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CHILD CARE & EARLY LEARNING

WHY TRUMP'S TAX INCENTIVE FOR EMPLOYERS TO PROVIDE CHILD CARE WON'T WORK

High-quality child care is fundamental to the economic security of women and families, but it is out of reach for too many.

The child care proposal that President Trump released during the campaign[1] includes a provision aimed at "incentiviz[ing] employers to provide child care at the workplace" through the tax code.[2] Unfortunately, this aspect of the Trump proposal, if enacted, is likely to have little impact. Rather than advance ineffective tax incentives for employers, policymakers should increase investments in direct child care assistance and tax assistance for families.

Current Law: The Credit for Employer-Provided Child Care

The existing federal Credit for Employer-Provider Child Care provides a tax benefit to employers who incur child care or child care resource and referral expenditures.[3] The credit was enacted in 2001, and has been in effect since 2002.[4] Employers may claim this nonrefundable credit if they incur eligible expenses related to acquiring, building, or operating child care facilities, contracts for child care services provided by a qualified child care facility, or contracts to provide resource and referral services for their employees.[5]

- The credit is worth 25 percent of eligible child care expenses, and 10 percent of resource and referral expenses.[6]
- The maximum value of the credit for any taxable year is $150,000,[7] which would mean that the employer claimed between $600,000 and $1.5 million in eligible expenses.[8]
- If expenses for building a child care facility are claimed for the credit and the employer stops operating the facility within 10 years, a portion of the credit is recaptured.[9]

The Trump Proposal to Improve the Existing Federal Credit

The Trump proposal purports to increase the incentive for employers to provide on-site child care by making the existing federal tax Credit for Employer-Provided Child Care "more effective." The proposal states that it would:

- increase the "cap" on the size of the credit (although it does not say by how much),
- shorten the period that an on-site child care center must be in operation before a portion of the credit is recaptured (although it does not specify by how much), and
- "devise ways for companies to pool resources in order to make the credit more attractive."[10]

The Credit Is Underutilized

In 2001, prior to the credit's enactment, the Joint Committee on Taxation (JCT) estimated that, over a ten-year period, tax expenditures from claims of the credit would total $1.4 billion.[11] However, the actual expenditures from the credit have been far below those projections. In the first ten years after the credit went into effect, the tax benefits from claims of the credit totaled about one-tenth of the amount projected by the JCT ($151 million).[12]

And in tax year 2013, the most recent year for which data are available, claims of the Employer-Provided Child Care Credit resulted in tax expenditures and benefits to employers of $16.8 million.[13] IRS data do not specify the number of employers who claimed the credit, but if all the employers who did so in 2013 claimed the maximum credit amount of $150,000, there would have been just 112 claimants.[14]

The modest amount claimed for the credit suggests that it has done little to incentivize employers to provide child care to their employees. Indeed, it may well be that only employers that were already providing child care to their employees before the credit was enacted are claiming the credit. The anemic performance of the federal credit is consistent with that of state employer child care credits: a 2002 National Women's Law Center study found that in 16 of the 20 states with employer tax credits and utilization data, *five or fewer employers* claimed the credit in the most recent tax year for which data were available.[15]

One reason that claims of the credit are low may be that many employers do not have federal tax liability. These employers include government agencies and non-profit organizations, as well as active for-profit corporations. Government agencies and non-profit organizations are not eligible for the credit,[16] and a recent GAO study concluded that, "[i]n each year from 2006-2012, at least two-thirds of all active corporations had no federal income tax liability."[17] In the absence of tax liability, the nonrefundable Employer-Provided Child Care Credit has no value to an employer.

The Trump Proposal Is Not Likely to Have Much of An Impact

The unspecified changes proposed by the Trump campaign are unlikely to increase claims of the credit, especially if the Trump Administration succeeds in its efforts to lower the corporate tax rate from a maximum of 35 percent under current law to a maximum of 15 percent.[18] Although many corporations currently pay effective tax rates of less than 35 percent because of tax exclusions, deductions and other credits,[19] lower nominal rates would likely produce still lower effective rates and lower corporate tax liability. And the more tax liability is reduced or eliminated for corporations, the less attractive tax credits like the Credit for Employer-Provided Child Care will prove. Making the maximum amount of the credit *larger* will do nothing to alter that effect. In short, the Trump employer child care tax proposal is unlikely to increase the number of employers providing child care to their employees or make a difference in the lives of families who need child care in order to work.

What Would Help Families Meet the High Cost of Child Care

Instead, policymakers should focus on efforts that would increase support for working families and the middle class.

- Congress should increase funding for the bipartisan Child Care and Development Block Grant[20] sufficiently to enable it to serve all the low- and moderate-income families who qualify for its help. CCDBG
    - Gives real help to families paying for the child care provider they choose so they pay less out of pocket each month;
    - Helps ensure children have safe and healthy learning environments;
    - Ensures that funds are available to inspect child care settings, help families find child care, assist child care providers with increasing their credentials, and improve child care quality; and
    - Helps increase the wages of child care providers so they do not have to worry about putting food on the table for their own children.
- Congress should also expand the Child and Dependent Care Tax Credit,[21] including by:
    - improving the sliding scale that determines the percentage of expenses that families can claim for the credit,
    - increasing the expenses that families can claim for the credit, and
    - making the credit refundable to provide help to families with low or no tax liability.

1 Donald J. Trump Campaign – Child Care Reforms That Will Make America Great Again 1, *available at* https://web.archive.org/web/20170205141827/https://www.donaldjtrump.com/policies/tax-plan (last visited May 12, 2017) (accessed via the Internet Archive Index) [hereinafter Trump Campaign – Child Care Reforms]. This analysis focuses on the employer credit proposal the Trump campaign released because the one-page tax principles the Trump Administration released on April 26, 2017, *see Read the White House Memo on President Trump's Proposed Tax Plan*, CNBC (April 26, 2017), http://www.cnbc.com/2017/04/26/heres-the-white-house-memo-on-president-trumps-proposed-tax-plan.html [hereinafter *Read the White House Memo*], stated only that the Administration's eventual tax plan would provide "tax relief for families with child and dependent care expenses," without providing more information about the form of that relief. *Id.*

2 Trump Campaign – Child Care Reforms, *supra* note 1.

3 26 U.S.C. § 45F (2016).

4 The credit was enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16, § 204, 115 Stat. 38, 49 (codified at 26 U.S.C. § 45F (2016)). The credit was initially scheduled to expire after tax year 2010, *id.* § 901, but was first extended for two years by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 101(a), 124 Stat. 3296, 3298 (codified as amended at 26 U.S.C. § 45F (2016)), and then made permanent by the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 101(a), 126 Stat. 2313, 2315 (codified as amended at 26 U.S.C. § 45F (2016)).

5 26 U.S.C. § 45F(c)(1) (2016). Although businesses can deduct the cost of providing child and dependent care benefits to their employees as a business expense, *see id*. § 162, the same expenses cannot be claimed for the credit and deducted. *Id.* § 45F(f)(2).

6 26 U.S.C. § 45F(a) (2016).

7 *Id.* § 45F(b).

8 NWLC calculations based on 26 U.S.C. § 45F(a) (2016). Because the credit amounts are calculated as a percentage of expenses, either 25 percent (for child care expenses) or 10 percent (for resource and referral expenses), the range of expenses can be estimated by multiplying the credit amount by 10 (the inverse of the percentage applied to resource and referral expenses) as the upper boundary and by 4 (the inverse of the percentage applied to child care expenses) as the lower boundary. If all of the expenses were resource and referral expenses, the amount of expenses used to claim the credit would have approximated $1.5 million. If, instead, all of the expenses were child care expenses, the amount of expenses used to claim the credit would have approximated $600,000. Thus, the range of aggregate funds that a business could have spent to receive the maximum credit amount of $150,000 would be between $600,000 and $1.5 million.

9 26 U.S.C. § 45F(d) (2016).

10 Trump Campaign – Child Care Reforms, *supra* note 1.

11 Joint Comm. on Taxation, JCX-51-01, Estimated Budget Effects of the Conference Agreement for H.R. 1836, at 7 (2011), *available at* https://www.jct.gov/publications.html?func=startdown&id=2001.

12 NWLC calculations based on Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2002, *available at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s (showing claims of $11.7 million); Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2003, *available at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s (showing claims of $13.9 million); Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2004, *available at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s (showing claims of $14.5 million); Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2005, a*vailable at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s (showing claims of $14 million); Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2006, *available at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s (showing claims of $15.1 million); Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2007, *available at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s (showing claims of $15.9 million); Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2008, *available at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s (showing claims of $15.2 million); Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2009, *available at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s (showing claims of $15.2 million); Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2010, *available at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s (showing claims of $15.4 million); Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2011, *available at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s (showing claims of $15.3 million). The JCT estimates, *see supra* note 11, assumed the credit would take effect in 2001, but it took effect in 2002, resulting in a slight difference in the ten-year window.

13 Internal Revenue Serv., SOI Tax Stats – Table 21 – Returns of Active Corporations, Tax Year 2013, *available at* https://www.irs.gov/uac/soi-tax-stats-table-21-returns-of-active-corporations-other-than-forms-1120-reit-1120-ric-and-1120s.

14 NWLC calculations based on Returns of Active Corporations, Tax Year 2013, *supra* note 13.

15 *See* Christina Smith FitzPatrick & Nancy Duff Campbell, Nat'l Women's Law Ctr., The Little Engine That Hasn't: The Poor Performance of Employer Tax Credits for Child Care 5 (2002), *available at* https://nwlc.org/wp-content/uploads/2015/08/TheLittleEngine2002.pdf. *See also* Nancy Duff Campbell et al., Nat'l Women's Law Ctr., Extra Credit: How Louisiana Is Improving Child Care 26 fig. 18 (2015), *available at* https://nwlc.org/wp-content/uploads/2015/08/final_nwlc_louisianataxcreditsreport.pdf (showing that only 105 businesses in Louisiana claimed the state Business-Supported Credit in 2011).

16 *See* 26 U.S.C. § 115 (2016) (exempting government entities from taxation); *see, e.g.*, *id.* § 501(a) (exempting charitable organizations described in § 501 from taxation).

17 U.S. Gov't Accountability Off., GAO-16-363, Corporate Income Tax: Most Large Profitable U.S. Corporations Paid Tax But Effective Tax Rates Differed Slightly From the Statutory Rate 10 (2016), *available at* https://www.gao.gov/assets/680/675844.pdf. The GAO analyzed "active corporations filing tax forms 1120 (U.S. Corporation Income Tax Return), 1120-L (U.S. Life Insurance Company Income Tax Return), 1120-PC (U.S. Property and Casualty Insurance Company Income Tax Return), and 1120-F (U.S. Income Tax Return of a Foreign Corporation)," as well as large corporations that filed Schedules M-3, and so the data do not include "certain 'pass-through' entities," *id.* at 2 n.3, or non-profits and government agencies. *See* also Fitzpatrick & Campbell, *supra* note 15 at 31–32 (finding that in the 17 states with employer child care tax credits and tax liability data, on average, 57 percent of state corporate filers had no tax liability and 93 percent of state corporate filers did not have sufficient tax liability to take advantage of the full amount of the credit for which they were eligible).

18 *See Read the White House Memo*, *supra* note 1; Trump Campaign – Child Care Reforms, *supra* note 1. The tax principles provide for a corporate tax rate of 15 percent and a "one-time tax on trillions of dollars held overseas." *Read the White House Memo, supra* note 1. Although the Administration did not specify the tax rate for overseas profits in its principles, campaign documents stated that corporate profits that have been held overseas and repatriated would have a tax rate of 10 percent. *Compare id.* with Trump Campaign – Child Care Reforms, *supra* note 1.

19 *See generally* Matthew Gardner, Robert McIntyre & Richard Phillips, Inst. on Taxation and Econ. Policy, The 35 Percent Corporate Tax Myth (2017), *available at* http://www.itep.org/pdf/35percentfullreport.pdf (finding that the effective tax rate for 258 Fortune 500 corporations analyzed was 21.2 percent between 2008 and 2015); U.S. Gov't Accountability Off., *supra* note 17 at 13 (noting effective tax rate of 14 percent for corporations in tax year 2012).

20 42 U.S.C. § 9858 et seq. (2016).

21 26 U.S.C. § 21 (2016).