CREDITS AGAINST TAX

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

(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.

(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 $25,000.

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

(A) QUALIFYING INDIVIDUAL.—The term "qualifying individual" means—

(i) a dependent of the taxpayer (as defined in section 152(a)(1)) who has not attained age 13,

(ii) a dependent of the taxpayer (as defined in section 152(a)(1)) who has attained age 13 and is a full-time student for such taxable year, or

(iii) a dependent of the taxpayer (as defined in section 152(a)(1)) 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

(B) QUALIFYING INDIVIDUAL.—The term "qualifying individual" means amounts paid for any tax year by a taxpayer for the care of the taxpayer's dependent for which there are 1 or more qualifying individuals with respect to the taxpayer.

(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) EMPLOYMENT-RELATED EXPENSES.—The term "employment-related expenses" means amounts paid by the taxpayer during the taxable year for:

(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.

(ii) a qualifying individual described in paragraph (1)(A) or

(jj) a qualifying individual 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 (B)(ii)) 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)(ii) are met.

(T) DEPENDENT CARE CENTER.—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).

(D) DOLLAR LIMIT ON AMOUNT CREDITABLE.—The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(1) $3,000 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or

(2) $6,000 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.
§ 1.21-1 Expenses for household and dependent care services necessary for gainful employment.—(a) In general.—(1) Section 21 allows a credit to a taxpayer against the tax imposed by chapter 1 for employment-related expenses for household services and care (as defined in paragraph (d) of this section) of a qualifying individual (as defined in paragraph (b) of this section). The purpose of the expenses must be to enable the taxpayer to be gainfully employed (as defined in paragraph (c) of this section). For taxable years beginning after December 31, 2004, a qualifying individual must have the same principal place of abode (as defined in paragraph (g) of this section) as the taxpayer for more than one-half of the taxable year. For taxable years beginning before January 1, 2005, the taxpayer must maintain a household (as defined in paragraph (h) of this section) that includes one or more qualifying individuals.

(2) The amount of the credit is equal to the applicable percentage of the employment-related expenses that may be taken into account by the taxpayer during the taxable year (but subject to the limits prescribed in §1.21-2): Applicable percentage means, 35 percent reduced by 2,5 percent for each $2,000 (or fraction thereof) by which the taxpayer’s adjusted gross income for the taxable year exceeds $15,000, but not less than 20 percent. For example, if a taxpayer’s adjusted gross income is $31,800, the applicable percentage is 26 percent.

(3) Expenses may be taken as a credit under section 21, regardless of the time the services are performed, only in the taxable year the expenses are performed or the taxable year the expenses are paid, whichever is later.

(4) The requirements of section 21 and §§1.21-1 through 1.21-4 are applied at the time the services are performed, regardless of when the expenses are paid.

(5) Examples—The provisions of this paragraph (a) are illustrated by the following examples:

Example 1. In December 2002, B pays for the care of her child for January 2003. Under paragraph (a)(3) of this section, B may claim the credit in 2003, the later of the two years in which the expenses are paid and the services are performed.

Example 2. The facts are the same as in Example 1, except that B’s child turns 13 on February 1, 2008, and B pays for the care provided in January 2008 on February 3, 2008. Under paragraph (a)(4) of this section, the determination of whether the expenses are employment-related expenses is made when the services are performed. Assuming other requirements are met, the amount B pays will be an employment-related expense under section 21, because B’s child is a qualifying individual when the services are performed, even though the child is not a qualifying individual when B pays the expenses.

(b) Qualifying individual.—(1) In general.—For taxable years beginning after December 31, 2004, a qualifying individual is—

(i) The taxpayer’s dependent (who is a qualifying child within the meaning of section 152) who has not attained age 13;

(ii) The taxpayer’s dependent (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 self-care and who has the same principal place of abode as the taxpayer for more than one-half of the taxable year;

(iii) The taxpayer’s spouse who is physically or mentally incapable of self-care and who has the same principal place of abode as the taxpayer for more than one-half of the taxable year.

(2) Taxable years beginning before January 1, 2005.—For taxable years beginning before January 1, 2005, a qualifying individual is—

(i) The taxpayer’s dependent for whom the taxpayer is entitled to a deduction for a personal exemption under section 151(c) and who is under age 13;

(ii) The taxpayer’s dependent who is physically or mentally incapable of self-care, or

(iii) The taxpayer’s spouse who is physically or mentally incapable of self-care.

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