

113TH CONGRESS
1ST SESSION

S. 881

To amend the Internal Revenue Code of 1986 to provide an income tax credit for the costs of certain infertility treatments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2013

Mrs. GILLIBRAND (for herself and Mr. SCHATZ) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide an income tax credit for the costs of certain infertility treatments, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Act of 2013”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) The American Society of Reproductive Med-
8 icine recognizes infertility as a disease, and the Cen-
9 ters for Disease Control and Prevention have de-
10 scribed infertility as an emerging public health pri-

1 ority in the United States. Globally, the World
2 Health Organization also formally recognizes infer-
3 tility as a disease.

4 (2) According to the Centers for Disease Con-
5 trol and Prevention, approximately 3,000,000 Amer-
6 icans suffer from infertility.

7 (3) A portion of those 3,000,000 people are
8 cancer survivors who were diagnosed as infants, chil-
9 dren, or young adults. Their treatments included
10 chemotherapy, radiation, and surgery which have led
11 to irreparable damage to their reproductive systems.

12 (4) Military families notably are also impacted
13 by infertility as a result of lower extremity war inju-
14 ries arising from the perils of modern warfare. For
15 active duty individuals, frequent changes in perma-
16 nent duty station, combat deployments, and training
17 rotations complicate access to fertility treatments. In
18 addition, active duty individuals or veterans have no
19 coverage for in vitro fertilization (IVF) through their
20 military health insurance and must pay out of pock-
21 et for those expenses, even within military treatment
22 facilities.

23 (5) For many, the cost of treatment for the dis-
24 ease of infertility is prohibitive. According to the
25 American Society for Reproductive Medicine, the

1 cost per cycle of IVF is approximately \$12,500, and
2 on average couples require at least 2 cycles. Many
3 couples have to choose between their desire to estab-
4 lish a family and their future financial well-being.

5 (6) Medical insurance coverage for infertility
6 treatments is sparse and inconsistent at the State
7 level. Only 8 States have passed laws to require com-
8 prehensive infertility coverage, and under those
9 State laws employer-sponsored plans are exempt;
10 therefore, coverage for treatments such as IVF is
11 limited. According to Mercer's 2005 National Survey
12 of Employer-Sponsored Health Plans, IVF was vol-
13 untarily covered by 19 percent of large employer-
14 sponsored health plans and only 11 percent of small
15 employer-sponsored health plans. Even in States
16 with coverage mandates, out-of-pocket expenses for
17 these treatments are significant.

18 (7) According to the latest National Survey of
19 Family Growth, African-American and Hispanic
20 women are more likely to be infertile than Caucasian
21 women, yet studies indicate that they are less likely
22 to use infertility services.

23 **SEC. 3. CREDIT FOR CERTAIN INFERTILITY TREATMENTS.**

24 (a) IN GENERAL.—Subpart A of part IV of sub-
25 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 is amended by inserting before section 24 the fol-
 2 lowing new section:

3 **“SEC. 23A. CREDIT FOR CERTAIN INFERTILITY TREAT-**
 4 **MENTS.**

5 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
 6 gible individual, there shall be allowed as a credit against
 7 the tax imposed by this chapter for the taxable year an
 8 amount equal to 50 percent of the qualified infertility
 9 treatment expenses paid or incurred during the taxable
 10 year.

11 “(b) LIMITATIONS.—

12 “(1) DOLLAR LIMITATION.—The amount of the
 13 credit under subsection (a) for any taxable year shall
 14 not exceed the excess (if any) of—

15 “(A) the dollar amount in effect under sec-
 16 tion 23(b)(1) for the taxable year, over

17 “(B) the aggregate amount of the credits
 18 allowed under subsection (a) for all preceding
 19 taxable years.

20 “(2) INCOME LIMITATION.—

21 “(A) IN GENERAL.—The amount otherwise
 22 allowable as a credit under subsection (a) for
 23 any taxable year (determined after the applica-
 24 tion of paragraph (1) and without regard to
 25 this paragraph and subsection (c)) shall be re-

1 duced (but not below zero) by an amount which
2 bears the same ratio to the amount so allowable
3 as—

4 “(i) the amount (if any) by which the
5 taxpayer’s adjusted gross income exceeds
6 the dollar amount in effect under clause (i)
7 of section 23(b)(2)(A); bears to

8 “(ii) \$40,000.

9 “(B) DETERMINATION OF ADJUSTED
10 GROSS INCOME.—For purposes of subparagraph
11 (A), adjusted gross income shall be determined
12 without regard to sections 911, 931, and 933.

13 “(3) DENIAL OF DOUBLE BENEFIT.—

14 “(A) IN GENERAL.—No credit shall be al-
15 lowed under subsection (a) for any expense for
16 which a deduction or credit is taken under any
17 other provision of this chapter.

18 “(B) GRANTS.—No credit shall be allowed
19 under subsection (a) for any expense to the ex-
20 tent that reimbursement or other funds in com-
21 pensation for such expense are received under
22 any Federal, State, or local program.

23 “(C) INSURANCE REIMBURSEMENT.—No
24 credit shall be allowed under subsection (a) for
25 any expense to the extent that payment for

1 such expense is made, or reimbursement for
2 such expense is received, under any insurance
3 policy.

4 “(4) LIMITATION BASED ON AMOUNT OF
5 TAX.—In the case of a taxable year to which section
6 26(a)(2) does not apply, the credit allowed under
7 subsection (a) for any taxable year shall not exceed
8 the excess of—

9 “(A) the sum of the regular tax liability
10 (as defined in section 26(b)) plus the tax im-
11 posed by section 55; over

12 “(B) the sum of the credits allowable
13 under this subpart (other than this section) and
14 section 27 for the taxable year.

15 “(c) CARRYFORWARDS OF UNUSED CREDIT.—

16 “(1) RULE FOR YEARS IN WHICH ALL PER-
17 SONAL CREDITS ALLOWED AGAINST REGULAR AND
18 ALTERNATIVE MINIMUM TAX.—In the case of a tax-
19 able year to which section 26(a)(2) applies, if the
20 credit allowable under subsection (a) exceeds the
21 limitation imposed by section 26(a)(2) for such tax-
22 able year reduced by the sum of the credits allowable
23 under this subpart (other than this section), such
24 excess shall be carried to the succeeding taxable year

1 and added to the credit allowable under subsection
2 (a) for such succeeding taxable year.

3 “(2) RULE FOR OTHER YEARS.—In the case of
4 a taxable year to which section 26(a)(2) does not
5 apply, if the credit allowable under subsection (a)
6 exceeds the limitation imposed by subsection (b)(4)
7 for such taxable year, such excess shall be carried to
8 the succeeding taxable year and added to the credit
9 allowable under subsection (a) for such succeeding
10 taxable year.

11 “(3) LIMITATION.—No credit may be carried
12 forward under this subsection to any taxable year
13 after the 5th taxable year after the taxable year in
14 which the credit arose. For purposes of the pre-
15 ceding sentence, credits shall be treated as used on
16 a first-in first-out basis.

17 “(d) QUALIFIED INFERTILITY TREATMENT EX-
18 PENSES.—For purposes of this section—

19 “(1) IN GENERAL.—The term ‘qualified infer-
20 tility treatment expenses’ means amounts paid or in-
21 curred for the treatment of infertility via in vitro
22 fertilization if such treatment is—

23 “(A) provided by a licensed physician, li-
24 censed surgeon, or other licensed medical prac-
25 titioner, and

1 “(B) administered with respect to a diag-
2 nosis of infertility by a physician licensed in the
3 United States.

4 “(2) TREATMENTS IN ADVANCE OF INFER-
5 TILITY ARISING FROM MEDICAL TREATMENTS.—In
6 the case of expenses incurred in advance of a diag-
7 nosis of infertility for fertility preservation proce-
8 dures which are conducted prior to medical proce-
9 dures that, as determined by a physician licensed in
10 the United States, may cause involuntary infertility
11 or sterilization, such expenses shall be treated as
12 qualified infertility treatment expenses—

13 “(A) notwithstanding paragraph (1)(B),
14 and

15 “(B) without regard to whether a diagnosis
16 of infertility subsequently results.

17 Expenses for fertility preservation procedures in ad-
18 vance of a procedure designed to result in infertility
19 or sterilization shall not be treated as qualified infer-
20 tility treatment expenses.

21 “(3) INFERTILITY.—The term ‘infertility’
22 means the inability to conceive or to carry a preg-
23 nancy to live birth, including iatrogenic infertility re-
24 sulting from medical treatments such as chemo-
25 therapy, radiation or surgery. Such term does not

1 include infertility or sterilization resulting from a
2 procedure designed for such purpose.

3 “(e) ELIGIBLE INDIVIDUAL.—For purposes of this
4 section, the term ‘eligible individual’ means an indi-
5 vidual—

6 “(1) who has been diagnosed with infertility by
7 a physician licensed in the United States, or

8 “(2) with respect to whom a physician licensed
9 in the United States has made the determination de-
10 scribed in subsection (d)(2).

11 “(f) FILING REQUIREMENTS.—Married taxpayers
12 must file joint returns. Rules similar to the rules of para-
13 graphs (2), (3), and (4) of section 21(e) shall apply for
14 purposes of this section.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) The table of sections for subpart A of part
17 IV of subchapter A of chapter 1 of the Internal Rev-
18 enue Code of 1986 is amended by inserting before
19 the item relating to section 24 the following new
20 item:

“Sec. 23A. Credit for certain infertility treatments.”.

21 (2) Section 23(c)(1) of such Code is amended
22 by striking “25D” and inserting “23A, 25D,”.

23 (3) Section 25(e)(1)(C) of such Code is amend-
24 ed by inserting “23A,” before “25D,”.

1 (4) Section 1400C(d) of such Code is amended
2 by striking “section 25D” and inserting “sections
3 23A and 25D”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to taxable years beginning after
6 December 31, 2013.

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