

110TH CONGRESS  
2D SESSION

# H. R. 6390

To amend the Internal Revenue Code of 1986 to provide a credit against tax for certain caregivers, to expand the dependent care credit, and to increase the exclusion limitation for dependent care assistance programs.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2008

Ms. CORRINE BROWN of Florida introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide a credit against tax for certain caregivers, to expand the dependent care credit, and to increase the exclusion limitation for dependent care assistance programs.

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 “Caregiver Financial  
5 Relief Act of 2008”.

6 **SEC. 2. REFUNDABLE CREDIT FOR LONG-TERM CARE.**

7 (a) GENERAL RULE.—Subpart C of part IV of sub-  
8 chapter A of chapter 1 of the Internal Revenue Code of

1 1986 (relating to refundable credits) is amended by redese-  
2 ignating section 36 as section 37 and by inserting after  
3 section 35 the following new section:

4 **“SEC. 36. FAMILY CARE CREDIT.**

5       “(a) ALLOWANCE OF CREDIT.—There shall be al-  
6 lowed as a credit against the tax imposed by this chapter  
7 for the taxable year an amount equal to the sum of \$3,000  
8 multiplied by the number of applicable individuals with re-  
9 spect to whom the taxpayer is an eligible caregiver for the  
10 taxable year.

11       “(b) LIMITATION.—

12               “(1) APPLICABLE INDIVIDUALS TAKEN INTO  
13 ACCOUNT.—For purposes of this section, a taxpayer  
14 may not take into account more than 2 applicable  
15 individuals (4 in the case of a joint return) for any  
16 taxable year.

17               “(2) BASED ON ADJUSTED GROSS INCOME.—

18                       “(A) IN GENERAL.—The amount of the  
19 credit allowable under subsection (a) shall be  
20 reduced (but not below zero) by \$100 for each  
21 \$1,000 (or fraction thereof) by which the tax-  
22 payer’s modified adjusted gross income exceeds  
23 the threshold amount. For purposes of the pre-  
24 ceding sentence, the term ‘modified adjusted  
25 gross income’ means adjusted gross income in-

1           creased by any amount excluded from gross in-  
2           come under section 911, 931, or 933.

3           “(B) THRESHOLD AMOUNT.—For purposes  
4           of this paragraph, the term ‘threshold amount’  
5           means—

6                   “(i) \$150,000 in the case of a joint  
7                   return, and

8                   “(ii) \$100,000 in the case of an indi-  
9                   vidual who is not married, and

10                   “(iii) \$75,000 in the case of a married  
11                   individual filing a separate return.

12           “(c) DEFINITIONS.—For purposes of this section—

13                   “(1) APPLICABLE INDIVIDUAL.—

14                   “(A) IN GENERAL.—The term ‘applicable  
15                   individual’ means, with respect to any taxable  
16                   year, any individual who has been certified, be-  
17                   fore the due date for filing the return of tax for  
18                   the taxable year (determined without regard to  
19                   extensions), by a physician (as defined in sec-  
20                   tion 1861(r) of the Social Security Act) as  
21                   being an individual with long-term care needs  
22                   described in subparagraph (B) for a period—

23                   “(i) which is at least 180 consecutive  
24                   days, and

1                   “(ii) a portion of which occurs within  
2                   the taxable year.

3                   Such term shall not include any individual oth-  
4                   erwise meeting the requirements of the pre-  
5                   ceding sentence unless within the 39½ month  
6                   period ending on such due date (or such other  
7                   period as the Secretary prescribes) a physician  
8                   (as so defined) has certified that such indi-  
9                   vidual meets such requirements.

10                   “(B) INDIVIDUALS WITH LONG-TERM CARE  
11                   NEEDS.—An individual is described in this sub-  
12                   paragraph if the individual meets any of the fol-  
13                   lowing requirements:

14                   “(i) The individual is at least 6 years  
15                   of age and—

16                   “(I) is unable to perform (with-  
17                   out substantial assistance from an-  
18                   other individual) at least 3 activities  
19                   of daily living (as defined in section  
20                   7702B(c)(2)(B)) due to a loss of  
21                   functional capacity,

22                   “(II) requires substantial super-  
23                   vision to protect such individual from  
24                   threats to health and safety due to se-  
25                   vere cognitive impairment and is un-

1           able to perform at least 1 activity of  
2           daily living (as so defined) or to the  
3           extent provided in regulations pre-  
4           scribed by the Secretary (in consulta-  
5           tion with the Secretary of Health and  
6           Human Services), is unable to engage  
7           in age appropriate activities, or

8                     “(III) requires substantial super-  
9                     vision to protect such individual from  
10                    threats to health and safety due to a  
11                    severe psychological disability, mental  
12                    retardation, or related developmental  
13                    disabilities and would otherwise re-  
14                    quire residence in a psychiatric hos-  
15                    pital, an intermediate care facility for  
16                    the mentally retarded, or similar resi-  
17                    dential facility approved by the Sec-  
18                    retary of Health and Human Services.

19                   “(ii) The individual is at least 2 but  
20                   not 6 years of age and is unable due to a  
21                   loss of functional capacity to perform  
22                   (without substantial assistance from an-  
23                   other individual) at least 2 of the following  
24                   activities: eating, transferring, or mobility.

1           “(iii) The individual is under 2 years  
2           of age and requires specific durable med-  
3           ical equipment by reason of a severe health  
4           condition or requires a skilled practitioner  
5           trained to address the individual’s condi-  
6           tion to be available if the individual’s par-  
7           ents or guardians are absent.

8           “(C) PSYCHOLOGICAL DISABILITY DE-  
9           FINED.—The term ‘psychological disability’  
10          means any diagnosable clinical condition on  
11          Axis I or Axis II of the current edition of the  
12          American Psychiatric Association’s Diagnostic  
13          and Statistical Manual of Mental Disorders  
14          which is of a severity that requires substantial  
15          supervision or residence in a psychiatric hos-  
16          pital or similar residential facility approved by  
17          the Secretary.

18          “(D) MENTAL RETARDATION DEFINED.—  
19          The term ‘mental retardation’ means any devel-  
20          opmental disability (as defined in section 102 of  
21          the Developmental Disabilities Assistance and  
22          Bill of Rights Act (42 U.S.C. 15002)) which is  
23          of a severity that requires substantial super-  
24          vision or residence in an intermediate care facil-  
25          ity for the mentally retarded, or similar residen-

1            tial facility approved by the Secretary of Health  
2            and Human Services.

3            “(2) ELIGIBLE CAREGIVER.—

4                  “(A) IN GENERAL.—A taxpayer shall be  
5            treated as an eligible caregiver for any taxable  
6            year with respect to the following individuals:

7                          “(i) The taxpayer.

8                          “(ii) The taxpayer’s spouse.

9                          “(iii) An individual with respect to  
10            whom the taxpayer is allowed a deduction  
11            under section 151 for the taxable year.

12                          “(iv) An individual who would be de-  
13            scribed in clause (iii) for the taxable year  
14            if section 152(d)(1)(B) were applied by  
15            substituting for the exemption amount an  
16            amount equal to the sum of the exemption  
17            amount, the standard deduction under sec-  
18            tion 63(c)(2)(C), and any additional stand-  
19            ard deduction under section 63(c)(3) which  
20            would be applicable to the individual if  
21            clause (iii) applied.

22                          “(v) An individual who would be de-  
23            scribed in clause (iii) for the taxable year  
24            if—

1           “(I) the requirements of subpara-  
2           graph (B) are met with respect to the  
3           individual in lieu of the support test  
4           of section 152(c)(1)(D) or  
5           152(d)(1)(C), as the case may be, and

6           “(II) in the case of an individual  
7           who is not a qualifying child (as de-  
8           fined in section 152(d)) for the tax-  
9           able year, the requirements of clause  
10          (iv) are met with respect to the indi-  
11          vidual.

12          “(B) RESIDENCY TEST.—The require-  
13          ments of this subparagraph are met if an indi-  
14          vidual has as his principal place of abode the  
15          home of the taxpayer for the taxable year  
16          and—

17                 “(i) in the case of an individual who  
18                 is an ancestor or descendant of the tax-  
19                 payer or the taxpayer’s spouse, is a mem-  
20                 ber of the taxpayer’s household for over  
21                 half the taxable year, or

22                 “(ii) in the case of any other indi-  
23                 vidual, is a member of the taxpayer’s  
24                 household for the entire taxable year.

1           “(C) SPECIAL RULES WHERE MORE THAN  
2 1 ELIGIBLE CAREGIVER.—

3           “(i) IN GENERAL.—If more than 1 in-  
4 dividual is an eligible caregiver with re-  
5 spect to the same applicable individual for  
6 taxable years ending with or within the  
7 same calendar year, a taxpayer shall be  
8 treated as the eligible caregiver if each  
9 such individual (other than the taxpayer)  
10 files a written declaration (in such form  
11 and manner as the Secretary may pre-  
12 scribe) that such individual will not claim  
13 such applicable individual for the credit  
14 under this section.

15           “(ii) NO AGREEMENT.—If each indi-  
16 vidual required to file a written declaration  
17 under clause (i) does not do so, the indi-  
18 vidual with the highest modified adjusted  
19 gross income (as defined in subsection  
20 (b)(2)) shall be treated as the eligible care-  
21 giver.

22           “(iii) MARRIED INDIVIDUALS FILING  
23 SEPARATELY.—In the case of married indi-  
24 viduals filing separately, the determination  
25 under this subparagraph as to whether the

1           husband or wife is the eligible caregiver  
2           shall be made under the rules of clause (ii)  
3           (whether or not one of them has filed a  
4           written declaration under clause (i)).

5           “(d) IDENTIFICATION REQUIREMENT.—No credit  
6 shall be allowed under this section to a taxpayer with re-  
7 spect to any applicable individual unless the taxpayer in-  
8 cludes the name and taxpayer identification number of  
9 such individual, and the identification number of the phy-  
10 sician or licensed independent practitioner licensed by the  
11 State to render relevant diagnosis certifying such indi-  
12 vidual, on the return of tax for the taxable year.

13           “(e) TAXABLE YEAR MUST BE FULL TAXABLE  
14 YEAR.—Except in the case of a taxable year closed by rea-  
15 son of the death of the taxpayer, no credit shall be allow-  
16 able under this section in the case of a taxable year cov-  
17 ering a period of less than 12 months.

18           “(f) TERMINATION.—This section shall not apply to  
19 taxable years beginning after December 31, 2010.”.

20           (b) CONFORMING AND CLERICAL AMENDMENTS.—

21           (1) Paragraph (2) of section 6213(g) of such  
22 Code (relating to mathematical or clerical error) is  
23 amended—

24           (A) by striking “and” at the end of sub-  
25 paragraph (L), by striking the period at the

1 end of subparagraph (M) and inserting “, and”,  
2 and by inserting after subparagraph (M) the  
3 following new subparagraph:

4 “(N) an omission of a correct TIN or phy-  
5 sician identification required under section  
6 36(d) (relating to family care credit) to be in-  
7 cluded on a return.”, and

8 (B) in the matter preceding clause (i) of  
9 subparagraph (L), by striking “or 32” and in-  
10 sserting “32, or 36”.

11 (2) The table of sections for subpart C of part  
12 IV of subchapter A of chapter 1 of such Code is  
13 amended by striking the item relating to section 36  
14 and inserting the following:

“Sec. 36. Family care credit.

“Sec. 37. Overpayments of tax.”.

15 (c) APPROPRIATIONS FOR REFUND.—Section  
16 1324(b)(2) of title 31, United States Code, is amended  
17 by striking “or 53(e)” and inserting “, 53(e), or 36”.

18 (d) EFFECTIVE DATE.—The amendments made by  
19 this section shall apply to taxable years beginning after  
20 December 31, 2008.

21 **SEC. 3. MODIFICATION OF DEPENDENT CARE CREDIT.**

22 (a) CREDIT ALLOWED FOR COSTS INCURRED TO  
23 CARE FOR PARENT AND GRANDPARENTS WHO DO NOT  
24 LIVE WITH TAXPAYER.—Paragraph (1) of section 21(b)

1 of the Internal Revenue Code of 1986 (defining qualifying  
2 individual) is amended by striking “or” at the end of sub-  
3 paragraph (B), by striking the period at the end of sub-  
4 paragraph (C) and inserting “, or”, and by adding at the  
5 end the following new subparagraph:

6                   “(D) in the case of taxable years beginning  
7                   in 2009 and 2010, an individual described in  
8                   subparagraph (B) (determined without regard  
9                   to whether such person has the same principal  
10                  place of abode as the taxpayer for any part of  
11                  such taxable year) who is the taxpayer’s mother  
12                  or father (or an ancestor of either).”.

13           (b) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 December 31, 2008.

16 **SEC. 4. DEPENDENT CARE ASSISTANCE PROGRAM EXCLU-**  
17 **SION LIMITATION TO BE APPLIED WITH RE-**  
18 **SPECT TO EACH QUALIFYING INDIVIDUAL.**

19           (a) IN GENERAL.—Subsection (e) of section 129 of  
20 the Internal Revenue Code of 1986 (relating to definitions  
21 and special rules) is amended by adding at the end the  
22 following new paragraph:

23                   “(10) INCREASED EXCLUSION LIMITATION FOR  
24                   2009 AND 2010.—

1           “(A) IN GENERAL.—In the case of taxable  
2 years beginning in 2009 and 2010, subsection  
3 (a)(2)(A) shall be applied by substituting ‘pro-  
4 vided during a taxable year for each qualifying  
5 individual with respect to the taxpayer’ for ‘pro-  
6 vided during a taxable year’. For purposes of  
7 the preceding sentence, not more than 4 indi-  
8 viduals may be treated as qualifying individuals  
9 at any one time.

10           “(B) IDENTIFYING INFORMATION RE-  
11 QUIRED WITH RESPECT TO QUALIFYING INDI-  
12 VIDUALS.—No amount paid or incurred by an  
13 employer for dependent care assistance provided  
14 to an employee with respect to a qualifying in-  
15 dividual shall be excluded from the gross in-  
16 come of such employee by application of sub-  
17 paragraph (A) unless the TIN of such indi-  
18 vidual is included on the return claiming the  
19 credit.”.

20           (b) CONFORMING AMENDMENT.—Subsection (c) of  
21 section 21 of such Code (relating to dollar limit on amount  
22 creditable) is amended by inserting “(but not below zero)”  
23 after “shall be reduced”.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to taxable years beginning after  
3 December 31, 2008.

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