

Miscellaneous Recommendations

#52 EXCLUDE TAXPAYERS IN SPECIFIED CIRCUMSTANCES FROM THE REQUIREMENT TO PROVIDE A SOCIAL SECURITY NUMBER FOR THEIR CHILDREN TO CLAIM THE CHILD TAX CREDIT

Present Law

The Tax Cuts and Jobs Act (TCJA) amended Internal Revenue Code (IRC) § 24 to require taxpayers claiming the Child Tax Credit (CTC) to provide a Social Security number (SSN) for all qualifying children.²¹⁰

IRC § 1402(g) exempts members of certain religious faiths from the requirement to pay self-employment tax. An individual may apply for an exemption from the self-employment tax requirements:

... if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act).

To claim the exemption, the individual must file an application on IRS Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.²¹¹

Reasons for Change

The requirement under IRC § 24 that children claimed for purposes of the CTC have SSNs was intended to prevent taxpayers whose children do not have SSNs from improperly or fraudulently claiming the CTC. However, the provision is having the unintended effect of disqualifying several taxpayer populations whose dependents do not have SSNs due to unique circumstances but who otherwise meet the requirements for the credit, including:

- Taxpayers who do not apply for SSNs due to their deeply held religious beliefs, most notably the Amish;
- Taxpayers whose adopted children have not yet received SSNs; and
- Taxpayers who were unable to obtain SSNs because their child was born and died in the same or consecutive tax years.

Prior to the TJCA amendment, IRC § 24 only required the taxpayer to provide a taxpayer identification number for a qualifying child to claim the CTC, and the IRS provided administrative relief to allow the credit for individuals who did not have a taxpayer identification number for their dependent(s) due to their deeply held religious beliefs. Specifically, taxpayers whose dependents did not have SSNs due to the parents' deeply held religious beliefs were allowed the credit if they indicated on the return that they had an approved Form 4029 establishing that they met the requirements under IRC § 1402(g).

²¹⁰ TCJA, Pub. L. No. 115-97, 131 Stat. 2054 (Dec. 22, 2017) (codified at IRC § 24(h)(7)).

²¹¹ IRC § 1402(g).

In certain circumstances, the IRS would request additional information from the taxpayer to prove the age, relationship, and residence of the dependent. Further, the language in the CTC prior to the TCJA permitted the IRS to allow the credit for taxpayers whose adopted child only had an Adoption Taxpayer Identification Number (ATIN), which is a tax identification number issued for use while waiting to receive an SSN. Now, the IRS is no longer providing administrative relief to allow the CTC if the qualifying child lacks an SSN, unless the taxpayer's child was born and died in the same or consecutive tax years.²¹²

Recommendation

- Amend IRC § 24(h)(7) to allow a taxpayer to claim the CTC with respect to a child who does not have an SSN if the child meets all other eligibility requirements for the credit, and if the taxpayer:
 - Is a member of a recognized religious group and meets the requirements under IRC § 1402(g);
 - Adopted a child and provides an ATIN for the qualifying child; or
 - Had a child that was born and died in the same or consecutive years.

²¹² The IRS Office of Chief Counsel has opined that the IRS is legally prohibited from allowing the CTC if a qualifying child lacks an SSN because of religious or conscientious based objections. See Program Manager Technical Advice (PMTA), Administration of the Child Tax Credit for Objectors to Social Security Numbers, POSTS-117474-18, PMTA 2019-2 (Mar. 29, 2019). For an in-depth discussion regarding TAS's disagreement with this advice, see *The Tax Filing Season: Hearing Before the H. Subcomm. on Government Oversight of the H. Comm. on Ways and Means*, 116th Cong. 22-27 (2019) (testimony of Nina E. Olson, National Taxpayer Advocate); National Taxpayer Advocate 2020 Objectives Report to Congress 48 (Area of Focus: *TAS Will Urge the IRS to Reconsider Its Position on the Application of the Religious Freedom Restoration Act to the Social Security Requirement Under IRC § 24(h)(7), Which Has the Effect of Denying Child Tax Credit Benefits to the Amish and Certain Other Religious Groups*); and National Taxpayer Advocate, NTA Blog, *The IRS's Position on the Application of the Religious Freedom Restoration Act to the Social Security Requirement Under Internal Revenue Code § 24(h)(7) Has the Effect of Denying Child Tax Credit Benefits to the Amish and Certain Other Religious Groups* (June 26, 2019), [https://taxpayeradvocate.irs.gov/IRS_Position_on_the_Application_of_the_Religious_Freedom_Restoration_Act_to_the_Social_Security_Requirement_Has_the_Effect_of_Denying_Child_Tax_Credit_Benefits_to_Amish_and_Other_Religious_Groups?category=Tax News](https://taxpayeradvocate.irs.gov/IRS_Position_on_the_Application_of_the_Religious_Freedom_Restoration_Act_to_the_Social_Security_Requirement_Has_the_Effect_of_Denying_Child_Tax_Credit_Benefits_to_Amish_and_Other_Religious_Groups?category=Tax%20News). See also Internal Revenue Manual 3.12.3.26.17.6, TIN Requirements (EC 287) (Apr. 15, 2019).