

119TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To amend the Internal Revenue Code of 1986 to expand the employer-provided child care credit and the dependent care assistance exclusion.

---

IN THE SENATE OF THE UNITED STATES

---

Mrs. BRITT (for herself, Mr. Kaine, Ms. Ernst, Mrs. Shaheen, Mr. Curtis, and Mr. King) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

---

**A BILL**

To amend the Internal Revenue Code of 1986 to expand the employer-provided child care credit and the dependent care assistance exclusion.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Care Availability  
5 and Affordability Act”.

6 **SEC. 2. EXPANSION OF EMPLOYER-PROVIDED CHILD CARE**  
7 **CREDIT.**

8 (a) INCREASE OF AMOUNT OF QUALIFIED CHILD  
9 CARE EXPENDITURES TAKEN INTO ACCOUNT.—Section

1 45F(a)(1) of the Internal Revenue Code of 1986 is amend-  
2 ed by striking “25 percent” and inserting “50 percent”.

3 (b) INCREASE OF MAXIMUM CREDIT AMOUNT.—Sec-  
4 tion 45F(b) of the Internal Revenue Code of 1986 is  
5 amended by striking “\$150,000” and inserting  
6 “\$500,000”.

7 (c) TREATMENT OF JOINTLY OWNED OR OPERATED  
8 CHILDCARE FACILITY.—Section 45F(c)(1) of the Internal  
9 Revenue Code of 1986 is amended by adding at the end  
10 the following new subparagraph:

11 “(C) JOINTLY OWNED OR OPERATED  
12 CHILDCARE FACILITY.—For purposes of sub-  
13 paragraph (A)(i)(I), a facility shall not fail to  
14 be treated as a qualified childcare facility of the  
15 taxpayer merely because such facility is jointly  
16 owned or operated by the taxpayer and other  
17 persons.”.

18 (d) SPECIAL RULE FOR SMALL BUSINESSES.—Sec-  
19 tion 45F(e) of the Internal Revenue Code of 1986 is  
20 amended by adding at the end the following new para-  
21 graph:

22 “(4) SMALL BUSINESSES.—

23 “(A) IN GENERAL.—In the case of a tax-  
24 payer described in subparagraph (B)—

1 “(i) subsection (a)(1) shall be applied  
2 by substituting ‘60 percent’ for ‘50 per-  
3 cent’, and

4 “(ii) subsection (b) shall be applied by  
5 substituting ‘\$600,000’ for ‘\$500,000’.

6 “(B) TAXPAYER DESCRIBED.—A taxpayer  
7 described in this subparagraph is a taxpayer  
8 that meets the gross receipts test of section  
9 448(c), determined—

10 “(i) by substituting ‘5-taxable-year’  
11 for ‘3-taxable-year’ in paragraph (1) there-  
12 of, and

13 “(ii) by substituting ‘5-year’ for ‘3-  
14 year’ each place such term appears in  
15 paragraph (3)(A) thereof.”.

16 (e) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to amounts paid or incurred after  
18 the date of the enactment of this section.

19 **SEC. 3. INCREASE IN AMOUNT EXCLUDABLE FOR DEPEND-**  
20 **ENT CARE ASSISTANCE PROGRAMS.**

21 (a) IN GENERAL.—Section 129(a)(2)(A) of the Inter-  
22 nal Revenue Code of 1986 is amended by striking “\$5,000  
23 (\$2,500” and inserting “\$7,500 (\$3,750”.

1 (b) EFFECTIVE DATE.—The amendment made by  
2 this section shall apply to amounts paid or incurred after  
3 the date of the enactment of this section.

4 **SEC. 4. HOUSEHOLD AND DEPENDENT CARE CREDIT IN-**  
5 **CREASED AND MADE REFUNDABLE.**

6 (a) IN GENERAL.—Subpart C of part IV of sub-  
7 chapter A of chapter 1 of the Internal Revenue Code of  
8 1986 is amending by inserting after section 36B the fol-  
9 lowing new section:

10 **“SEC. 36C. EXPENSES FOR HOUSEHOLD AND DEPENDENT**  
11 **CARE SERVICES NECESSARY FOR GAINFUL**  
12 **EMPLOYMENT.**

13 “(a) ALLOWANCE OF CREDIT.—

14 “(1) IN GENERAL.—In the case of an individual  
15 for which there are 1 or more qualifying individuals  
16 with respect to such individual, there shall be al-  
17 lowed as a credit against the tax imposed by this  
18 chapter for the taxable year an amount equal to the  
19 applicable percentage of the employment-related ex-  
20 penses paid by such individual during the taxable  
21 year.

22 “(2) APPLICABLE PERCENTAGE DEFINED.—For  
23 purposes of paragraph (1), the term ‘applicable per-  
24 centage’ means 50 percent—

1           “(A) reduced (but not below 35 percent)  
2           by 1 percentage point for each \$2,000 (or frac-  
3           tion thereof) by which the taxpayer’s adjusted  
4           gross income for the taxable year exceeds  
5           \$15,000, and

6           “(B) further reduced (but not below zero)  
7           by 1 percentage point for each \$2,000 (or frac-  
8           tion thereof) by which the taxpayer’s adjusted  
9           gross income for the taxable year exceeds  
10          \$150,000.

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

14                 “(1) QUALIFYING INDIVIDUAL.—The term  
15                 ‘qualifying individual’ means—

16                         “(A) a dependent of the taxpayer (as de-  
17                         fined in section 152(a)(1)) who has not attained  
18                         age 13,

19                         “(B) a dependent of the taxpayer (as de-  
20                         fined in section 152, determined without regard  
21                         to subsections (b)(1), (b)(2), and (d)(1)(B))  
22                         who is physically or mentally incapable of car-  
23                         ing for himself or herself and who has the same  
24                         principal place of abode as the taxpayer for  
25                         more than one-half of such taxable year, or

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

6           “(2) EMPLOYMENT-RELATED EXPENSES.—

7           “(A) IN GENERAL.—The term ‘employ-  
8 ment-related expenses’ means amounts paid for  
9 the following expenses, but only if such ex-  
10 penses are incurred to enable the taxpayer to be  
11 gainfully employed for any period for which  
12 there are 1 or more qualifying individuals with  
13 respect to the taxpayer:

14                   “(i) Expenses for household services.

15                   “(ii) Expenses for the care of a quali-  
16 fying individual.

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

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

1                   “(i) a qualifying individual described  
2                   in paragraph (1)(A), or

3                   “(ii) a qualifying individual (not de-  
4                   scribed in paragraph (1)(A)) who regularly  
5                   spends at least 8 hours each day in the  
6                   taxpayer’s household.

7                   “(C) DEPENDENT CARE CENTERS.—Em-  
8                   ployment-related expenses described in subpara-  
9                   graph (A) which are incurred for services pro-  
10                  vided outside the taxpayer’s household by a de-  
11                  pendent care center (as defined in subpara-  
12                  graph (D)) shall be taken into account only if—

13                   “(i) such center complies with all ap-  
14                   plicable laws and regulations of a State or  
15                   unit of local government, and

16                   “(ii) the requirements of subpara-  
17                   graph (B) are met.

18                  “(D) DEPENDENT CARE CENTER DE-  
19                  FINED.—For purposes of this paragraph, the  
20                  term ‘dependent care center’ means any facility  
21                  which—

22                   “(i) provides care for more than 6 in-  
23                   dividuals (other than individuals who re-  
24                   side at the facility), and

1                   “(ii) receives a fee, payment, or grant  
2                   for providing services for any of the indi-  
3                   viduals (regardless of whether such facility  
4                   is operated for profit).

5           “(c) DOLLAR LIMIT ON AMOUNT CREDITABLE.—The  
6 amount of the employment-related expenses incurred dur-  
7 ing any taxable year which may be taken into account  
8 under subsection (a) shall not exceed—

9                   “(1) \$5,000 if there is 1 qualifying individual  
10 with respect to the taxpayer for such taxable year,  
11 or

12                   “(2) \$8,000 if there are 2 or more qualifying  
13 individuals with respect to the taxpayer for such tax-  
14 able year.

15           “(d) EARNED INCOME LIMITATION.—

16                   “(1) IN GENERAL.—Except as otherwise pro-  
17 vided in this subsection, the amount of the employ-  
18 ment-related expenses incurred during any taxable  
19 year which may be taken into account under sub-  
20 section (a) shall not exceed—

21                   “(A) in the case of an individual who is  
22 not married at the close of such year, such indi-  
23 vidual’s earned income for such year, or

24                   “(B) in the case of an individual who is  
25 married at the close of such year, the lesser of



1           such individual's earned income or the earned  
2           income of his spouse for such year.

3           “(2) SPECIAL RULE FOR SPOUSE WHO IS A  
4           STUDENT OR INCAPABLE OF CARING FOR SELF.—In  
5           the case of a spouse who is a student or a qualifying  
6           individual described in subsection (b)(1)(C), for pur-  
7           poses of paragraph (1), such spouse shall be deemed  
8           for each month during which such spouse is a full-  
9           time student at an educational institution, or is such  
10          a qualifying individual, to be gainfully employed and  
11          to have earned income of not less than—

12                   “(A) \$250 if subsection (c)(1) applies for  
13                   the taxable year, or

14                   “(B) \$500 if subsection (c)(2) applies for  
15                   the taxable year.

16          “(e) SPECIAL RULES.—For purposes of this sec-  
17          tion—

18                   “(1) PLACE OF ABODE.—An individual shall  
19                   not be treated as having the same principal place of  
20                   abode of the taxpayer if at any time during the tax-  
21                   able year of the taxpayer the relationship between  
22                   the individual and the taxpayer is in violation of  
23                   local law.

24                   “(2) MARRIED COUPLES MUST FILE JOINT RE-  
25                   TURN.—If the taxpayer is married at the close of

1 the taxable year, the credit shall be allowed under  
2 subsection (a) only if the taxpayer and the tax-  
3 payer's spouse file a joint return for the taxable  
4 year.

5 “(3) MARITAL STATUS.—An individual legally  
6 separated from the individual's spouse under a de-  
7 cree of divorce or of separate maintenance shall not  
8 be considered as married.

9 “(4) CERTAIN MARRIED INDIVIDUALS LIVING  
10 APART.—If—

11 “(A) an individual who is married and who  
12 files a separate return—

13 “(i) maintains as the individual's  
14 home a household which constitutes for  
15 more than  $\frac{1}{2}$  of the taxable year the prin-  
16 cipal place of abode of a qualifying indi-  
17 vidual, and

18 “(ii) furnishes over half of the cost of  
19 maintaining such household during the  
20 taxable year, and

21 “(B) during the last 6 months of such tax-  
22 able year such individual's spouse is not a mem-  
23 ber of such household,  
24 such individual shall not be considered as married.

1           “(5) SPECIAL DEPENDENCY TEST IN CASE OF  
2           DIVORCED PARENTS, ETC.—If—

3                   “(A) section 152(e) applies to any child  
4                   with respect to any calendar year, and

5                   “(B) such child is under the age of 13 or  
6                   is physically or mentally incapable of caring for  
7                   himself or herself,

8           in the case of any taxable year beginning in such  
9           calendar year, such child shall be treated as a quali-  
10          fying individual described in subparagraph (A) or  
11          (B) of subsection (b)(1) (whichever is appropriate)  
12          with respect to the custodial parent (as defined in  
13          section 152(e)(4)(A)), and shall not be treated as a  
14          qualifying individual with respect to the noncustodial  
15          parent.

16           “(6) PAYMENTS TO RELATED INDIVIDUALS.—  
17          No credit shall be allowed under subsection (a) for  
18          any amount paid by the taxpayer to an individual—

19                   “(A) with respect to whom, for the taxable  
20                   year, a deduction under section 151(c) (relating  
21                   to deduction for personal exemptions for de-  
22                   pendents) is allowable either to the taxpayer or  
23                   the taxpayer’s spouse, or

24                   “(B) who is a child of the taxpayer (within  
25                   the meaning of section 152(f)(1)) who has not

1           attained the age of 19 at the close of the tax-  
2           able year.

3           For purposes of this paragraph, the term ‘taxable  
4           year’ means the taxable year of the taxpayer in  
5           which the service is performed.

6           “(7) STUDENT.—The term ‘student’ means an  
7           individual who during each of 5 calendar months  
8           during the taxable year is a full-time student at an  
9           educational organization.

10           “(8) EDUCATIONAL ORGANIZATION.—The term  
11           ‘educational organization’ means an educational or-  
12           ganization described in section 170(b)(1)(A)(ii).

13           “(9) IDENTIFYING INFORMATION REQUIRED  
14           WITH RESPECT TO SERVICE PROVIDER.—No credit  
15           shall be allowed under subsection (a) for any amount  
16           paid to any person unless—

17           “(A) the name, address, and taxpayer  
18           identification number of such person are in-  
19           cluded on the return claiming the credit, or

20           “(B) if such person is an organization de-  
21           scribed in section 501(c)(3) and exempt from  
22           tax under section 501(a), the name and address  
23           of such person are included on the return  
24           claiming the credit.

1 In the case of a failure to provide the information  
2 required under the preceding sentence, the preceding  
3 sentence shall not apply if it is shown that the tax-  
4 payer exercised due diligence in attempting to pro-  
5 vide the information so required.

6 “(10) IDENTIFYING INFORMATION REQUIRED  
7 WITH RESPECT TO QUALIFYING INDIVIDUALS.—No  
8 credit shall be allowed under this section with re-  
9 spect to any qualifying individual unless the TIN of  
10 such individual is included on the return claiming  
11 the credit.

12 “(f) REGULATIONS.—The Secretary shall issue such  
13 regulations or other guidance as may be necessary or ap-  
14 propriate to carry out the purposes of this section.”.

15 (b) CONFORMING AMENDMENTS.—

16 (1) Section 1324(b) of title 31 is amended by  
17 inserting “36C,” after “36B,”.

18 (2) Section 21 of the Internal Revenue Code of  
19 1986 is repealed.

20 (3) The table of sections for subpart A of part  
21 IV of subchapter A of chapter 1 of such Code is  
22 amended by striking the item relating to section 21.

23 (4) Section 6211(b)(4)(A) of such Code is  
24 amended by striking “21 by reason of subsection (g)  
25 thereof,”.

1 (5) Section 6213(g)(2) of such Code is amend-  
2 ed—

3 (A) in subparagraph (H), by striking “sec-  
4 tion 21” and inserting “section 36C”, and

5 (B) in subparagraph (L)—

6 (i) by striking “21,”, and

7 (ii) by inserting “36C,” after “32,”.

8 (6) The following sections of such Code are  
9 each amended by striking “section 21(e)” and in-  
10 sserting “section 36C(e)”.

11 (A) Section 23(f)(1).

12 (B) Section 35(g)(6).

13 (C) Section 129(a)(2)(C).

14 (7) Section 129 of such Code is further amend-  
15 ed—

16 (A) in subsection (b)(2), by striking “sec-  
17 tion 21(d)(2)” and inserting “section  
18 36C(d)(2)”, and

19 (B) in subsection (e)(1), by striking “sec-  
20 tion 21(b)(2)” and inserting “section  
21 36C(b)(2)”.

22 (8) Section 213(e) of such Code is amended by  
23 striking “section 21” and inserting “section 36C”.

24 (c) CLERICAL AMENDMENT.—The table of sections  
25 for subpart C of part IV of subchapter A of chapter 1

1 of such Code is amended by inserting after the item relat-  
2 ing to section 36B the following new item:

“Sec. 36C. Expenses for household and dependent care services necessary for  
gainful employment.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall apply to taxable years beginning after  
5 the date of the enactment of this section.