

**Legislative Recommendation #56****Exclude Taxpayers in Specific Circumstances From the Requirement to Provide a Social Security Number for Their Children to Claim the Child Tax Credit****SUMMARY**

- *Problem:* In 2017, Congress enacted legislation that prohibits taxpayers from claiming a child for purposes of the child tax credit (CTC) if the child does not have a Social Security number (SSN). The intent was to ensure that only children who are U.S. citizens could be claimed. However, there are at least three categories of children who are U.S. citizens but do not have SSNs, and the change in law had the unintended effect of preventing families from receiving CTC benefits with respect to these children.
- *Solution:* Allow children who do not have SSNs to be claimed for purposes of the CTC in the limited circumstances described below, provided they meet all other eligibility requirements.

**PRESENT LAW**

The Tax Cuts and Jobs Act (TCJA) amended IRC § 24 to require a taxpayer claiming the CTC to provide a SSN valid for employment for a qualifying child.<sup>1</sup>

IRC § 1402(g) exempts members of certain religious faiths from the requirement to pay self-employment tax if certain conditions are met. 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 apply on IRS Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.<sup>2</sup>

**REASONS FOR CHANGE**

The requirement under IRC § 24 that a qualifying child claimed for the CTC have an SSN valid for employment was intended to prevent a taxpayer whose child is not a U.S. citizen or is not otherwise eligible for an SSN from receiving 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. These populations are being denied a valuable tax benefit that Congress did not intend to deny them. Affected taxpayers include:

- 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 unable to obtain an SSN for a qualifying child because the child was born and died in the same or consecutive tax years.

<sup>1</sup> TCJA, Pub. L. No. 115-97, § 11022(a), 131 Stat. 2054, 2073-2074 (2017) (codified at IRC § 24(h)(7)).

<sup>2</sup> IRC § 1402(g).

Prior to the TCJA amendment, IRC § 24 only required a taxpayer claiming a child as a qualifying child for the CTC to provide a taxpayer identification number (TIN) for the child. The IRS provided administrative relief to allow the credit to a taxpayer without a TIN for a qualifying child due to the taxpayer's deeply held religious beliefs. Specifically, taxpayers whose qualifying children did not have an SSN or other TIN due to the taxpayers' deeply held religious beliefs were allowed the credit if the taxpayers indicated on their tax returns that they have an approved Form 4029 establishing that they had met the requirements under IRC § 1402(g).

In certain circumstances, the IRS would request additional information from the taxpayer to prove the age, relationship, and residence of the child. Further, the language in the CTC prior to the TCJA change permitted the IRS to allow the credit for taxpayers whose children only had Adoption Taxpayer Identification Numbers (ATINs), which are TINs issued for use while waiting to receive SSNs for the adopted children. Now, the IRS is no longer providing administrative relief to allow the CTC if a qualifying child lacks an SSN, unless the taxpayer's child was born and died in the same or consecutive tax years.<sup>3</sup> This may violate the Religious Freedom Restoration Act.<sup>4</sup>

The National Taxpayer Advocate believes that the affected taxpayer populations are being treated unjustly because the TCJA language did not provide an exception to the SSN requirement for qualifying children for these specific groups, thereby denying them the CTC to which they are otherwise entitled. Moreover, the IRS is now applying the law inconsistently by allowing an exception for children who were born and died in the same or consecutive tax years while not allowing an exception for similar categories of children.

## RECOMMENDATION

- Amend IRC § 24(h)(7) to allow a taxpayer to claim the CTC with respect to a qualifying child without an SSN if the taxpayer 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 (or has a child lawfully placed with the taxpayer for adoption) and provides an ATIN for the qualifying child; or
  - Had a child that was born and died in the same or consecutive tax years.

3 The IRS Office of Chief Counsel has opined that the IRS is legally prohibited from allowing the CTC with respect to a child who lacks an SSN because of religious or conscience-based objections. See IRS Tech. Adv. Mem. PMTA-2019-02 (Mar. 29, 2019), <https://www.irs.gov/pub/irsoa/pmta-2019-02.pdf>.

4 See *The Tax Filing Season: Hearing Before the H. Subcomm. on Gov't Oversight of the H. Comm. on Ways and Means*, 116th Cong. 22-27 (2019) (testimony of Nina E. Olson, then the National Taxpayer Advocate); National Taxpayer Advocate Fiscal Year 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*), [https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20\\_Volume1\\_AOF\\_02.pdf](https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/08/JRC20_Volume1_AOF_02.pdf); Nina E. Olson, 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, NATIONAL TAXPAYER ADVOCATE BLOG (Feb. 26, 2023), <https://www.taxpayeradvocate.irs.gov/news/ntablog-the-irss-position-on-the-application-of-the-religious-freedom-restoration-act-to-the-social-security-requirement>.