NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

MEMORANDUM

To: Individuals and Organizations Interested in Child Care
From: Nancy Duff Campbell, Amy K. Matsui, and Janine Herring
Date: February 10, 2012
Re: Developments in Federal and State Child and Dependent Care Tax Provisions in 2011

Tax provisions for child and dependent care expenses provide valuable help to many families struggling to pay for the care necessary for them to earn a living. The tax codes of the federal government and 28 states, including the District of Columbia, currently contain a total of 35 child and dependent care (CADC) provisions that reduce the amount of tax owed by families and, in some instances, increase their tax refunds. While many state legislatures have continued to improve their provisions, progress has slowed in recent years, and some states have even reduced benefits provided to families through CADC provisions. Advocates can help to expand the number of provisions, improve existing provisions, and inform families about these and other federal and state tax provisions that can help them meet their CADC expenses.

This memorandum summarizes changes to state and federal child and dependent care tax provisions that took effect or were enacted in 2011. Since the National Women's Law Center's April 2011 edition of its publication *Making Care Less Taxing: Improving State Child and Dependent Care Tax Provisions*[1] and its accompanying state-by-state report card *Making the Grade for Care,*[2] which together present a comprehensive overview of CADC provisions in effect through tax year 2010, no states enacted new CADC provisions. Three states, Arkansas, California, and Kansas, enacted legislative changes to their CADC provisions; the most significant change occurred in California, which made its previously refundable credit nonrefundable.

The federal CADC credit remained unchanged, although improvements to the credit in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA)[3] that were extended by Congress in the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA)[4] will expire on December 31, 2012, unless further extended.

This memorandum also reminds advocates of the materials available as a part of the Center's Tax Credits Outreach Campaign to increase the number of eligible families claiming

[1] Nancy Duff Campbell et al., Nat'l Women's Law Ctr., *Making Care Less Taxing: Improving State Child and Dependent Care Tax Provisions* (2011), *available at* http://www.nwlc.org/sites/default/files/pdfs/nwlc-mclt2011-without_report_card_inside_and_bookmarked.pdf [hereinafter *Making Care Less Taxing*].
[2] Nat'l Women's Law Ctr., *Making the Grade for Care: Ranking State Child and Dependent Care Tax Provisions* (2011), *available at* http://www.nwlc.org/sites/default/files/pdfs/nwlc-makinggradeforcare2011.pdf.
[3] Pub. L. No. 107-16, § 204, 115 Stat. 38, 49 (2001) (codified as amended at 26 U.S.C.A. § 21 (West, Westlaw through Pub. L. No. 112-86 (excluding Pub. L. No. 112-55, 112-56, 112-74, 112-78, and 112-81)).
[4] Pub. L. No. 111-312, § 101(a), 124 Stat. 3296, 3298 (2010).

these and other child-related federal and state tax provisions. These materials explain federal and state provisions and assist advocates in reaching families who are eligible to claim tax benefits.

Changes to State Law Effective for Tax Year 2011

As discussed above, no states enacted new CADC tax provisions in 2011. However, three states, Arkansas, California, and Kansas, enacted changes to their CADC provisions.[5]

Arkansas

In 2011, Arkansas enacted a small technical change to its CADC credit, effective for tax year 2011, to provide that it is based on the federal CADC credit in effect on January 1, 2011.[6] Under prior law, the credit was based on the federal CADC credit in effect on January 1, 2007. This change will have no impact on the value of the credit for tax year 2011—but in the future, if the value of the federal credit changes, the value of the Arkansas credit will remain the same.

However, Arkansas failed to similarly amend its "early childhood program" credit, which continues to be based on the federal CADC credit in effect on January 1, 1993.[7]

California

In 2011, California made its previously refundable CADC credit nonrefundable, effective for tax year 2011.[8] This means that up to $1,050, the credit's maximum value, will no longer be available to families without state tax liability. In tax year 2008, the most recent year for which data are available, the credit provided $138 million in benefits to California families, of which only $38 million was used to reduce tax liability; the remaining $100 million was received as a refund by eligible tax filers.[9] This change in the law could therefore mean a loss of over two-thirds of the credit's value to California families.

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[5] In addition, Maryland decreased its the top marginal tax rate from 6.25% for tax year 2010 to 5.5% for tax year 2011, reducing Maryland's maximum CADC deduction from $188 to $165, for one child or dependent, and from $375 to $330, for two or more children or dependents. *See* Md. Code Ann., Tax-Gen. §§ 10-208(e), 10-105 (West, Westlaw through 2011 Reg. Sess. and 2011 Spec. Sess.) (deduction and tax rates, respectively).

[6] Ark. Code Ann. § 26-51-502 (West, Westlaw through 2011 Gen. Sess.); 2011 Ark. Acts 787.

[7] This specific date reference means that the EGTRRA improvements to the federal credit that took effect in 2003 (and were extended by TRUIRJCA through 2012) did not automatically result in improvements to the early childhood program credit. The date distinctions in the Arkansas statute between this and the other Arkansas CADC credit are not reflected in the Arkansas tax forms and instructions for tax year 2011, however, which do not require a tax filer to recalculate the filer's federal credit amount without the EGTRRA improvements in order to claim the refundable early childhood program credit. For more information regarding this aspect of the early childhood program credit, *see Making Care Less Taxing*, *supra* note 1, at 14 n.32, 21 n.64.

[8] Cal. Ann. Rev. & Tax Code § 17052.6 (West, Westlaw through 2011 Reg. Sess. Laws, 2011-2012 1st Ex. Sess. Laws); 2011 Cal. Stat. ch. 14.

[9] State of California Franchise Tax Board, *California Income Tax Expenditures: Compendium of Individual Provisions* 28 (2011), *available at* https://www.ftb.ca.gov/aboutftb/Tax_Expenditure_Report_2011.pdf.

Kansas

In 2011, Kansas required a tax filer to provide a Social Security Number for himself or herself, his or her spouse, and "every" dependent in order to receive the CADC credit, effective for tax year 2011.[10] In contrast, federal law permits a tax filer claiming the federal CADC credit to provide either an Individual Tax Identification Number (ITIN) or a Social Security Number (SSN).[11] ITINs are issued to foreign nationals and others who have federal tax reporting or filing requirements but do not qualify for a SSN; for example, a nonresident alien, or a dependent or spouse of a U.S. citizen or resident alien who does not qualify for a SSN.[12] In calendar year 2011, Kansas taxpayers filed 20,966 state returns that included an ITIN for a taxpayer or his or her spouse.[13] It is unknown how many of these returns claimed the Kansas CADC credit, but the Kansas change may reduce the number of filers eligible for the credit.[14]

Potential Changes to Federal Law in 2012

As noted above, Congress in TRUIRJCA extended the CADC improvements that were enacted in 2001, and effective in tax year 2003, through tax year 2012.[15] If the 2001 improvements are allowed to expire, many families will see a substantial decrease in the value of their federal CADC credit. In addition, many states with CADC tax provisions linked to the federal credit will see an automatic decrease in the value of their state provisions.[16]

With many other tax provisions expiring at the end of 2012, Congress is unlikely to move separate legislation on the CADC credit. The National Women's Law Center is working to ensure that the credit's improvements are maintained and to lay the groundwork for additional improvements that might be part of a broader tax reform effort. Please contact Amy Matsui at amatsui@nwlc.org if you are interested in joining advocacy efforts related to the federal credit.

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[10] Kan. Stat. Ann. § 79-32,111a (West, Westlaw through 2011 Reg. Sess.); 2011 Kan. Sess. Laws ch. 115.

[11] 26 U.S.C.A. § 21(e)(10).

[12] Internal Revenue Serv., IRS Pub. 1915, *Understanding Your IRS Individual Taxpayer Identification Number* 6-7 (2012).

[13] Telephone Interview with Jeannine Koranda, Pub. Info. Officer, Office of the Sec'y, Kansas Dep't of Revenue (Feb. 9, 2012).

[14] The Kansas tax forms and instructions for 2011 do not explicitly prohibit a tax filer from using an ITIN to claim the CADC credit, but the Kansas Department of Revenue has issued a policy statement stating that a filer who claims the CADC credit on a return with an ITIN will not receive the credit. *See* Kansas Dep't of Revenue, *Questions Regarding Tax Returns with ITINs?: The Department of Revenue has announced its policy for the 2012 filing season*, Kansas Soc'y of CPAs (Sept. 28, 2011), http://www.kscpa.org/about/news/164-tax_returns_with_itins-_department_of_revenue.

[15] Congress in EGTRRA increased the expense limits for the credit from $2,400 for one child or dependent and $4,800 for two or more children or dependents to $3,000 for one child or dependent and $6,000 for two or more children or dependents. *See* EGTRRA § 204(a). In addition, Congress increased the maximum percentage of eligible expenses a taxpayer may claim from 30% to 35% of expenses, and increased the adjusted gross income (AGI) at and below which a taxpayer may claim the maximum percent of qualifying expenses from $10,000 to $15,000, and the AGI above which a taxpayer may claim the minimum 20% of expenses from $28,000 to $43,000. *See* EGTRRA § 204(b). As a result of these changes, which were effective in tax year 2003, the maximum potential credit amount increased from $1,440 to $2,100. Congress in TRUIRJCA extended these changes through the end of 2012. *See* TRUIRJCA § 101(a).

[16] Eighteen states provide a credit whose amount is a percentage of the federal CADC credit, four states provide a tax deduction for expenses eligible for the federal credit, and four states provide a tax credit whose amount is a percentage of the expenses eligible for the federal credit. *See Making Care Less Taxing*, *supra* note 1, at 14-17.

Tax Credits Outreach Campaign for Tax Year 2011

Each year, the Center conducts a national Tax Credits Outreach Campaign in partnership with state advocates and service providers to help families take advantage of federal and state child and dependent care tax provisions and other valuable tax benefits. Campaign partners work to get the word out to families through child care services and other networks, the media, large employers, and state agencies. Similar campaigns in previous years have significantly increased the number of families claiming these tax benefits and the amount of benefits they receive.

In order to assist advocates, the Center has prepared materials to inform families about the benefits available for tax year 2011 from the federal CADC credit, Earned Income Tax Credit, and Child Tax Credit. Fliers are available in English and Spanish, and in some instances, in Vietnamese and Chinese. The Center has also prepared state-specific fliers in English and Spanish for every state, describing parallel state tax provisions, as well as a variety of other informational and campaign materials. All of these materials are available on the Center's tax credits outreach campaign web page, www.nwlc.org/loweryourtaxes.

You can help spread the word to eligible families by distributing outreach fliers, including an article about tax credits in your newsletter, and by linking to the Center's tax credits outreach web page on your own website. To find out more about how you can spread the word about valuable federal and state tax benefits, check out the Center's Toolkit for Child Care Advocates, also available at www.nwlc.org/loweryourtaxes.

The Center invites you to become a Community Partner in the campaign. The Center is providing its Community Partners with tailored materials, including media materials, and technical assistance upon request. To sign up to be a Community Partner, please contact Val Vilott at vvilott@nwlc.org.

Conclusion

For more information about federal and state tax credits for which eligible families may be eligible, please visit www.nwlc.org/loweryourtaxes and www.nwlc.org/educationseries. Center staff would be happy to work with you to establish or expand a child and dependent care tax provision in your state, improve state tax forms to make it easier for families to claim the state provision, or connect with tax credits outreach campaigns in your area. Please contact Amy Matsui at amatsui@nwlc.org for more information.