

107TH CONGRESS
2^D SESSION

H. R. 5130

To allow a custodial parent a bad debt deduction for unpaid child support payments, and to require a parent who is chronically delinquent in child support to include the amount of the unpaid obligation in gross income.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2002

Mr. COX (for himself, Mr. FOLEY, Ms. HART, Ms. LOFGREN, Mr. FILNER, Mr. DREIER, Mr. SHADEGG, Mr. SCHAFFER, Mr. TOWNS, Mr. MCKEON, Mr. SENSENBRENNER, Mr. OWENS, Mr. WILSON of South Carolina, Mr. GRAHAM, Mr. CUNNINGHAM, Mr. BALDACCI, Mr. OSE, Mr. SANDERS, Mr. BARR of Georgia, Ms. BROWN of Florida, Mr. BURTON of Indiana, Mr. CALVERT, Mr. ROTHMAN, Mr. HORN, Mr. ISSA, Mr. GARY G. MILLER of California, Mr. KUCINICH, Mr. PENCE, Mr. PITTS, Mr. PASCRELL, Mr. POMBO, Mr. ROHRABACHER, Mr. ROYCE, Mr. TANCREDO, Mr. TIBERI, Mr. WALDEN, Mr. GILLMOR, Mr. DUNCAN, Mr. TRAFICANT, Mr. FOSSELLA, Ms. MILLENDER-McDONALD, Mr. GILCHREST, and Mrs. MORELLA) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To allow a custodial parent a bad debt deduction for unpaid child support payments, and to require a parent who is chronically delinquent in child support to include the amount of the unpaid obligation in gross income.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION. 1. SHORT TITLE.**

2 This Act may be cited as the “Child Support Enforce-
3 ment Act”.

4 **SEC. 2. NO EFFECT ON RIGHTS AND LIABILITIES.**

5 Nothing in this Act shall be construed to affect—

6 (1) the right of an individual or State to receive
7 any child support payment; or

8 (2) the obligation of an individual to pay child
9 support.

10 **SEC. 3. ALLOWANCE OF BAD DEBT DEDUCTION FOR UN-**
11 **PAID CHILD SUPPORT PAYMENTS.**

12 (a) IN GENERAL.—Section 166 of the Internal Rev-
13 enue Code of 1986 (relating to deduction for bad debts)
14 is amended by redesignating subsection (f) as subsection
15 (g) and by inserting after subsection (e) the following new
16 subsection:

17 “(f) UNPAID CHILD SUPPORT.—

18 “(1) IN GENERAL.—In the case of a custodial
19 parent who, as of the close of the taxable year, is
20 owed child support, the amount of unpaid child sup-
21 port shall be deemed a canceled debt as of such
22 date, and shall be allowed as a deduction for such
23 taxable year.

24 “(2) PRESUMPTION OF WORTHLESSNESS.—
25 Subsection (a) (relating to worthless debts) shall not
26 apply to child support.

1 “(3) SUBSEQUENT PAYMENTS.—If any unpaid
2 child support with respect to which a deduction was
3 allowed under paragraph (1) is subsequently paid to
4 the custodial parent, the amount of such payment
5 shall not be included in the gross income of the cus-
6 todial parent, nor shall it be allowed as a deduction
7 to the delinquent debtor. The delinquent debtor shall
8 be neither required nor allowed to file an amended
9 return in any subsequent year to reflect the subse-
10 quent payment of unpaid child support.

11 “(4) FULL DEDUCTION FROM ORDINARY IN-
12 COME.—Subsection (d) (relating to the treatment of
13 nonbusiness bad debt as a loss from the sale or ex-
14 change of a capital asset) shall not apply to the de-
15 ductibility of unpaid child support.

16 “(5) TAX RETURNS.—A custodial parent who
17 wishes to deduct the amount of unpaid child support
18 shall include on the return claiming the deduction
19 the name and taxpayer identification number of each
20 child with respect to whom child support payments
21 to which this subsection applies are required to be
22 paid.

23 “(6) INFORMATION RETURNS.—

24 “(A) IN GENERAL.—A custodial parent
25 who wishes to deduct the amount of unpaid

1 child support shall complete Form 1099–CS (or
2 such other form as the Secretary may pre-
3 scribe) and provide such form to the Secretary,
4 and (if the address is known) to the delinquent
5 debtor, within 45 days following the close of the
6 taxable year for which the deduction is claimed.
7 Failure to so file such form with the Secretary
8 (or, if the address is known, with the delinquent
9 debtor) shall result in disallowance of the de-
10 duction for the taxable year.

11 “(B) CONTENTS OF FORM.—The Form
12 1099–CS (or such other form as the Secretary
13 may prescribe) shall contain—

14 “(i) the total amount of child support
15 owed (whether or not paid) for such tax-
16 able year,

17 “(ii) the total amount of unpaid child
18 support as of the last day of such taxable
19 year,

20 “(iii) the name, address (if known),
21 and taxpayer identification number of the
22 delinquent debtor, and

23 “(iv) notice that the delinquent debtor
24 is required to include such total amount of
25 unpaid child support in gross income for

1 the delinquent debtor’s taxable year which
2 includes the last day of the custodial par-
3 ent’s taxable year.

4 “(C) DEBTOR’S ADDRESS UNKNOWN.—If
5 the delinquent debtor’s address is not known to
6 the custodial parent, the Form 1099–CS (or
7 such other form as the Secretary may pre-
8 scribe) shall indicate that fact. In such a case,
9 the Secretary may send such notice if the ad-
10 dress is available to the Secretary, and the no-
11 tice from the custodial parent to the delinquent
12 debtor under subparagraph (A) shall not be re-
13 quired.

14 “(7) DETERMINATION OF WHETHER CHILD
15 SUPPORT IS PAID.—

16 “(A) CHILD SUPPORT ENFORCEMENT OF-
17 FICE RECORDS AS CONCLUSIVE EVIDENCE OF
18 PAYMENT.—Child support shall be treated as
19 paid if such payment is recorded by the State
20 office of child support enforcement in which the
21 custodial parent is registered.

22 “(B) TIMELY MAILING AS TIMELY PAY-
23 MENT.—A payment received by the State office
24 of child support enforcement in which the cus-
25 todial parent is registered after the last day of

1 the custodial parent's taxable year shall be
2 treated for the purpose of this subsection as
3 paid on such day if the postmark date falls on
4 or before such day. The rules of section 7502(f)
5 and regulations issued thereunder shall apply
6 for purposes of this subparagraph.

7 “(8) DEFINITIONS.—For the purposes of this
8 subsection—

9 “(A) CHILD SUPPORT.—The term ‘child
10 support’ means—

11 “(i) any periodic payment of a fixed
12 amount, or

13 “(ii) any payment of a medical edu-
14 cation expense, insurance premium, or
15 other similar item,

16 which is required to be paid to a custodial par-
17 ent by an individual under a support instru-
18 ment for the support of any qualifying child of
19 such individual. ‘Child support’ does not include
20 any amount which is described in section
21 408(a)(3) of the Social Security Act and which
22 has been assigned to a State.

23 “(B) CUSTODIAL PARENT.—The term ‘cus-
24 todial parent’ means an individual who is enti-
25 tled to receive child support and who has reg-

1 istered with the appropriate State office of child
2 support enforcement charged with implementing
3 section 454 of the Social Security Act.

4 “(C) DELINQUENT DEBTOR.—The term
5 ‘delinquent debtor’ means a taxpayer who owes
6 unpaid child support to a custodial parent.

7 “(D) QUALIFYING CHILD.—The term
8 ‘qualifying child’ means a child of a custodial
9 parent with respect to whom a dependent de-
10 duction is allowable under section 151 for the
11 taxable year (or would be so allowable but for
12 paragraph (2) or (4) of section 152(e)).

13 “(E) SUPPORT INSTRUMENT.—The term
14 ‘support instrument’ means—

15 “(i) a decree of divorce or separate
16 maintenance or a written instrument inci-
17 dent to such a decree,

18 “(ii) a written separation agreement,
19 or

20 “(iii) a decree (not described in clause
21 (i)) of a court or administrative agency re-
22 quiring a parent to make payments for the
23 support or maintenance of 1 or more chil-
24 dren of such parent.

1 “(F) UNPAID CHILD SUPPORT.—The term
2 ‘unpaid child support’ means child support that
3 is payable for months during a custodial par-
4 ent’s taxable year and unpaid as of the last day
5 of such taxable year, provided that such unpaid
6 amount as of such day equals or exceeds one-
7 half of the total amount of child support due to
8 the custodial parent for such year.”.

9 (b) DEDUCTION FOR NONITEMIZERS.—Section 62(a)
10 of such Code is amended by inserting after paragraph (18)
11 the following new paragraph:

12 “(19) UNPAID CHILD SUPPORT PAYMENTS.—
13 The deduction allowed by section 166(f).”

14 (c) CONFORMING AMENDMENT.—Section 166(d)(2)
15 of such Code is amended by striking “or” at the end of
16 subparagraph (A), by striking the period at the end of
17 the subparagraph (B) and by inserting “, or” and by add-
18 ing at the end the following new subparagraph:

19 “(C) a debt which constitutes unpaid child
20 support payment under subsection (f).”

21 **SEC. 4. INCLUSION IN INCOME OF AMOUNT OF UNPAID**
22 **CHILD SUPPORT.**

23 (a) IN GENERAL.—Section 108 of the Internal Rev-
24 enue Code of 1986 (relating to discharge of indebtedness

1 income) is amended by adding at the end the following
2 new subsection:

3 “(h) UNPAID CHILD SUPPORT.—

4 “(1) IN GENERAL.—For purposes of this chap-
5 ter, any unpaid child support of a delinquent debtor
6 for any taxable year shall be treated as amounts in-
7 cludible in gross income of the delinquent debtor for
8 the taxable year.

9 “(2) DETERMINATION OF WHETHER CHILD
10 SUPPORT IS UNPAID.—

11 “(A) IN GENERAL.—Child support shall be
12 treated as paid if such payment is recorded by
13 the State office of child support enforcement in
14 which the custodial parent is registered.

15 “(B) TIMELY MAILING AS TIMELY PAY-
16 MENT.—A payment received by the State office
17 of child support enforcement in which the cus-
18 todial parent is registered after the last day of
19 the custodial parent’s taxable year shall be
20 treated for the purpose of this subsection as
21 paid on such day if the postmark date falls on
22 or before such day. The rules of section 7502(f)
23 and regulations issued thereunder shall apply
24 for purposes of this subparagraph.

1 “(3) DEFINITIONS.—For the purposes of this
2 subsection—

3 “(A) CHILD SUPPORT.—The term ‘child
4 support’ means—

5 “(i) any periodic payment of a fixed
6 amount, or

7 “(ii) any payment of a medical edu-
8 cation expense, insurance premium, or
9 other similar item,

10 which is required to be paid to a custodial par-
11 ent by an individual under a support instru-
12 ment for the support of any qualifying child of
13 such individual. ‘Child support’ does not include
14 any amount which is described in section
15 408(a)(3) of the Social Security Act and which
16 has been assigned to a State.

17 “(B) CUSTODIAL PARENT.—The term ‘cus-
18 todial parent’ means an individual who is enti-
19 tled to receive child support and who has reg-
20 istered with the appropriate State office of child
21 support enforcement charged with implementing
22 section 454 of the Social Security Act.

23 “(C) DELINQUENT DEBTOR.—The term
24 ‘delinquent debtor’ means a taxpayer who owes
25 unpaid child support to a custodial parent.

1 “(D) QUALIFYING CHILD.—The term
2 ‘qualifying child’ means a child of a custodial
3 parent with respect to whom a dependent de-
4 duction is allowable under section 151 for the
5 taxable year (or would be so allowable but for
6 paragraph (2) or (4) of section 152(e)).

7 “(E) SUPPORT INSTRUMENT.—The term
8 ‘support instrument’ means—

9 “(i) a decree of divorce or separate
10 maintenance or a written instrument inci-
11 dent to such a decree,

12 “(ii) a written separation agreement,
13 or

14 “(iii) a decree (not described in clause
15 (i)) of a court or administrative agency re-
16 quiring a parent to make payments for the
17 support or maintenance of 1 or more chil-
18 dren of such parent.

19 “(F) UNPAID CHILD SUPPORT.—The term
20 ‘unpaid child support’ means child support that
21 is payable for months during a custodial par-
22 ent’s taxable year and unpaid as of the last day
23 of such taxable year, provided that such unpaid
24 amount as of such day equals or exceeds one-

1 half of the total amount of child support due to
2 the custodial parent for such year.

3 “(4) COORDINATION WITH OTHER LAWS.—
4 Amounts treated as income by paragraph (1) shall
5 not be treated as income by reason of paragraph (1)
6 for the purposes of any provision of law which is not
7 an internal revenue law.”.

8 **SEC. 5. TAXPAYER INFORMATION REGARDING CHILD SUP-**
9 **PORT NOT BASIS FOR AUDIT.**

10 A discrepancy between the tax returns of a custodial
11 parent and a delinquent debtor concerning whether a pay-
12 ment of child support has been made may not be used
13 or relied upon by the Internal Revenue Service in any way
14 in selecting an individual’s tax return for a general audit.

15 **SEC. 6. EFFECTIVE DATE; IMPLEMENTATION.**

16 The amendments made by the Act shall apply to tax-
17 able years beginning after December 31, 2001. The Sec-
18 retary of the Treasury shall publish Form 1099–CS (or
19 such other form that may be prescribed to comply with
20 section 3(a)(6) of this Act) regulations, if any, that may
21 be deemed necessary to carry out the purposes of this Act,
22 not later than 90 days after the date of enactment of this
23 Act.

○