

**Legislative Recommendation #59****Clarify Whether Dependents Are Required to Have Taxpayer Identification Numbers for Purposes of the Credit for Other Dependents****PRESENT LAW**

IRC § 24 authorizes a Child Tax Credit (CTC) of up to \$2,000 per “qualifying child,” of which up to \$1,400 is refundable.<sup>1</sup> The Tax Cuts and Jobs Act (TCJA) added a new provision to IRC § 24 that allows a nonrefundable credit of \$500 for each “dependent” who is not a “qualifying child.”<sup>2</sup> This nonrefundable credit is referred to as the credit for other dependents (ODC).<sup>3</sup>

IRC § 24(e) provides that a “qualifying child” must have a Taxpayer Identification Number (TIN) to be claimed under this section. IRC § 24(h)(7) further provides that the qualifying child’s TIN must be a Social Security number (SSN) valid for employment in the United States.

Under IRC § 24(h)(4), the ODC is available for a “dependent of the taxpayer (as defined in section 152).” There is no requirement in IRC § 152 that to be a “dependent,” an individual must have a TIN (either an SSN or an Individual Taxpayer Identification Number (ITIN)). IRC § 24 specifically provides that where a qualifying child’s lack of an SSN prevents a taxpayer from claiming the CTC for that child, the taxpayer may receive the ODC for that child.<sup>4</sup>

**REASONS FOR CHANGE**

Despite the absence of a TIN requirement in the statute, the IRS has instructed taxpayers that to claim a dependent for the ODC, the dependent must have a TIN.<sup>5</sup> The IRS has used its summary assessment authority to disallow the ODC claimed by over 118,000 taxpayers on their 2019 returns because their dependents did not have TINs.<sup>6</sup>

In response to TAS’s inquiry, the IRS Office of Chief Counsel explained its legal rationale as follows: “[I]n order to avoid treating dependents for whom a taxpayer may claim a credit under section 24(h)(4)(A) [*i.e.*, the ODC] inconsistently, section 24(e)(1) [which imposes a TIN requirement for claiming a “qualifying child” for a credit under section 24] should be interpreted as applying to all dependents for whom a taxpayer claims

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- 1 The American Rescue Plan Act, Pub. L. No. 117-2, § 9611, 135 Stat. 4, 359-376 (2021) makes this credit fully refundable and, for tax year 2021, increases it to \$3,000 for children under 18 and to \$3,600 for children under six.
  - 2 Tax Cuts and Jobs Act (TCJA), Pub. L. 115-97, § 11022, 131 Stat. 2054, 2073 (2017), adding IRC § 24(h)(4), applicable to taxable years beginning after Dec. 31, 2017, and before Jan. 1, 2026.
  - 3 IRC § 24(h)(4).
  - 4 IRC § 24(h)(4)(C).
  - 5 See, e.g., IRS Pub. 972, Child Tax Credit and Credit for Other Dependents 2 (Jan. 11, 2021). See also IRS Form 1040 and 1040-SR Instructions 20 (Apr. 13, 2021).
  - 6 We presume that the IRS exercised its summary assessment authority in reliance on IRC § 6213(g)(2)(I), which includes in the definition of “mathematical or clerical error” “an omission of a correct TIN required under section 24(e) (relating to child tax credit) to be included on a return.” Over 118,000 taxpayers were issued summary assessment notices, removing 102,146 dependents with respect to whom the ODC had been claimed because the dependents had invalid or missing TINs. (The 118,000 taxpayers include both primary and secondary taxpayers on married filing joint returns, and correspond to 70,248 tax returns.) IRS, Compliance Data Warehouse, Individual Master File Individual Returns Transaction File (IRTF) Form 1040 and Entity tables, TY 2019, returns posted by cycle 202134. If \$500 of ODC was claimed with respect to each dependent, then the total amount of disallowed ODC would be over \$51 million (*i.e.*, 102,146 times \$500).

a credit under section 24(h)(4)(A), not only a qualifying child described in section 24(h)(4)(C) [*i.e.*, who is a “qualifying child” but lacks the SSN required by section 24(h)(7)].”<sup>7</sup>

It is a basic canon of statutory construction that the plain language of a statute controls absent a clearly expressed legislative intent to the contrary.<sup>8</sup> Here, there is no statutory requirement that a dependent have a TIN to be claimed for the ODC. The IRS Office of Chief Counsel (OCC) appears to have imposed the requirement on its own, likely to deter fraudulent claims. The TCJA legislative history suggests Congress considered a TIN requirement and did not adopt it. The House version of the TCJA included a requirement that a dependent have a TIN for purposes of the ODC but the subsequent Senate version of the TCJA did not, and the enacted bill followed the Senate approach.<sup>9</sup> It is possible that a drafting error was made, but if so, Congress – not the IRS – should fix it.<sup>10</sup>

To resolve the inconsistency between the absence of a TIN requirement in the ODC statute and the IRS’s decision to impose the requirement on its own, the National Taxpayer Advocate recommends that Congress clarify its intent.

## RECOMMENDATIONS

- Clarify whether a dependent with respect to whom a taxpayer claims the ODC under IRC § 24(h)(4) is required to have a taxpayer identification number.
- If a dependent with respect to whom a taxpayer claims the ODC is required to have a taxpayer identification number, clarify the type of taxpayer identification number required.

7 Email communication from the Office of Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) to TAS Management & Program Analyst (Dec. 19, 2019) (on file with TAS). The email does not contain any references or citations to any legal authority for this position.

8 See, e.g., *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980) (“We begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself. Absent a clearly expressed legislative intention to the contrary, that language must ordinarily be regarded as conclusive.”); *Connecticut Nat’l Bank v. Germain*, 503 U.S. 245, 254 (1992) (“[W]hen the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’”).

9 See H.R. CONF. REP. NO. 115-466, at 225-227 (Dec. 15, 2017), <https://www.congress.gov/115/crpt/hrpt466/CRPT-115hrpt466.pdf>.

10 A technical correction was proposed, but the correction was not enacted into law. See Joint Committee on Taxation, JCX-1-19, *Technical Explanation of the House Ways and Means Committee Chairman’s Discussion Draft of the “Tax Technical and Clerical Corrections Act”* 5 (Jan. 2, 2019), <https://www.jct.gov/publications.html?func=startdown&id=5154>. The fact that Congress sought to make this a “technical correction” provides further evidence that the law does not require dependents to have TINs for purposes of the ODC.