

112TH CONGRESS
1ST SESSION

S. 965

To amend the Internal Revenue Code of 1986 to provide an income tax credit for the costs of certain infertility treatments, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2011

Mrs. GILLIBRAND introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide an income tax credit for the costs of certain infertility treatments, and for other purposes.

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 “Family Act of 2011”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) The World Health Organization formally
8 recognizes infertility as a disease, and the Centers
9 for Disease Control and Prevention have stated that
10 infertility is an emerging public health priority.

1 (2) According to the Centers for Disease Con-
2 trol and Prevention, approximately 3,000,000 have
3 infertility.

4 (3) Medical insurance coverage for infertility
5 treatments is sparse and inconsistent at the State
6 level—only 8 States have passed laws to require
7 comprehensive infertility coverage, and under those
8 State laws most employer-sponsored plans are ex-
9 empt; therefore, coverage for treatments such as in
10 vitro fertilization is limited. According to Mercer’s
11 2005 National Survey of Employer-Sponsored
12 Health Plans, in vitro fertilization was covered by 19
13 percent of large employer-sponsored health plans
14 and only 11 percent of small employer-sponsored
15 health plans. Even in States with coverage man-
16 dates, out-of-pocket expenses for these treatments
17 are significant.

18 **SEC. 3. CREDIT FOR CERTAIN INFERTILITY TREATMENTS.**

19 (a) IN GENERAL.—Subpart A of part IV of sub-
20 chapter A of chapter 1 of the Internal Revenue Code of
21 1986 is amended by inserting before section 24 the fol-
22 lowing new section:

1 **“SEC. 23A. CREDIT FOR CERTAIN INFERTILITY TREAT-**
 2 **MENTS.**

3 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-
 4 gible individual, there shall be allowed as a credit against
 5 the tax imposed by this chapter for the taxable year an
 6 amount equal to 50 percent of the qualified infertility
 7 treatment expenses paid or incurred during the taxable
 8 year.

9 “(b) LIMITATIONS.—

10 “(1) DOLLAR LIMITATION.—The aggregate
 11 amount of qualified infertility treatment expenses
 12 which may be taken into account under subsection
 13 (a) for all taxable years shall not exceed \$13,360
 14 with respect to any eligible individual.

15 “(2) INCOME LIMITATION.—

16 “(A) IN GENERAL.—The amount otherwise
 17 allowable as a credit under subsection (a) for
 18 any taxable year (determined after the applica-
 19 tion of paragraph (1) and without regard to
 20 this paragraph and subsection (c)) shall be re-
 21 duced (but not below zero) by an amount which
 22 bears the same ratio to the amount so allowable
 23 as—

24 “(i) the amount (if any) by which the
 25 taxpayer’s adjusted gross income exceeds
 26 \$150,000; bears to

1 “(ii) \$40,000.

2 “(B) DETERMINATION OF ADJUSTED
3 GROSS INCOME.—For purposes of subparagraph
4 (A), adjusted gross income shall be determined
5 without regard to sections 911, 931, and 933.

6 “(3) DENIAL OF DOUBLE BENEFIT.—

7 “(A) IN GENERAL.—No credit shall be al-
8 lowed under subsection (a) for any expense for
9 which a deduction or credit is taken under any
10 other provision of this chapter.

11 “(B) GRANTS.—No credit shall be allowed
12 under subsection (a) for any expense to the ex-
13 tent that reimbursement or other funds in com-
14 pensation for such expense are received under
15 any Federal, State, or local program.

16 “(C) INSURANCE REIMBURSEMENT.—No
17 credit shall be allowed under subsection (a) for
18 any expense to the extent that payment for
19 such expense is made, or reimbursement for
20 such expense is received, under any insurance
21 policy.

22 “(4) LIMITATION BASED ON AMOUNT OF
23 TAX.—In the case of a taxable year to which section
24 26(a)(2) does not apply, the credit allowed under

1 subsection (a) for any taxable year shall not exceed
2 the excess of—

3 “(A) the sum of the regular tax liability
4 (as defined in section 26(b)) plus the tax im-
5 posed by section 55; over

6 “(B) the sum of the credits allowable
7 under this subpart (other than this section) and
8 section 27 for the taxable year.

9 “(c) CARRYFORWARDS OF UNUSED CREDIT.—

10 “(1) RULE FOR YEARS IN WHICH ALL PER-
11 SONAL CREDITS ALLOWED AGAINST REGULAR AND
12 ALTERNATIVE MINIMUM TAX.—In the case of a tax-
13 able year to which section 26(a)(2) applies, if the
14 credit allowable under subsection (a) exceeds the
15 limitation imposed by section 26(a)(2) for such tax-
16 able year reduced by the sum of the credits allowable
17 under this subpart (other than this section), such
18 excess shall be carried to the succeeding taxable year
19 and added to the credit allowable under subsection
20 (a) for such succeeding taxable year.

21 “(2) RULE FOR OTHER YEARS.—In the case of
22 a taxable year to which section 26(a)(2) does not
23 apply, if the credit allowable under subsection (a)
24 exceeds the limitation imposed by subsection (b)(4)
25 for such taxable year, such excess shall be carried to

1 the succeeding taxable year and added to the credit
2 allowable under subsection (a) for such succeeding
3 taxable year.

4 “(3) LIMITATION.—No credit may be carried
5 forward under this subsection to any taxable year
6 after the 5th taxable year after the taxable year in
7 which the credit arose. For purposes of the pre-
8 ceding sentence, credits shall be treated as used on
9 a first-in first-out basis.

10 “(d) QUALIFIED INFERTILITY TREATMENT EX-
11 PENSES.—For purposes of this section—

12 “(1) IN GENERAL.—The term ‘qualified infer-
13 tility treatment expenses’ means amounts paid or in-
14 curred for the treatment of infertility via in vitro
15 fertilization if such treatment is—

16 “(A) provided by a licensed physician, li-
17 censed surgeon, or other licensed medical prac-
18 titioner, and

19 “(B) administered with respect to a diag-
20 nosis of infertility by a physician licensed in the
21 United States.

22 “(2) TREATMENTS IN ADVANCE OF INFER-
23 TILITY ARISING FROM MEDICAL TREATMENTS.—In
24 the case of expenses incurred in advance of a diag-
25 nosis of infertility for fertility preservation proce-

1 dures which are conducted prior to medical proce-
 2 dures that, as determined by a physician licensed in
 3 the United States, may cause involuntary infertility
 4 or sterilization, such expenses shall be treated as
 5 qualified infertility treatment expenses—

6 “(A) notwithstanding paragraph (1)(B),
 7 and

8 “(B) without regard to whether a diagnosis
 9 of infertility subsequently results.

10 Expenses for fertility preservation procedures in ad-
 11 vance of a procedure designed to result in infertility
 12 or sterilization shall not be treated as qualified infer-
 13 tility treatment expenses.

14 “(3) INFERTILITY.—The term ‘infertility’
 15 means the inability to conceive or to carry a preg-
 16 nancy to live birth, including iatrogenic infertility re-
 17 sulting from medical treatments such as chemo-
 18 therapy, radiation or surgery. Such term does not
 19 include infertility or sterilization resulting from a
 20 procedure designed for such purpose.

21 “(e) ELIGIBLE INDIVIDUAL.—For purposes of this
 22 section, the term ‘eligible individual’ means an indi-
 23 vidual—

24 “(1) who has been diagnosed with infertility by
 25 a physician licensed in the United States, or

1 “(2) with respect to whom a physician licensed
2 in the United States has made the determination de-
3 scribed in subsection (d)(2).

4 “(f) FILING REQUIREMENTS.—Married taxpayers
5 must file joint returns. Rules similar to the rules of para-
6 graphs (2), (3), and (4) of section 21(e) shall apply for
7 purposes of this section.

8 “(g) ADJUSTMENTS FOR INFLATION.—

9 “(1) DOLLAR LIMITATIONS.—In the case of a
10 taxable year beginning after December 31, 2012, the
11 dollar amount in subsection (b)(1) shall be increased
12 by an amount equal to—

13 “(A) such dollar amount; multiplied by

14 “(B) the cost-of-living adjustment deter-
15 mined under section 1(f)(3) for the calendar
16 year in which the taxable year begins, deter-
17 mined by substituting ‘calendar year 2011’ for
18 ‘calendar year 1992’ in subparagraph (B)
19 thereof.

20 If any amount as increased under the preceding sen-
21 tence is not a multiple of \$10, such amount shall be
22 rounded to the nearest multiple of \$10.

23 “(2) INCOME LIMITATION.—In the case of a
24 taxable year beginning after December 31, 2002, the

1 dollar amount in subsection (b)(2)(A)(i) shall be in-
 2 creased by an amount equal to—

3 “(A) such dollar amount; multiplied by

4 “(B) the cost-of-living adjustment deter-
 5 mined under section 1(f)(3) for the calendar
 6 year in which the taxable year begins, deter-
 7 mined by substituting ‘calendar year 2001’ for
 8 ‘calendar year 1992’ in subparagraph (B)
 9 thereof.

10 If any amount as increased under the preceding sen-
 11 tence is not a multiple of \$10, such amount shall be
 12 rounded to the nearest multiple of \$10.”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) The table of sections for subpart A of part
 15 IV of subchapter A of chapter 1 of the Internal Rev-
 16 enue Code of 1986 is amended by inserting before
 17 the item relating to section 24 the following new
 18 item:

“Sec. 23A. Credit for certain infertility treatments.”.

19 (2) Section 36C(b)(4) of such Code is amended
 20 by striking “section 25D” and inserting “sections
 21 23A and 25D”.

22 (3) Section 25(e)(1)(C)(ii) of such Code is
 23 amended by inserting “23A,” before “24,”.

1 (4) Section 25D(c)(1)(B) of such Code is
2 amended by striking “section 27” and inserting
3 “sections 23A and 27”.

4 (5) Section 1400C(d)(1) of such Code is
5 amended by striking “section 25D” and inserting
6 “sections 23A and 25D”.

7 (6) Section 1400C(d)(2) of such Code is
8 amended by inserting “23A,” after “23,”.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall apply to taxable years beginning after
11 December 31, 2011.

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