TEENAGERS, TWENTY SOMETHINGS, AND TAX INEQUALITY: A PROPOSAL TO SIMPLIFY THE AGE REQUIREMENTS OF THE DEPENDENCY EXEMPTION

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The dependency exemption affects close to forty-eight million individual tax returns nationwide. Like many other tax provisions, the child's age is the factor most likely to disqualify families. Generally, parents qualify for the dependency exemption if their child is eighteen years or younger. This benefit is extended for children up to age twenty-three if they are full time students. These divergent age requirements of the exemption do not link reliably to the other child-related benefits, creating unnecessary complexity for administrators and increased litigation. More injurious, however, is that the related benefits do not reach the families with the highest expenses, which are those with children in their teens and twenties. Further, the tax law continues to benefit middle- and upper-middle income parents who send their children to college full time, while ceasing benefits for lower income parents unable to afford their children the same academic opportunities. By adopting age twenty-three as the only criteria for age, this unnecessary complexity could be eliminated. More importantly, it would result in a more equitable system that better reflects the real costs families have in raising children.

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I.
Introduction[1]

The dependency exemption is the basis for several provisions of the Internal Revenue Code[2] that potentially benefit families raising children. Based on competing theories, the dependency exemption takes into account the disparity in the ability to pay based on the number of the taxpayer's dependents.[3] Abjuring the application of universal eligibility requirements, Congress enacted multiple tax provisions where the child's age was the factor most likely to disqualify families. The divergent age requirements of the exemption do not link reliably to the other child-related benefits, and most of the benefits are paid to families with the youngest children at ages when the cost of raising children is the lowest. This mismatch creates unnecessary complexity for administrators and, predictably, increased taxpayer error.[4]

As detailed below, two major policy reasons for maintaining the dependency exemption include (1) fairness or the ability to pay[5] and

1. C. Garrison Lepow, *A Qualifying Child*, YouTube (Apr. 8, 2016), https://youtu.be/6eeWqU90ZMs.

2. *See generally* Internal Revenue Code of 1986 as amended [hereinafter I.R.C. or Code].

3. The personal exemption applies to the taxpayer (both spouses on a joint return) and others, including children, certain other relatives, and household members who qualify as the taxpayer's dependent. I.R.C. § 152(c)–(d) (2015). *But see* I.R.C. § 151(b) (explaining that in limited circumstances the taxpayer may claim a dependent spouse on a separate return, if the spouse (1) does not have any gross income, and (2) is not claimed as a dependent of another taxpayer).

4. In 2010, family status (filing as single, married filing jointly, head of household or married filing separately) was one of the top ten most litigated tax issues in the federal courts. Nat'l Taxpayer Advocate, 2010 Annual Report to Congress, Vol. One 415 (2010). Approximately 84% of these family-status cases concerned the dependency exemption. *See also* Amy Hamilton, *Taxpayer Advocate Drafts Simplification Proposals for Congress*, 2002 Tax Notes Today, Jan. 2, 2002, at 2-1 (identifying family status as a factor in a number of arithmetic errors).

5. *See infra* notes 36–43 and accompanying text.

(2) consumption.[6] While dependency exemptions should provide ordinary families with tax relief designed to raise their standard of living, this article will use federal and independent data to show that this does not happen in practice. Effectively, the tax code rewards the middle and upper middle-income parents who send their children to college full time and prevents lower-income parents from affording their children the same academic opportunities. This is because full-time students over eighteen continue as dependents of their parents no matter how much they earn, while children who are not full-time students are not dependents if their earnings equal the amount of the personal exemption.

The following example illustrates why Congress should unify the various age requirements for tax benefits to families and equalize the opportunity provided by the dependency exemption:

Mia, an only child who is nineteen years old, lives with her father and her step-mother for eight months in 2016,[7] works as an opera singer, and earns $4,000, an amount close to the exemption.[8] Because her work is not steady, she does not have enough income to live on her own. Mia's access to grants and scholarships is limited as a part-time student.

Families like Mia's face a dilemma because tax law discourages work. If instead Mia earns $4,050, the amount of the personal exemption adjusted for inflation in 2016, the household would lose the personal exemption and other tax benefits associated with older children who are not full-time students.

Because Mia earns less than the combined personal exemption and standard deduction, her personal exemption cannot lower her own taxes. Furthermore, Mia cannot claim the earned income credit because she is too young.[9] On the other hand, her stepmother and father cannot claim her as their dependent because, as a qualifying relative, her earnings are too high.[10] As explained below, there are two classes of dependent children. The first class, called a qualifying child, allows a deduction for children up to age 23 if they are full-time students up to age twenty-three, or non-students up to age eighteen. The second

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6. *See infra* notes 44–55 and accompanying text.

7. Penelope Green, *Wash That Blog Out with Soap*, N.Y. Times, July 26, 2012, at D1 (describing moving back in with parents after "a rotating cast of Craigslist roommates").

8. Rev. Proc. 2015-53, 2015-44 I.R.B. 622, § 3.24 (establishing that the inflation adjusted personal and dependency exemption is $4,050 in 2016).

9. I.R.C. § 32(c)(1)(A)(ii)(II) (minimum age requirement is 25 for taxpayers without children).

10. I.R.C. § 152(d)(1)(B) (income must be less than the personal exemption).

class, called a qualifying relative, allows a deduction for children older than age eighteen if they earn less than the income limit—the amount of the personal exemption. Neither Mia nor her parents can benefit from her own exemption.[11] If otherwise eligible, her parents' maximum income for the earned income credit phases out at $20,430[12] compared to $44,846 if Mia remains a qualifying child, a class of dependents without earning restrictions. Thus, if Mia's income increases by $50 to $4,050, no one in Mia's family can benefit from her exemption.[13]

Mia's family would be in a worse position if her father were single. Not only would her father lose the dependency exemption, he would no longer be eligible for head-of-household filing status, or the earned income credit in the year in which Mia turned 19. Although he supports his daughter, at age 19, Mia is no longer a qualifying child. This means that her father's standard deduction drops from $9,300 to $6,300 as a single filer. He will also pay tax at higher rates. As a single taxpayer, Mia's father reaches the 15 percent bracket at $9,276 compared to $13,251 for the head-of-household filer. Further, for a single filer, the earned income credit phases out at $14,880.[14]

Compare Jacob, who is twenty, earns $5,050, and lives with his parents for more than half the year. In addition, Jacob has a full scholarship worth $50,000. As a full-time student, Jacob maintains his status as a qualifying child and, unlike Mia, is exempt from the gross income test.[15] Jacob remains his parents' dependent. Should Jacob's earnings increase, his status does not change unless he uses his earnings to provide more than half of his own support.[16] This is unlikely because his scholarship does not count for purposes of support.[17]

The two sets of parents are in a comparable economic position, but their tax treatment is different. The reason for this disparity is the

11. *See generally* I.R.C. § 63(c)(2) (adjusted for consumer price index); *id.* § 151(d) (adjusted for consumer price index).

12. Rev. Proc. 2015-53, 2015-44 I.R.B. 619, § 3.06 (listing the inflation adjusted rates in 2016 for I.R.C. § 1).

13. *See* I.R.C. § 63(c)(2) (adjusted for consumer price index); *id.* § 151(d) (adjusted for consumer price index). The taxpayer's waiver of exemption and child tax credit does not affect head of household status. *Id.*

14. The phaseout amount is the same for single, surviving spouses, or heads of household. Rev. Proc. 2015-53, 2015-44 I.R.B. 622, § 3.24(2) (personal exemption phaseout).

15. *See* I.R.C. § 152(c)(1)(D).

16. *But see id*. § 32(c)(3)(A) (demonstrating an exception: an otherwise qualifying child may provide more than half of her own support); *id*. § 2(b) (dictating that unmarried taxpayer maintains a household that includes a qualifying child).

17. *Id*. § 152(f)(5) (explaining that scholarships not taken into account to determine support for a dependent).

function of the exemption in the calculation of income tax. Mechanically, the personal and dependency exemptions allow a deduction to individuals for themselves,[18] their spouses[19] and their dependents[20] as a preliminary step in the computation of taxable income,[21] which is, in turn, an intermediate step in the computation of individual tax liability.[22]

This largely middle-class benefit is available to reduce current income tax liability. Although it is technically available for an unlimited number of children, the deduction does not benefit fully low-income taxpayers with multiple exemptions or high-income taxpayers with even one exemption.[23]

In contrast to high-income taxpayers, who lose the exemption when their income over a trigger amount diminishes the value of the

18. *Id.* § 151(a).

19. *Id.* § 151(b).

20. *Id.* §§ 151(c)–(d) (identifying a dependent as either a qualifying child or a qualifying relative).

21. After determining adjusted gross income (gross income less listed deductions such as alimony payments), the taxpayer deducts personal exemptions (including the dependency exemption). *Id.* §§ 62(a)(10), 215(a). Next the taxpayer deducts either the standard deduction, or itemized deductions to determine taxable income. *Id.* § 63(b) (standard deduction); *id.* § 63(a) (itemized deductions).

22. For information on calculating taxable income, see *id.* § 1.

23. High-income taxpayers lose the exemption in two ways: through "phaseout" provisions and through the Alternative Minimum Tax. The "phaseout" provisions of the 2012 American Taxpayer Relief Act ("2012 Relief Act") gradually lower the dollar value of the total number of exemptions by two percent in increments of $2,500 up to 100% of the exemption for taxpayers with income above certain trigger amounts. Pub. L. No. 112-240, 126 Stat. 2313 (Jan. 2013); *see* Alan D. Viard, *AEI Scholar Testifies on Simplifying Incentives, Phaseouts,* 2011 TAX NOTES TODAY, Apr. 13, 2011, at 72–69 ("Phaseouts add to the progressivity of the tax system by raising taxes on those with higher incomes through the reduction or elimination of selected tax preferences."). In 1986 the exemption was subject to a phaseout that applied to high-income taxpayers. S. Rep. No. 99-313, at 40 (1986). Legislation in 2010 repealed the phaseouts for 2010 through 2012, but the phaseout was reinstated in 2013. Tax Relief and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296; American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (Jan. 2013); I.R.C. § 1(f). The phaseout provision has the effect of a higher tax rate for individuals with income over the trigger points. This makes the tax more progressive, but in a less transparent way than altering the tax rates directly. Other phaseout provisions limit itemized deductions for high-income taxpayers. The "Pease provisions" (named for Democratic Representative Donald Pease who proposed the original limitations in 1990) reduce the amount of itemized deductions by 3% when income rises above the same triggers as the personal exemption. The total limitation is 80%. The Pease reduction does not apply to medical expenses, investment interest, casualty and theft losses or to wagering losses. Phaseouts also add to the complexity of the tax law. Stewart Karlinsky, *Tax Simplification in a Complex World*, TAX NOTES, Feb. 20, 2012, at 1017, 1020 (arguing that a single income limitation for all phaseout provisions would limit complexity).

dependency exemption through phase-out provisions[24] and through the alternative minimum tax (AMT)[25] that wipes out all of the exemptions,[26] low-income taxpayers lose the exemption if it exceeds their tax liability. The excess value of the personal exemption neither supports a refund, as in the case of the earned income credit,[27] nor can be carried forward or backward to reduce tax liability in future or past years as a business net operating loss.[28] Hence, for practical purposes, tax liability determines the number of children for whom a low or moderate-income taxpayer can claim the exemption.[29]

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24. In 2016, high-income taxpayers begin to lose the exemption when their adjusted gross incomes reach $311,300 for married couples filing jointly (including surviving spouses); $285,350 for head of household; $259,400 for single; $155,650 for married filing separately. The exemption phases out completely at $433,800 for married couples; $407,850 for head of household; and $381,900 for single individuals and $216,900 for married couples filing separately. Rev. Proc. 2015-53, 2015-44 I.R.B. 622, § 3.24(2).

25. *See* I.R.C. § 55(b)(1)(E) (providing that the AMT wipes out the exemptions that taxpayers deduct for themselves and their dependents in their calculation of the regular income tax). A high-income taxpayer adds back the dependency exemption to calculate the AMT. *See* Klaassen v. Comm'r., 1998 T.C.M. (RIA) 98,241, *aff'd* 182 F.3d 932 (10th Cir. 1999) (providing that the twelve exemptions for couple with ten children triggered AMT). Taxpayers potentially subject to the AMT must "compute their taxes twice." First, under the regular income tax provisions and, second, under the alternate AMT provisions. The taxpayer must then pay the greater figure. NINA OLSON, NAT'L TAXPAYER ADVOCATE: 2011 ANNUAL REPORT TO CONGRESS, VOL. ONE 511 (2011). The National Taxpayer Advocate recommended repeal of the AMT. *See* Timothy Catts, *National Taxpayer Advocate: AMT is Top Concern*, 2004 TAX NOTES TODAY, Jan. 15, 2004, at 1019. The AMT exemption for 2016 is $83,800 for married couples filing jointly and $53,900 for other taxpayers. Rev. Proc. 2015-53, 2015-44 I.R.B. 622, § 3.11. The rates under the AMT are 26% on $175,000 ($87,500 for married filing separate), 28% on higher amounts. I.R.C. § 55(b). There is an exempt amount of income shielded from the AMT. In addition to voiding the personal exemption, taxpayers cannot deduct the standard deduction and certain itemized deductions. *Id.* § 56(b)(1)(A)(i) (referring to § 67(b) miscellaneous itemized deductions); *id.* § 56(b)(1)(A)(ii) ((1) referring to § 164(a)(1) state and local, and foreign, real property taxes), (2) (state and local personal property taxes), or (3) (state and local, and foreign, income, war profits, and excess profits taxes)); *id.* § 164(b)(5)(A)(ii) (state and local sales taxes). On the other hand, nonrefundable personal credits may apply to both the regular tax and the AMT. *Id.* § pt. 4. The AMT does not affect the Child Tax Credit. *Id.* § 24. The AMT exemption is adjusted for inflation after 2013. *Id.* § 55(d)(4).

26. *Id.* § 56(b)(1)(E) (cutting standard deduction and personal exemptions). *See generally id.* §§ 151 (allowing personal exemption), 152 (defining dependent).

27. *Id.* § 32(a); *see infra* app. I.

28. *Compare* I.R.C. §§ 170 (net operating loss carryover and carry back), 1212(a) (corporate capital loss carry backs and carryovers), *with id.* § 152 (no carryover features).

29. Lily L. Batchelder, Fred T. Goldberg, Jr., & Peter R. Orszag, *Efficiency and Tax Incentives: The Case for Refundable Tax Credits,* 59 STAN. L. REV. 23 (2006) (large tax incentives to high income households is inefficient).

In recent years, the dependency exemption increased in importance as direct aid to children diminished.[30] According to a survey by the Urban Institute, federal spending on children has remained about 10 percent of the federal budget in recent years compared to 44 percent spent on Social Security, Medicare and Medicaid to adults and 17 percent on defense.[31] Tax provisions comprise forty percent of all federal investments distributed to children.[32] The report explains that limitations on federal spending required by the Budget Control Act resulted in reduced spending by three percent on children's programs between 2013 and 2014.[33] The Urban Institute predicts that children's spending will continue to decline because government spending on interest on the debt, Medicare, Medicaid, and Social Security will increase.[34]

II.
THE THEORY AND PURPOSE OF THE DEPENDENCY EXEMPTION

A. *Fairness or the Ability to Pay*

The most prominent theory for the dependency exemption is that it is based on the ability to pay and the ideal of fairness. A taxpayer, who "feels legally or morally obligated to feed" his or her extended family, Professor Boris Bittker states, has less income[35] with which to pay tax.[36] The dependency exemption reflects the philosophy that once children are born, society feels an obligation to support them.[37] Children reduce their parents' ability to pay tax "to a degree that should be reflected in [their] tax liability."[38] The exemption prevents

30. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2015 (2014), www.whitehouse.gov/omb/overviewfiscalyear2015budgetoverview. The President also proposed outfitting American schools and students with broadband and wireless capabilities and providing training for educators to make the most of such new resources. *Id.; see* David M. Herszenhorn, *Congress Strikes a Budget Deal with President*, N.Y. TIMES, Oct. 27, 2015, at A1 (modest budget increases with cuts to some social programs and an increase in federal borrowing limits).

31. JULIA ISAACS ET AL., URBAN INST., KIDS' SHARE 2015: REPORT ON FEDERAL EXPENDITURE ON CHILDREN IN 2014 AND FUTURE PROJECTIONS 4, fig.ES.1. (2015).

32. *Id.* at 5, 17.

33. *Id.* at 18.

34. *Id.* at 20–21.

35. *See* Boris I. Bittker, *A "Comprehensive Tax Base" as a Goal of Income Tax Reform*, 80 HARV. L. REV. 925, 932 (1967).

36. Boris I. Bittker, *Federal Income Taxation and the Family*, 27 STAN. L. REV. 1389, 1448 (1975), *reprinted in Yale Law School Faculty Scholarship Series*, Paper 2291, http://digitalcommons.law.yale.edu/fss_papers/2291.

37. *Id.* ("[T]he taxpayer's taxpaying capacity is reduced by parenthood . . . .").

38. *Id.* at 1452 ("horizontal equity").

people with incomes "equal to or less than a minimum amount needed for an acceptable standard of living" from paying tax.[39] This theory does not support exemptions for families living above the subsistence level.[40]

Critics of the subsistence theory note that "[t]he benefit goes to persons who are above the specified plateau."[41] The Code, however, diminishes the value of the dependency exemption to high-income taxpayers through the application of phase-out provisions and the AMT.[42] Taxpayers subject to the AMT lose certain deductions available in the regular tax including the dependency exemption.

Philosophically, Professor Bittker states that "[t]here is no consensus on the propriety of tax allowances for dependents," but there are four prominent positions.[43]

B. Consumption

Expenditures for one's own children "are said to be an indulgence in personal preferences because the decision to procreate is voluntary."[44] Financial aid to members of one's extended family is "even more voluntary" than the support of one's children because the taxpayer has no legal obligation to provide it.[45]

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39. Deborah H. Schenk, *Simplifying Dependency Exemptions: A Proposal for Reform*, 35 TAX LAWYER 855, 866 (1982). *But see* I.R.C. § 32 (providing a refund from the earned income tax credit to families with incomes above subsistence level).

40. Schenk, *supra* note 39, at 871 (noting that making families with an income above "a minimum amount needed for an acceptable standard of living" does not serve the purpose of ensuring that families have a sufficient income to support an acceptable standard of living).

41. Bittker, *supra* note 35, at 940. Professor Bittker proposed a "'vanishing' exemption" similar to the phase-out provisions adopted in 1986, but found that such limitations would be "'inefficient' by welfare standards because it can be claimed by wealthy persons who are only temporarily in low brackets, as well as by the children and other dependents of high bracket taxpayers." *Id*.

42. I.R.C. § 56(b)(1)(E) (preventing the use of the dependency exemption for the AMT in conjunction with other tax shelters). *See generally supra* note 25.

43. Bittker, *supra* note 36, at 1445; *see also id.* at 1445–49 (listing the four positions as consumption, investment, reducing taxpaying capacity, and population policy).

44. *Id.* at 1446. *But see* Andrew Goldman, *Our Lady Of Contraception*, N.Y. TIMES, June 24, 2012, at M12 ("After testifying before House Democrats in February about the limited contraceptive coverage in Georgetown University's insurance plan, Rush Limbaugh referred to . . . [Sandra Fluke] as a 'slut' on his radio show" and Ms. Fluke found "feminist superstardom."); Brian Stelter, *Limbaugh Advertisers Flee Show Amid Storm*, N.Y. TIMES (March 4, 2014), http://nytimes.com/top/reference/timestopics/people/l/rush_limbaugh.

45. Bittker, *supra* note 36, at 1446.

The theory of "dependents as consumption" is best known in the work of Henry Simons who states that an individual's "income may be defined as the algebraic sum of (1) the market value of rights exercised in consumption and (2) the change in the value of the store of property rights between the beginning and end of the period in question."[46] The consumption theory states "expenditures for the care and education of children and for the support of other dependents are usually in the public interest [but] . . . they are also . . . forms of consumption."[47] At the extreme, the theory would not allow a deduction for the support of minors at a subsistence level.[48] Henry Simon himself indicated some ambivalence when he "did not object . . . to the deduction in effect in 1938" that "the taxpayer [be] the dependent's chief support."[49] Such an extreme position has never been part of the dependency exemption.

Although never explicit, the consumption theory may explain why the earned income credit and the additional child tax credit limit the number of children helped by these benefits to low-income taxpayers to three (i.e., the benefit maximum is "three or more qualifying children" and does not increase with each child after three). Finally, the phase-out provisions applicable to tax years starting in 2013[50] and the alternate minimum tax (AMT)[51] inferentially follow the consumption theory as they treat the dependency exemption as a tax shelter where it joins the accelerated depreciation deduction,[52] mining explo-

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46. *Id.* at 1421 n.99 (quoting HENRY SIMONS, PERSONAL INCOME TAXATION 50 (1938)). *See id.* at 1447; *see also* Joseph M. Dodge, *Deconstructing Haig-Simons Income and Reconstructing It as Objective Ability-to-Pay 'Cash Income' Tax* 1 (Fla. St. Univ. Coll. of L., Public Law Research Paper No. 595, 2012), http://ssrn.com/abstract=2245818 ("[T]he classic Haig-Simons formulation of personal income, namely, an individual's consumption plus net increases in wealth for the taxable year . . . is contrary to fundamental political values, and raises (unnecessarily) intractable practical problems . . . [that] are resolved under an objective ability-to-pay personal income concept.").

47. Bittker, *supra* note 36, at 1445–46 n.153 (quoting L. SELTZER, THE PERSONAL EXEMPTIONS IN THE INCOME TAX 13–14 (1968)).

48. *Id*. at 1446.

49. *Id.* at 1447 (citing HENRY SIMONS, PERSONAL INCOME TAXATION 137–41 (1938)).

50. *See supra* note 23 (explaining how high income taxpayers lose the dependency exemption).

51. *Id.*

52. I.R.C. § 56(a)(1).

ration losses[53] and interest deductions[54] that sometimes wiped out the tax liability of wealthy taxpayers.[55]

III.
THE HISTORY OF THE DEPENDENCY EXEMPTION AND OTHER CHILD RELATED TAX PROVISIONS

In 1913, the first year of the modern income tax, a personal exemption of $3,000 applied to all taxpayers.[56] Married taxpayers living with their spouses received an additional $1,000.[57] In 1916, Congress granted the same level of exemption to heads of the family.[58] Hence, whether taxpayers lived with a spouse or another family member, the tax benefit was equal. There was no separate exemption for dependent children until 1917 when the United States entered World War I.[59] To pay for the war, Congress slashed the personal exemption to $2,000 for a married taxpayers and heads of a family[60] and $1,000 for single

53. *Id*. § 56(a)(2).

54. *Id*. § 56(b)(1)(C).

55. Elaine MAAG, STEPHANIE RENNANE & C. EUGENE STEUERLE, A REFERENCE MANUAL FOR CHILD TAX BENEFITS 20 (2011).

56. Robert A. Wilson, *Personal Exemptions and Individual Income Tax Rates*, 1913–2002, I.R.S., https://www.irs.gov/pub/irs-soi/02inpetr.pdf.

57. Tariff Act of 1913, ch. 16, § 2(C), 38 Stat. 168; Revenue Act of 1916, ch. 463 § 7(a), 39 Stat. 756, 761, *as amended by* War Revenue Act of 1917, ch. 63, § 1203, 40 Stat. 300, 331; *see* Instructions Form 1040 (1917) (providing that married persons not living with their spouses were treated as single). Although married taxpayers with separate income could file separate returns, they could not deduct more than $4,000 in the aggregate on both returns. The tax form had a separate line for items of "wife's income," but there was only one signature line. *Id.*

58. Revenue Act of 1916, ch. 463, § 7(a), 39 Stat. 756. The head of a family was one who because of a moral or legal obligation actually supports "one or more individuals who are closely related . . . by blood, marriage or adoption." These relationships included spouses and in-laws, children and stepchildren, parents and grandparents, and aunts and uncles. *See* Instruction Form 1040 (1916) (providing that the exemption applied to estates and trusts as well as individuals); Bittker, *supra* note 36, at 1444 n.147 (citing I.T. 3410, 1940-2 Cum. Bull. 86).

59. The United States entered World War I on April 6, 1917. *U.S. Entry into World War I, 1917*, OFF. OF THE HISTORIAN, https://history.state.gov/milestones/1914-1920/wwi (last visited Nov. 14, 2016); Jim Yardley, *Where the Americans Turned the Tide of World War I*, N.Y. TIMES, July 4, 2014, at A4.

60. The dependency exemption appears to keep up with inflation. If we examine the exemption for children, it compares well with the $200 enacted in 1917: The value of the dependency exemption in 2015 dollars is $3,717.89. BUREAU OF LABOR STATISTICS, DEP'T OF LABOR, CPI (Consumer Price Index) INFLATION CALCULATOR, http://www.bls.gov/data/inflation_calculator.htm. In contrast, the exemption for a married taxpayer living with his or her spouse or for heads of family (a single parent with one or more children) is incomparable. The $4,000 exemption in 1917 for taxpayers living with their spouses or for heads of family is $74,357.81 in 2015 dollars. *Id.*

taxpayers.[61] To offset the tax increase, Congress introduced a $200 exemption for each child "if under eighteen years of age, or if incapable of self-support because mentally or physically defective."[62] The provision that disabled children had no age limit remains unchanged throughout the history of the dependency exemption.[63] In 1918, the term "support" was changed to "chief support,"[64] but a close relationship between the taxpayer and his or her dependent was no longer required.[65] Thus, the first dependency exemption set a single age requirement (under eighteen). Since its inception in 1917, the deduction for taxpayers with children grew and has continued to grow more complex as one Congress after another has sought to target only the most deserving families.

For the next decades, there was no age requirement until the 1954 Internal Revenue Code eliminated the gross income test for a child who "has not attained the age of 19 at the close of the calendar year in which the taxable year of the taxpayer begins."[66] At the same time, Congress added a new exemption for full-time students that had no age limits and continued the exemption for disabled children without age limits.

In the early part of the 20th century, Congress directly increased the amount of the personal and dependency exemptions in times of surplus[67] and decreased or eliminated them in times of war or economic stress.[68] Beginning in the latter part of the century, instead of

61. *Compare* War Revenue Act of 1917, ch. 63, § 3, 40 Stat. 302-308, 331 (1917), *with* Revenue Act of 1918, ch. 18, § 216(d), 40 Stat. 1057, 1069. *See* Bittker, *supra* note 36, at 1444 n.147.

62. War Revenue Act of 1917, ch. 63 § 1203(l), 40 Stat. 301, 331; *see* Schenk, *supra* note 39, at 855.

63. I.R.C. § 152(c)(3)(B).

64. Revenue Act of 1918, ch. 18 § 210(b), 40 Stat. 1057, 1069; *id.* at ch. 18 § 230(a)(1), 40 Stat. 1076.

65. The allowance was expanded in 1918, and a close relationship between the taxpayer and the dependent was not necessary. The phrase "'dependent upon . . . the taxpayer' was interpreted to include voluntary support, rather than restricted to obligations imposed on the taxpayer by law." Bittker, *supra* note 36, at 1453 n.170 (citing Hammonds v. Comm'r, 38 BTA 4, 15 (1938)); H.R. 767, 65th Cong., 2d Sess. (1918), *reprinted in* 1939-1 (pt. 2) C.B. 86, 94.

66. I.R.C. § 152(c)(3)(A)(i).

67. *See, e.g.*, War Revenue Act of 1921, ch. 136, § 216(d), 42 Stat. 227, 243 (providing that the dependency exemption increased to $400 because of budget surplus).

68. Revenue Act of 1932, ch. 209, § 25(c), 47 Stat. 169; *id.* at 184; *id.* at 516; *id.* at 519; Revenue Act of 1941, ch. 412, §§ 111, 113, 55 Stat. 687, 696–97 (World War II decreased personal exemptions for married couples to $1,500 and for singles to $750); Revenue Act of 1941, ch. 412, § 113, 55 Stat. 687, 696 (eliminating one dependency exemption for the heads of family). *See* Schenk, *supra* note 39, at 856; *see also* Instructions Form 1040 (1933).

large increases in the amount of the dependency exemption,[69] Congress enacted multiple provisions that appeared to overlap with the same sets of children covered by the dependency exemption,[70] but had different requirements,[71] bewilderingly excluding many of those children.

Finally, in 2005, in a significant amendment to the dependency exemption provision, Congress described eligible children for tax benefits. The statute signaled its streamlined process for deserving taxpayers to claim benefits for raising a child in its title: The Working Families Relief Act.[72] First, the provision split children between the ones that taxpayers can claim as dependents and the ones they cannot. Thus, taxpayers who only support children that do not make the cut cannot claim their children as dependents. Second, the statute divides the dependents between two *sui generis* categories: the "qualifying child"[73] and the "qualifying relative."[74]

Fashioned as a kind of super dependent, the status of "qualifying child" is the gateway to benefits beyond the dependency exemption, including the earned income credit,[75] the household and dependent

69. The amount of the exemption increased moderately. Tax Reform Act of 1969, Pub. L. No. 91-172, § 801, 83 Stat. 487, 676–77 (exemption increased to $625 in 1970; $650 in 1971; $700 in 1972; $750 in 1973). The exemption was indexed for inflation. Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, § 104, 95 Stat. 172 (the amendment took effect in tax years following 1984). *See generally* Schenk, *supra* note 39, at 855–60 (historical development of the dependency exemption).

70. *See* Schenk, *supra* note 39, at 857; Revenue Act of 1948, ch. 168, § 201, 62 Stat. 110, 112–13. During a period of surplus following the end of World War II, Congress used a transitional approach: it increased the exemption by $100 and created two new personal exemptions limited to taxpayers who were age 65 or older or were blind. *See* I.R.C. § 22 (credit for low income blind or totally disabled taxpayers). *But see* The Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73, Sec. 302, 119 Stat. 2024 (2005) (providing an additional $500 exemption for taxpayers who used personal residence for at least sixty days as free housing for Hurricane survivors); The Gulf Opportunity Zone Act of 2005, Pub. L. 109-135, 119 Stat. 2577 (2005); *see also* I.R.C. § 152(d) (allowing an exemption for other family or household members whom the taxpayer supports). This discussion relates to dependent children and not to others who may be claimed by a taxpayer as qualifying relatives.

71. *How the Tax Code's Burdens on Families & Individuals Demonstrate the Need for Comprehensive Tax Reform: Hearing Before the H. Comm. on Ways & Means*, 112th Cong. 9 (2011) (statement of Alan Viard, Resident Scholar, American Enterprise Institute). "The primary problem is the proliferation of tax incentives that serve largely similar purposes, but [are] governed by different and complicated rules." *Id.*

72. Working Families Tax Relief Act of 2004, Pub. L. 108-311 tit. II, 118 Stat. 1166.

73. I.R.C. § 152(c).

74. *Id*. § 152(d).

75. *Id*. § 32(c)(3) (providing earned income credit cross references to I.R.C. § 152(c)).

care credit,[76] the child tax credit,[77] and the head of household filing status.[78] The status of qualifying child has six general requirements:[79] the child (1) must have a close familial relationship with the taxpayer;[80] (2) must have the same principal place of abode as the taxpayer for more than half of the taxable year;[81] (3) must meet the age requirements;[82] (4) must not provide more than half of his or her own

76. *Id*. § 21(a)(1)–(b)(1) (providing that credit for expenses for household and dependent care services necessary for gainful employment); *id*. § 21(b)(1)(A) (referring to I.R.C. § 152(a)(1), but adding the additional age limitation of not having attained age 13).

77. *Id*. § 24 (child tax credit); *see also id*. § 2(a) (surviving spouse status includes having the same principal place of abode as both qualifying child and qualifying relative who is a member of the taxpayer's household); *id*. § 2(b) (head of household status includes having the same principal place of abode as both qualifying child and qualifying relative who is a member of the taxpayer's household). The head of household must support a household that includes a dependent. *Id.*

78. *Id.* § 2(b)(1)(A)(i) (providing a household for a qualifying child or qualifying relative). *But see id.* § 2(a) (surviving spouse filing status requires maintaining a household for a more narrow set of dependents—son, daughter, stepson, or stepdaughter).

79. *Id*. §§ 152(c)(1)(A)–(E) (defining a "qualifying child").

80. *Id*. §§ 152(c)(1)(A) (family relationship), 152(c)(2)(A) (child, or child's descendant), 152(c)(2)(B) (brother, sister, stepbrother, stepsister of taxpayer or their descendant). Tiebreaker rules clarify which family member has priority to claim the child as a dependent. *Id*. § 152(c)(4) (providing that the parent has the primary right to claim the qualifying child). Married same-sex couples may file a joint federal tax return. United States v. Windsor, 133 S. Ct. 2675 (2013) (holding that a widow, whose same-sex marriage was recognized by New York, her state of domicile, could not be barred from claiming the federal marital deduction). In the *Windsor* case, the state defined marriage to include same-sex and opposite-sex couples. *Id*. If a married couple files as married filing separately, either the parent or the stepparent can claim the child. I.R.C. § 152(c)(1)(A). In case of a conflict, the parent with the higher income properly claims the child. State law determines the relationship between the members of a household. *Windsor*, 133 S. Ct. at 2691. Hence, both partners are legal parents. If only one parent is the legal mother or father of the child, his or her spouse is the stepparent. Both have the right to claim the child. In cases of conflict, the parent with the higher income has the right to claim the child. I.R.C. § 152(c)(4)(A). Since June 2015, states must recognize same-sex marriage. Obergefell v. Hodges, 135 S. Ct. 2071 (2015).

81. This new definition of *qualifying* child virtually replaced the support test with a residency test. *See* I.R.C. § 152(c)(1)(B) (requiring that the child must have the same abode as the taxpayer for more than one half of the year); *see also* C. Garrison Lepow, *The Flimflam Father: Deconstructing Parent-Child Stereotypes in Federal Tax Subsidies,* 5 N.Y.U. J. LEGIS. & PUB. POL'Y 129, 136–46 (2001) (providing how to determine support).

82. I.R.C. § 152(c)(1)(C).

support;[83] (5) must not file a joint return;[84] and (6) must have a taxpayer identification number (TIN).[85]

In theory, the statute creates a uniform definition of a "qualifying child" to simplify the process of claiming multiple child-based benefits.[86] In practice, however, inconsistencies complicate the process.[87]

IV.
MULTIPLE AGE REQUIREMENTS PREVENT UNIFORMITY

Rather than considering the overall cost of raising a child, Congress enacted provisions with inconsistent age requirements that do not match the economic burden of raising children, which often extends into the late teens and the early twenties. Multiple provisions target a unique age group of children for the benefit: children up to the age of nineteen,[88] those up to the age of twenty-four,[89] and children of any age who are disabled.[90]

The age requirements of the dependency exemption only occasionally match those of the other important child-related sections: the earned income credit,[91] the child tax credit,[92] head of household filing status,[93] and the credit for expenses for household and dependent care services necessary for gainful employment.[94] The earned income credit and head of household status have age requirements consistent with the dependency exemption, but the age cut off in other provisions has wild variations. These Code sections suggest that Congress made

83. *Id*. § 152(c)(1)(D).

84. *Id*. § 152(c)(1)(E) (except to claim a refund).

85. *Id*. § 151(e) (requiring the taxpayer to include the dependent's TIN on his or her return).

86. STAFF OF JOINT COMM. ON TAXATION, 108TH CONG., GEN. EXPLANATION OF TAX LEGISLATION ENACTED IN THE 108TH CONG. 126 (Comm. Print 2005) (the purpose of the uniform definition of qualifying child is to simplify the process of claiming tax benefits related to a child).

87. *Compare* I.R.C. § 152(b)(2) (providing that dependency exemption allows married dependents), *with id.* § 2 (requiring for the head of household that the dependent be single), *and id*. § 152(b)(1) (providing that the dependency exemption is disallowed if the child can be another's dependent).

88. *Id*. § 152(c)(3)(A)(i) (ordinary child); *id.* § 152(f)(6)(D) (kidnapped children).

89. *Id*. § 152(c)(3)(A)(ii) (student).

90. *Id*. § 152(c)(3)(B); *see id*. § 22(e)(3) (targeting for the benefit "an individual unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months").

91. *Id*. § 32(c)(1)(A)(i).

92. *Id*. § 24(c)(1).

93. *Id*. § 2(b)(1)(A).

94. *Id*. § 21(b)(1)(A).

little effort to harmonize the provisions related to children. Were Congress to make the cut off for these benefits uniform, most benefits would apply generally to families with children.

For example, the child tax credit[95] and the child and dependent care credit,[96] including the dependent care assistance programs,[97] add ages sixteen and twelve respectively to the otherwise uniform requirements. In addition, the dependent care credit eliminates the disabled qualifying child.[98] Other benefits indirectly related to children add even more inconsistent age requirements to the mix. For example, the employer-provided health insurance adds age twenty-six.[99]

Carving out narrow age requirements for certain family groups causes complexity and, as shown below, is not related to the family's economic burden.[100] If these myriad age requirements for children were harmonized with the uniform age requirement of the dependency exemption, the resulting single age requirement would simplify benefits and reduce taxpayer error.

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95. *Id*. § 24(c)(1).

96. *Id*. § 21(b)(1)(A).

97. *Id*. § 129(d)(1); *see also id.* § 125 (cafeteria plans incorporate age limits in health and dependent care sections).

98. The dependent care credit for disabled dependents uses a different definition of disabled than the one used in the dependency exemption. *Compare id.* § 21(b)(1)(B), *with id.* § 152(c)(3)(B), *and id.* § 22(e)(3) ("unable to engage in any substantial gainful activity").

99. *Id*. §§ 105, 106 (exclusion of employer provided health insurance); *see, e.g.*, *id.* § 1(g) (taxing a child's unearned income at his or her parent's rates adds ages 17, 18, or 23); *id.* § 23(d)(2)(B) (providing that credit for adoption expenses for child of any age with special needs, which include ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental or emotional handicaps"); *id.* §§ 72(t)(7)(A)(iii), 72(t)(2)(D)(i)(III) (providing that the exclusion of the early distribution penalty for individual retirement plan distributions used to pay higher education expenses or health insurance premiums of the taxpayer's child of any age); *id.* § 117(d) (excluding scholarships and fellowships for undergraduate education, qualifying children of an employee treated as an employee for qualified tuition reduction); *id.* § 117(d)(2)(A) (providing that the benefit also applied to children under 25 if their parents are deceased); *id.* § 129(c)(2) (adding age 18 for exclusion of dependent care assistance from employer); *id.* § 137 (providing that the adoption tax credit and the adoption assistance program exclusion add age 17); *id.* § 132(b) (providing that employee fringe benefit provisions apply to dependent children: no additional cost of service for use of employer facilities such as free tuition for a teacher's children); *id.* § 132(c) (providing that qualified employee discounts for the purchase of merchandize from retail or manufacturing employers); *id.* § 132(j)(4) (providing that dependent child's use of workplace athletic facilities, adds age 24 for children of former employees whose parents are both deceased); *id.* § 132(h)(B)(i) (referring to 152(f)(1) (definition of a child limited to child, stepchild, adopted, eligible foster child of taxpayer or spouse)); *see* I.R.S. Notice 89-110, 1989-2 C.B. 447 (excluding group term life insurance for dependent children up to a $2,000 face amount).

100. *See infra* Part V (The Economics of Raising Children).

The pitfalls of trying to eliminate complexity in the definition of a qualifying child illustrate the inherent contradiction in creating simple language on the one hand, yet addressing perceived inequities on the other.[101] For example, the provision for missing children reflects a desire by Congress to correct instances where the law denied the exemption to deserving families.[102] It started when an IRS employee told the distraught parents of a child kidnapped by a stranger that they might claim the exemption for the year of the kidnapping, but not for later years while the child remained missing.

The notice to the parents concluded that they did not meet the support test for later years because neither keeping the child's room nor costs of searching for the child qualified as support.[103] The story, first reported in Tax Notes Today, then picked up by other newspapers across the country, started a nationwide outcry against the IRS.[104]

In 2000, emergency legislation reversed the IRS and added a provision that allows parents of a kidnapped child to continue to claim the dependency exemption and other child related benefits[105] passed the House of Representatives unanimously, 419-0,[106] quickly passed the Senate without change, and was signed immediately by President Bill Clinton. Ironically, the bill passed the day following an IRS revision[107] of the earlier memorandum that denied the deduction.[108]

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101. *See* Schenk, *supra* note 39, at 872 ("[I]n order to avoid abuse by a tiny minority of taxpayers and to protect taxpayers with bizarre situations, Congress has created extraordinarily complex definitions understandable to almost no one.").

102. John Buckley, *Uniform Definition of a Child: Large Unintended Consequences*, 111 TAX NOTES, Mar. 20, 2006, at 1345; Letter from Dennis B. Drapkin, Chair, Am. Bar Assoc. Section of Taxation, to Hon. Charles E. Grassley et al. (July 24, 2006), *reprinted in* 2006 TAX NOTES TODAY 142-19 (July 25, 2006) (providing that the National Association of Enrolled Agents raises the "qualifying child paradox" where each twin would be the qualifying child of the other). *But see* I.R.C. § 152(c)(3)(A) (providing that a child must be younger than the taxpayer claiming the exemption).

103. Bonner Menking & Warren Rojas, *House Approves Bill Protecting Exemption, Credits for Kidnapped Children*, 2000 TNT, Sept. 28, 2000, at 190–96.

104. Bonner Menking, *No Dependency Exemption for Kidnapped Child Says IRS*, 2000 TNT, Aug. 31, 2000, at 171–72. The memorandum provides that "neither keeping the child's room ready for a hoped-for return nor money spent searching for the child would constitute support." *Id.*

105. I.R.C. § 152(f)(6)(A) (Missing Children Tax Fairness Act of 2000).

106. Menking & Rojas, *supra* note 103.

107. I.R.S. G.C.M. 200038059 (Sept. 25, 2000) (providing that support will "ordinarily be presumed" by the IRS).

108. I.R.S. G.C.M. 200034029 (Aug. 25, 2000) (limiting the exemption for the year of the kidnapping, not for future years). Comm'r v. Otmishi, 41 T.C.M. (CCH) 237 (1980) (holding that the custodial father is denied exemption for child kidnapped by former wife). In addition, the expenses to find the child were not deductible as theft loss. *Id.*

For the purpose of comparison, the age limit for an ordinary child is when the child "has not attained the age of [nineteen] as of the close of the calendar year in which the taxable year[109] of the taxpayer begins."[110] The difficult language means the year in which the child is eighteen.

In contrast, for the parents of a kidnapped child, the dependency exemption "shall cease to apply as of the first taxable year of the taxpayer beginning after the calendar year in which there is a determination that the child is dead (or, if earlier, in which the child would have attained age eighteen)."[111] Thus, even when Congress expresses the same age as another subsection, it changes the language.

As this example shows, Congress enacted each new subsection of the dependency exemption without an effort to harmonize the language with the original definition of dependent child.[112] Hence, the age requirement changes (or appears to change) among the various provisions that benefit families with children.

Age has become the issue that lurks in the background and, though not litigated *per se*, contributes to taxpayer error and consequent enforcement problems for tax administrators. Like the rings on a tree, this process results in age requirements that are not uniform even within the definition of a qualifying child section itself.

V.
The Economics of Raising Children

A. *Real Costs Vary with Age, Income, and Locale*

The Code provides benefits based upon the age of the child and grants the most benefits to families with the youngest children.[113] Although this would make sense if these families had the highest expenses, this is not the case.

109. I.R.C. § 441(b)(2) (if a taxpayer fails to elect a fiscal year, the taxpayer must use a calendar year).

110. *Id*. § 152(c)(3)(A)(i).

111. *Compare id*. § 152(f)(6)(D), *with id*. § 152(c)(3)(A)(i) (a child's death ends the exemption for future years). *See also* I.R.S. Pub. 501 (2013), at 13–14.

112. *Compare* I.R.C. § 152I(3)(A)(i) (who has not attained the age of 19 as of the close of the calendar year in which the taxable year of the taxpayer begins), *with id*. § 152(c)(3)(A)(ii) (who has attained the age of 24 as of the close of such calendar year). The former section includes the taxable year of the taxpayer claiming the exemption thereby permitting the claimant to use a fiscal taxable year for the deduction. In contrast, the latter places the child and the claimant on a calendar year basis for the deduction.

113. *See, e.g.*, *id*. §§ 21 (child and dependent care credit), 24 (child tax credit), 129(d)(1) (cafeteria plans).

Since 1960, the Department of Agriculture has estimated the cost of raising children by surveying the expense of major components of the family budget as correlated with the child's age, the family's income, and the geographic area of their residence.[114] Using a two-parent, two-child family in a middle-income household as the norm for the purpose of comparisons, the most recent report, estimated the annual cost to raise a child in the United States ranged from $12,800 to $14,910.[115] In comparison, the estimated cost for low-income families ranged from $9,130 to $10,400, and the estimated cost for high-income families ranged from $21,330 to $25,400.[116] The overall cost for middle-income parents to raise a child born in 2013 until age seventeen increased to $304,480 (adjusted for inflation) from $195,690 (adjusted for inflation) in 1960.[117] However, the cost is not divided equally over the seventeen years. The parents spend more as the children grow older, spending the most on teenagers.[118]

Among every income group,[119] annual expenses escalate as the children grow older.[120] For example, in a two-parent, middle-income family with two children, the younger child, in the youngest group between birth and two years of age, costs $12,940;[121] the cost for an older child, in the oldest group between fifteen and seventeen, is $14, 970, a difference of $2,030.[122] The difference is more pronounced for

114. Mark Lino, U.S.D.A., CNPP Misc. Pub. No. 1528-2013, Expenditures on Children by Families, 2013, at iii-iv, 3, 21 (Aug. 2014), https://www.cnpp.usda.gov/sites/default/files/expenditures_on_children_by_families/crc2013.pdf (54th year documenting families' costs for children from birth through age 17) (citing U.S. Census Bureau 2005-2006 Consumer Expenditure Survey of 11,800 two parent households and 3,350 single-parent households weighted by the Bureau of Labor Statistics weighting methods and converted to 2013 dollars according to the Consumer Price Index).

115. *Id.* at iv. (middle-income group's before-tax income is $61,530–$102,870).

116. *Id.* (high-income group's before-tax income is above $102,870).

117. *Id.* at 3.

118. *But see id.* at 12, fig.3 (average costs for 6 to 8 year olds dip $170 then continue to rise).

119. The study breaks down costs of raising children among three income groups: low income less than $61,530 (average $39,360), middle income $61,530 to $106,540 (average $82,790), high income more than $106,540 (average $186,460). *Id*. at 26, tbl.1.

120. *Id.* at 21. Children between 6 and 8 are the least costly group. The average cost for middle-income, two-parent households is $12,290 with the age 3–5 group at $12,390 and the age 9–11 group at $13,110. *Id.* at 12, fig.3.

121. *See also* Cassman v. United States, 31 Fed. Cl. 121 (1994) (providing no exemption for child not born by year's end).

122. The difference between the annual expenses for the youngest and the oldest segments is $920 for low-income families and $4,270 for high-income families. Lino, *supra* note 114, at 26 tbl.1. Regional differences affect the component numbers, but the 15–17 year-old group is always more expensive than the 0–2 year-old group. In

single-parent families with two children, where low-income parents spend over $1,470 more on the oldest segment than on the youngest.[123] The difference for single parent, middle-income families is $4,000.[124] Clearly, parents of teenagers have a greater financial burden than parents of two-year-olds.[125] Providing for a child is an overwhelming experience for the parents of a newborn—it is just not as expensive as raising teenagers.

It is not the child's age, but the parents' income level, which has the greatest effect on child related-costs, and the greatest disparity is in the portion of family income devoted to children. Proportionately, high-income families spend only half the percentage of income that low-income families spend. Low-income families sacrifice 25 percent of their income on their children.[126]

In contrast, high-income and middle-income families spend a considerably smaller proportion—only 12 and 16 percent, respectively, of their household income.[127] Most single-parent households are in the low-income group.[128] More lower-income than higher-in-

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some areas, such as the urban South, there is a stark difference between the middle and low-income families—$1,930 difference in the middle-income range, but only $930 difference in the low-income group. *Id.* at 30 tbl.5. On the other hand, in the Northeast the difference is $2,990 for the middle-income group and $1,980 in the low-income group. *Id.* at 27 tbl. 2.

123. *Id.* at 32 tbl. 7.

124. *Id.* There were too few high-income single parents to constitute a separate sample. On the other hand, regional differences are not calculated for single parent families.

125. The study excludes the cost of pre-natal care and costs related to children older than age 17. *Id.* at 22. Contributions by third parties including gifts and in-kind contributions by charity and government, such as public education, Medicaid and school meals, are excluded. *Id.*

126. *Id.* at 10.

127. *Id.*

128. *Id.* at iv. Only one third of two parent households were in this group. *Id.* Eighty-five percent of single parents are mothers, but the percentage of singles is increasing at a greater rate than both single mothers and two parent households. Mathew R. Warren, *Single Fathers, Their Numbers Growing, Face Array of Challenges*, N.Y. TIMES, Nov. 20, 2011, at A20 (2011 Census reports of 11.8 single-parent families who live with children 17 or younger, 10 million are mothers). *See* Alex Williams, *Just Wait Until Your Mother Gets Home,* N.Y. TIMES, Aug. 12, 2012, at ST1 (ranks of stay-at-home dads growing nationwide); Jason DeParle & Sabrina Tavernise, *Unwed Mothers Now Claim Most Births Under 30*, N.Y. TIMES, Feb. 18, 2012, at A1, A14 (53% of births are to single women under 30). In the United States, the proportion of births to white single women between 20 and 30 with some college tripled since 1990, but 59% of all births are to married women) *Id.* Births to white single women between ages 20 and 30 with no college increased from 21% in 1990 to 51% in 2009; with some college the number increased from 11% in 1990 to 34% in 2009; the number with a degree increased from 3% in 1990 to 8% in 2009. *Id. See also* Katie Rolphe, *More Single Moms. So What.*, SLATE (Feb. 20, 2012), http://www

come taxpayers are single parents and 85 percent of single parents are women.[129] In fact, only fifteen percent of single-parent households have income above $62,010, the upper edge of the low-income group.[130] The sample of high-income single parents was too small to be included in the study.[131]

In 2016, the 15 percent bracket for joint-return filers was under $75,300,[132] but a single parent with the same income was in the 25 percent bracket.[133] In addition, the standard deduction was $12,600 on joint returns but only $9,300 for single-parent families filing head-of-household returns.[134] Hence, single parents pay higher tax rates than married couples with no children.[135]

.slate.com/articles/life/roiphe/2012/02/the_new_york_times_condescends_to_single_moms_.html (critiques New York Times's judgmental article that interviewed a single working mother studying nursing at night who wished she did not fall asleep when she was with her daughter). "As if that feeling of wishing you could spend more or better time with your child is *unknown* to the married working mother, who of course never feels that she is too tired or distracted to do something she wanted to do with her 6-year-old, and anyway has a roast chicken in the oven, and a homemade pie cooling on the windowsill." *Id.*

129. LINO, *supra* note 114, at 5.

130. *Id.* at 5. Income includes child support. *Id*.

131. *Id. But see* WENDY WANG, KIM PARKER & PAUL TAYLOR, PEW SOC. & DEMOGRAPHIC TRENDS, BREADWINNER MOMS 1 (May 29, 2013), http://www.pewsocialtrends.org/2013/05/29/breadwinner-moms/ (mothers are the main breadwinner in 40% of households with children). These women fall into two groups: 37% are married and have higher income than their spouses while 63% are single parents. *Id.* The median total family income for married mothers in 2011 was $80,000 and the median for families led by single mothers was $23,000. The national median income was $57,000. *Id.* (based on Pew Research Center 2011 American Community Survey); Catherine Rampell, *U.S. Women on the Rise as Family Breadwinner,* N.Y. TIMES (May 29, 2013), http://www.nytimes.com/2013/05/30businesss/econmy/women-as-family-breadwinner-on-the-rise-study-says/ (generally, family income is higher when the wife is the breadwinner). Women out earn their husbands in 24% of marriages. *Id.*

132. Rev. Proc. 2015-53, 2015-44 I.R.B. 622, § 3.01, tbl.1 (calculating inflation adjustments for 2016 for I.R.C. § 1(a)). Joint return status includes two adults with no children or two adults with children. I.R.C. § 6013. Legally married same-sex couples may file joint federal tax returns. Rev. Rul. 2013-17, 2013-2 C.B. 201. The ruling does not apply to domestic partnerships, civil union and other formalized relationships valid under state law. *Id.*

133. Rev. Proc. 2015-53, 2015-44 I.R.B. 622, § 3.01, tbl.2.

134. *Id.* § 3.14; I.R.C. § 63(c)(2) (basic standard deduction). *See* Katie Roiphe, *In Defense of Single Motherhood*, N.Y. TIMES, Aug.12, 2012, at SR8 (the danger to children is "poverty and instability," not their single mothers). In 2016, the 10% rate for joint-returns filers was under $18,550—but it was under $13,250 for head of household filers. I.R.C. §§ 1(a), (b). In addition, the standard deduction was $12,600 on joint returns but only $9,300 for head of household single-parent families. Rev. Proc. 2015-53, 2015-44 I.R.B. 622, § 3.14; I.R.C. § 63(c)(2).

135. *Compare* I.R.C. § 1(a) (married filing jointly), *with id.* § 1(b) (head of household).

Income affects the amount that parents spend on various components of the children's budget. A study considered the major components of a family budget related to child-rearing costs: housing, food, transportation, clothing, health care, childcare and education, and miscellaneous goods and services (e.g., entertainment, books and personal care items).[136] Percentage comparisons of household budget items across income groups were calculated using pre-tax income.[137] On a component basis, the percentage of income a family spends on food and clothing[138] did not vary as much as miscellaneous expenses. Food is the second highest expense, eighteen percent, for a child in the lowest income group, but the third highest expense for middle- and high-income families at 16 percent[139] and 12 percent,[140] respectively. Miscellaneous expenses for the children age five and under in higher-income households nearly double the amount spent by middle-income families. In turn, miscellaneous expenses by middle-income families are nearly double the expense for low-income children. High-income families focus miscellaneous expenses on increasing the academic performance of their children.[141]

Geography and regional differences affect expenditures. Of the major expenditures, housing consistently overshadowed all other expenses, comprising roughly one third of the family budget across income groups.[142] Specifically, the housing costs associated with raising a child include the cost of an additional bedroom, any additional furniture for that bedroom, as well as the child's share of household utili-

136. LINO, *supra* note 114, at 1–2.

137. *Id.* at 5.

138. Clothing fell from 11% in 1960 to 6% in 2013. Here again the costs were highest for the 15 to 17 year-old age group. The largest disparity was between single-parent and two-parent households. *Id*. at 23, 26, 32.

139. *Id.* at 11.

140. *Id.* at 26. Wealthy parents spend their money on "cognitively stimulating experiences for their young children." Sean F. Reardon, *No Rich Child Left Behind*, N.Y. TIMES, April 28, 2013, at SR4. These miscellaneous expenses appear to contribute to the increasing gap between the academic scores of high and low-income students. Between 1972 and 2006, high-income families increased the amount spent on enrichment (toys) by 150%, while low-income families increased their toy budget by 57%. *Id.* (citing research by RICHARD J. MURNANE & GREG J. DUNCAN, WHITHER OPPORTUNITY? (2011)). Not only does money provide "more stable home environments, more time for parents to read to their children, . . . and—in places like New York City, where 4-year-old children take tests to determine entry into gifted and talented programs—access to preschool test preparation tutors." *Id*. *See* Matt Richtel, *We'll Always Have Darth*, N.Y. TIMES, March 11, 2012, at ST2. U.S parents spend approximately $500 million a year on "'Star Wars' toys, clothing, video games and just about anything else you can think of." *Id.*

141. *See* Reardon, *supra* note 138.

142. LINO, *supra* note 114, at 11.

ties.[143] Geography[144] (as in "location, location, location") most affects the cost of housing.[145]

While child-related housing costs are proportionately equal among age groups and income levels, middle and upper income families are more likely than low-income families to benefit from a home mortgage interest and state real estate tax deductions.[146] For example, the IRS' mortgage interest deduction provides 100 times greater benefits to wealthy as opposed to low-income taxpayers.[147]

Moreover, while the multiple age requirements on which the IRS bases its benefits appear complicated and precise, the age measurements in the dependency exemption do not reflect the economics of caring for children. For example, suppose a middle-income couple,[148] Joe and Samantha, have one child, Danny, age two, and their expenses are equal to the national average. They spend $16,175 per year on raising Danny. In contrast, if Danny were seventeen, Joe and Samantha would spend $18,712.35 per year.[149] Hence, Joe and

143. Id. at 8–9.

144. *See generally* Taquesha Cain, *Individual Income Tax Returns, By State, 2007*, *in* 30.4 INTERNAL REVENUE SERV., STATISTICS OF INCOME BULLETIN 174 (2011); Jeff Curry & Jonathon Dent, *Individual Income Tax Returns, By Age of Primary Tax Payer, Tax Years 1997 and 2007*, *in* 30.4 INTERNAL REVENUE SERV., STATISTICS OF INCOME BULLETIN 55 (2011). U.S. Citizens living overseas reported the highest average salaries and wages; followed by Connecticut, at $70,362, and New Jersey, at $64,651. Cain, *supra*, at 175 fig.A. Wyoming reported the most capital gains, followed by Nevada, the District of Columbia, and New York. *Id.* at 176 fig.C. California had the highest number of individual returns and the highest average itemized deductions. *Id.* at 178 fig.E.

145. *See, e.g.*, LINO, *supra* note 114, at iv. The highest housing costs are found in the urban Northeast, followed by the urban far west; while the lowest costs occur in rural areas across the country, followed by the urban south. *Id.* The median cost point is the Midwest. *Id.*; *see also* Ehren Dhler, *The Alarming Rise in Homeless Students*, Ctr. on Budget and Pol'y Priorities: Off the Charts Blog (Sept. 15, 2015, 5:00 PM), www.cbpp.org/blog/the-alarming-rise-in-homeless-students (California has 20% of the national total of homeless children, despite only having 12% of the nation's total schoolchildren).

146. *See* I.R.C. §§ 163(h)(3)(A), (h)(4)(A) (granting a qualified residence interest for indebtedness secured to the taxpayer's principal residence and one other residence); *id.* § 264(a)(1) (local real estate taxes). *But see id.* §§ 56(b)(1)(A)(ii), (b)(1)(C) (deduction not allowed under alternative minimum tax).

147. To illustrate, in 2011 the average benefit to residents of Beverly Hills, California was $1,873, compared to only $45 for residents of Clarksdale, Missouri. Martin A. Sullivan, *The Rich Get 100 Times More Mortgage Subsidy Than the Poor*, *in* 130 Tax Notes 1110, 1110 (2011); *cf*. I.R.C. § 121(a)-(b)(1) (permitting taxpayers to exclude from gross income up to $250,000 of gain from the sale of a qualified residence).

148. "Middle income" in the United States ranges between $61,530–$106,540, with an average salary of $82,790. LINO, *supra* note 114, at 26 tbl.1.

149. *Id.* (showing the national average expenditures on children in husband-wife households by income bracket).

Samantha would pay $2500 less to support a two-year-old than a seventeen-year-old.

Tax benefits also fail to reflect the variation in expenses between one-, two-, and three- or more child households. Parents with two children spend less per child than those with one child. For example, again using the national average expense, parents of a two-year-old in a two-child family spend $12,940 for each child compared to $16,180 for a single child.[150] The expenses do not double.

To put it another way, middle-income parents (i.e., those with incomes ranging from $62,010 to $107,360)[151] spend 27% of their income on a single child, but spend only 41% (20.50% for each child) on two children. Thus, the tax benefit doubles with dependency exemptions following the addition of a second child, but the expense does not.

The equal amount of the tax exemption favors families with two or three children over those with an only child because parents with multiple children spend less per child in families with multiple children. In two-parent families, expenses for an only child cost 25% more than for each child in a two-child household.[152] Thus, the average expenses in such households must be weighted by a factor of 1.25.[153] In contrast, the cost of each child in a husband-wife household with three children is 22% less per child than in a similar two-child household.[154] Nevertheless, under the Code, the amount of the dependency exemption is equal for all children regardless of the efficiencies of a large family's size and actual cost.[155]

The number of families with more than three children was too small to sample; hence, the report presumes that the expenses per child are the same as a three-child family.[156] The per-child cost for multiple children is lower because of fixed costs for housing, combined childcare and transportation costs. For example, parents and older children would drive more than one family member. However, the lower per child cost documented in the report does not account for

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150. *Id.* at 16 tbl.8.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.* at 16–17. The lower cost-per-child for families with multiple children comes from fixed costs for housing and transportation, e.g. where parents or older children drive more than one family member. *Id.* at 15, 17. In addition, childcare often covers more than one child and private school or after-school activities often provide discounts to families with multiple children. *Id*.

155. I.R.C. § 151.

156. LINO, *supra* note 114, at 15.

the value of the parent's time or foregone earnings and career opportunities.[157]

The Department of Agriculture does not survey the costs of children over age seventeen,[158] but the Code extends the benefit of the dependency exemption if children between eighteen and twenty-three attend college full time.[159] The full-time student requirement of the dependency exemption is neither simple nor fair, nor efficient. The economic outcomes discussed below cause different treatment for taxpayers based on race, class and income.

B. *The Full-Time Student*

For children older than age seventeen, the cost of higher education constitutes a major expense.[160] Generally, taxpayers may claim full-time students through age twenty-three as dependents.[161] The cost of higher education is a major potential expense for families with children older than seventeen.[162] Generally, taxpayers may claim full-time students through age twenty-three as dependents.[163] This policy, in

157. *See id*. at 22.

158. *Id*. at iv. Contributions by third parties, including gifts and in-kind contributions by charity, and government expenditures on children (i.e. public education, Medicaid and school meals) are also excluded. *Id.* at 22.

159. I.R.C. § 152(c)(3)(A)(ii).

160. LINO, *supra* note 114, at 22.

161. The full-time student exemption predated most of the extensive tax benefits for students. *See, e.g.*, I.R.C. § 25A(a)–(b) (granting a "Hope Scholarship" credit for full or part-time students, equivalent to 100% of the first $1,000 in qualified tuition and academic fees and 50% of the next $1,000); *id.* §§ 103, 141, 144(b), 146 (excluding interest on state and local government student loan bonds); *id.* § 117 (excluding employer-provided tuition reduction); *id.* § 108(f) (excluding income attributable to student loan debt); *id.* § 127 (excluding employer-provided educational assistance); *id.* § 135 (excluding interest on savings bonds used to pay higher education fees); *id.* § 221 (allowing deduction for interest on student loans); *id.* § 222 (allowing deduction for higher education expenses); *id.* § 529 (excluding earnings of qualified prepaid tuition programs); *id.* § 530 (excluding Coverdell education savings accounts).

162. LINO, *supra* note 114, at 22.

163. The full-time student exemption predated most of the extensive tax benefits for students. *See, e.g.*, I.R.C. § 25A (establishing the requirements for the Hope scholarship credit for full or part-time students—100% of first $1,200 of qualified tuition and academic fees, 50% of next $1,200), *id.* §§ 103, 141, 144(b), 146 (excluding the interest on state and local government student loan bonds), *id.* § 117 (excluding employer provided tuition reduction), *id.* § 108(f) (excluding income attributable to student loan debt), *id.* § 127 (excluding the employer-provided educational assistance), *id.* § 135 (providing that the education savings account excludes interest on education savings bonds), *id.* § 221 (deducting for interest on student loans), *id.* § 222 (deducting for higher education expenses), *id.* § 529 (excluding earnings of qualified prepaid tuition programs), *id.* § 530 (excluding Coverdell education savings accounts). Upper-income families with college students cannot claim the exemption because of the AMT and phase-outs. *See supra* notes 24–25 (detailing the AMT and phase-out for students

practice, reinforces widening economic inequality and low mobility potential in the United States because the demographic composition of American college applicants, students, and graduates is not representative of the economic and racial makeup of the population.[164] The full-time student requirement thus economically favors families with median and higher incomes because children from those families are more likely to attend college full-time than are their counterparts from poorer families.[165]

High-achieving, low-income students in high school are unlikely to apply to the best colleges, or even to graduate from the colleges they do attend.[166] By contrast, 78 percent of high-achieving students in the highest income quartile apply to, are accepted to, and ultimately attend the most selective colleges in America.[167] In total, only 39 percent of Americans between twenty-five and thirty-nine hold post-secondary degrees.[168] The graduation rate at many of America's public universities is below 50 percent — the next to lowest graduation rate among Western countries.[169] The gap in graduation rates between wealthy and poor students also continues to grow: in 2013 individuals from the highest-income families were eight times more likely than individuals from low-income families to obtain a bache-

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from certain wealthy families and explaining how phase-outs, by reducing or eliminating selected tax preferences, make the tax system more progressive by effectively raising taxes on those with higher incomes).

164. David Leonhardt, *Better Colleges Failing to Lure Talented Poor*, N.Y. Times, Mar. 17, 2013, at A1. *See also* Caroline M. Hoxby & Christopher Avery, *The Missing "One-Offs": The Hidden Supply of High-Achieving, Low Income Students* (Mar. 21, 2013), http://www.nber.org/papers/w18586 (application behavior differs between high and low-income high-achieving students).

165. *See* SANDY BAUM, JENNIFER MA & KATHLEEN PAYEA, COLLEGE BOARD, EDUCATION PAYS 2013, at 34 (Feb. 27, 2014), http://trends.collegeboard.org/sites/default/files/education-pays-2013-full-report-022714.pdf (tracking American college enrollment by family income); *see also* PELL INST., INDICATORS OF HIGHER EDUCATION EQUITY IN THE UNITED STATES: 2016 HISTORICAL TREND REPORT 12, 13, 59 (2016), http://www.pellinstitute.org/downloads/publications-Indicators_of_Higher_Education_Equity_in_the_US_2016_Historical_Trend_Report.pdf (providing that over 50% of graduates came from the highest quartile).

166. David Leonhardt, *At Colleges, Too Few Diplomas and an Acceptance of Failure,* N.Y. Times, Sept. 9, 2009, at B1.

167. Leonhardt, *supra* note 164 ("78 percent of high achieving students in highest income quartile attend the most selective colleges."); Hoxby and Avery, *supra* note 164 ("The pool of high-achieving, low-income students who apply to selective colleges is small: for every high-achieving, low-income student who applies, there are from 8 to 15 high-achieving, high-income students who apply . . . .").

168. Mark Schneider, *The Costs of Failure Factories in American Higher Education*, AM. ENTER. INST. (Oct. 30, 2008), http://www.aei.org/article/education/the-costs-of-failure-factories-in-american-higher-education/.

169. Leonhardt, *supra* note 164.

lor's degree by age twenty-four.[170] Thus, the tax code does not adequately address the needs of low-income students.

In 2012, forty-eight states cut their budgets for aid to college students.[171] This dramatic policy choice further widened the gap in access to higher education between low and median/high-income families.[172] Not only did aid to students decline, but a sharp increase in tuition in most states also followed. The most extreme case was Arizona, where tuition increased by over 78 percent.[173] In 2015, cuts to higher education continued. In January 2015, Louisiana's former governor, Bobby Jindal, proposed cuts from $200 to $300 million for the 2015-2016 academic year.[174] Not far behind, Wisconsin Governor Scott Walker signed the 2015-2017 budget cutting $250 million from the University of Wisconsin.[175] While not as drastic, Arizona cut funding to public universities by $99 million in 2015.[176] In 2016, the

170. PELL INST., *supra* note 165, at 59. The trend is ongoing. *See* DeParle & Tavernise, *supra* note 128.

171. Forty-seven states spent less per student during the 2014-2015 school year than they did during the recession in 2008. MICHAEL MITCHELL & MICHAEL LEACHMAN, CTR. ON BUDGET & POL'Y PRIORITIES, YEARS OF CUTS THREATEN TO PUT COLLEGE OUT OF REACH FOR MORE STUDENTS 1 (May 13, 2015), http://www.cbpp.org/sites/default/files/atoms/files/5-13-15sfp.pdf.

172. *See id.*

173. *Id.* at fig.3 (source College Board). Tuition in Arizona, for example, increased by over 78% from 2008 to 2015. At the same time, Arizona cut funding to 56% of 2008 levels. *See Higher Education Cuts Jeopardize Students' and Arizona's Economic Future*, CTR. ON BUDGET AND POL'Y PRIORITIES, http://www.cbpp.org/sites/default/files/atoms/files/sfp_highered_az.pdf (last visited Nov. 20, 2016).

174. Julia O'Donoghue, *Cutting Louisiana Higher Education by $300 Million, Putting It into Perspective*, TIMES-PICAYUNE (Jan. 12, 2015), http://www.nola.com/politics/index.ssf/2015/01/what_does_it_mean_to_cut_300_m.htmls (this cut the flagship Louisiana State University's operating budget by one third); *see* Bruce Alpert, *Louisiana Leads Nation in Per-student Funding Cuts: Report,* TIMES PICAYNE (May 13, 2015), http://www.nola.com/politics/index.ssf/2015/05/louisiana_leads_nation_in_per-.html (providing that only Alaska, North Dakota, and Wyoming have not cut funding).

175. Annie Wood, *Wisconsin Governor Cuts $300 Million from Public University System While Proposing $500 Million for New Stadium*, GENERATION PROGRESS (Feb. 2, 2015), http://genprogress.org/voices/2015/02/02/34527/wisconsin-governor-cuts-300-million-from-public-university-system-while-proposing-500-million-for-new-stadium/. The proposal appears to "shield" the main campus in Madison where the governor's son is a student. *Id.* The proposal gives power to college administrators to raise tuition without legislative approval. Ry Rivard, *Deep Cuts in Wisconsin*, INSIDE HIGHER ED (Jan. 28, 2015), https://www.insidehighered.com/news/2015/01/28/wisconsin-looks-cut-higher-ed-300m-tries-give-something-return.

176. *Legislature Passes State Budget after All-Night Debate,* ASSOCIATED PRESS (Mar. 7, 2015), http://www.abc15.com/news/state/legislature-passes-state-budget-after-all-night_debate; *see* Maxwell Tani, *Arizona Legislature Passes Deep Cuts to Public Universities,* HUFFINGTON POST (Mar. 8, 2015), http://www.huffingtonpost.com/2015/03/08/arizona-education-cuts_n_6819886.html (reporting that Arizona cut

new Louisiana governor, John Bel Edwards, did not add further cuts to higher education in the current legislative session, but the state cut aid to students by 30 percent.[177]

The difficulty for the taxpayer is matched by the difficulty in administration. Slamming together the requirements of age and "full-time student"[178] increases complexity and makes it difficult for the IRS to administer. The requirement "under age twenty-four" is easy to verify through public records, but enrollment is not a public record. Student privacy laws make it illegal for schools to disclose whether the student is full or part-time without the student's permission.[179] There are exceptions for certain government agencies, but the IRS, or the Treasury, is not among them. Hence, verification requires an intrusive audit. The difficulty for the taxpayer matches the difficulty in administering the provision.

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state spending on higher education by $99 million despite an original proposal of $75 million); Michael Mitchell, Vincent Palacios & Michael Leachman, *States Are Still Funding Higher Education Below Pre-Recession Levels*, CTR. ON BUDGET & POL'Y PRIORITIES (May 1, 2014), www.cbpp.org/cms/index.cfm?fa=view&id=4135 (funding for education is lower than in 2007 the start of the recession in 48 out of 50 states).

177. Melinda Deslatte, *Edwards Unveils $70M in State Budget Cuts, to Close Deficit,* WBRZ NEWS 2 BLOG (Mar. 24, 2016 5:02 p.m.), http://www.wdsu.com/news/local-news/new-orleans/edwards-unveils-70m-in-state-budget-cuts-to-close-deficit/38679296; Julia O'Donoghue, *Louisiana Higher Education Spared Additional Cuts in Latest Budget Reductions,* TIMES-PICAYUNE (Mar. 24, 2016), http://www.nola.com/politics/indes.ssf/2016/03/louisianas_next_round_of_midye.html. The state cut scholarship aid to students by 30%. Rebekah Allen, *Governor Jon Bel Edwards to Higher Education Leaders: Don't Increase Tuition*, THE ADVOCATE (Jun. 29, 2016), http://www.theadvocate.com/baton_rouge/news/education/article/_98296c00-3e42-11e6-a5f6-07e1bc84fb1e.html.

178. I.R.C. § 152(f)(2)(A). First, there is the definition of student and then the definitions of the terms used to define "student." The term "[s]tudent" means a full-time student for 5 months of the year who attends "an educational organization"—defined in §§ 152(f)(2)(A), 170(b)(1)(A)(ii)—or a "farm training program"—defined in § 152(f)(2)(B) as institutional on-farm training under the supervision of an accredited agent or a State or its political subdivision). Thus, a student who takes 12 hours in one semester qualifies. But the student who takes 12 hours in two semesters during the taxable year does not. The requirement applies to a single semester, but students on the quarter or trimester system require attendance for more than 5 months.

179. Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99 (1974) (protecting student records in all schools that receive federal funds). Schools may disclose "directory information" such as the students name, address, telephone number, place of birth, graduation date, the institution attended immediately prior to admission, major, awards, photo, classification, dates of enrollment, degrees conferred, dates of conferral, graduation distinctions, and the institution attended immediately prior to admission. Exceptions to prohibition of disclosure of other information without consent include the comptroller general of the United States, the Health, Education, and Welfare Secretary and others, but not the United States Treasury or the Internal Revenue Service (the number of classes in which a student enrolled is protected information).

The full-time student requirement of the dependency exemption helps America stand out "as the advanced country in which it matters most who your parents were, the country in which those born on one of society's lower rungs have the least chance of climbing to the top or even to the middle."[180] The "upwardly mobile American is becoming a statistical oddity."[181] Research by the Brookings Institution shows that "only 58 percent of Americans born into the bottom fifth of income earners move out of that category, and just 6 percent born into the bottom fifth move into the top."[182] Barely one fourth of United States children achieve a higher level of education than their parents.[183] Because of the high correlation between higher education and higher income, this results in low social-economic mobility.

Concerned that middle and high-income students "who earned more than the personal exemption" in a summer job could inadvertently "cause their parents to lose a dependency exemption," Congress adopted the student provision to encourage work.[184] If students understood the tax effect, common sense dictates that they would stop working before they reached the amount of the exemption. In 1954, the provision for dependent students extended the dependency exemption to the upper and middle-income parent whose children were most likely to attend college full time and work in the summer.[185] Now

180. Paul Krugman, Opinion, *America's Unlevel Field*, N.Y. Times, Jan. 9, 2012, at A19 ("America actually stands out as the advanced country in which it matters most who your parents were . . . . The failure starts early . . . low-income mothers and their children are too likely to suffer from poor nutrition and receive inadequate health care."). Because "less-advantaged children get a far worse education," college education is more difficult to attain. *Id.*

181. Joseph E. Stiglitz, Opinion, *Equal Opportunity, Our National Myth*, N.Y. Times, Feb. 17, 2013, at SR4.

182. *Id*. (noting that both "quantity and quality" of education cause the lack of economic opportunity).

183. Org. for Econ. Co-operation and Dev. (OECD), Education in Focus 2 fig.1 (2015). In the United States, a college degree results in a nearly 100% wage premium for men with a college degree and an 80% premium for women. OECD, Education at a Glance: OECD Indicators 2012, at 143 (2012). Men with a college education can expect to earn $400,000 more over their working lives than men with only a high school degree. *Id.* at 167. Women earn a smaller but still substantial premium—$300,000. *Id.* Women who do not graduate from high school earn only 70% of the amount earned by women who graduate high school. *Id.* at tbl.A8.1. Today, the United States has less upward mobility than most European countries because children with parents who do not have a college education have less than a 20% chance of achieving a higher level of education than their parents. *Id.*

184. S. Comm. on Budget Rep., S. Rep. No. 105-70 (105 Cong. 2d Sess., Dec. 1998), at 29.

185. Schenk, *supra* note 39, at 858 (citing H.R. Rep. No. 1337, 83d Cong. 2d Sess. 19 (1954) (stating that taxpayers with children in college are "likely to have more expenses")).

worth thousands in tax benefits,[186] the loss of benefits or the disincentive to work affects low and middle-income families.

"The tax savings are not related to the cost of education" or whether the student or his or her parents pay college tuition.[187] What students earn from employment or from investment is irrelevant.[188] It is unlikely for the parent of a college student to lose the exemption. The parent loses the exemption only if the student pays for more than half of his or her own support.[189] This is unlikely because scholarships, the largest element of support for most students, do not count as support.[190] Neither do the loans that the student incurs to attend college.[191] The child can thus earn income without affecting his or her parents' exemption. There are no cases where the government challenged the dependency exemption of parents with college age children.

Since the 1990's, students have worked an average of thirty hours a week.[192] In 2011, twenty percent of full-time undergraduate students also worked full time.[193] To finance their college educations, students may borrow money for tuition on their own credit or continue as the qualifying children of their parents.[194] In 2015, student debt was $1.2

186. S. COMM. ON BUDGET REP., S. REP. NO. 111-58 (111 Cong. 2d Sess., Dec. 2010), reprinted in *Senate Budget Committee Releases Tax Expenditures Report*, 2011 TNT, Feb. 7, 2011, 25-78, 373.

187. *Id.*

188. I.R.C. § 152(c)(3)(A)(ii) (requiring for a student to be no older than 23 at the end of the calendar year); *but see id*. § 152(c)(1)(D) (establishing that children providing over half of their own support are not dependents).

189. *Id.* § 152(c)(1)(D).

190. *Id.* § 152(f)(5) (excepting scholarships that may represent tens of thousands of dollars from calculations of support).

191. The proceeds of a loan are not income because the borrower has a simultaneous obligation to repay the loan. Therefore there is no increase in wealth and hence no income. *See* Comm'r v. Glenshaw Glass Co., 348 U.S. 426 (1955).

192. ANTHONY P. CARNEVALE ET AL., GEO. UNIV. CTR. ON EDUC. & THE WORKFORCE, EARNING WHILE LEARNING: THE NEW NORMAL 20 (2015), https://cew.georgetown.edu/wp-content/uploads/Working-Learners-Report.pdf. *But see* Nelson D. Schwartz, *Starbucks and Other Corporations to Announce Plan to Curb Unemployment of Young People*, N.Y. TIMES (July 13, 2015), http://www.nytimes.com/2015/07/13/business/starbucks-and-other-corporations-to-announce-plan-to-curb-unemployment-of-young-people.html?_r=0 (quoting Professor Robert Lerman's discussion of the recent decline in jobs available to students)*; see also* CARNEVALE ET AL., *supra*. Despite a decline in student employment during the Great Recession years of 2011–2012, 62% of students worked an average of 20 hours per week.

193. Lynn O'Shaughnessy, *More Students Working (a Lot) in College*, CBS MONEYWATCH (Feb. 5, 2013), http://www.cbsnews.com/news/more-students-working-a-lot-in-college (stating that students work 35 or more hours a week).

194. During the 2012–2013 academic year, 85% of undergraduate students received loans. NAT'L CTR. FOR EDUC. STATISTICS, DEPT. OF EDUC., THE CONDITION OF EDUCATION 212 (2015), http://nces.ed.gov/pubs2015/1015144.pdf. Thirteen percent of

trillion,[195] twice the amount held at the beginning of the recession in 2007.[196] The Class of 2016 graduated with an average debt of $37,173, a six-percent increase from 2015.[197] About 71 percent of college students graduate with debt.[198] On the other hand, in 2016, three in five families did not borrow for college.[199] Among the families that did borrow, three fourths of college loans were made to students, not to their parents.[200] In 2015, ninety-three percent of student loans came

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graduates of the class of 2006 to 2011 had paid off their college debt 5 years after graduation. CHARLEY STONE ET AL., WORK TRENDS REPORTS, JOHN J. HELDRICH CTR. FOR WORKFORCE DEV., EDWARD J. BLOUSTEIN SCHOOL OF PLANNING AND PUBLIC POLICY, RUTGERS UNIV., CHASING THE AMERICAN DREAM: RECENT COLLEGE GRADUATES AND THE GREAT RECESSION 11 (2012). Only 10% of pre-recession graduates from the classes of 2006 and 2007, and 9% of recession-era graduates from the classes of 2009 through 2011, said that family members helped with payment of college loans. *Id.* at 21, fig.19.

195. Susan Dynarski, *New Data Gives Clearer Picture of Student Debt*, N.Y. TIMES (Sept. 10, 2015), http://www.nytimes.com/2015/09/11/upshot/new-data-gives-clearer-picture-of-student-debt.html.

196. Kathleen M. Howley, *American Dream Eludes with Student Debt Burden: Mortgages*, BLOOMBERG (Apr. 12, 2013, 4:50 PM), http://www.bloomberg.com/news/articles/2013-04-12/american-dream-eludes-with-student-debt-burden-mortgages (citing data collected by the Consumer Financial Protection Bureau and the New York Federal Reserve).

197. Aimee Picchi, *Congrats, Class of 2016: You're the Most Indebted Yet*, CBS MONEYWATCH (May 4, 2016), http://www.cbsnews.com/news/congrats-class-of-2016-youre-the-most-indebted-yet.

198. Jeffrey Sparshott, *Congratulations, Class of 2015. You're the Most Indebted Ever (For Now)*, WALL ST. J. BLOG (May 8, 2015, 9:00 AM) http://blogs.wsj.com/numbers/congatulations-to-class-of-2014-the-most-indebted-ever-1368 (citing an analysis by Mark Kantrowitz concerning how to pay for college).

199. SALLIE MAE, IPSOS PUB. AFFAIRS, HOW AMERICA PAYS FOR COLLEGE 12 (2016), http://news.salliemae.com/files/doc_library/file/HowAmericaPaysforCollege2016FNL.pdf [hereinafter *How America Pays for College*].

200. *Id.* at 12. In the 2015–2016 academic year, the average amount spent by parents was 29% of the total funding costs, slightly less than in the previous year. *Id.* at 9. Scholarships and grants provided 34% of total college expenses. *Id.* Sixty percent of families did not borrow for college, but when families did borrow, students, not parents, took on most of the liability. Students borrowed in 74% of the families that borrowed. *Id*. at 12. Student borrowing paid for 13% of college, while parent borrowing accounted for only 7%. Student savings and income contributed to 12% of the cost, while 5% came from relatives and friends. *Id.* at 7. Seventy-seven percent of students worked an average of 22 hours per week to pay for their expenses. *Id.* at 27. In 2016, 86% of parents expected that their student would earn more money with a college degree. *Id*. at 8. In 23% of families, parents did not contribute to the cost of higher education. *Id.* at 11. An equal percentage of students paid none of the cost. *Id.* The number of parents who pay for college dropped by 35% between 2010 and 2012. Tyler Kingkade, *Most College Students Work Part-Time Jobs, But Few Pay Their Way Through School: Poll*, HUFFINGTON POST (Aug. 7, 2013, 3:35 PM), http://www.huffingtonpost.com/2013/08/07/college-students-jobs_n_3720688.html.

from the federal government rather than from private sources.[201] A recent study shows that the greatest increase in default is by students at for-profit schools and to a lesser extent two-year colleges.[202] On the other hand, students with higher debt, who attended better schools, had higher earnings (or help from their families), and thus were able to repay the debt.[203]

Increasingly, today, parents continue to provide financial support to their adult children long after they graduate from college.[204] In theory, parents can claim these adult children as qualifying relatives for dependency exemption purposes. The catch is that the dependent's earnings must be less than $4,050, the personal exemption amount for 2016.

Alternatively, the child could choose to claim the exemption for his or herself.[205] However, if the child's income is under the standard deduction ($6,300), the personal exemption does not lower his or her

201. *How America Pays for College*, *supra* note 199, at 7. For the 2016–2017 academic year, the federal interest rate on undergraduate student loans was 3.76% compared to 4.29% last year. The rates on loans for graduate or professional school were 5.31%, falling from the 5.84% rate last year. The rate for parents borrowing for their children's education went down to 6.31% from 6.84% last year. FED. STUDENT AID, U.S. DEP'T OF EDUC., INTEREST RATES FOR NEW DIRECT LOANS (2016), https://studentaid.ed.gov/sa/types/loans/interest-rates. The rate is set between July 2016 and July 2017 but reset each year based on the ten-year Treasury note. U.S. DEP'T OF EDUC., STUDENT LOANS OVERVIEW: FISCAL YEAR 2017 BUDGET PROPOSAL 5 (2016), https://www2.ed.gov/about/overview/budget/budget17/justifications/q-sloverview.pdf. The interest rates cannot exceed 8.25% for undergraduates, 9.5% for graduates and 10.5% for parents. *Id*. at 7. Federal loans have identical interest rates for subsidized and unsubsidized loans. *Id*. at 5. The federal government pays the interest due on the subsidized loan while the student is in school. With an unsubsidized loan, the student is responsible for interest payments immediately but actual payment may be deferred until graduation. *Id*. at 6.

202. Adam Looney & Constantine Yannelis, *A Crisis in Student Loans? How Changes in the Characteristics of Borrowers and in the Institutions They Attended Contributed to Rising Loan Defaults*, BROOKINGS PAPERS ON ECON. ACTIVITY, Fall 2015, at 50–51, http://www.brookings.edu/about/projects/bpea/papers/2015/looney-yannelis-student-loan-defaults.

203. *Id. See also* Kevin Carey, *Student Debt Is Worse Than You Think,* N.Y. TIMES (Oct. 7, 2015), http://www.nytimes.com/2015/10/08/upshot/student-debt-is-worse-than-you-think.html (discussing how deferring loan payments based on economic hardship can allow individual students to prevent default, while at the same time, their interest substantially accumulates and overall non-repayment rates increase).

204. *See* Shelley Clark & Catherine Kenney, *Is the U.S. Experiencing a "Matrilineal Tilt"?*: *Gender, Family Structures and Financial Transfer to Adult Children*, 88 SOCIAL FORCES 1753, 1754 (June 2010) (citing ON THE FRONTIER OF ADULTHOOD: THEORY, RESEARCH, AND PUBLIC POLICY 29–75 (Richard A. Setterson, Jr. et al. eds., 2005).

205. Taxpayers have a personal deduction under I.R.C. § 151(a) unless another, such as the children's parents, can claim them. I.R.C. §§ 151(d)(3)(D), 152(c)(3)(A)(ii).

tax liability.[206] As such, parents can claim as dependents children whose income is less than the exemption amount, but if the child earns any more than that value, the parents lose the exemption. The result is that neither the child nor the parent may benefit from the exemption, and the statute discourages work. Consider the divergent examples of Mia and Jacob discussed in the introduction.

The full-time student requirement for children between nineteen and twenty-three safeguards the well-being of the children of upper-middle-income taxpayers. The non-student or the part-time student living with his or her parents is often as great a financial burden to parents as the child enrolled in a full-time college. There is no longer a factual basis for the distinction between the financial burden placed on parents of students and nonstudents.

Class differences affect family structure, with working-class children living at home longer and upper-middle-class children living in their own space paid for by their parents. Whether or not children attend college, they need, and receive, considerable financial help from their families. Hence, the burden of support does not stop after high school.

A report by the Pew Research Center found that only 54.3 percent of children age eighteen to twenty-four are employed—the lowest rate since 1948, when the U.S. Bureau of Labor Statistics began to record this information.[207] Since late 2007 when the recession began, the drop in employment for this age group is steeper than for all other workers.[208] According to the Pew survey, not even the high numbers of eighteen to twenty-four year olds attending college accounts for this shockingly low employment rate.[209]

Further, although the recession officially ended in 2009, unemployment is still high among the eighteen to twenty-four year old group.[210] In 2016, they remain the hardest hit. The unemployment rate for workers ages sixteen to nineteen was 16.0 percent in June 2016, down from a high in October 2010 of 27.2 percent.[211] In comparison,

206. Rev. Proc. 2015-53, 2015-44 I.R.B. 619, § 3.14.

207. PEW RESEARCH CTR., YOUNG, UNDEREMPLOYED AND OPTIMISTIC: COMING OF AGE, SLOWLY, IN A TOUGH ECONOMY 6 (Feb. 9, 2012) (analyzing the results of a nationwide survey of 2,043 adults conducted between December 6 and 19, 2011) [hereinafter PEW].

208. *Id.* at 6.

209. *Id.* at 3.

210. *See id.*

211. *Compare* BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, USDL-16-1771, THE EMPLOYMENT SITUATION—AUGUST 2016 4 (2016), http://www.bls.gov/news.release/pdf/empsit.pdf [hereinafter EMPLOYMENT], *with* BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, BLS DATA VIEWER LNS14000012 (Feb. 6, 2015),

the overall unemployment rate for all workers in June 2016 was 4.9 percent, down from a high of 9.9 percent in March and April 2010.[212] The statistics for unemployment according to the Department of Labor in June 2016 showed that 8.7 percent of workers aged twenty to twenty-four were unemployed, a rate nearly twice the overall 4.9 percent unemployment rate of all workers.[213] In 2011, the gap in unemployment between the eighteen to twenty-four year old taxpayers and others was "the widest in recorded history."[214] Even before the recession, employment for this age group dropped 7 percent between 2001 and 2007.[215] During the recession of 2009, the median weekly income for full-time employees between the ages of eighteen and twenty-four dropped 6 percent. In contrast, older workers had level earnings.[216] In fact, for the past 20 years, in good and bad times, the unemployment rate for people between eighteen and twenty-four was 4 percent higher than that of the next age group (twenty-five to twenty-nine years old).[217]

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http://beta.bls.gov/dataViewer/view/timeseries/LNS14000012 [hereinafter BLS DATA]. In a deteriorating market young adults (age 15–29) have difficulty entering the labor market. OECD, EDUCATION AT A GLANCE: OECD INDICATORS 370 (2015), http://www.oecd.org/edu/education-at-a-glance-19991487.htm [hereinafter OECD 2015].

212. BLS DATA, *supra* note 211, at LNS14000000, http://data.bls.gov/timeseries/LNS14000000; EMPLOYMENT, *supra* note 211, at 4. The unemployment rate for college graduates was only 2.5% in July 2016, down from a high of 4.9% in 2010. BLS DATA, *supra* note 211, at LNS14027662, http://data.bls.gov/timeseries/LNS14027662. The unemployment rate for workers without a high school diploma was 6.3%, down from a high of 15.8% in 2010. *Id*. at LNS14027659, http://data.bls.gov/timeseries/LNS14027659. *See also* Schwartz, *supra* note 192 (reporting that Starbucks chief unveils plan to find 100,000 jobs for Americans 16–24). Other sponsors of the plan include Alaska Airlines, CVS Health, Microsoft, Taco Bell, Target and Walmart. *Id*.

213. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, LABOR FORCE STATISTICS FROM THE CURRENT POPULATION SURVEY A-10 (last updated July 8, 2016), http://www.bls.gov/web/empsit/cpseea10.htm. Unemployment statistics include people not currently employed, but who "are actively looking for work." PEW, *supra* note 207, at 14. *See* Catherine Rampell, *A Generation Of Slackers? Not So Much*, N.Y. TIMES, May 29, 2011, at Wk3 ("[T]he unemployment rate for 16-to-24-year-olds is a whopping 17.6 percent."); *cf.* COOPERATIVE INST. RESEARCH PROGRAM, HIGHER EDUC. RESEARCH INST., U.C.L.A., THE AMERICAN FRESHMAN: NATIONAL NORMS FALL 2015 54 2015, http://www.heri.ucla.edu/monographs/TheAmericanFreshman2015.pdf (a record high of 37.1% plan to volunteer). *See also* OECD, EDUCATION AT A GLANCE: OECD INDICATORS 120 (2012) (reporting that in Europe, during the 2008–09 recession, 25–34 year olds without a high school diploma were "hit harder" than 55–64 year olds with the same degree of education). Unemployment increased 5.6% for the younger group but only 2.6% for the older group. *Id.* at 121.

214. PEW, *supra* note 207, at 1.

215. *Id.* at 9.

216. *Id.* at 6.

217. *Id.* at 14.

A report by the Young Invincibles, a youth advocacy group, measured the cost of unemployment in lost taxes (93 percent) and social welfare spending (7 percent).[218] Each jobless worker between eighteen and twenty-four resulted in a loss in taxes of $4,100.[219] If the analysis considered youth too discouraged to look for work, the total would increase to $25 billion.[220]

VI.
HOW REFUNDABLE TAX CREDITS IMPROVE LIFE LONG OUTCOMES FOR POOR CHILDREN

For low and moderate-income families with children, the refundable portions of the earned income credit and the additional child tax credit strengthen the benefit of the dependency exemption.[221] Because they are refundable credits rather than deductions, if the credits exceed their tax liability, the taxpayers receive a refund.[222] In December 2015, Congress made permanent the temporary provisions of the economic stimulus plan that expanded coverage in both the earned income credit and the child tax credit from two to three children and made permanent the refundable portion of the child tax credit.[223] By making these changes permanent, Congress kept an estimated 16 mil-

218. RORY O'SULLIVAN, KONRAD MUGGLESTONE & TOM ALLISON, IN THIS TOGETHER: THE HIDDEN COST OF YOUNG ADULT UNEMPLOYMENT 7 (Jan. 7, 2014) http://www.younginvincibles.org/inthistogether/.

219. *Id.* at 6.

220. *Id.* at 9. The finding is consistent with earlier studies that estimated the loss over the lifetime of the generation. *See* SARAH AYRES STEINBERG, CTR. FOR AM. PROGRESS, THE HIGH COST OF YOUTH UNEMPLOYMENT (April 5, 2013) (providing that the costs include lost taxes, increased health care, crime, welfare and social services); O'SULLIVAN, MUGGLESTONE & ALLISON, *supra* note 218, at 11–12.

221. *See* Batchelder, Goldberg & Orszag, *supra* note 29, at 40 n.69 (providing that politicians use the earned income credit to argue against increasing the minimum wage).

222. *Compare* I.R.C. § 24(a) & § 24(d)(1)(B), *with* § 151(a).

223. Temporary changes were made permanent in 2016. Consolidated Appropriations Act, Pub. L. No. 114-113, §§ 101 & 103, 129 Stat. 3045 (2015) (making permanent the enhanced child tax credit and earned income credit). American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1002, 123 Stat. 115 (2009) (increasing, temporarily, the number of eligible children from 2 to 3; increasing the phase-out level for married taxpayers); Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, § 103, 124 Stat. 3299 (2010) (extending temporary provisions until the end of 2012); American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, § 103, 126 Stat. 2313 (2013) (extending temporary provisions until 2017); *see also* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2216 (1996) (requiring social security numbers for the taxpayer and the qualifying children).

lion people from falling into poverty or into even deeper poverty.[224] In turn, this has an extraordinary effect. Even an increase of $3,000 in family income correlated with better school performance and higher earnings for the children later in life.[225]

VII.
CONCLUSION

The dependency exemption is not the only complex section in the Internal Revenue Code, but it is the one most widely encountered by individuals.[226] The provision affects close to 48 million individual tax returns with the benefits potentially reaching over 84 million dependent children nationwide.[227]

If one assumes that people devoted to raising children provide social utility or that the cost of raising children reduces the ability of such people to pay their tax liability, one might design a system that modifies the tax liability to account for these costs. Should Congress replace the flat-rate dependency exemption with tax provisions tailored to the most deserving taxpayers, the age of the child would not be the most relevant factor. The tax benefits would account for differences in the cost of living in different geographical regions,[228] the number of children in the family, and household income. These factors will be closer to the true economic impact children have on taxpayers' ability to pay.

On the other hand, such precision creates hyper-complexity in the tax provisions applying to children. Thus, a less accurate dependency exemption will simplify the process for the taxpayer. The current provision does not accurately reflect a family's financial burden, nor is it simple. In 2010, family status (filing as single, married filing jointly,

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224. Chye-Ching Huang, *Working-Family Tax Credits Lift Millions Out of Poverty*, CTR. ON BUDGET & POL'Y PRIORITIES BLOG (Sept. 16, 2015), www.cbpp.org/blog/working-family-tax-credits-lift-millions-out-of-poverty.

225. Chuck Marr, Chye-Ching Huang, Arloc Sherman & Brandon Debot, *EITC and Child Tax Credit Promote Work, Reduce Poverty, and Support Children's Development, Research Finds*, CTR. ON BUDGET & POL'Y PRIORITIES BLOG (Oct. 1, 2015), http://www.cbpp.org/research/federal-tax/eitc-and-child-tax-credit-promote-work-reduce-poverty-and-support-childrens.

226. *See* INTERNAL REVENUE SERV., DEP'T OF THE TREASURY, PUBLICATION 4801, INDIVIDUAL INCOME TAX RETURNS LINE ITEM ESTIMATES 2012 (estimates based on samples for all 1040 returns).

227. *Id.*

228. *Cf.* Fair Access to Health Care Act of 2015, H.R. 1341, 114th Cong. (2015) (providing that the bill would amend the Internal Revenue Code in regards to the premium assistance tax credit, to adjust the poverty line cap used to determine the eligibility of low-income taxpayers living in high-cost areas as confirmed by the Census Bureau).

head of household or married filing separately) was one of the top ten most litigated tax issues in the federal courts.[229] Approximately 84 percent of these family-status cases concerned the dependency exemption. The taxpayers prevailed in full in only 8 percent of the cases.[230] It was also a factor in a number of arithmetic errors.[231]

A single-age requirement for dependent children whether or not they are students, with an exception for disabled children, would provide greater simplicity and equity, in that it would more closely reflect the real costs that families have in raising children. If the kidnapped child were added to the definition of a qualifying child, the separate provisions for the full-time student and the kidnapped child could be eliminated.

The next issue is whether the uniform age should be sixteen, the age limit of the child tax credit, eighteen, the age of majority and current limit for the dependency exemption, or twenty-three, the current age of dependent children who are full-time students. Parents supporting children who are no longer in school but are unemployed bear as great a societal burden as do parents of full-time college students. Families with children between the ages of eighteen and twenty-three who do not have resources or earnings to support themselves have a similar financial burden with respect to their children.

The fact that one child is a full-time student does not affect this burden, and as a matter of equity the families should be not be taxed differently. When the jobs economy strengthens and the child is able to support him or herself, the child will be able to use the exemption. Until then, a family should not lose the exemption for some of its members. Age sixteen is the current cut-off for the child tax credit, when most children are in high school and their expenses are the highest. This would harm American families. Lowering the eligible age of the child would harm middle-income parents with children in college. This is not only a middle-income benefit, but also important to moderate-income families eligible for the earned income credit. A recent study showed that there were increased college attendance rates by 20 to 30 percent in families of recipients of $1,000 or more in tax refunds

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229. NAT'L TAXPAYER ADVOCATE, INTERNAL REVENUE SERV., 2010 ANNUAL REPORT TO CONGRESS 417 (2010).

230. *Id.* at 494.

231. *Id.* at 91. *See also* Gene Steuerle, Urban Inst., Remarks at the Tax Analysts Roundtable Discussion: "Tax Reform and Simplicity—Must a Good Tax Code Be a Simple One?" (July 8, 2005) ("We require so many people to spend so much time filling out tax returns, to deal with the IRS, to deal with the various aspects of government, that is a real cost to the economy.").

from the earned income credit when their child was a senior in high school.[232]

Although raising older children, rather than younger children, costs more, the current distribution provides more benefits for those raising younger children. The dependency exemption, combined with the other child related benefits, exacerbates the misaligned aid to parents of young children. Having mismatched age requirements within the dependency exemption, for the child tax credit and other benefits, prevents clarity and lacks economic purpose.

Having a single age for the dependency exemption and related benefits can further simplify the tax code. Although the multiple provisions help some parents, they are difficult to understand and add complexity without significant benefit to families with the highest expenses. If the dependency exemption were higher for a qualifying child than for a qualifying relative, the difference could be included in the tax tables. A single age requirement would make it easier to combine the provisions[233] with respect to children and to address the policy issues veiled in the multiple sections.[234]

The structure of the dependency exemption as a deduction (rather than as a credit) causes it to have less value for a low-income taxpayer than for an upper middle-income taxpayer because the benefit from a deduction varies with the taxpayer's highest marginal tax rate.[235] In a

232. Austin Nichols & Jesse Rothstein, *The Earned Income Tax Credit (EITC)* 39 (Nat'l Bureau of Econ. Research, Working Paper No. 21211, May 2015), http://www.nber.org/papers/w21211.pdf.

233. The National Taxpayer Advocate proposed separating the work portion of the earned income credit from the portion related to children and consolidating these provisions with other provisions related to children. NAT'L TAXPAYER ADVOCATE, INTERNAL REVENUE SERV., 2010 ANNUAL REPORT TO CONGRESS 369 (2010).

234. *Compare* I.R.C. § 24(c)(2) (2012) (qualified children include citizens, nationals and residents of the United States), *with* I.R.C. §§ 21(b)(1)(A) (2012) & § 152(b)(3) (2012) (qualified children include citizens or nationals of the United States and residents of the United States, Mexico, and Canada). *See* Deborah H. Schenk, *Old Wine in Old Bottles: Simplification of Family Status Tax Issues*, 91 Tax Notes 1437 ¶62 nn.114 & 115 (May 28, 2001) (United States residence required for head of household status, but residence in United States, Mexico, and Canada suffices for the dependency exemption).

235. DOUGLAS A. KAHN & JEFFREY H. KAHN, FEDERAL INCOME TAX 669 (Foundation, 6th ed. 2011). Generally, in the United States, individual tax rates for ordinary income are progressive. The standard deduction and the personal and dependency exemption create a space in which tax rate on income is zero. MARVIN A. CHIRELSTEIN & LAWRENCE ZELENAK, FEDERAL INCOME TAXATION 3–4 (Foundation, 13th ed. 2015). "As income increases, an individual's tax liability also increases but at a greater rate" in that as taxable income increases, the tax burden increases proportionately. *Id.* Marginal rates mean that the first dollar of income is subject to a lower rate of tax within a range called a tax bracket. JAMES J. FREELAND, DANIEL J. LATHROPE, STEPHEN A. LIND & RICHARD B. STEPHENS, FUNDAMENTALS OF FEDERAL INCOME

2010 report, economist Elaine Maag estimates that families in the lowest quartile receive only 1.5 percent of benefits from the dependency exemption while families in the top 40 percent receive 57.1 percent of the benefits.[236] In contrast, a tax credit would reduce a taxpayer's liability dollar for dollar.[237] Furthermore, the credit would be less helpful to taxpayers with very low income because tax liability places an upper limit on the value of a credit that is neither refundable, nor carried over to a future or prior year.[238] Making the unused dependency exemption refundable would allow low-income taxpayers to benefit from the exemption.

A study published by the Organization for Economic Cooperation and Development found that increased income disparity weakens economic growth and that redistribution of income through high taxes does not decelerate growth.[239] Recently, a group of Harvard and Berkeley economists showed that tax refunds for low-income parents brought economic mobility to pockets of the country like Salt Lake City and Seattle;[240] this is in stark contrast to the worsening poverty in most cities in the United States.[241] In contrast to these progressive

TAXATION 303, 1002 (18th ed. 2016). A higher rate applies to the amount of dollars beyond the first bracket, and increasingly higher rates apply to successive brackets. In 2014, the marginal rates for individuals are 10, 15, 25, 28, 33, 35 and 39.6%. Before 1981, individual rates went up to 70%. I.R.C. § 1 (1980).

236. Elaine Maag, *Who Benefits from the Dependency Exemption?*, TAX POL'Y CTR. (Dec. 2010), http://www.taxpolicycenter.org/publications/url.cfm?ID=1001478 (approximating that only 1.5% of benefits will accrue to families in the lowest income quartile while 57.1% of benefits will accrue to families in the top 40% of the income distribution in 2010); *see* MAAG ET AL., *supra* note 55 (stating that families in the 10% tax bracket save 10 cents for each dollar of the dependency exemption while families in the 35% bracket save 35 cents). *But see* American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (2013) (providing that phaseout rules prevent families in the 39.6% bracket from saving almost 40 cents).

237. MAAG ET AL., *supra* note 55, at 4.

238. *See The Impact of Tax Reform on Low- and Middle-Income Households: Hearing Before the H. Comm. on Ways & Means*, 109th Cong. 19 (2005) (statement of Leonard E. Burman, The Urban Inst.) (stating that without the stigma of welfare, refundable tax credits such as the earned income credit provide more cash assistance to needy families than food stamps).

239. OECD, FOCUS ON INEQUALITY AND GROWTH (Dec. 2014), https://www.oecd.org/social/Focus-Inequality-and-Growth-2014.pdf.

240. RAJ CHETTY, NATHANIEL HENDREN, PATRICK KLINE & EMMANUEL SAEZ, WHERE IS THE LAND OF OPPORTUNITY? THE GEOGRAPHY OF INTERGENERATIONAL MOBILITY IN THE UNITED STATES (June 2014) (stating that most upwardly mobile cities include San Jose, San Francisco, Washington DC, Seattle, Salt Lake City, New York City, Boston, San Diego, Newark, NJ, and Manchester, NH). Tax policy correlated with upward mobility. *Id.* at 4 (The Geography of College Attendance by Parent Income Gradients, Online app. fig.VII).

241. OXFAM, WORKING FOR THE FEW 3 (2014). The richest 1% amassed 95% of the post-recession growth during 2009 to 2012, but the rate of poverty of the bottom 90%

cities, the nation as a whole has an impermeable class structure.[242] At least one study found that Americans in the bottom quintile of income have a lower chance of reaching the middle or higher income ranks than anywhere in Scandinavia or the UK.[243]

"Some [tax reform] questions are hard. . . . Still others are so complicated that we avert our eyes rather than take stock of them."[244] One unanswerable question remains: why are there so many different age requirements for parents seeking benefits for caring for their children?

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increased. *Id.* (citing E. SAEZ, STRIKING IT RICHER: THE EVOLUTION OF TOP INCOMES IN THE UNITED STATES (updated with 2012 preliminary estimates) (2013)); *see also* OXFAM, WEALTH: HAVING IT ALL AND WANTING MORE 2 (2015) (providing that the world's richest 80 people held 50% of the wealth). According to the report based on statistics from Credit Suisse and on the Forbes' billionaires list published annually in March, the pace of concentrated wealth is increasing from 2013 when half the world's wealth was shared by 93 billionaires. *Id.*

242. A recent study shows that children who are neither in school nor employed are trapped in segregated areas of large cities that have high rates of unemployment and poverty. Editorial Board, Editorial, *The Cost of Letting Young People Drift,* N.Y. TIMES, June 21, 2015, at SR10; *see* KRISTEN LEWIS & SARAH BURD-SHARPS, A PORTRAIT OF CALIFORNIA 2014–2015, at 21 (Nov. 2014), http://www.issuelab.org/resource/a_portrait_of_california_2014_2015_california_human_development_report.

243. MARKUS JANTTI, KNUT ROED, ROBIN NAYLOR, ANDERS BJORKLUND, BERNT BRATSBERG, ODDBJORN RAAUM, EVA OSTERBACKA & TOR ERRIKSSON, American Exceptionalism in a New Light: A Comparison of Intergenerational Earnings Mobility in the Nordic Countries, the United Kingdom and the United States 15–16 (IZA Discussion Paper Ser. No. 1938, 2006) ("For men, all four summary measures identify the United States as the country with intergeneration income mobility.") Among Scandinavian countries and Britain, scores varied slightly with different methods but "[t]he only crystal-clear result is that there is less intergeneration mobility in the U.S. than in the other countries." *Id*. at 17. There is also a greater persistence of high-income staying on top than in other countries. *Id*. at 27; *see also* Jason DeParle, *Harder for Americans to Rise From Lower Rungs*, N.Y. TIMES (Jan. 4, 2012), http://www.nytimes.com/2012/01/05/us/harder-for-americans-to-rise-from-lower-rungs.html (academic studies and the Occupy Wall Street movement brought attention to income mobility).

244. Philip Galanes, *Dear Abby, Ann Landers . . . and Me?*, N.Y. TIMES, Nov. 6, 2011 at ST2 (discussing social and political questions).

Appendix

The significant statutes that supplement the dependency exemption include: Earned Income Credit, Child Tax Credit, Childcare Credit, Adoption Credit, Children's Investment Income (Kiddie Tax), Health Insurance. In December 2015, Congress made permanent the temporary expansion of two refundable credits for low-income families with children—The Earned Income Credit and the Child Tax Credit.[245]

I. The Earned Income Credit

The Earned Income Credit (EIC) typically provides lump-sum cash tax refunds[246] to working taxpayers with low income. Because the EIC shares the age requirements of the dependency exemption, the problems are similar with one difference—the EIC applies only to working taxpayers who are economically vulnerable.[247]

Enacted in 1975 to promote work and keep workers with children from poverty, the EIC became the largest federal anti-poverty program.[248] The EIC is usually a temporary benefit that most taxpayers receive for two years or less.[249] Empirical studies consistently find that the EIC "unambiguously" increases employment by low-income single mothers, "especially those with less education,"[250] and does not

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245. *See* Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, § 101, 129 Stat 2242.

246. *See* Cong. Research Serv., 111st Cong., Tax Expenditures Compendium of Background Materials on Individual Provisions (Comm. Print 2011) [hereinafter Tax Expenditures]. The EIC has three tiers of benefits: first, the phase-in provisions where the credit increases as the amount of the taxpayers' earned income increases; second, a plateau phase where the benefit continues at its highest amount; third, the phase out, after the plateau when addition income decreases the amount of the credit. Molly Dahl, Thomas DeLeire, & Jonathan Schwabish, *Stepping Stone or Dead End? The Effect of the EITC on Earnings Growth* 5 (IZA Discussion Paper Ser. No. 1938, 2009).

247. *See* I.R.C. § 32(c)(3)(A) (2015). Both the taxpayers and their qualifying children must have valid social security numbers to claim the EIC. A taxpayer identification number is sufficient for other child related provisions. *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105.

248. Dahl et al., *supra* note 246, at 6; Tax Expenditures, *supra* note 246.

249. John B. Horowitz & Tim Dowd, *The Earned Income Tax Credit: Short Term Safety Net or Long-Term Income Support*, 39 Pub. Fin. Rev. 619 (2011) (providing that 61% of families claim the EIC for one or two years; 20% receive the credit more than five years).

250. Dahl et al., *supra* note 246, at 6 (citing Nada Eissa & Jeffrey B. Leibman, *Labor Supply Response to the Earned Income Tax Credit,* 11 Q.J. Econ. 605 (1996); Bruce D. Meyer & Dan. T. Rosenbaum, *Making Single Mothers Work: Recent Tax and Welfare Policy and its Effects,* 53 Nat'l Tax J. 1027 (2000); Bruce D. Meyer &

lead "single mothers to 'dead end' jobs."[251] The EIC does not discourage marriage,[252] or lead to a higher birthrate.[253] On the other hand, the increase in the labor force causes hourly wages for unskilled workers to fall.[254]

Taxpayers eligible for the EIC and the refundable portion of the child tax credit may not benefit from other child-related provisions because their income tax liability is lower than the amount of the benefit, as in the case of the childcare credit, because the dependency exemption and the head of household status, or because their income is too low in the case of the child tax credit. The amount of the earned income credit varies with whether the taxpayer is married or single, whether the taxpayer claims no children[255] or from one to three children[256] on his or her return,[257] the taxpayer's income from personal services, and disqualified income from investments.[258] The maximum

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Dan. T. Rosenbaum, *Welfare, the Earned Income Tax Credit, and the Labor Supply of Single Mothers,* 116 Q.J. ECON. 1063 (2001)). The findings were confirmed in later studies. Nada Eissa & Hilary Hoynes, *Behavioral Responses to Taxes: Lessons from the EITC and Labor Supply*, 20 TAX POL'Y & ECON. 73, 94 (2006).

251. Dahl et al., *supra* note 246, at 4. Single mothers did not increase hours of work because of the EIC. *Id*. at 6. The study also found that when a single mother becomes employed, she develops the skills needed to increase her earnings. *Id.* at 19. The study sample included single women who were not in school or disabled, ages 19 to 44, with children who were under 19 or students under 24. *Id*. at 31–32.

252. *Id.* at 6–8.

253. *Id.* at 8. *But see* David T. Ellwood, *The Impact of the Earned Income Tax Credit & Social Policy Reforms on Work, Marriage, and Living Arrangements,* 53 NAT'L TAX J. 1063 (2000) (providing that a small percentage of married women choose to stay home with the children). This is consistent with the findings of Professor Edward McCaffery that the structure of the tax system as a whole discourages work by married women. EDWARD J. MCCAFFERY, TAXING WOMEN, HOW THE MARRIAGE PENALTY AFFECTS YOUR TAXES 21 (1997) (explaining why bias in the Code causes working women to become secondary earners).

254. ANDREW LEIGH, WHO BENEFITS FROM THE EARNED INCOME TAX CREDIT? INCIDENCE AMONG RECIPIENTS, COWORKERS AND FIRMS 4, 12, 35–36 (IZA Discussion Paper Ser. No. 4960, 2010).

255. The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312 (allowing individuals without children to become eligible for EIC).

256. Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, § 101, 129 Stat. 2242 (making permanent the changes from the 2009 Act); American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (increasing, temporarily, the number of eligible children from 2 to 3).

257. Rev. Proc. 2015–53, 2015-44 I.R.B. 622, § 3.02. In 2016, the maximum credit for three children is $6,269, for two children is $5,572, and $3,373 for one qualifying child.

258. Disqualified income includes interest (whether taxable or tax exempt), dividends, net rent or royalty income, net capital gains income, net passive income excluding self-employment income.

amount of investment income for married or single taxpayers is $3,400.[259]

The maximum credit for a married couple with three children is $6,269 in 2016.[260] The credit does not increase if the taxpayer has more than three children. The credit begins to phase out for single filers (surviving spouses and heads of household) with three children at $18,190[261] and for married taxpayers filing jointly with three children at $23,740.[262] The credit phases out completely at $47,955 for a single, surviving spouse or head of household with three or more children, and at $53,505 for a married couple with three or more children.[263]

II. The Child Tax Credit

The child tax credit (CTC) uses age sixteen to eliminate taxpayers with older children from qualifying for this benefit.[264] Illogically the child tax credit ends midway into the children's most costly years—ages fifteen through seventeen.

As originally enacted in 1997 and effective in 1998, the CTC[265] benefitted upper middle-income parents unable to claim the dependency exemption because their income was higher than the phase-out

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259. Rev. Proc. 2015–53, 2015-44 I.R.B. 622, § 3.06(2) (disqualifying investment income).

260. *Id*. § 3.06(1). The maximum credit for a married taxpayer filing jointly with three children is $6,269, with two children is $5,572, with one child is $3,373 and with no children the maximum credit is $506. *2016 EITC Income Limits, Maximum Credit Amounts and Tax Law Updates*, I.R.S. (Nov. 03, 2016), https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/eitc-income-limits-maximum-credit-amounts.

261. Rev. Proc. 2015–53, 2015-44 I.R.B. 622, § 3.06. The credit begins to phase out for couples with one or two children at $18,190 and with no children at $8,270.

262. *Id.* The credit begins to phase out for married taxpayers for one or two children at $23,740, the same level as three or more children. The credit begins to phase out at $13,820 for no children.

263. *Id.* The credit phases out completely for married taxpayers with two children at $44,648, with one child at $39,296 and with no children at $14,880.

264. I.R.C. § 24(c)(1); *see also id*. § 24(c)(2) (credit limited to children living in the United States).

265. Taxpayer Relief Act of 1997 Pub. L. No. 105-34, 111 Stat. 788, *amended by* The Economic Growth and Tax Relief Reconciliation Act of 2001 (temporarily increasing credit gradually to $1,000, refundable on earned income over $10,000; offsets alternative minimum tax); The Jobs Growth and Tax Relief Reconciliation Act of 2003 Pub. L. 108-27, 117 Stat. 753 (temporarily increasing credit to $1,000 in 2003 and 2004).

provisions,[266] they were subject to the alternate minimum tax, or they did not have social security numbers.[267]

On the other hand, today taxpayers with modified adjusted gross incomes (MAGIs) above certain trigger amounts lose a portion of the credit. The reduction begins at income levels over the following triggers: $110,000 for married taxpayers filing joint returns; $55,000 for married couples filing separately; and $75,000 for single individuals filing either as heads of households or as singles.[268] Taxpayers lose $50 of the child tax credit for each $1,000 (or fraction thereof) by which the taxpayer's adjusted growth income exceeds the reduction triggers.[269] Phase-out begins at the 25 percent tax bracket and is completely phased out at the 33 percent bracket.

Real change followed when the refund threshold went down to $3,000 in 2009. The 2010 Census showed the expanded child tax credit kept approximately 1 million Americans above the poverty line,[270] and benefitted 35 million families.[271] In 2004, the maximum amount of the child tax credit increased from $500 per child to $1,000 per child and became refundable.[272]

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266. Originally, the child tax credit benefitted high and upper middle-income parents who could not claim the dependency exemption because of the phaseout provisions before 2010. The phaseout provisions were in effect before 2010 and revived in 2013. *See* I.R.C. § 24(e) (providing that the taxpayer must include the child's name and taxpayer identification number). For high-income families filing joint returns, the federal tax burden is lessened because of marginal tax rates, lower rates on dividends and capital gains, reduction of the marriage penalty. *But see* STAFF OF J. COMM. ON TAXATION, 105TH CONG., GENERAL EXPLANATION OF TAX LEGISLATION ENACTED IN 1997 7 (Comm. Print 1997) (to "recognize the financial responsibilities of child rearing, and promote family values").

267. *See* JANE G. GRAVELLE, CONG. RESEARCH SERV., 98-653, THE MARRIAGE PENALTY AND OTHER FAMILY TAX ISSUES 5 (1998).

268. I.R.C. § 24(b)(2).

269. *Id.* § 24(b)(1).

270. Arloc Sherman, *Stimulus Keeping 6 Million Americans Out of Poverty in 2009, Estimates Show,* CTR. ON BUDGET & POL'Y PRIORITIES (Sept. 9, 2009), http://www.cbpp.org/research/stimulus-keeping-6-million-americans-out-of-poverty-in-2009-estimates-show; RESULTS, DOMESTIC (U.S. POVERTY) CAMPAIGNS HANDBOOK 2012, http://www.results.org/uploads/files/results_us_poverty_2012_ic_background_packet.pdf (last visited Oct. 4, 2016).

271. *Id.*

272. *See* Jobs and Growth Taxpayer Relief and Reconciliation Act of 2003, Pub. L. No. 108-27, 117 Stat. 753; Economic Growth and Taxpayer Relief and Reconciliation Act of 2001, Pub. L. No. 107-6, 115 Stat. 45. Beginning in 2004, taxpayers with one or two children and income over $10,750, indexed for inflation, were eligible to receive a refund based on 10% of their earned income over $10,750. Taxpayers with three children were eligible to receive the higher of the 10% refund or a refund equal to the that their social security tax payments exceed their earned income credit.

In December 2015, Congress made permanent the lower refund threshold at $3,000 and eliminated the inflation adjustment for the threshold amount.[273] This makes the CTC available to lower-income taxpayers, but not available to those in deepest poverty.

The CTC, worth up to $1,000 per eligible child, incorporates the definition of eligible children used in the dependency exemption.[274] The credit increases with earnings, and has a floor of $3,000 that excludes extremely poor families. The refund is based on 15 percent of the taxpayer's earnings over $3,000.[275]

For example, Rick, a single father with two children ages six and eight, who works full-time for minimum wage, will earn $14,500 in 2016. Rick's refund from the additional child tax credit is $1,725:

$14,500 salary
-$ 3,000 floor
$11,500
x .15
$1,725

Suppose instead that Rick's income was $3,000 from stock dividends and $10,000 from wages. Rick can still receive a refund from the child tax credit, but only his income from wages counts towards the refund from the child tax credit. His refund from the child tax credit is $1,050 ($10,000-$3,000=$7,000 x .15).[276] Were the child tax credit not refundable, Rick would not benefit from it because he has no federal income tax liability.

If Rick, as the custodial parent, waives the dependency exemption in favor of his former spouse, his former spouse does not qualify for the CTC because the children live with Rick.[277] The refundable

273. Consolidated Appropriations Act of 2016, Pub. L. No. 114-113, 129 Stat. 2242, 3044; I.R.C. § 24(d)(1)(B)(i). The 2009 legislation temporarily reduced the refund threshold from $10,000 (adjusted for inflation) to $3,000 (adjusted for inflation). American Recovery and Reinvestment Act, Pub. L. No. 111-5, § 1003, 123 Stat. 115, 313 (2009).

274. I.R.C. § 24(a).

275. *Id.* § 24(d)(1)(B)(i). For taxpayers with three or more children, the credit is the amount of social security taxes minus the amount allowed under the earned income credit. *Id.* § 24(d)(1)(B)(ii).

276. The calculation of the refundable child tax credit is as follows. A taxpayer with one or two children uses the lesser of the excess child tax credit over their tax liability or 15% of the taxpayer's earned income over $3,000. A taxpayer with three or more children uses the lesser of the excess child tax credit over their tax liability, or the higher 15% of earned income over $3,000 or Social Security and Medicare tax paid less the earned income credit.

277. I.R.C. § 24(a) (providing that eligibility for credit limited to taxpayer who is allowed to claim a dependency exemption); *id.* § 152(e)(2) (waiver in favor of non-custodial parent).

portion of the CTC bolsters the refund from the earned income credit for three or more children.[278] The refundable credit also encourages work because it is based on earned income.[279]

Income from refundable tax credits results in improved health of mothers and infants, better grades in school, higher college attendance, and lifelong better employment and earnings.[280]

III. Childcare Credit

The credit[281] for childcare and household services[282] that allows custodial parents[283] to work or to look for work[284] drops the age limit of a qualifying child to twelve.[285] The highest costs are for the full-time care of children between birth and five years of age.[286] By focus-

278. *Id.* § 24(d)(1)(B)(ii); *see id*. § 32(b)(1)(A) (providing that refund for taxpayers with three or more children is the social security taxes over the earned income credit allowed).

279. *See id.* § 24(d).

280. *See* Chuck Marr et al., *EITC & Child Tax Credit Promote Work, Reduce Poverty, & Support Children's Development, Research Finds*, CTR. ON BUDGET & POL'Y PRIORITIES: OFF THE CHARTS BLOG (Oct. 1, 2015), www.cbpp.org/files/6-26-12tax.pdf; Hilary W. Hoynes et al., *Income, The Earned Income Tax Credit & Infant Health* (Nat'l Bureau of Econ. Research, Working Paper No. 18206, 2012), www.nber.org/papers/w18206; Nada Eissa & Hilary Hoynes, *Behavioral Responses to Taxes: Lessons from the EITC & Labor Supply* (Nat'l Bureau of Econ. Research, Working Paper No 11729, 2005), www.nber.org/papers/w11729.

281. I.R.C. § 21(c) (providing that the maximum credit is $3,000 for one child or $6,000 for two or more children). Employer provided dependent care that is excluded from the taxpayer's income reduces the credit. *id.* § 129(a)(2)(A) (dependent care assistance program by employers excludes $5,000).

282. *Id*. § 21(a) (allowing credit for a percentage of work-related childcare expenses paid to a caregiver). The caregiver does not include anyone who the taxpayer or taxpayer's spouse can claim as a dependent, *id.* § 21(e)(6)(A), or who is the taxpayer's child who is younger than 19, *id.* § 21(e)(6)(B) (son, daughter, including adopted, eligible foster, and stepchild). The percentage of the expenses starts at 35% and gradually falls to 20% for parents whose income is $43,000 or higher. *id.* § 21(a)(2).

283. *Id.* § 21(e)(5) (disallowing credit for the noncustodial parent who claims the dependency exemption).

284. The primary purpose of allowable expenses "is to assure the individual's well being and protection." *Topic 602: Child and Dependent Care Credit*, I.R.S. (Feb. 5, 2016), https://www.irs.gov/taxtopics/tc602.html. Married couples must file a joint return, I.R.C. § 21(e)(2), both must work, or one must work and the other be looking for work, or be a full-time student for 5 months, or be physically or mentally unable to care for him or herself, *id.* § 21(b)(1)(C), (d)(2) & (e)(7), and is unable to care for his or her "hygiene or nutritional needs," Treas. Reg. § 1.21-1(b)(4) (2007), and requires full-time care for the spouse's "safety or the safety of others." *Id*. This article does not address the provisions with respect to profoundly disabled dependents.

285. I.R.C. § 21(b)(1)(A); *see id.* § 21(b)(1)(B)–(C) (the credit covers disabled dependents who have the same principal place of abode as the taxpayer for more than half the year and who are within the age limit).

286. LINO, *supra* note 114, at 12, 26 tbl.1. The cost of part-time care for children after school is lower. *Id.* (the total cost of raising children age six to eight is the lowest

ing on a single source of expenses related to raising children, the benefit ends well before children enter their most costly years. The older children have the highest clothing, food, and transportation costs.[287]

But there are other structural problems that limit its usefulness. First, low-income parents do not benefit from its provisions because their income (and tax liability) is too low and the credit is not refundable. As a result, many low-income parents cannot use the credit because their expenses exceed their tax liability.[288] Second, even though the benefits of the childcare credit seem more likely to accrue to high-income parents,[289] the childcare credit does not come near the cost of daycare for middle and high-income parents in in large cities. For example, in New York City, the cost of care for a child under two years is $16,250.[290] That is not only Manhattan, but also brownstone Brooklyn, and suburban Staten Island—all five boroughs.[291] The cost for

of any age group). Childcare and education costs increase between ages nine to eleven then decrease between ages twelve to seventeen. *Id*. Regional differences modify the results in teenage years. *Id.* at 26–30 tbls.1–5.

287. *Id.* at 1–2.

288. *See* Batchelder, Goldberg & Orszag, *supra* note 29, at 55. *See also* Dorothy A. Brown, *Race and Class Matters*, 107 COLUM. L. REV. 790, 803 (2007) ("The decision to exclude certain low-income taxpayers from receiving the benefits of the [childcare tax credit] was a conscious one.").

289. *See* TAQUESHA CAIN, I.R.S., INDIVIDUAL INCOME TAX RETURNS, BY STATE, 2007 (Spring 2011); JEFF CURRY & JONATHAN DENT, I.R.S., INDIVIDUAL INCOME TAX RETURNS, BY AGE OF PRIMARY TAXPAYER, TAX YEARS 1997 AND 2007 174 (Spring 2011). U.S. Citizens living overseas earned the highest income. The two states with the next highest average salaries and wages were Connecticut, at $70,362 and New Jersey, at $64,651.

290. LETITIA JAMES, N.Y.C. PUB. ADVOC., POLICY REPORT: CHILD CARE IN NEW YORK CITY, PART II: INVESTING IN CHILDCARE 5 (2015), http://pubadvocate.nyc.gov/sites/advocate.nyc.gov/files/child_care_report_nov_2015.pdf; SEN. KIRSTEN GILLIBRAND, CHILD CARE COSTS RISING $730 EACH YEAR IN NEW YORK 1, http://www.gillibrand.senate.gov/imo/media/doc/ChildCare.pdf; *see also Day Care Cost: Report Reveals States Where Child Care Is Most & Least Affordable,* HUFFINGTON POST (Aug. 29, 2012), http://www.huffingtonpost.com/2012/08/29/day-care-cost_n_1834650.html#slide=1442704. New York State has the highest costs for infants, $14,009. The median income for a single mother is $25,852 and for a two-parent family is $88,189. In the second highest, Minnesota, the cost is $13,579, the median income for a single mother is $26,123 and for a two-parent family is $87,271. The cheapest day care is $4,591 in Mississippi, where the median income for a single mother is $17,796 and for a two-parent family is $65,668.

291. GILLIBRAND, *supra* note 290.

children between six and twelve is $9,620.[292] Statewide the cost increases $730 per year.[293]

Apart from the tax credit, government statistics show only half of the families surveyed report childcare expenses.[294] Only 31 percent of two parent families nationwide have this expense compared to 45 percent for middle-income families and 56 percent for high-income families.[295] The percentage is only slightly higher for single parents.[296]

Not all childcare arrangements qualify. Marissa Mayer, the chief executive of Yahoo, "built a nursery next to her office at her own expense, to make working almost straight through [her maternity leave] easier,"[297] but it does not meet the childcare credit requirement that dependent care outside the home be in a "facility" that cares for more than six children.[298]

An analysis by the Congressional Research Service found that the exclusion of employer provided childcare assistance "violates the eco-

292. JAMES, *supra* note 290. The highest amount of the credit is 35% of up to $3,000 (or $6,000 for two or more children) worth of childcare expenses for parents with income under $15,000. The percentage goes down 1% for each $2,000 of increased adjusted gross income. At $43,000 the credit stays at 20%. I.R.C. § 21(a)(2) (2012).

293. GILLIBRAND, *supra* note 290; *see also* Erin Durkin, *Average Cost of Daycare in NYC Tops $16G*, N.Y. DAILY NEWS (Nov. 9, 2015, 8:37 PM), http://www.nydailynews.com/new-york/average-cost-daycare-nyc-tops-16k-article-1.2428709 (noting that the cost of childcare increases annually by $1,612). Although the James report states that costs are rising, the figures are unchanged from the Gillibrand report of 2009. GILLIBRAND, *supra* note 290.

294. LINO, *supra* note 114, at 6. The cost may appear larger because childcare and educational expenses may decrease expenses for other component costs such as transportation, housing and miscellaneous expenses. *Id.* Additionally, the cost is limited to families who pay for childcare rather than for all families. *Id.* Sixty-three percent of American "children under 5 years of age were in some type of regular child care arrangement." LYNDA LAUGHLIN, WHO'S MINDING THE KIDS? CHILD CARE ARRANGEMENTS: SPRING 2005/SUMMER 2006 2 (U.S. Census Bureau 2010). This article does not address the provisions with respect to profoundly disabled dependents.

295. LINO, *supra* note 114, at 6. *But see* E.J. Dionne Jr., *Two-Paycheck Couples Are Quickly Becoming the Norm*, WASH. POST (Apr. 18, 2012), https://www.washingtonpost.com/opinions/two-paycheck-couples-are-quickly-becoming-the-norm/2012/04/18/gIQALSzlRT_story.html?utm_term=.fe38977b47ce (showing that most children do not have a full-time, stay-at-home parent). A 2010 study by Center for American Progress reported only 28.7% of children have a full-time stay at home parent, down from 52.6% in 1975. *Id.* According to the study, 44.8% of families have two working parents and 26.1% have a single working parent. *Id.* "Seven in 10 (69.7%) working wives earn as much or more than their husbands in the bottom 20% of income distribution for all families. And about half (45.3%) of working wives are breadwinners in families in the middle of the income distribution . . . ." *Id.* (citing the Center for American Progress report).

296. LINO, *supra* note 114, at 6 (noting that 34% of low income and 44% of middle and higher income single parents had a child care expense).

297. Maureen Dowd, *Get Off of Your Cloud,* N.Y. TIMES, Feb. 27, 2013, at A25.

298. I.R.C. § 21(d) (2012).

nomic principle of horizontal equity, in that all taxpayers with similar incomes and work-related childcare expenses are not treated equally."[299] As the provision generally benefits upper income taxpayers, "the tax subsidy is inverse to need."[300]

The focus on the single component distorts the tax benefits to families with children because the overall expense is higher for families with children over twelve. The value of the credit for childcare should be reexamined.

IV. Adoption Credit

Taxpayers who adopt children seventeen years of age or younger or adopt individuals of any age who are incapable of caring for themselves, may claim the adoption credit. Adjusted for inflation,[301] in 2016 the credit is $13,460.[302] Made permanent under the American Taxpayer Relief Act of 2012,[303] the credit is not refundable. Similarly, the Code excludes the payment by an employer or reimbursement of adoption expenses from the employee's income, but prevents doubling the benefit.[304] The adoption incentives are no longer limited to children with special needs. Parents who adopt an individual with special needs, however, may receive a benefit that is more than their out of pocket expenses.[305] In 2016, phase-out provisions reduce the benefit when modified adjusted gross income is over $201,920 and completely phases out at $241,920.[306] The credit does not apply to the adoption of a spouse's child.[307] Two unmarried individuals adopting a child are treated as a single individual for the purposes of the credit or exclusion.[308]

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299. Tax Expenditures, *supra* note 246, at 740.

300. *Id.*; *see also* I.R.C. § 21(a)(2) (2012).

301. I.R.C. § 23(h) (2012). The credit is for $10,000 (adjusted for inflation) of adoption expenses, such as adoption agency and legal fees. *Id*. § 23(d)(1) (2012). The disabled individual must be a citizen or permanent resident of the United States. *Id*. § 23(d)(3) (2012).

302. Rev. Proc 2015-53, 2015-44 I.R.B. 622, § 3.03.

303. American Taxpayer Relief Act, Pub. L. No. 112-240, 126 Stat. 2313 (2013).

304. I.R.C. §§ 23(b)(3) (adoption assistance programs).

305. *But see* Claudia Corrigan D'Arcy, *Why Not a Tax Credit So Mothers Can Afford to Keep Children?,* N.Y. Times: Room for Debate (Oct. 29, 2012), http://www.nytimes.com/roomfordebate/2012/10/29/should-the-adoption-tax-credit-be-renewed/why-not-a-tax-credit-so-mothers-can-afford-to-keep-children (arguing that birth mothers turn to adoption out of desperation). Critics of the adoption industry argue for aid to mothers upon the birth of a child. *Id.*

306. Rev. Proc 2015-53, 2015-44 I.R.B. 622, § 3.03.

307. *Id.*; *see* I.R.C. § 23(d)(1) (2012).

308. *See* I.R.C. §§ 23(i), 137(b)(1) (2012).

V. *Children's Investment Income (Kiddie Tax)*

Section 1(g) (commonly called the "kiddie tax") aborts the pre-1986 technique whereby parents shift tax liability for investment income to their lower-income children, yet continue to control the property nominally owned by their children.[309] The section raises the rate on net earnings from investment property[310] and other unearned income above an exempt amount[311] to the parent's highest marginal rate.[312] Were it not for the kiddie tax, lower-bracket minor children of wealthy parents would pay taxes at their lower marginal rate.[313]

By twisting the age requirements of the dependency exemption, section 1(g) applies to some, but not all, children who are dependents. Section 1(g) applies to a child who is 17 at the close of the taxable year (a dependent)[314] or eighteen before the close of the taxable

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309. *Id.* § 1(g) (2012). Unearned income includes interest, dividends, capital gains, rents, royalties, including income from property held under the Uniform Gift to Minors Act. 26 C.F.R. § 1.1(i)-1T; *see* I.R.C. §§ 652(a), 662(a) (2012).

310. *But see* I.R.C. § 1(g)(4)(C) (2012) (stating that income from a qualified disability trust is taxed under I.R.C. §§ 652 or 662 and not subject to I.R.C. § 1(g)).

311. The parents' tax rate applies to the child's net unearned income. This is the total unearned income reduced by an exempt amount that is adjusted for inflation. In 2016 the provision reduces the amount of unearned income by $1,050 and includes an addition standard deduction ($1,050), so that generally $2,100 is exempt from the higher rate of tax. *Id.* § 63(c)(5)(A) (2012); Rev. Proc. 2015-53, 2015-44 I.R.B. 622, § 3.02. If the child itemizes deductions, the reduction includes deductions that are directly connected to the unearned income. I.R.C. §§ 1(g)(4), 63(c)(5)(A) (2012).

312. *See* I.R.C. § 1(g)(4)(A)(ii)(I). *See also id.* § 1(g)(7) (providing that parental election includes child's gross income on parent's return in 2016 is over $1,050 but under $10,500). The standard deduction is $1,050. *Id*. § 63(c)(5)(A). If the child itemizes deductions, only the deductions related to the production of income are allowed. *Id.* §§ 1(g)(4), 63(c)(5)(A); Rev. Proc. 2015-53, 2015-44 I.R.B. 622, § 3.02. Beginning in the 2016 taxable year, the exemption for the alternative minimum tax for taxpayers subject to the kiddie tax is the amount of the child's earned income plus $7,400. I.R.C. §§ 55 (2014), 59(j) (2015); Rev. Proc. 2015-53, 2015-44 I.R.B. 622, § 3.14(2); *see also id*. §§ 3.12, 3.14 (providing that the standard deduction for a dependent child is $1,050 in 2016 or $350 plus the child's earned income up to the personal exemption for a single person). The rates are adjusted annually for inflation. I.R.C. § 1(i)(1)(C).

313. I.R.C. § 1(h)(1)(B). That rate is zero for qualified capital gains and dividend income. The income-producing property is not limited to transfers from the parents. The source of the property is irrelevant and includes property purchased by the child with his or her own earnings. Temp. Treas. Reg. § 1.1(i)-1T, Q&A 8 (2016).

314. I.R.C. § 1(g)(2)(A)(i) (providing that dependents are individuals who has not attained age 18 before the close of the taxable year); *see also id.* § 1(g)(2)(A)(ii)(II) (requiring for the child's earned income (excluding scholarships) not exceed one half of the child's support); *id.* § 1(g)(2)(B) (one parent is alive); *id.* § 1(g)(2)(C) (child does not file a joint return).

year,[315] and to a child who is a full-time student younger than 24 (also a dependent).[316]

The section does not apply to eighteen year olds who are not full-time students, disabled adult children,[317] and children whose earned income exceeds one half of their own support.[318] All of the above are qualifying children for purposes of the dependency exemption. Thus, in a narrow area some children claimed as dependents by their parents are taxed at their own (presumably lower) rates. In addition, the section does not apply to children both of whose parents have died, even if they can be claimed as a dependent by another taxpayer (for example, an older sibling). The child may be claimed as a dependent on his or her parents' final income tax return.[319] In general, married children who file a joint return[320] are not qualifying children and cannot be claimed as dependents. Similarly, they are not covered by the kiddie tax.

The mismatch of age requirements between sections 1(g) and 152 makes the Code less efficient and less transparent. For the sake of clarity, section 1(g) should apply to any child who can be claimed as a dependent on another taxpayer's return.

VI. Health Insurance

Under section 105(b) of the Code, the taxpayer's income does not include reimbursement or direct payment of medical care for the employee, his or her spouse, and certain dependents and other children by

315. *Id.* § 1(g)(2)(A)(ii).
316. *Id.* § 1(g)(2)(A) uses the phrase "taxable year."
317. *Id.* § 1(g)(2)(A)(ii)(I); *see also* DEP'T OF THE TREASURY, INTERNAL REVENUE SERVICE (99), FORM 8615: TAX FOR CERTAIN CHILDREN WHO HAVE INVESTMENT INCOME OF MORE THAN $1,900 (2015).
318. *Compare* I.R.C. § 1(g)(2)(A)(II), *with id.* § 152(c)(1)(D). The individuals may be claimed as qualifying children under the dependency exemption as long as they do not use their income to pay for over half of their own support. The definition of a qualifying child is one "who has not provided over one-half of such individual's own support." *Id.* § 152(c)(1)(D). Thus the expenditure on the child's own support, and not the amount of his or her earnings, disqualifies the child as a dependent.
319. *Id.* § 1(g)(2)(B). The child may be claimed as a dependent on his or her parent's final income tax return.
320. *Id.* § 1(g)(2)(C); *see also id.* § 152(b)(2) (providing that a child who files a joint return (other than to claim a refund) is not a dependent).

the taxpayer's employer.[321] The employer receives a deduction for the premiums or other payments as a business expense.[322]

Since 2010, the Code requires employer-provided health insurance[323] to cover an employee's children[324] between ages nineteen through twenty-six on their policies.[325] The provision applies to children whether or not they are full-time students, married, have gross income that is higher than the personal exemption, live with the taxpayer, or whether the taxpayer supports them.[326]

Section 105(b) creates two classes of beneficiaries and each class has different age requirements. First, the dependent[327] under the dependency exemption includes members of the taxpayer's extended family who live in the same household as the taxpayer and meet the

321. *Id.* § 105(b). The section excludes from the employee's income direct payments or reimbursements for the medical treatment of employees and their spouses, dependents, and children younger than age 27 at the end of the year. The same age requirement applies to the deduction for health insurance premiums by a self-employed individual. *Id.* §162(*l*)(1) (providing that the deduction covers 100% of premiums, but not more than the taxpayer's net income from the trade or business less self-employment tax and retirement plan deductions); health benefits provided by qualified pension or annuity plans, *id.* § 401(h); and health benefits provided by voluntary employee benefits associations (VEBA) covering the same family group. *Id.* § 501(c)(9). *See also id.* §§ 105 (providing that employer-provided health care excluded from employee's income), 106 (employer-provided coverage under an accident and health plan).

322. *Id.* § 162(a)(1) (ordinary and necessary expense, for reasonable salary or other compensation for personal services).

323. *Id.* §§ 105(b) (excluding payment of employee medical expenses by employer), 106 (excludes employer-provided health insurance). The section excludes from the employee's income direct payments or reimbursements for the medical treatment of employees and their spouses, dependents, and children younger than age 27 at the end of the year. The same age requirement applies to the deduction for health insurance premiums by a self-employed individual. The deduction covers 100% of premiums, but not more than the taxpayer's net income from the trade or business less self-employment tax and retirement plan deductions. *Id.* § 162(*l*)(1); *see also id.* § 401(h) (health benefits provided by qualified pension or annuity plans); *id.* § 501(c)(9) (health plans by voluntary employee benefits associations (VEBA) covering the same family group); *id.* § 106 (employer-provided health care excluded from employee's income).

324. *See id.* § 105(b) (excluding employer provided health insurance for any child under 27 from gross income).

325. In the case of divorced parents, the child is a dependent of both parents for purposes of health and other fringe benefits. *See id.* §§ 105(b), 152(e).

326. *See id.* § 105(b).

327. *See id.* §§ 152(c)(2)(A), 152(f)(1) (providing that dependents include taxpayer's children, including adopted children or eligible foster children, and their descendants); *see also id.* § 152(c)(2)(B) (2015) (dependents also include siblings, stepsiblings, and their descendants).

age limits of the qualifying child provisions.[328] Second, the healthcare beneficiary[329] is a "child" narrowly defined by § 152(f)(1). This is limited to a "blood" offspring,[330] an adopted child,[331] an eligible foster child, and a stepchild.[332] Thus, the members of the taxpayer's extended family that were qualifying children under the dependency exemption, such as a taxpayer's grandson, are not covered by the child provision of § 152(f). At age twenty-five, a taxpayer's grandson is not a beneficiary even if he was once the taxpayer's qualifying child and the only thing that changed is his age.[333]

For example, assume Lola lives with her younger brother, Bob, who is twenty-two years old and a full-time student. Bob is a qualifying child as his sister's dependent[334] for purposes of employer provided health insurance.[335] Two years later, assume that nothing changes except Bob's age. At twenty-four, Bob is not a qualifying child for employer provided health insurance. Although he is under age twenty-seven, Bob is not a "child" under § 152(f).[336] If Lola

328. *See id.* § 152 (c)(1)(B) ("qualifying child" has the same abode as taxpayer); *see also id.* § 152(c)(3)(A) (2015) ("qualifying child" is younger than 19 or younger than 24 and full-time student).

329. *See id.* § 105(b) (defining child as in §152 (f)(1) and as younger than age 27).

330. *See id.* § 152 (f)(1)(A)(i) (excluding siblings and descendants from the definition of "child").

331. *Id.* § 152(f)(1)(B) (treating adopted child or child "lawfully placed" for "legal adoption" as child by blood).

332. *Id.* § 152(f)(1)(C) (defining an "eligible foster child" as a child placed "by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction").

333. Adoption solves a temporary insurance/tax problem but may raise other issues of family dynamics. Robert Pear, *Ambiguity in Health Law Could Make Family Coverage Too Costly for Many*, N.Y. TIMES, Aug. 12, 2012, at A10 (meaning of "affordable" dependent coverage could require a low-income employee to spend 12% of his income for family coverage). This puts low-income parents in the position of being unable to afford coverage from their employer but not be eligible for subsidies to acquire private insurance. *Id*. For example, in North Carolina, the state pays all or nearly all of the premium for health insurance for a state government employee but nothing for insurance for dependents. *Id.* The cost of such insurance is not affordable for many state employees. *Id.* Because subsidies rest on the cost of employee insurance, and the employee-only insurance is free, state employees may not be able to receive subsidies. *Id. See generally* Robert Greenstein, *Repairing the Safety Net*, CTR. ON BUDGET & POL'Y PRIORITIES (Feb. 7, 2012 at 4:46 PM), http://www.cbpp.org/blog/repairing-the-safety-net.

334. *See* I.R.C. § 152(c)(2)(B) (brother, sister, stepbrother, or stepsister is qualifying child).

335. *See id.* § 105(b) (excluding employer payment of medical expenses of dependent).

336. *See id*. § 152(f)(1)(A)(i) (child does not include siblings; limited to biological and step children).

adopted her brother, he would be covered under the employer provided plan.[337]

Before the amendment, people between eighteen and twenty-six were chronically uninsured,[338] not because they were unemployed, but because employers can exclude employees who are under twenty-five, employed less than three years, or working part-time[339] or seasonally from qualified accident and health plans.[340]

Generally, middle and low-income individuals cannot afford individual health insurance policies.[341] In addition, low-income young adults, who are not disabled and have no children, are not eligible for Medicaid in most states.[342] The Supreme Court struck down the portion of the Affordable Care Act that would have made adults with income up to 133 percent of the federal poverty level eligible for Medicaid[343] in 2014.[344] According to a Kaiser Family Foundation report, that group includes 17.1 million uninsured adults.[345] The plural-

337. *See id*.

338. *See* MATT BROADDUS & EDWIN PARK, CTR. FOR BUDGET & POL'Y PRIORITIES, NUMBER OF UNINSURED FELL IN 2011, LARGELY DUE TO HEALTH REFORM AND PUBLIC PROGRAMS 1–2 (Sept. 2012) (uninsured fell by 1.3 million; 40% were between 19 and 25). This was the largest drop since 1999 when states created or expanded the Children's Health Insurance Program, CHIP. *Id*. at 2. Insurance coverage is lower than pre-recession rates with the highest number of uninsured in the next oldest group, 25–34 years old. *Id*. *See also* CARMEN DENAVAS-WALT, BERNADETTE D. PROCTOR, JESSICA C. SMITH, U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2011 27 (2012) ("Among those aged 19 to 25, the unisured rate decreased in 2011 to 27.6 percent from 29.7 percent in 2010.").

339. *See* 5 U.S.C. § 6101 (2015) (establishing a basic workweek of 40 hours).

340. *Cf.* Samson Reiny, *US Gives Temporary Health Insurance to Seasonal Firefighters*, CHI. TRIBUNE (July 17, 2012), http://articles.chicagotribune.com/2012-07-17/business/sns-rt-usa-obamafirefightersl2e8ih8h8-20120717_1_seasonal-firefighters (temporary, seasonal employees are usually "ineligible for federal benefits such as health insurance", but mandate gave seasonal firefighters temporary coverage).

341. *See* KARYN SCHWARTZ & ANTHONY DAMICO, THE HENRY J. KAISER FAMILY FOUNDATION, EXPANDING MEDICAID: COVERAGE FOR LOW-INCOME ADULTS UNDER HEALTH REFORM 2 (2010) (finding that in 2009 an employee's average cost was $779 a year and the average full cost was $4,824).

342. Greenstein, *supra* note 333.

343. Patient Protection & Affordable Care Act of 2010, 124 Stat. 271 (expanding Medicaid to cover individuals with income at or below 133 % of poverty line); Nat'l. Fed'n. of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2608 (2012) (finding that Medicaid expansion violates Constitution by threatening existing funding).

344. States can voluntarily expand Medicaid. *Sebelius*, 132 S. Ct. at 2608.

345. SCHWARTZ & DAMICO, *supra* note 341, at 3.

ity of the uninsured childless adult group, thirty-four percent, is between the ages of nineteen and twenty-five.[346]

346. *See* KAISER COMMISSION ON MEDICAID AND THE UNINSURED, THE HENRY J. KAISER FAMILY FOUNDATION, EXPANDING MEDICAID UNDER HEALTH REFORM: A LOOK AT ADULTS AT OR BELOW 133 PERCENT OF POVERTY 1–2 (2010) (finding that in 2009 133% of the federal poverty level was $14,404 for an individual). *See generally* *Kaiser Commission on Medicaid and the Uninsured*, KAISER FAM. FOUND., kff.org/about-kaiser-commission-on-medicaid (last visited Oct. 3, 2016).