

112TH CONGRESS  
1ST SESSION

# S. 965

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

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IN THE SENATE OF THE UNITED STATES

MAY 12, 2011

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

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Act of 2011”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

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

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

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

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

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

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

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

9 “(b) LIMITATIONS.—

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

15 “(2) INCOME LIMITATION.—

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

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

1 “(ii) \$40,000.

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

6 “(3) DENIAL OF DOUBLE BENEFIT.—

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

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

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

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

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

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

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

9 “(c) CARRYFORWARDS OF UNUSED CREDIT.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8           “(g) ADJUSTMENTS FOR INFLATION.—

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

13                   “(A) such dollar amount; multiplied by

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

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

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



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

3 “(A) such dollar amount; multiplied by

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

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

13 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

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

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

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

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