

108TH CONGRESS
1ST SESSION

S. 127

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 SENATE OF THE UNITED STATES

JANUARY 9, 2003

Mrs. BOXER (for herself and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Finance

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Support Enforce-
5 ment Act”.

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

7 Nothing in this Act shall be construed to affect—

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

3 (2) the obligation of an individual to pay child
4 support.

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

7 (a) IN GENERAL.—Section 166 of the Internal Rev-
8 enue Code of 1986 (relating to deduction for bad debts)
9 is amended by redesignating subsection (f) as subsection
10 (g) and by inserting after subsection (e) the following new
11 subsection:

12 “(f) UNPAID CHILD SUPPORT.—

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

19 “(2) PRESUMPTION OF WORTHLESSNESS.—
20 Subsection (a) (relating to worthless debts) shall not
21 apply to child support.

22 “(3) SUBSEQUENT PAYMENTS.—If any unpaid
23 child support with respect to which a deduction was
24 allowed under paragraph (1) is subsequently paid to
25 the custodial parent, the amount of such payment

1 shall not be included in the gross income of the cus-
2 todial parent, nor shall it be allowed as a deduction
3 to the delinquent debtor. The delinquent debtor shall
4 be neither required nor allowed to file an amended
5 return in any subsequent year to reflect the subse-
6 quent payment of unpaid child support.

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

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

19 “(6) INFORMATION RETURNS.—

20 “(A) IN GENERAL.—A custodial parent
21 who wishes to deduct the amount of unpaid
22 child support shall complete Form 1099–CS (or
23 such other form as the Secretary may pre-
24 scribe) and provide such form to the Secretary,
25 and (if the address is known) to the delinquent

1 debtor, within 45 days following the close of the
2 taxable year for which the deduction is claimed.
3 Failure to so file such form with the Secretary
4 (or, if the address is known, with the delinquent
5 debtor) shall result in disallowance of the de-
6 duction for the taxable year.

7 “(B) CONTENTS OF FORM.—The Form
8 1099–CS (or such other form as the Secretary
9 may prescribe) shall contain—

10 “(i) the total amount of child support
11 owed (whether or not paid) for such tax-
12 able year,

13 “(ii) the total amount of unpaid child
14 support as of the last day of such taxable
15 year,

16 “(iii) the name, address (if known),
17 and taxpayer identification number of the
18 delinquent debtor, and

19 “(iv) notice that the delinquent debtor
20 is required to include such total amount of
21 unpaid child support in gross income for
22 the delinquent debtor’s taxable year which
23 includes the last day of the custodial par-
24 ent’s taxable year.

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

11 “(7) DETERMINATION OF WHETHER CHILD
12 SUPPORT IS PAID.—

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

19 “(B) TIMELY MAILING AS TIMELY PAY-
20 MENT.—A payment received by the State office
21 of child support enforcement in which the cus-
22 todial parent is registered after the last day of
23 the custodial parent’s taxable year shall be
24 treated for the purpose of this subsection as
25 paid on such day if the postmark date falls on

1 or before such day. The rules of section 7502(f)
2 and regulations issued thereunder shall apply
3 for purposes of this subparagraph.

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

6 “(A) CHILD SUPPORT.—The term ‘child
7 support’ means—

8 “(i) any periodic payment of a fixed
9 amount, or

10 “(ii) any payment of a medical ex-
11 pense, education expense, insurance pre-
12 mium, or other similar item,

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

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

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

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

10 “(E) SUPPORT INSTRUMENT.—The term
11 ‘support instrument’ means—

12 “(i) a decree of divorce or separate
13 maintenance or a written instrument inci-
14 dent to such a decree,

15 “(ii) a written separation agreement,
16 or

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

22 “(F) UNPAID CHILD SUPPORT.—The term
23 ‘unpaid child support’ means child support that
24 is payable for months during a custodial par-
25 ent’s taxable year and unpaid as of the last day

1 of such taxable year, provided that such unpaid
 2 amount as of such day equals or exceeds one-
 3 half of the total amount of child support due to
 4 the custodial parent for such year.”.

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

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

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

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

17 **SEC. 4. INCLUSION IN INCOME OF AMOUNT OF UNPAID**
 18 **CHILD SUPPORT.**

19 (a) IN GENERAL.—Section 108 of the Internal Rev-
 20 enue Code of 1986 (relating to discharge of indebtedness
 21 income) is amended by adding at the end the following
 22 new subsection:

23 “(h) UNPAID CHILD SUPPORT.—

24 “(1) IN GENERAL.—For purposes of this chap-
 25 ter, any unpaid child support of a delinquent debtor

1 for any taxable year shall be treated as amounts in-
2 cludible in gross income of the delinquent debtor for
3 the taxable year.

4 “(2) DETERMINATION OF WHETHER CHILD
5 SUPPORT IS UNPAID.—

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

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

20 “(3) DEFINITIONS.—For the purposes of this
21 subsection—

22 “(A) CHILD SUPPORT.—The term ‘child
23 support’ means—

24 “(i) any periodic payment of a fixed
25 amount, or

1 “(ii) any payment of a medical ex-
2 pense, education expense, insurance pre-
3 mium, or other similar item,
4 which is required to be paid to a custodial par-
5 ent by an individual under a support instru-
6 ment for the support of any qualifying child of
7 such individual. ‘Child support’ does not include
8 any amount which is described in section
9 408(a)(3) of the Social Security Act and which
10 has been assigned to a State.

11 “(B) CUSTODIAL PARENT.—The term ‘cus-
12 todial parent’ means an individual who is enti-
13 tled to receive child support and who has reg-
14 istered with the appropriate State office of child
15 support enforcement charged with implementing
16 section 454 of the Social Security Act.

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

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

1 “(E) SUPPORT INSTRUMENT.—The term
2 ‘support instrument’ means—

3 “(i) a decree of divorce or separate
4 maintenance or a written instrument inci-
5 dent to such a decree,

6 “(ii) a written separation agreement,
7 or

8 “(iii) a decree (not described in clause
9 (i)) of a court or administrative agency re-
10 quiring a parent to make payments for the
11 support or maintenance of 1 or more chil-
12 dren of such parent.

13 “(F) UNPAID CHILD SUPPORT.—The term
14 ‘unpaid child support’ means child support that
15 is payable for months during a custodial par-
16 ent’s taxable year and unpaid as of the last day
17 of such taxable year, provided that such unpaid
18 amount as of such day equals or exceeds one-
19 half of the total amount of child support due to
20 the custodial parent for such year.

21 “(4) COORDINATION WITH OTHER LAWS.—
22 Amounts treated as income by paragraph (1) shall
23 not be treated as income by reason of paragraph (1)
24 for the purposes of any provision of law which is not
25 an internal revenue law.”.

1 **SEC. 5. TAXPAYER INFORMATION REGARDING CHILD SUP-**
2 **PORT NOT BASIS FOR AUDIT.**

3 A discrepancy between the tax returns of a custodial
4 parent and a delinquent debtor concerning whether a pay-
5 ment of child support has been made may not be used
6 or relied upon by the Internal Revenue Service in any way
7 in selecting an individual's tax return for a general audit.

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

9 The amendments made by the Act shall apply to tax-
10 able years beginning after December 31, 2002. The Sec-
11 retary of the Treasury shall publish Form 1099-CS (or
12 such other form that may be prescribed to comply with
13 the amendment made by section 3(a) of this Act) and reg-
14 ulations, if any, that may be deemed necessary to carry
15 out the purposes of this Act, not later than 90 days after
16 the date of enactment of this Act.

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