

Legislative Recommendation #58**Clarify Whether Dependents Are Required to Have Taxpayer Identification Numbers for Purposes of the Credit for Other Dependents****SUMMARY**

- *Problem:* As part of the Tax Cuts and Jobs Act (TCJA), Congress authorized taxpayers to claim a tax credit for dependents who do not meet the requirements of a qualifying child. In doing so, Congress did not require that the dependents have taxpayer identification numbers (TINs), but the IRS has imposed this requirement. This IRS-imposed requirement has rendered hundreds of thousands of otherwise qualifying dependents ineligible for credit claims.
- *Solution:* Clarify whether a dependent is required to have a TIN for purposes of the Credit for Other Dependents (ODC).

PRESENT LAW

IRC § 24 authorizes a Child Tax Credit (CTC) of up to \$2,000 per qualifying child, of which up to \$1,400 is refundable.¹ The TCJA added a new provision to IRC § 24 that allows a nonrefundable credit of \$500 for each dependent who is not a qualifying child.² This nonrefundable credit is found in IRC § 24(h)(4) and referred to as the ODC.

IRC § 24(e) provides that a qualifying child must have a TIN. IRC § 24(h)(7) provides that, through 2025, the qualifying child's TIN must be a Social Security number (SSN) valid for employment in the United States.

Under IRC § 24(h)(4), the ODC is available for a “dependent of the taxpayer (as defined in section 152).” There is no requirement in IRC § 152 that an individual have a TIN (either an SSN or an individual taxpayer identification number) to be a dependent. IRC § 24(h)(4)(C) specifically provides that if a qualifying child's lack of an SSN prevents a taxpayer from claiming the CTC for that child, the taxpayer may receive the ODC for that child.

REASONS FOR CHANGE

Despite the absence of a TIN requirement in the statute, the IRS has taken the position that a dependent must have a TIN to be claimed for purposes of the ODC.³ The IRS has used its summary assessment

1 For tax year 2021, the American Rescue Plan Act made this credit fully refundable and increased the credit to \$3,000 for children under 18 and to \$3,600 for children under six. Pub. L. No. 117-2, § 9611, 135 Stat. 4, 144-145 (2021).

2 Pub. L. No. 115-97, § 11022, 131 Stat. 2054, 2073 (2017) (applicable to taxable years beginning after Dec. 31, 2017, and before Jan. 1, 2026).

3 See, e.g., IRS, Form 1040 (and 1040-SR) Instructions 18-19 (Dec. 27, 2023), <https://www.irs.gov/pub/irs-pdf/i1040qi.pdf>; IRS, 2023 Instructions for Schedule 8812, at 1 (Dec. 6, 2023), <https://www.irs.gov/pub/irs-pdf/i1040s8.pdf>.

authority to disallow the ODC claimed by nearly 390,000 taxpayers on their returns from Tax Years 2018 to 2023 (as of October 2024) because their dependents did not have TINs.⁴

In response to an inquiry from TAS, the IRS Office of Chief Counsel explained its legal rationale as follows:

[I]n order to avoid treating dependents for whom a taxpayer may claim a credit under section 24(h)(4)(A) [i.e., the ODC] inconsistently, section 24(e)(1) [which imposes a TIN requirement for claiming a “qualifying child” for a credit under section 24] should be interpreted as applying to all dependents for whom a taxpayer claims a credit under section 24(h)(4)(A), not only a qualifying child described in section 24(h)(4)(C) [i.e., a “qualifying child” who lacks the SSN required by section 24(h)(7)].⁵

We question whether the IRS may legally impose a TIN requirement for the ODC. It is a basic principle of statutory interpretation that the unambiguous language of a statute controls.⁶ Here, there is no statutory requirement that a dependent have a TIN to be claimed for the ODC. The IRS has imposed the requirement on its own.

The TCJA legislative history shows that Congress considered a TIN requirement and did not adopt it. The House version of the TCJA included a requirement that a dependent have a TIN for purposes of the ODC, but the subsequent Senate version of the TCJA did not. The enacted bill followed the Senate approach.⁷

To resolve the inconsistency between the absence of a TIN requirement in the ODC statute and the IRS’s decision to impose the requirement on its own, the National Taxpayer Advocate recommends that Congress clarify its intent.

RECOMMENDATION

- Clarify whether a dependent is required to have a TIN for purposes of the ODC under IRC § 24(h)(4).

4 We presume the IRS exercised its summary assessment authority in reliance on IRC § 6213(g)(2)(I), which defines “mathematical or clerical error” to include “an omission of a correct TIN required under section 24(e) (relating to child tax credit) to be included on a return.” The nearly 390,000 taxpayers include both primary and secondary taxpayers on married filing joint returns and correspond to 269,795 tax returns. IRS, Compliance Data Warehouse, Individual Returns Transaction File, TY 2018-2023 (Oct. 2024). If \$500 of ODC was claimed with respect to each dependent, then the total amount of disallowed ODC would be about \$287 million (i.e., 574,550 multiplied by \$500).

5 Email from the Office of Division Counsel/Associate Chief Counsel (National Taxpayer Advocate Program) to TAS Management & Program Analyst (Dec. 19, 2019) (on file with TAS). The email does not contain references or citations to any legal authority for this position.

6 See, e.g., *Babb v. Wilkie*, 589 U.S. 399, 413 (2020) (“In any event, where, as here, the words of [a] statute are unambiguous, the judicial inquiry is complete.”) (internal quotations omitted); *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 253-54 (1992) (“We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there.”).

7 See H.R. REP. NO. 115-466, at 225-227 (2017) (Conf. Rep.), <https://www.congress.gov/115/crpt/hrpt466/CRPT-115hrpt466.pdf>. It is possible that a drafting error was made, but if so, Congress – not the IRS – should correct it. Indeed, a technical correction was proposed but was not enacted. See STAFF OF J. COMM. ON TAX’N, 115TH CONG., TECH. EXPLANATION OF THE HOUSE WAYS AND MEANS COMM. CHAIRMAN’S DISCUSSION DRAFT OF THE “TAX TECH. AND CLERICAL CORR. ACT” 4, JCX-1-19 (J. Comm. Print 2019), <https://www.ict.gov/publications.html?func=startdown&id=5154>.