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[Sec. 21]

SEC. 21. EXPENSES FOR HOUSEHOLD AND DEPENDENT CARE SERVICES NECESSARY FOR GAINFUL EMPLOYMENT.

[Sec. 21(a)]

(a) ALLOWANCE OF CREDIT.—(1) IN GENERAL.—In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year.

➔➔➔ **Caution:** Code Sec. 21(a)(2), below, was amended by P.L. 107-16. For sunset provision, see P.L. 107-16, §901 [as amended by P.L. 111-312], in the amendment notes.

(2) APPLICABLE PERCENTAGE DEFINED.—For purposes of paragraph (1), the term “applicable percentage” means 35 percent reduced (but not below 20 percent) by 1 percentage point for each \$2,000 (or fraction thereof) by which the taxpayer’s adjusted gross income for the taxable year exceeds \$15,000.

Amendments

• 2004, Working Families Tax Relief Act of 2004 (P.L. 108-311)

P.L. 108-311, §203(a): Amended Code Sec. 21(a)(1) by striking “In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1))” and inserting “In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual”. Effective for tax years beginning after 12-31-2004.

• 2001, Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16)

P.L. 107-16, §204(b)(1)-(2): Amended Code Sec. 21(a)(2) by striking “30 percent” and inserting “35 percent”, and by striking “\$10,000” and inserting “\$15,000”. Effective for tax years beginning after 12-31-2002.

P.L. 107-16, §901(a)-(b), as amended by P.L. 111-312, §101(a)(1), provides:

SEC. 901. SUNSET OF PROVISIONS OF ACT.

(a) IN GENERAL.—All provisions of, and amendments made by, this Act shall not apply—

(1) to taxable, plan, or limitation years beginning after December 31, 2012, or

(2) in the case of title V, to estates of decedents dying, gifts made, or generation skipping transfers, after December 31, 2012.

(b) APPLICATION OF CERTAIN LAWS.—The Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 shall be applied and administered to years, estates, gifts, and transfers described in subsection (a) as if the provisions and amendments described in subsection (a) had never been enacted.

[Sec. 21(b)]

(b) DEFINITIONS OF QUALIFYING INDIVIDUAL AND EMPLOYMENT-RELATED EXPENSES.—For purposes of this section—

(1) QUALIFYING INDIVIDUAL.—The term “qualifying individual” means—
(A) a dependent of the taxpayer (as defined in section 152(a)(1)) who has not attained age 13,

(B) a dependent of the taxpayer (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)) who is physically or mentally incapable of caring

for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or

(C) the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.

(2) EMPLOYMENT-RELATED EXPENSES.—

(A) IN GENERAL.—The term “employment-related expenses” means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

- (i) expenses for household services, and
- (ii) expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer’s household at a camp where the qualifying individual stays overnight.

(B) EXCEPTION.—Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer’s household shall be taken into account only if incurred for the care of—

- (i) a qualifying individual described in paragraph (1)(A), or
- (ii) a qualifying individual (not described in paragraph (1)(A)) who regularly spends at least 8 hours each day in the taxpayer’s household.

(C) DEPENDENT CARE CENTERS.—Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer’s household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if—

- (i) such center complies with all applicable laws and regulations of a State or unit of local government, and
- (ii) the requirements of subparagraph (B) are met.

(D) DEPENDENT CARE CENTER DEFINED.—For purposes of this paragraph, the term “dependent care center” means any facility which—

- (i) provides care for more than six individuals (other than individuals who reside at the facility), and
- (ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

Amendments

- 2005, Gulf Opportunity Zone Act of 2005 (P.L. 109-135)

P.L. 109-135, § 404(b):

Amended Code Sec. 21(b)(1)(B) by inserting “(as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B))” after “dependent of the taxpayer”. Effective as if included in the provision of the Working Families Tax Relief Act of 2004 (P.L. 108-311) to which it relates [effective for tax years beginning after 12-31-2004.—CCH].

- 2004, Working Families Tax Relief Act of 2004 (P.L. 108-311)

P.L. 108-311, § 203(b):

Amended Code Sec. 21(b)(1). Effective for tax years beginning after 12-31-2004. Prior to amendment, Code Sec. 21(b)(1) read as follows:

(1) QUALIFYING INDIVIDUAL.—The term “qualifying individual” means—

(A) a dependent of the taxpayer who is under the age of 13 and with respect to whom the taxpayer is entitled to a deduction under section 151(c),

(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.

- 1988, Family Support Act of 1988 (P.L. 100-485)

P.L. 100-485, § 703(a):

Amended Code Sec. 21(b)(1)(A) by striking “age of 15” and inserting “age of 13”. Effective for tax years beginning after 12-31-88.

- 1987, Revenue Act of 1987 (P.L. 100-203)

P.L. 100-203, § 10101(a):

Amended Code Sec. 21(b)(2)(A) by adding at the end thereof a new sentence. For the effective date, see Act Sec. 10101(b), below.

P.L. 100-203, § 10101(b), provides:

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to expenses paid in taxable years beginning after December 31, 1987.

(2) SPECIAL RULE FOR CAFETERIA PLANS.—For purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight [effective date changed by P.L. 100-647, § 2004(a)].

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