

108TH CONGRESS  
2D SESSION

# S. 2030

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

JANUARY 26, 2004

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 36 as section 37 and  
8 by inserting after section 35 the following new section:

9 **“SEC. 36. 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 2004, 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

1           such calendar year determined by sub-  
2           stituting 2003 for 1992 in subparagraph  
3           (B) of section 1(f)(3).

4           “(ii) ROUNDING.—If any increase de-  
5           termined under clause (i) is not a multiple  
6           of \$10, such increase shall be rounded to  
7           the nearest multiple of \$10 (or if such in-  
8           crease is a multiple of \$5, such increase  
9           shall be increased to the next highest mul-  
10          tiple of \$10).

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 ‘employ-  
16          ment-related expenses’ means amounts paid for  
17          the following expenses, but only if such ex-  
18          penses are incurred to enable the taxpayer to be  
19          gainfully employed for any period for which  
20          there are 1 or more qualifying individuals with  
21          respect to the taxpayer:

22           “(i) expenses for household services,  
23          and

24           “(ii) expenses for the care of a quali-  
25          fying individual.

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 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 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) \$3,000 if there is 1 qualifying in-  
 24 dividual with respect to the taxpayer for  
 25 such taxable year, or

1           “(ii) \$6,000 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) \$250 if paragraph (2)(A)(i) ap-  
 15                    plies for the taxable year, or

16                    “(ii) \$500 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 sec-  
14 tion—

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 house-  
12 hold 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 quali-  
9           fying 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(e)(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 “(10) IDENTIFYING INFORMATION REQUIRED  
4 WITH RESPECT TO QUALIFYING INDIVIDUALS.—No  
5 credit shall be allowed under this section with re-  
6 spect to any qualifying individual unless the TIN of  
7 such individual is included on the return claiming  
8 the credit.

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

12 (b) CONFORMING AMENDMENTS.—

13 (1) Section 21 of such Code is repealed.

14 (2) Section 23(f)(1) of such Code, section  
15 35(g)(6) of such Code, and section 129(a)(2)(C) of  
16 such Code are each amended by striking “section  
17 21(e)” and inserting “section 36(e)”.

18 (3) Section 129(b)(2) of such Code is amended  
19 by striking “section 21(d)(2)” and inserting “section  
20 36(b)(3)(B)”.

21 (4) Section 129(e)(1) of such Code is amended  
22 by striking “under section 21(b)(2) (relating to ex-  
23 penses for household and dependent care services  
24 necessary for gainful employment)” and inserting

1 “or respite care services under section 36 (relating  
2 to dependent care services)”.

3 (5) Section 213(e) of such Code is amended by  
4 striking “section 21” and inserting “section 36”.

5 (6) Section 6213(g)(2)(H) of such Code is  
6 amended by striking “section 21 (related to expenses  
7 for household and dependent care services necessary  
8 for gainful employment)” and inserting “section 36  
9 (relating to dependent care services)”.

10 (7) Section 6213(g)(2)(L) of such Code is  
11 amended by striking “section 21” and inserting  
12 “section 36”.

13 (c) TECHNICAL AMENDMENTS.—(1) The table of sec-  
14 tions for subpart C of part IV of subchapter A of chapter  
15 1 of such Code is amended by striking the item relating  
16 to section 36 and inserting the following:

“Sec. 36. Dependent care services.  
“Sec. 37. Overpayments of tax.”.

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

19 (d) EFFECTIVE DATE.—The amendments made by  
20 this section shall apply to taxable years beginning after  
21 December 31, 2003.

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