

107TH CONGRESS  
1ST SESSION

# S. 384

To amend the Internal Revenue Code of 1986 to make the dependent care credit refundable.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2001

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on Finance

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# A BILL

To amend the Internal Revenue Code of 1986 to make the dependent care credit 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. DEPENDENT CARE TAX CREDIT.**

4       (a) DEPENDENT CARE SERVICES.—Subpart C of  
5 part IV of subchapter A of chapter 1 of the Internal Rev-  
6 enue Code of 1986 (relating to refundable credits) is  
7 amended by redesignating section 35 as section 36 and  
8 by inserting after section 34 the following new section:

9 **“SEC. 35. DEPENDENT CARE SERVICES.**

10     “(a) ALLOWANCE OF CREDIT.—

1           “(1) IN GENERAL.—In the case of an individual  
2        who maintains a household which includes as a  
3        member 1 or more qualifying individuals, there shall  
4        be allowed as a credit against the tax imposed by  
5        this subtitle for the taxable year an amount equal to  
6        the applicable percentage of the sum of—

7           “(A) the employment-related expenses paid  
8        by such individual during the taxable year, plus  
9           “(B) the respite care expenses paid by  
10       such individual during the taxable year.

11       “(2) APPLICABLE PERCENTAGE DEFINED.—

12           “(A) IN GENERAL.—For purposes of para-  
13        graph (1), the term ‘applicable percentage’  
14        means 50 percent reduced (but not below 20  
15        percent) by 1 percentage point for each full  
16        \$1,000 amount by which the taxpayer’s ad-  
17        justed gross income for the taxable year exceeds  
18        \$15,000.

19           “(B) COST-OF-LIVING ADJUSTMENT.—

20           “(i) IN GENERAL.—In the case of a  
21        taxable year beginning in a calendar year  
22        after 2001, subparagraph (A) shall be ap-  
23        plied by increasing the \$15,000 amount  
24        contained therein by the cost-of-living ad-  
25        justment (as defined in section 1(f)(3)) for

such calendar year determined by substituting 2000 for 1992 in subparagraph (B) of section 1(f)(3).

11        "(b) EMPLOYMENT-RELATED EXPENSES.—For pur-  
12    poses of this section—

13               “(1)    DETERMINATION    OF    ELIGIBLE    EX-  
14               PENSES.—

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

1           Such term shall not include any amount paid  
2           for services outside the taxpayer's household at  
3           a camp where the qualifying individual stays  
4           overnight and shall not include any respite care  
5           expense taken into account under subsection  
6           (a).

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 subsection (d)(1), or  
14           “(ii) a qualifying individual (not de-  
15           scribed in subsection (d)(1)) 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 subparagraph  
5                     (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 6 in-  
11                    dividuals (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                    “(2) DOLLAR LIMIT ON AMOUNT CRED-  
18                    ITABLE.—

19                    “(A) IN GENERAL.—The amount of the  
20                    employment-related expenses incurred during  
21                    any taxable year which may be taken into ac-  
22                    count under subsection (a) shall not exceed—

23                    “(i) \$2,400 if there is 1 qualifying in-  
24                    dividual with respect to the taxpayer for  
25                    such taxable year, or

1                             “(ii) \$4,800 if there are 2 or more  
2                             qualifying individuals with respect to the  
3                             taxpayer for such taxable year.

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

8                             “(B) REDUCTION IN LIMIT FOR AMOUNT  
9                             OF RESPITE CARE EXPENSES.—The limitation  
10                             of subparagraph (A) shall be reduced by the  
11                             amount of the respite care expenses taken into  
12                             account by the taxpayer under subsection (a)  
13                             for the taxable year.

14                             “(3) EARNED INCOME LIMITATION.—

15                             “(A) IN GENERAL.—Except as otherwise  
16                             provided in this paragraph, the amount of the  
17                             employment-related expenses incurred during  
18                             any taxable year which may be taken into ac-  
19                             count under subsection (a) shall not exceed—

20                             “(i) in the case of an individual who  
21                             is not married at the close of such year,  
22                             such individual’s earned income for such  
23                             year, or

24                             “(ii) in the case of an individual who  
25                             is married at the close of such year, the

1           lesser of such individual's earned income or  
2           the earned income of his spouse for such  
3           year.

4           “(B) SPECIAL RULE FOR SPOUSE WHO IS  
5           A STUDENT OR INCAPABLE OF CARING FOR  
6           HIMSELF.—In the case of a spouse who is a  
7           student or a qualified individual described in  
8           subsection (d)(3), for purposes of subparagraph  
9           (A), such spouse shall be deemed for each  
10           month during which such spouse is a full-time  
11           student at an educational institution, or is such  
12           a qualifying individual, to be gainfully employed  
13           and to have earned income of not less than—

14           “(i) \$200 if paragraph (2)(A)(i) ap-  
15           plies for the taxable year, or

16           “(ii) \$400 if paragraph (2)(A)(ii) ap-  
17           plies for the taxable year.

18           In the case of any husband and wife, this sub-  
19           paragraph shall apply with respect to only one  
20           spouse for any one month.

21           “(c) RESPITE CARE EXPENSES.—For purposes of  
22           this section—

23           “(1) IN GENERAL.—The term ‘respite care ex-  
24           penses’ means expenses paid (whether or not to en-  
25           able the taxpayer to be gainfully employed) for—

1                   “(A) the care of a qualifying individual—

2                   “(i) who has attained the age of 13,

3                   or

4                   “(ii) who is under the age of 13 but  
5                   has a physical or mental impairment which  
6                   results in the individual being incapable of  
7                   caring for himself,

8                   during any period when such individual regu-  
9                   larly spends at least 8 hours each day in the  
10                  taxpayer's household, or

11                  “(B) the care (for not more than 14 days  
12                  during the calendar year) of a qualifying indi-  
13                  vidual described in subparagraph (A) during  
14                  any period during which the individual does not  
15                  regularly spend at least 8 hours each day in the  
16                  taxpayer's household.

17                  “(2) **DOLLAR LIMIT.**—The amount of the res-  
18                  pite care expenses incurred during any taxable year  
19                  which may be taken into account under subsection  
20                  (a) shall not exceed—

21                  “(A) \$1,200 if such expenses are incurred  
22                  with respect to only 1 qualifying individual for  
23                  the taxable year, or

1                   “(B) \$2,400 if such expenses are incurred  
2                   for 2 or more qualifying individuals for such  
3                   taxable year.

4                   “(d) QUALIFYING INDIVIDUAL.—For purposes of this  
5 section, the term ‘qualifying individual’ means—

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

9                   “(2) a dependent of the taxpayer who is phys-  
10                   ically or mentally incapable of caring for himself, or

11                   “(3) the spouse of the taxpayer, if he is phys-  
12                   ically or mentally incapable of caring for himself.

13                   “(e) SPECIAL RULES.—For purposes of this  
14 section—

15                   “(1) MAINTAINING HOUSEHOLD.—An indi-  
16                   vidual shall be treated as maintaining a household  
17                   for any period only if over half the cost of maintain-  
18                   ing the household for such period is furnished by  
19                   such individual (or, if such individual is married  
20                   during such period, is furnished by such individual  
21                   and his 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 household  
12 that 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 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 qual-  
9       ifying individual with respect to the custodial parent  
10      (within the meaning of section 152(e)(1)), and shall  
11      not be treated as a qualifying individual with respect  
12      to the noncustodial parent.

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

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

21               “(B) who is a child of the taxpayer (within  
22       the meaning of section 151(c)(3)) who has not  
23       attained the age of 19 at the close of the tax-  
24       able year.

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

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

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

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

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

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

23 In the case of a failure to provide the information  
24 required under the preceding sentence, the preceding  
25 sentence shall not apply if it is shown that the tax-

1       payer exercised due diligence in attempting to pro-  
2       vide the information so required.

3       “(f) REGULATIONS.—The Secretary shall prescribe  
4       such regulations as may be necessary to carry out the pur-  
5       poses of this section.”.

6       (b) CONFORMING AMENDMENTS.—

7           (1) Section 21 of such Code is repealed.  
8           (2) Section 23(f)(1) of such Code and section  
9       129(a)(2)(C) of such Code are each amended by  
10       striking “section 21(e)” and inserting “section  
11       35(e)”.

12       (3) Section 129(b)(2) of such Code is amended  
13       by striking “section 21(d)(2)” and inserting “section  
14       35(b)(3)(B)”.

15       (4) Section 129(e)(1) of such Code is amended  
16       by striking “under section 21(b)(2) (relating to ex-  
17       penses for household and dependent care services  
18       necessary for gainful employment)” and inserting  
19       “or respite care services under section 35 (relating  
20       to dependent care services)”.

21       (5) Section 213(e) of such Code is amended by  
22       striking “section 21” and inserting “section 35”.

23       (6) Section 6213(g)(2)(H) of such Code is  
24       amended by striking “section 21 (related to expenses  
25       for household and dependent care services necessary

1 for gainful employment)" and inserting "section 35  
2 (relating to dependent care services)".

3 (c) TECHNICAL AMENDMENTS.—(1) The table of sec-  
4 tions for subpart C of part IV of subchapter A of chapter  
5 1 of such Code is amended by striking the item relating  
6 to section 35 and inserting the following:

"Sec. 35. Dependent care services.  
"Sec. 36. Overpayments of tax.".

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

9 (d) EFFECTIVE DATE.—The amendments made by  
10 this section shall apply to taxable years beginning after  
11 December 31, 2000.

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