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Federal Tax Coordinator 2d

¶A-4301. Child and dependent care credit.

A credit is available to an individual taxpayer:


- (1) for whom there are one or more qualifying individuals ([¶A-4312](#)); and
- (2) who has incurred employment-related expenses ([¶A-4319](#) et seq.) that enable the taxpayer to be gainfully employed ([¶A-4328](#)).¹

 **RIA observation:** Because “qualifying individuals” are the taxpayer’s dependent children under the age of 13 and certain other dependents who are incapable of self-care, see [¶A-4312](#), the above credit is generally known as the “child and dependent care credit.”

¹
[Code Sec. 21\(a\)\(1\)](#); [Reg § 1.21-1\(a\)\(1\)](#).

Married couples must file a joint return to claim the credit, see [¶A-4310](#).

The credit is available if the qualifying individual or qualifying individuals live with the taxpayer for more than half the year, even if the taxpayer doesn’t provide more than half the cost of maintaining the household.²

 **RIA observation:** The above “residence” requirement derives from the definition of “qualifying individual.” See [¶A-4312](#).

²
[Conf Rept No. 108-696 \(PL 108-311\) p. 64](#).


The credit equals the applicable percentage (see below) of the employment-related expenses paid by the individual during the tax year, subject to the limits discussed below.


³
³

[Code Sec. 21\(a\)\(1\)](#); [Reg § 1.21-1\(a\)\(2\)](#).

The applicable percentage is 35%, reduced (but not below 20%) by one percentage point for each \$2,000 (or fraction of \$2,000) by which the taxpayer’s adjusted gross income (AGI, see [¶A-2601](#) et seq.) for the tax year exceeds \$15,000.⁴ Thus, a taxpayer’s applicable credit percentage can be computed using the following chart:⁵

Adjusted gross income		
Over	But not over	Applicable Percentage
0	\$15,000	35%
15,000	17,000	34
17,000	19,000	33
19,000	21,000	32
21,000	23,000	31
23,000	25,000	30
25,000	27,000	29
27,000	29,000	28
29,000	31,000	27
31,000	33,000	26
33,000	35,000	25
35,000	37,000	24
37,000	39,000	23
39,000	41,000	22
41,000	43,000	21
43,000	No limit	20

 **RIA illustration:** F and G each have \$6,000 in employment-related expenses for two qualifying individuals (see [¶ A-4302](#)). F has adjusted gross income of \$22,500, so F's credit is \$1,860 (31% of \$6,000). G has adjusted gross income of \$27,500, so G's credit is \$1,680 (28% of \$6,000).


 **sample client letter:** A sample client letter that explains the child and dependent care credit and contrasts the tax benefits of the credit with those of a dependent care flexible spending account, appears in [Client Letters ¶ 2400](#).

⁴
[Code Sec. 21\(a\)\(2\)](#); [Reg § 1.21-1\(a\)\(2\)](#).

⁵
[IRS Pub No. 503, \(2006\), p. 10](#).


For the dollar and earned income limits on employment-related expenses, see [¶ A-4302](#) and [¶ A-4304](#), respectively.

The credit isn't refundable. That is, the taxpayer can't get a refund for any part of the credit that's more than his or her tax.⁶

 **RIA caution:** The credit is also subject to an annual limitation on certain total nonrefundable personal credits, see [¶ A-4308](#).

⁶
[IRS Pub No. 503, \(2006\), p. 11](#).

The credit is claimed on Form 1040, Form 1040A, or Form 1040NR. Form 1040 and Form 1040NR filers must attach Form 2441; Form 1040A filers must complete Schedule 2.⁷


 **Filled in Form** A sample Form 2441 , filled in with a line-by-line explanation by the RIA professional staff, appears in Individual Tax Return Guide .

 **Forms to use:** Form 1040A, Schedule 2 , reproduced in e-FormRS.

⁷

[IRS Pub No. 503, \(2006\), p. 11 .](#)

The credit can't be claimed on Form 1040EZ.⁸

 **RIA caution:** Where the credit is allocable to or chargeable against foreign earned income excluded from gross income under [Code Sec. 911](#) , see [¶ O-1112](#) .

⁸

[IRS Pub No. 503, \(2006\), p. 11 .](#)


For requirement that the TINs of qualifying individuals be provided on the return claiming the credit, see [¶ A-4333](#) .

For requirement that identifying information with respect to care providers be provided on the return claiming the credit, see [¶ A-4334](#) .

For coordination of the child and dependent care credit with the exclusion from gross income of benefits under an employer's dependent care assistance program ([¶ H-1401](#) et seq.), see [¶ A-4303](#) .

For the effect after Dec. 31, 2010 on the rules above of the sunset provisions contained in Sec. 901, PL 107-16, 6/7/2001, see [¶ T-11051](#) .

The statutory rules allowing the child and dependent care credit, currently set forth by [Code Sec. 21](#) , were formerly set forth by Code Sec. 44A. The '84 Deficit Reduction Act redesignated Code Sec. 44A as [Code Sec. 21](#) .⁹ IRS originally issued final regs under Code Sec. 44A in '79,¹⁰ and amended those regs in '84,¹¹ before the redesignation of Code Sec. 44A as [Code Sec. 21](#) .¹²

 **RIA observation:** The regs as issued and amended under former Code Sec. 44A will be referred to as the "Code Sec. 44A final regs."

⁹

Code Sec. 44A before redes by Sec. 471(c), PL 98-369, 7/18/84 .

¹⁰

TD 7643, 8/27/79 .

¹¹

[TD 7951, 4/26/84](#).
¹²

[Reg § 1.44A-1, before removed by TD 9354, 8/13/2007](#); [Reg § 1.44A-2, before removed by TD 9354, 8/13/2007](#); [Reg § 1.44A-3, before removed by TD 9354, 8/13/2007](#); [Reg § 1.44A-4, before removed by TD 9354, 8/13/2007](#);

After the Code Sec. 44A final regs were issued and amended, [Code Sec. 21](#) was amended several times, but IRS did not make any changes to the final Code Sec. 44A regs to reflect those statutory amendments. Finally, in 2006, IRS issued proposed reliance regs that did reflect those various statutory amendments.¹³ In 2007, IRS adopted those proposed reliance regs as final regs,¹⁴ with various amendments.¹⁵ [TD 9354, 8/13/2007](#), which accomplished this, also removed the Code Sec. 44A final regs,¹⁶ and obsoleted [Rev Rul 76-278, 1976-2 CB 84](#) and [Rev Rul 76-288, 1976-2 CB 83](#), which set forth additional rules under former Code Sec. 44A.¹⁷
¹³

[Prop Reg § 1.21-1, before removed by TD 9354, 8/13/2007](#), [Prop Reg § 1.21-2, before removed by TD 9354, 8/13/2007](#), [Prop Reg § 1.21-3, before removed by TD 9354, 8/13/2007](#), [Prop Reg § 1.21-4, before removed by TD 9354, 8/13/2007](#) (“taxpayers may apply,” [Prop Reg § 1.21-3, before removed by TD 9354, 8/13/2007](#)).
¹⁴

[Reg § 1.21-1](#); [Reg § 1.21-2](#); [Reg § 1.21-3](#); [Reg § 1.21-4](#).
¹⁵


[Preamble to TD 9354, 8/13/2007](#); Preamble to Prop Regs, 5/23/2006 .
¹⁶

[TD 9354, 8/13/2007](#).
¹⁷

[Preamble to TD 9354, 8/13/2007](#).

For discussion of the Code Sec. 44A final regs, the proposed reliance regs, and their applicability, see below and the following paragraphs. For discussion of [Rev Rul 76-278, 1976-2 CB 84](#) and [Rev Rul 76-288, 1976-2 CB 83](#), see, respectively, [¶ A-4329](#) and [¶ A-4322](#).

On Aug. 14, 2007, the Code Sec. 44A final regs—which are listed at footnote 12 above, cited at footnote 26 below, and which are further discussed in the paragraphs that follow—were removed.¹⁸

 **RIA observation:** For periods before their removal, the Code Sec. 44A final regs would appear to be valid to the extent they do not conflict with the statutory amendments enacted after those regs were issued and amended. The nonconflicting portions of those regs are discussed below and in the paragraphs that follow.

In addition, for tax years for which the [Code Sec. 6511](#) credit or refund limitation period (see [¶ T-7501](#) et seq.) had not expired as of May 24, 2006, taxpayers were permitted to apply the proposed reliance regs. See below and the paragraphs that follow.

¹⁸

[TD 9354, 8/13/2007](#).

For tax years ending before Aug. 15, 2007, [Reg § 1.21-1\(a\)\(1\)](#) and [Reg § 1.21-1\(a\)\(2\)](#), setting forth the regulatory rules discussed in the text at footnotes 1, 3, and 4 above, did not apply.¹⁹ However, for those periods, proposed reliance regs set forth identical rules.

²⁰

¹⁹

[Reg § 1.21-1\(l\)](#).

²⁰

[Prop Reg § 1.21-1\(a\)\(1\)](#), before removed by [TD 9354, 8/13/2007](#), [Prop Reg § 1.21-1\(a\)\(2\)](#), before removed by [TD 9354, 8/13/2007](#) ("taxpayers may apply," [Prop Reg § 1.21-1\(l\)](#), before removed by [TD 9354, 8/13/2007](#)).

Before Aug. 14, 2007,²¹ the Code Sec. 44A final regs set forth a rule substantially similar to the rule discussed in the text at footnote 3 above.²²

²¹

[TD 9354, 8/13/2007](#).

²²

[Reg § 1.44A-1\(a\)\(2\)](#), before removed by [TD 9354, 8/13/2007](#).

For tax years for which the [Code Sec. 6511](#) credit or refund limitation period (see [§ T-7501](#) et seq.) had expired as of May 24, 2006,²³ taxpayers couldn't apply the proposed reliance regs discussed in the text at footnote 20 above.²⁴

²³

[Prop Reg § 1.21-1\(l\)](#), before removed.

²⁴

[Prop Reg § 1.21-1\(l\)](#), before removed by [TD 9354, 8/13/2007](#) ("taxpayers may apply," [Prop Reg § 1.21-1\(l\)](#), before removed by [TD 9354, 8/13/2007](#)).

For tax years beginning before Jan. 1, 2005,²⁵ requirement (1) above didn't apply. Instead, the child and dependent care credit was available to an individual taxpayer who maintained a household ([§ A-4315](#)) that included one or more qualifying individuals.²⁶

²⁵

[Sec. 208, PL 108-311, 10/4/2004](#).

²⁶

[Code Sec. 21\(a\)\(1\)](#) before amend by [Sec. 203\(a\), PL 108-311, 10/4/2004](#); [Reg § 1.21-1\(a\)](#); [Reg § 1.44A-1\(a\)\(2\)](#), before removed by [TD 9354, 8/13/2007](#).