

105TH CONGRESS  
1ST SESSION

# H. R. 2778

To amend the Internal Revenue Code of 1986 to increase the child care credit and provide that the credit will be refundable.

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IN THE HOUSE OF REPRESENTATIVES

OCTOBER 30, 1997

Ms. MCKINNEY introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to increase the child care credit and provide that the credit will be refundable.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Dependent  
5 Care Affordability Act of 1997”.

6 **SEC. 2. REFUNDABLE FAMILY CARE CREDIT AND INCREASE**  
7 **OF CERTAIN LIMITATIONS APPLICABLE TO**  
8 **CREDIT.**

9 (a) REFUNDABLE CREDIT AND INCREASE OF  
10 AMOUNT OF EMPLOYMENT-RELATED EXPENSES TAKEN

1 INTO ACCOUNT AND AMOUNT AT WHICH PHASE-DOWN  
2 OF PERCENTAGE BEGINS.—Subpart C of part IV of sub-  
3 chapter A of chapter 1 of the Internal Revenue Code of  
4 1986 (relating to refundable credits) is amended by insert-  
5 ing after section 34 the following new section:

6 **“SEC. 34A. EXPENSES FOR HOUSEHOLD AND DEPENDENT**  
7 **CARE SERVICES NECESSARY FOR GAINFUL**  
8 **EMPLOYMENT.**

9 “(a) ALLOWANCE OF CREDIT.—

10 “(1) IN GENERAL.—In the case of an individual  
11 who maintains a household which includes as a  
12 member one or more qualifying individuals (as de-  
13 fined in subsection (b)(1)), there shall be allowed as  
14 a credit against the tax imposed by this chapter for  
15 the taxable year an amount equal to the applicable  
16 percentage of the employment-related expenses (as  
17 defined in subsection (b)(2)) paid by such individual  
18 during the taxable year.

19 “(2) APPLICABLE PERCENTAGE DEFINED.—For  
20 purposes of paragraph (1), the term ‘applicable per-  
21 centage’ means 30 percent reduced (but not below  
22 20 percent) by 1 percentage point for each \$2,000  
23 (or fraction thereof) by which the taxpayer’s ad-  
24 justed gross income for the taxable year exceeds  
25 \$20,000.

1       “(b) DEFINITIONS OF QUALIFYING INDIVIDUAL AND  
2 EMPLOYMENT-RELATED EXPENSES.—For purposes of  
3 this section—

4           “(1) QUALIFYING INDIVIDUAL.—The term  
5 ‘qualifying individual’ means—

6           “(A) a dependent of the taxpayer who is  
7 under the age of 13 and with respect to whom  
8 the taxpayer is entitled to a deduction under  
9 section 151(c),

10           “(B) a dependent of the taxpayer who is  
11 physically or mentally incapable of caring for  
12 himself, or

13           “(C) the spouse of the taxpayer, if he is  
14 physically or mentally incapable of caring for  
15 himself.

16           “(2) EMPLOYMENT-RELATED EXPENSES.—

17           “(A) IN GENERAL.—The term ‘employ-  
18 ment-related expenses’ means amounts paid for  
19 the following expenses, but only if such ex-  
20 penses are incurred to enable the taxpayer to be  
21 gainfully employed for any period for which  
22 there are 1 or more qualifying individuals with  
23 respect to the taxpayer:

24           “(i) expenses for household services,  
25 and

1                   “(ii) expenses for the care of a quali-  
2                   fying individual.

3                   Such term shall not include any amount paid  
4                   for services outside the taxpayer’s household at  
5                   a camp where the qualifying individual stays  
6                   overnight.

7                   “(B)     EXCEPTION.—Employment-related  
8                   expenses described in subparagraph (A) which  
9                   are incurred for services outside the taxpayer’s  
10                  household shall be taken into account only if in-  
11                  curred for the care of—

12                  “(i) a qualifying individual described  
13                  in paragraph (1)(A), or

14                  “(ii) a qualifying individual (not de-  
15                  scribed in paragraph (1)(A)) who regularly  
16                  spends at least 8 hours each day in the  
17                  taxpayer’s household.

18                  “(C)     DEPENDENT CARE CENTERS.—Em-  
19                  ployment-related expenses described in subpara-  
20                  graph (A) which are incurred for services pro-  
21                  vided outside the taxpayer’s household by a de-  
22                  pendent care center (as defined in subpara-  
23                  graph (D)) shall be taken into account only if—

1           “(i) such center complies with all ap-  
2           plicable laws and regulations of a State or  
3           unit of local government, and

4           “(ii) the requirements of subpara-  
5           graph (B) are met.

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

10           “(i) provides care for more than six  
11           individuals (other than individuals who re-  
12           side at the facility), and

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

17           “(c) DOLLAR LIMIT ON AMOUNT CREDITABLE.—The  
18           amount of the employment-related expenses incurred dur-  
19           ing any taxable year which may be taken into account  
20           under subsection (a) shall not exceed—

21           “(1) \$3,600 if there is 1 qualifying individual  
22           with respect to the taxpayer for such taxable year,  
23           or

1           “(2) \$5,400 if there are 2 or more qualifying  
2 individuals with respect to the taxpayer for such tax-  
3 able year.

4 The amount determined under paragraph (1) or (2)  
5 (whichever is applicable) shall be reduced by the aggregate  
6 amount excludable from gross income under section 129  
7 for the taxable year.

8           “(d) EARNED INCOME LIMITATION.—

9           “(1) IN GENERAL.—Except as otherwise pro-  
10 vided in this subsection, the amount of the employ-  
11 ment-related expenses incurred during any taxable  
12 year which may be taken into account under sub-  
13 section (a) shall not exceed—

14           “(A) in the case of an individual who is  
15 not married at the close of such year, such indi-  
16 vidual’s earned income for such year, or

17           “(B) in the case of an individual who is  
18 married at the close of such year, the lesser of  
19 such individual’s earned income or the earned  
20 income of his spouse for such year.

21           “(2) SPECIAL RULE FOR SPOUSE WHO IS A  
22 STUDENT OR INCAPABLE OF CARING FOR HIM-  
23 SELF.—In the case of a spouse who is a student or  
24 a qualifying individual described in subsection  
25 (b)(1)(C), for purposes of paragraph (1), such

1 spouse shall be deemed for each month during which  
2 such spouse is a full-time student at an educational  
3 institution, or is such a qualifying individual, to be  
4 gainfully employed and to have earned income of not  
5 less than—

6 “(A) \$200 if subsection (c)(1) applies for  
7 the taxable year, or

8 “(B) \$400 if subsection (c)(2) applies for  
9 the taxable year.

10 In the case of any husband and wife, this paragraph  
11 shall apply with respect to only one spouse for any  
12 one month.

13 “(e) SPECIAL RULES.—For purposes of this sec-  
14 tion—

15 “(1) MAINTAINING HOUSEHOLD.—An individ-  
16 ual shall be treated as maintaining a household for  
17 any period only if over half the cost of maintaining  
18 the household for such period is furnished by such  
19 individual (or, if such individual is married during  
20 such period, is furnished by such individual and his  
21 spouse).

22 “(2) MARRIED COUPLES MUST FILE JOINT RE-  
23 TURN.—If the taxpayer is married at the close of  
24 the taxable year, the credit shall be allowed under

1 subsection (a) only if the taxpayer and his spouse  
2 file a joint return for the taxable year.

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

7 “(4) CERTAIN MARRIED INDIVIDUALS LIVING  
8 APART.—If—

9 “(A) an individual who is married and who  
10 files a separate return—

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

15 “(ii) furnishes over half of the cost of  
16 maintaining such household during the  
17 taxable year, and

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

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



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

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

7           in the case of any taxable year beginning in such  
8           calendar year, such child shall be treated as a quali-  
9           fying individual described in subparagraph (A) or  
10          (B) of subsection (b)(1) (whichever is appropriate)  
11          with respect to the custodial parent (within the  
12          meaning of section 152(e)(1)), and shall not be  
13          treated as a qualifying individual with respect to the  
14          noncustodial parent.

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

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

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

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

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

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

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

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

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

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

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

6 “(f) INAPPLICABILITY IF ADJUSTED GROSS INCOME  
7 OVER \$50,000 (\$80,000 FOR JOINT RETURNS).—No  
8 credit shall be allowed under subsection (a) if the tax-  
9 payer’s adjusted gross income for the taxable year exceeds  
10 \$50,000 (\$80,000 in the case of a joint return).

11 “(g) REGULATIONS.—The Secretary shall prescribe  
12 such regulations as may be necessary to carry out the pur-  
13 poses of this section.”

14 (b) CONFORMING AMENDMENTS.—

15 (1) REPEAL OF SECTION 21.—Subpart A of  
16 part IV of subchapter A chapter 1 of such Code (re-  
17 lating to nonrefundable personal credits) is amended  
18 by striking section 21.

19 (2) ADDITIONAL CONFORMING AMENDMENTS.—  
20 Each of the following provisions of such Code is  
21 amended by striking “section 21” and inserting  
22 “section 34A”:

23 (A) Section 129(a)(2)(C).

24 (B) Section 129(b)(2).

25 (C) Section 129(e)(1).

1 (D) Section 213(e).

2 (c) CLERICAL AMENDMENTS.—

3 (1) The table of sections for subpart C of part  
4 IV of subchapter A of chapter 1 of such Code is  
5 amended by inserting after the item relating to sec-  
6 tion 34 the following new item:

“Sec. 34A. Expenses for household and dependent care services  
necessary for gainful employment.”

7 (2) The table of sections for subpart A of part  
8 IV of subchapter A chapter 1 of such Code is  
9 amended by striking the item relating to section 21.

10 (d) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to taxable years beginning after  
12 December 31, 1996.

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