45.0%	$12,590	$5,666	$6,746	21.06%	$16,450	$43,352	$21,460	$48,362
2011	45.0%	$12,780	$5,751	$6,737	21.06%	$16,690	$43,998	$21,770	$49,078
2012	45.0%	$13,090	$5,891	$6,705	21.06%	$17,090	$45,060	$22,300	$50,270
2013	45.0%	$13,430	$6,044	$6,771	21.06%	$17,530	$46,227	$22,870	$51,567
2014	45.0%	$13,650	$6,143	$6,775	21.06%	$17,830	$46,997	$23,260	$52,427
2015	45.0%	$13,870	$6,242	$6,890	21.06%	$18,110	$47,747	$23,630	$53,267
2016	45.0%	$13,930	$6,269	$6,826	21.06%	$18,190	$47,955	$23,740	$53,505
2017	45.0%	$14,040	$6,318	$6,712	21.06%	$18,340	$48,340	$23,930	$53,930
2018	45.0%	$14,290	$6,431	$6,693	21.06%	$18,660	$49,194	$24,350	$54,884
2019	45.0%	$14,570	$6,557	$6,720	21.06%	$19,030	$50,162	$24,820	$55,952
2020	45.0%	$14,800	$6,660	$6,660	21.06%	$19,330	$50,954	$25,220	$56,844

Table A-1.–EITC Parameters, 1975-2020 (Cont'd)

Year	Credit Percentage	Earned Income Amount	Maximum Credit	Maximum Credit (2020 Dollars) [1]	Phaseout Percentage	Phaseout Start: Single, head of household	Phase End: Single, head of household	Phaseout Start: Joint filers	Phase End: Single, Joint filers
Childless adults:									
1994	7.65%	$4,000	$306	$540	7.65%	$5,000	$9,000	$5,000	$9,000
1995	7.65%	$4,100	$314	$539	7.65%	$5,130	$9,230	$5,130	$9,230
1996	7.65%	$4,200	$323	$540	7.65%	$5,300	$9,500	$5,300	$9,500
1997	7.65%	$4,300	$332	$538	7.65%	$5,450	$9,750	$5,450	$9,750
1998	7.65%	$4,450	$341	$544	7.65%	$5,600	$10,050	$5,600	$10,050
1999	7.65%	$4,500	$347	$545	7.65%	$5,700	$10,200	$5,700	$10,200
2000	7.65%	$4,600	$353	$539	7.65%	$5,800	$10,400	$5,800	$10,400
2001	7.65%	$4,750	$364	$536	7.65%	$5,950	$10,750	$5,950	$10,750
2002	7.65%	$4,900	$376	$548	7.65%	$6,100	$11,100	$7,100	$12,100
2003	7.65%	$4,990	$382	$542	7.65%	$6,240	$11,230	$7,240	$12,230
2004	7.65%	$5,100	$390	$543	7.65%	$6,390	$11,490	$7,390	$12,490
2005	7.65%	$5,220	$399	$540	7.65%	$6,530	$11,750	$8,530	$13,750
2006	7.65%	$5,380	$412	$536	7.65%	$6,740	$12,120	$8,740	$14,120
2007	7.65%	$5,590	$428	$545	7.65%	$7,000	$12,590	$9,000	$14,590
2008	7.65%	$5,720	$438	$535	7.65%	$7,160	$12,880	$10,160	$15,880
2009	7.65%	$5,970	$457	$558	7.65%	$7,470	$13,440	$12,470	$18,440
2010	7.65%	$5,980	$457	$544	7.65%	$7,480	$13,460	$12,490	$18,470
2011	7.65%	$6,070	$464	$544	7.65%	$7,590	$13,660	$12,670	$18,740
2012	7.65%	$6,210	$475	$541	7.65%	$7,770	$13,980	$12,980	$19,190
2013	7.65%	$6,370	$487	$546	7.65%	$7,970	$14,340	$13,310	$19,680
2014	7.65%	$6,480	$496	$547	7.65%	$8,110	$14,590	$13,540	$20,020
2015	7.65%	$6,580	$503	$556	7.65%	$8,240	$14,820	$13,760	$20,340
2016	7.65%	$6,610	$506	$551	7.65%	$8,270	$14,880	$13,820	$20,430
2017	7.65%	$6,670	$510	$542	7.65%	$8,340	$15,010	$13,930	$20,600
2018	7.65%	$6,780	$519	$540	7.65%	$8,490	$15,270	$14,180	$20,960
2019	7.65%	$6,920	$529	$543	7.65%	$8,650	$15,570	$14,440	$21,360
2020	7.65%	$7,030	$538	$538	7.65%	$8,790	$15,820	$14,680	$21,710

[1] Values are inflated to 2020 dollars using the ratio of January CPI for 2020 to January CPI for applicable year
[2] Values for 1991-1993 do not take into account the two supplemental credits that were available to certain EITC recipients in those years.

Sources: Gene Falk, Congressional Research Service, *The Earned Income Tax Credit: An Overview* (Report RL31768), October 2014;
Historical Consumer Price Index for All Urban Consumers (CPI-U), May 2020, Bureau of Labor Statistics; Joint Committee on Taxation staff calculations.