

Legislative Recommendation #57**Allow Taxpayers in Limited Circumstances to Claim the Child Tax Credit With Respect to Children Who Do Not Have Social Security Numbers But Otherwise Qualify for the 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). This restriction was not intended to exclude children who are U.S. citizens. However, there are at least three categories of children who are U.S. citizens but do not have SSNs. The change in law has had the unintended effect of preventing families from receiving CTC benefits with respect to these children.
- *Solution:* Allow children who are U.S. citizens and 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(h)(7) to require a taxpayer claiming the CTC to provide an SSN valid for employment for a qualifying child.¹

REASONS FOR CHANGE

The requirement under IRC § 24(h)(7) 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 are U.S. citizens who lack SSNs due to unique circumstances but otherwise meet the requirements for the credit. Taxpayer populations whose children are U.S. citizens but do not have SSNs include the following:

- Taxpayers who do not apply for SSNs due to deeply held religious beliefs, most notably the Amish;²
- Taxpayers whose adopted children have not yet received SSNs; and
- Taxpayers who are unable to obtain an SSN for a qualifying child because the child was born and died in the same or consecutive tax years (*i.e.*, before the Social Security Administration issued an SSN for the child).

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

² IRC § 1402(g) provides an exemption from the requirement to pay self-employment tax for an individual who “is a member of a recognized religious sect or division thereof and is an adherent of established religious tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance” of Social Security benefits, Medicare, or other insurance plans. Because SSNs are used to keep track of Social Security taxes and benefits, some of these individuals are also conscientiously opposed to obtaining SSNs. To claim the exemption, an individual must apply on IRS Form 4029, Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits. For purposes of the Child Tax Credit, taxpayers whose qualifying children did not have an SSN or other TIN due to the taxpayers’ deeply held religious beliefs were allowed the credit, prior to enactment of the TCJA, 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).

Taxpayers who do not apply for SSNs due to deeply held religious beliefs. Prior to the TCJA amendment, IRC § 24 only required a taxpayer claiming a child for purposes of the CTC to provide a taxpayer identification number (TIN) for the child.³ The TIN did not have to be an SSN. In addition, 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. The fact that taxpayers with religious-based reasons for not obtaining SSNs for their children are now barred by the TCJA from receiving the CTC not only denies them a valuable tax benefit but may also constitute a violation of the Religious Freedom Restoration Act.⁴

Taxpayers whose adopted children have not yet received SSNs. The CTC language prior to the TCJA change permitted the IRS to allow the credit for taxpayers whose children had Adoption Taxpayer Identification Numbers (ATINs), which are TINs issued by the IRS for use while waiting to receive SSNs for adopted children. Since the passage of the TCJA, the IRS is no longer providing administrative relief to allow the CTC with respect to children with ATINs.

Taxpayers who are unable to obtain an SSN for a qualifying child because the child was born and died in the same or consecutive tax years. The TCJA requires taxpayers to provide an SSN for a qualifying child to claim the CTC with respect to children who are born and die in the same or consecutive tax years, but the IRS currently is making an administrative exception to this requirement. While we are pleased this category of taxpayers is receiving relief, it is unclear on what basis the IRS has the legal authority to create an administrative exception to the statutory SSN requirement for this category of affected taxpayers but not for others.

The National Taxpayer Advocate believes these taxpayer populations are being treated unjustly because the TCJA language did not provide an exception to the SSN requirement for qualifying children in 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 – namely, children who do not have an SSN due to their parents' deeply held religious beliefs and children who were adopted and have an ATIN for the year for which the tax credit is being claimed.

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:
 - Has a sincere and deeply held religious belief that prohibits them from obtaining an SSN;
 - Adopted a child (or has a child placed with the taxpayer for legal adoption by an authorized placement agency) and provides an ATIN for the child; or
 - Had a child who was born and who died in the same or consecutive tax years.

³ A TIN is an identification number used by the IRS in administering the tax laws. It includes an SSN but also includes an Individual Taxpayer Identification Number (ITIN), an Adoption Taxpayer Identification Number (ATIN), and other identifying numbers.

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.