NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

M E M O R A N D U M

To: Individuals and Organizations Interested in Child Care
From: Nancy Duff Campbell, Amy Matsui and Amelia Bell
Date: August 5, 2016
Re: Developments in Federal and State Child and Dependent Care Tax Provisions in 2015

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 26 states, including the District of Columbia, currently contain a total of 34 child and dependent care (CADC) provisions that reduce the amount of tax owed by families and, in some instances, increase their tax refunds. While some state legislatures have reduced or even eliminated benefits provided to families through CADC provisions in recent years, other states have maintained or improved their 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 federal and state child and dependent care tax provisions that were enacted or took effect in 2015. The federal Child and Dependent Care Tax Credit was unchanged in 2015, but there were changes in four state credits. Iowa improved its existing CADC credit in 2014, effective for tax year 2015, allowing families with little or no federal tax liability to claim the state credit. Maine made its CADC credit nonrefundable for nonresidents in 2015, effective for tax year 2016. Nebraska made a minor change in its CADC credit in 2015, effective for tax year 2015, that is not likely to have a significant impact on tax filers. Oregon allowed its Necessary Dependent Care Expenses credit and its Working Family Child Care credit to sunset in 2015 and replaced them both with the Working Family Child and Dependent Care credit, effective for tax year 2016.

This memorandum supplements 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. This memorandum and the Center's February 11, 2015, February 10, 2014, March 8, 2013, and February 10, 2012 memoranda summarizing developments in

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[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.

federal and state CADC provisions in 2014,[3] 2013,[4] 2012,[5] and 2011[6] provide information on changes since 2010.

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 these and other family-related federal and state tax benefits. These materials assist advocates in reaching families who are eligible to claim the benefits of federal and state tax provisions. In addition to state-specific materials in English, Spanish, and some other languages, the materials also include information on the Premium Tax Credit that is available to help families pay for health insurance, a tax checklist for survivors of domestic violence, and resources for immigrant families. Updated materials for tax year 2016 will be available in fall 2016.

Changes to State CADC Provisions in 2015

Iowa

In 2014, Iowa enacted a change to its CADC credit that will benefit families with limited federal tax liability, and that change was effective for tax year 2015.[7] The state credit is now calculated as a percentage of the federal credit *before* it is limited by federal tax liability. Prior to this change, many low-income families in Iowa were unable to fully benefit from the state credit because it was calculated as a percentage of the federal credit, after the federal credit had been limited by federal tax liability.

Maine

In 2015, Maine enacted a change to its CADC credit that will reduce its value to nonresident tax filers, effective for tax year 2016. The credit will remain refundable up to $500 for resident tax filers and part-year resident tax filers, but will be nonrefundable for nonresident tax filers.[8] Prior to this change, the credit was partially refundable for both part-year resident and nonresident tax filers, with a maximum refund available to nonresident tax

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[3] Nat'l Women's Law Ctr., *2015 Supplement to Making Care Less Taxing: Improving State Child and Dependent Care Tax Provisions* (Feb. 2015), *available at* http://nwlc.org/resources/2015-supplement-making-care-less-taxing-improving-state-child-and-dependent-care-tax-provisions/.
[4] Nat'l Women's Law Ctr., *2014 Supplement to Making Care Less Taxing: Improving State Child and Dependent Care Tax Provisions* (Feb. 2014), *available at* http://www.nwlc.org/resource/2014-supplement-making-care-less-taxing-improving-state-child-and-dependent-care-tax-provis.
[5] Nat'l Women's Law Ctr., *2013 Supplement to Making Care Less Taxing: Improving State Child and Dependent Care Tax Provisions* (Mar. 2013), *available at* https://nwlc.org/wp-content/uploads/2016/08/final_cadc_ty_2012_memo.pdf.
[6] Nat'l Women's Law Ctr., *2012 Supplement to Making Care Less Taxing: Improving State Child and Dependent Care Tax Provisions* (Feb. 2012), *available at* https://nwlc.org/resources/2012-supplement-to-making-care-less-taxing-improving-state-child-and-dependent-care-tax-provisions/.
[7] IOWA CODE ANN. § 422.12C(1) (West 2016).
[8] ME. REV. STAT. ANN. tit. 36, § 5218(4) (2016).

filers of $500 multiplied by the ratio of the nonresident tax filer's Maine adjusted gross income (AGI) to the tax filer's federal AGI.

Nebraska

In 2015, effective for tax year 2015, Nebraska enacted a change to its CADC credit to provide that tax filers are only eligible to receive the credit "if the individual would have received the federal credit allowed under section 21 of the Internal Revenue Code after adding back in any carryforward of a net operating loss that was deducted pursuant to such section in determining eligibility for the federal credit."[9] (The change also applies to the Nebraska Earned Income Tax Credit.)[10] However, the 2015 tax forms and instructions did not reference this change as it applies to the CADC credit, or indicate that tax filers should calculate their CADC credit any differently, suggesting that the Nebraska Department of Revenue does not interpret the change as having much of an impact on the CADC credit.[11] This change was effective for tax year 2015.

Oregon

In 2015, Oregon enacted a new Working Family Child and Dependent Care (WFCADC) credit,[12] to replace two credits that were allowed to sunset at the end of 2015—the Working Family Child Care (WFCC) credit[13] and the Necessary Dependent Care Expenses (Oregon CADC) credit.[14] This new credit takes effect in tax year 2016.

Under the new WFCADC credit, as under the sunset Oregon CADC credit, tax filers may claim a partial reimbursement of employment-related expenses "allowable" under the federal CADC credit, that is, of expenses incurred for care of the tax filer's child under age 13, or spouse or dependent who is physically or mentally incapable of self-care, in order for the tax filer to work or look for work.[15] If the tax filer is married, the expenses must be incurred to allow both the tax filer and the filer's spouse to work or look for work, unless one spouse is a full-time student or is incapable of self-care.[16] The sunset WFCC credit, in contrast, permitted care expenses incurred in order for the tax filer or, if married, both the filer

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[9] NEB. REV. STAT. ANN. § 77-2715.07(2)(a) (West 2016).
[10] *See id.* § 77-2715.07(2)(e).
[11] *See* Neb. Dep't of Revenue, *2015 Nebraska Individual Income Tax Booklet* (2015), *available at* http://www.revenue.nebraska.gov/tax/15forms/f_1040n_booklet.pdf. In contrast, the 2015 tax forms and instructions specifically reference this change for tax filers claiming the Nebraska Earned Income Tax Credit, to which it also applies. *See id*. at 2.
[12] OR. REV. STAT. ANN. § 315.264 (West 2016).
[13] *Id.* § 315.262 (expired 2015).
[14] *Id.* § 316.078 (expired 2015).
[15] *Compare id.* § 315.264(1)(a), *with id.* § 316.078(1).
[16] *See id.* § 315.264(1)(a).

and the filer's spouse, to attend school, work, or look for work to qualify for the credit,[17] and had a somewhat different definition of the incapacity a spouse had to have to qualify a married couple for the credit when only one spouse was working, looking for work, or attending school.[18] However, only care expenses for children who were under age 13 or disabled qualified for the WFCC credit, not care expenses for spouses or other dependents.[19]

Under the WFCADC credit, tax filers with federal or Oregon adjusted gross income (AGI) at or below 300% of the federal poverty level (FPL) may claim a credit for a percentage of allowable care expenses.[20] The income limit of 300% of the FPL is higher than the income limit of the sunset WFCC credit of 250% of the FPL,[21] and the income limit of the sunset Oregon CADC credit was $45,000 in federal taxable income,[22] an amount difficult to compare to the income limits of the WFCADC or sunset WFCC credits.[23]

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[17] *See* Or. Dep't of Revenue, *2015 Oregon Working Family Child Care Credit for Full-Year Residents (Form & Instructions) 3* (2015). In addition, the school attendance could be part-time. *Id*. (requiring tax filer to have "paid qualifying child care expenses to allow you and your spouse to work or attend school at least part time or you or your spouse are exempt from this requirement due to a qualifying disability" in order to claim the WFCC credit).

[18] *See* OR. REV. STAT. ANN. § 315.262(2). Under the WFCC credit, care expenses could be claimed by a married couple if only one spouse worked or looked for work or was a student, if the other spouse "has a disability, if the disability is such that it prevents the taxpayer's spouse from providing child care, being gainfully employed, seeking employment and attending school." *Id.* Agency guidance defined "disabled" as "having a disability "that prevents (or severely restricts) [the individual] from all of the following: Performing an activity of daily living, including bathing, dressing, feeding, toileting, etc.; Working; Going to school at least part time; and Caring for the child(ren)." *See* Or. Dep't of Revenue, *supra*, at 3. In contrast, the WFCADC credit incorporates the federal CADC's requirement, see 26 U.S.C.A. § 21(d)(2) (2016), that care expenses may be claimed by a married couple if only one spouse is working or looking for work if the other spouse "is physically or mentally incapable of caring for himself or herself" OR. REV. STAT. ANN. § 315.264(1)(a). Federal regulations elaborate that "[a]n individual is physically or mentally incapable of self-care if, as a result of a physical or mental defect, the individual is incapable of caring for the individual's hygiene or nutritional needs, or requires full-time attention of another person for the individual's own safety or the safety of others. The inability of an individual to engage in any substantial gainful activity or to perform the normal household functions of a homemaker or care for minor children by reason of a physical or mental condition does not of itself establish that the individual is physically or mentally incapable of self-care." 26 C.F.R. § 1-21.1 (b)(4) (2016).

[19] OR. REV. STAT. ANN. § 315.262(1)(f).

[20] *Id.* § 315.264(2).

[21] *Compare id.* § 315.264(2), *with id.* § 315.262(4). The FPL varies by family size. For example, for a family of three (one adult and two children under age 18) in 2015, 300% of the FPL of $19,096 is $57,288, and 250% of the FPL is $47,740. Nat'l Women's Law Ctr. calculations based on U.S. CENSUS BUREAU, POVERTY THRESHOLDS BY SIZE OF FAMILY AND NUMBER OF CHILDREN FOR 2015, *available at* http://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-thresholds.html (last visited July 26, 2016). In addition, to claim the WFCC credit, a filer had to have earned income of at least a specified amount, *see* OR. REV. STAT. ANN. §§ 315.262(1)(e)(A), (8)(A), which for 2015 was $8,700. *See* Or. Dep't of Revenue, *supra* note 17, at 3.

[22] OR. REV. STAT. ANN. § 316.078(1).

[23] Specifically, AGI is income before most deductions are taken, whereas taxable income is income after deductions are taken, *see* 26 U.S.C.A. § 63, meaning that for most tax filers, AGI exceeds taxable income.

Under the WFCADC credit, tax filers may claim allowable care expenses of up to $12,000 for one qualifying individual, and up to $24,000 for two or more qualifying individuals.[24] The expense limits of the WFCADC credit are significantly higher than the expense limits of the sunset Oregon CADC credit (and the federal CADC credit) – $3,000 for one qualifying individual and $6,000 for two or more qualifying individuals[25] – and every state CADC credit in the country.[26] They are not, however, higher than the amount of expenses tax filers could claim for the WFCC credit, which were unlimited.[27]

Under the WFCADC credit, the percentage of care expenses that may be claimed varies according to (1) the tax filer's AGI, (2) whether the care is for a child or an adult, and (3) if a child, the age of the tax filer's youngest child. The applicable percentage of care expenses that may be claimed increases as AGI increases, reaching the maximum percentage at 90% of the FPL.[28] Once AGI exceeds 110% of the FPL, the applicable percentage decreases as AGI increases, reaching zero when AGI exceeds 300% of the FPL.[29] Up to 260% of the FPL, tax filers with children under age 3 may claim a higher percentage of their care expenses than filers with older children or older disabled children or dependents at the same income level.[30] The maximum percentage of expenses that may be claimed is 75%, for tax filers with AGI between 90 and 110% of FPL and care expenses for a child under age 3.[31]

In contrast, the percentage of care expenses that could be claimed under both the sunset WFCC credit and Oregon CADC credit varied by either AGI (WFCC)[32] or federal taxable income (Oregon CADC).[33] For the WFCC credit, the percentage range was 40% (at AGI of 200% of the FPL or less) to 8% (at AGI of 241-250% of the FPL),[34] and for the Oregon CADC credit, the percentage range was 30% (at federal taxable income of $5,000 or less) to 4% (at federal taxable income of $35,001-$45,000).[35]

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[24] OR. REV. STAT. ANN. § 315.264(1)(b).
[25] *Compare id.* § 315.264(1)(b), *with id.* § 316.078(1), *and* 26 U.S.C.A. § 21(c).
[26] *Compare* OR. REV. STAT. ANN. § 315.264(1)(b), *with* Nat'l Women's Law Ctr., *Making Care Less Taxing*, *supra* note 1, at Appendix A (listing expense limits for state child and dependent care tax provisions).
[27] *See* OR. REV. STAT. ANN. § 315.262(1)(b). However, in recent years many Oregon families have not spent more than the WFCADC credit expense limits. *See* Deana Grobe & Roberta B. Weber, *2014 Oregon Child Care Market Price Study* 31 (Feb. 2015), *available at* https://www.oregon.gov/DHS/ASSISTANCE/CHILD-CARE/Documents/2014-Market-Rate-Study.pdf (75th percentile of infant center-based care costs is $1,130/month, toddler care $1,066/month, preschool age care $850/month, and school age care $500/month during the school year and $725/month during the summer).
[28] OR. REV. STAT. ANN. § 315.264(2).
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.* § 315.262(4).
[33] *Id.* § 316.078(1).
[34] *Id.* § 315.262(4).
[35] *Id.* § 316.078(1).

The following table shows the applicable percentage and provides the maximum credit amount available for a single tax filer with two children under the WFCADC credit, if the filer claims the maximum amount of eligible expenses, $24,000.[36] The table reflects the differences if the tax filer had AGI between 0 and 10% of the FPL, between 90 and 110% of the FPL, between 200 and 210% of the FPL, between 240 and 250% of the FPL, and between 280 and 300% of the FPL.

Adjusted Gross Income as Percentage of the Federal Poverty Level (dollar amount for a family of 3 in 2015)[37]		Applicable percentage based on age of youngest child at close of tax year (maximum credit available to a family with two children)			
Greater than	Less than or equal to	Under 3 years	At least 3 years but less than 6	At least 6 years but less than 13, or at least 13 but less than 18 if disabled	18 years or older if disabled[38]
0% ($0)	10% ($1,910)	10% ($2,400)	8% ($1,920)	5% ($1,200)	5% ($1,200)
90% ($17,186)	110% ($21,006)	75% ($18,000)	73% ($17,520)	70% ($16,800)	55% ($13,200)
200% ($38,192)	210% ($40,102)	45% ($10,800)	43% ($10,320)	40% ($9,600)	22% ($5,280)
240% ($45,830)	250% ($47,740)	20% ($4,800)	18% ($4,320)	15% ($3,600)	5% ($1,200)
280% ($53,469)	300% ($57,288)	4% ($960)	4% ($960)	4% ($960)	4% ($960)

As a rough comparison, the maximum credit amount under the sunset WFCC credit for a single tax filer with two children under age 13 and $24,000 in expenses ranged from $9,600 at AGI of 200% of the FPL or less to $1,920 at AGI of 241-250% of the FPL (and $0 at AGI above 250% of the FPL).[39] The maximum amount under the Oregon CADC credit for a single tax filer with two children under age 13 and $24,000 in expenses ranged from $1,800

[36] Many tax filers, especially those at the low end of the income scale are, of course, unable to spend $24,000 on care expenses.
[37] Nat'l Women's Law Ctr. calculations based on U.S. Census Bureau data, *supra* note 21, and OR. REV. STAT. ANN. § 315.264(2).
[38]The chart is modeled on the statute that created the WFCADC credit, which does not include the applicable percentages for claims for adult dependents and spouses incapable of self-care. *See id*. § 315.264(2). Presumably, claims for those dependents and spouses would be treated the same as claims for a child "18 years or older if disabled," and the Oregon Department of Revenue should clarify this in the 2016 tax forms.
[39] Nat'l Women's Law Ctr. calculations based on OR. REV. STAT. ANN. § 315.262(4).

at federal taxable income of $5,000 or less to $240 at federal taxable income of $35,001-$45,000 (and $0 above federal taxable income of $45,000).[40]

Finally, the WFCADC credit, like the sunset WFCC credit, is fully refundable, but the sunset Oregon CADC credit was not refundable,[41] meaning that tax filers with limited income tax liability who could not fully benefit from the Oregon CADC credit can fully benefit from the WFCADC credit.

The different income eligibility levels, expense limits, type and age of dependents and percentage of expenses that determine benefits for each of the three credits make it difficult to determine whether the WFCADC is an improvement on the sunset WFCC credit and Oregon CADC credits, especially for those tax filers who were eligible for both of the sunset credits. More filers are likely to be eligible for the WFCADC credit than the sunset WFCC credit and Oregon CADC credit, but some eligible filers – including some low-income filers – may receive less under the WFCADC credit than they did under the sunset credits, and some low- and moderate-income filers may receive more under the WFCADC credit than they did under the sunset credits.

Tax Credits Outreach Campaign for Tax Year 2016

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.

The Center provides outreach materials to Campaign partners, including state-specific fliers available in Spanish and English (as well as some in Mandarin Chinese and Vietnamese) that inform families about the benefits available from the federal CADC credit, Earned Income Tax Credit, Child Tax Credit, state versions of these credits, and the federal Premium Tax Credit that is available to help families pay for health insurance. These, and other materials are available on the Center's tax credits outreach campaign web page, www.nwlc.org/loweryourtaxes. These materials will be updated for tax year 2016 and posted on the website in fall 2016.

Although the 2015 tax filing season has concluded, it's never too early to start planning for next year. To find out more about how you can spread the word about valuable

[40] Nat'l Women's Law Ctr. calculations based on OR. REV. STAT. ANN. § 316.078(1).
[41] *Compare* OR. REV. STAT. ANN. § 315.264(11), *with id.* § 315.262(7), *and id.* § 316.078(5).

federal and state tax benefits, check out the Center's Tax Credits Outreach Toolkit, also available at www.nwlc.org/loweryourtaxes.

Conclusion

For more information about federal and state tax credits for which families may be eligible, please visit www.nwlc.org/loweryourtaxes. Center staff would be happy to work with you to establish or expand a child and dependent care tax provision in your state, conduct a conference call or webinar for advocates in your state, or connect your organization with tax credits outreach campaigns in your area. Please contact Amy Matsui at amatsui@nwlc.org for more information.