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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-119882-25]

RIN 1545-BS06

Application of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to the Refunded Portion of Certain Federal Refundable Tax Credits

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide that the refunded portion of certain refundable Federal income tax credits available to individuals is a “Federal public benefit” under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). As a result, aliens who are not “qualified aliens” under PRWORA would be ineligible to receive the refunded portion of these refundable credits. These regulations would generally affect taxpayers claiming the following Federal income tax credits: the adoption tax credit, the American opportunity tax credit, the child tax credit, and the earned income credit. As required by PRWORA, this document also provides notice to the public and notifies recipients of proposed changes regarding eligibility for the refunded portion of such Federal income tax credits under PRWORA.

DATES: Written or electronic comments must be received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. A public hearing on this proposed regulation has been scheduled for October 14, 2026. Requests to speak and outlines of topics to be discussed at the public hearing must be received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL**

REGISTER]. If no outlines are received **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the public hearing will be cancelled. Requests to attend the public hearing must be received by 5 p.m. ET on October 9, 2026.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG-119882-25) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted electronically, and comments submitted on paper to the IRS's public docket. Send paper submissions to: CC:PA:01:PR (REG-119882-25), Room 5503, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Branch 4 of the Office of Associate Chief Counsel (Income Tax & Accounting), (202) 317-4718 (not a toll-free number); concerning submissions of comments or the public hearing, the Publications and Regulations Section at (202) 317-6901 (not toll-free numbers) or by email to *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

This notice of proposed rulemaking contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 23, 24, 25A, and 32 of the Internal Revenue Code (Code) under the authority of section 7805(a) of the Code, which authorizes the Secretary of the Treasury or the Secretary's delegate (Secretary) to prescribe all needful rules and regulations for the enforcement of the Code, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

The proposed regulations are also issued under the authority of section 404 of PRWORA, Public Law 104-193, 110 Stat. 2105, 2267 (Aug. 22, 1996) (8 U.S.C. 1614), which requires a Federal agency administering a Federal public benefit to post information and provide general notification to the public and to benefit recipients of the changes regarding eligibility for any such benefit pursuant to subtitle A of Title IV of PRWORA.

Background

I. *Personal Responsibility and Work Opportunity Reconciliation Act*

Section 401(a) of PRWORA (8 U.S.C. 1611(a)) provides that aliens who are not qualified aliens (as that term is defined in 8 U.S.C. 1641) are not eligible for any Federal public benefit (as defined in 8 U.S.C. 1611(c)), with certain narrow exceptions.[1]

Section 401(c)(1)(B) of PRWORA (8 U.S.C. 1611(c)(1)(B)) defines the term "Federal public benefit," in relevant part, as "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States."

Section 431(b) of PRWORA (8 U.S.C. 1641(b)) defines the term "qualified alien" as "an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit is: (1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act, (2) an alien who is granted asylum under section 208 of such Act, (3) a refugee who is admitted to the United States under section 207 of such Act, (4) an alien who is paroled into the United States under section

[1] 8 U.S.C. 1611(b) (listing exceptions). *See also* A.G. Order No. 6335-2025, 90 FR 32023 (July 11, 2025) (no benefits are exempt from PRWORA other than the provision of police, fire, ambulance, transportation, sanitation, and other similar services).

212(d)(5) of such Act for a period of at least 1 year, (5) an alien whose deportation is being withheld under section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104-208), (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980, (7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980), or (8) an individual who lawfully resides in the United States in accordance with a Compact of Free Association referred to in section 1612(b)(2)(G) of [title 8].”

The term “qualified alien” also includes certain aliens who have been battered or subject to extreme cruelty in the United States provided they meet certain requirements including a substantial connection between such battery or cruelty and the need for the benefits to be provided. *See* 8 U.S.C. 1641(c).

Section 404 of PRWORA (8 U.S.C. 1614) requires each Federal agency that administers a program to which section 1611 of title 8, United States Code, applies, to post information and provide general notification to the public and to program recipients of the changes regarding eligibility for such Federal public benefits.

II. *Executive Actions*

Prior to 2018, the Treasury Department and the IRS had not viewed tax benefits, including refundable credits, as constituting Federal public benefits under PRWORA. In 2018, the Treasury Department began to reconsider the potential applicability of PRWORA’s eligibility restrictions to the refunded portions of three individual refundable income tax credits: (1) the earned income credit under section 32 (EITC), (2) the child tax credit under section 24 (CTC), and (3) the American opportunity tax credit under section 25A (AOTC). In connection with that reconsideration, the General Counsel’s office of the Treasury Department requested an opinion from the Office of Legal

Counsel (OLC) at the Department of Justice as to whether the refundable portions of each of these three credits "may reasonably be construed as a 'Federal public benefit' within the meaning of PRWORA's provision on aliens' ineligibility for such benefits."[2]

On December 9, 2020, OLC sent a memorandum to the General Counsel of the Treasury Department opining that the refunded portion of the named tax credits may reasonably be construed as a "Federal public benefit" for which nonqualified aliens are generally ineligible under PRWORA.[3] OLC reasoned that the EITC, CTC, and AOTC provide direct payments to individual taxpayers and households; are materially similar to other kinds of monetary payments that the Federal government makes to individuals outside of the tax system; and each satisfies PRWORA's definition of a Federal public benefit either as a welfare benefit, postsecondary education benefit, or other similar benefit. The 2020 OLC Opinion stated, however, that "you have not asked us to consider, and we do not reach, the question whether this is the only permissible reading of the statute."[4]

On February 19, 2025, President Trump issued Executive Order 14218, *Ending Taxpayer Subsidization of Open Borders* (90 FR 10581). The Executive Order directs Federal agencies, among other actions, to identify federally funded programs administered by the agency and to ensure that such programs are operating in compliance with Title IV of PRWORA.[5]

Following the issuance of Executive Order 14218, the Treasury Department

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[2] *See* Memorandum for Brian Callanan, General Counsel, Department of the Treasury, from Jennifer L. Mascott, Deputy Assistant Attorney General, Office of Legal Counsel, *Re: Aliens' Limited Eligibility for Certain Refundable Tax Credits* at 1 (Dec. 9, 2020) (2020 OLC Opinion), available at *www.justice.gov/olc/media/1419266/dl?inline*.

[3] 2020 OLC Opinion at 1, 6. Although the 2020 OLC Opinion uses the term "refundable portion" instead of "refunded portion," it is clear from the discussion on page 7 of the 2020 OLC Opinion that the term "refundable portion" was used to refer to the amount of the refundable portion of certain tax credits that exceeds an individual taxpayer's income tax liability and therefore generates an overpayment. Accordingly, this notice of proposed rulemaking uses the term "refunded portion" instead of "refundable portion" for clarity.

[4] *Id.* at 1-2.

[5] Public Law 104-193, 100 Stat. 2105 (1996). Sections 400-451 of PRWORA are codified in title 8 of the United States Code (U.S.C.) at sections 1601 to 1646.

submitted a second request to OLC asking whether the interpretation that was the subject of the 2020 OLC Opinion represents the best reading of the law, in light of *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). This second request also asked whether the refunded portions of the premium tax credit (PTC) under section 36B and the Saver's Match under section 6433 of the Code constitute Federal public benefits. On November 19, 2025, in response, OLC issued a Memorandum Opinion to the General Counsel of the Treasury Department concluding that the interpretation addressed in the 2020 OLC Opinion reflects the best view of the law and that the refunded portions of the credits addressed in the 2020 OLC Opinion, as well as the PTC and the Saver's Match, are Federal public benefits under PRWORA.[6]

III. *Refunded Portion of Certain Individual Refundable Income Tax Credits as "Federal Public Benefits"*

A. Individual Refundable Income Tax Credits

In general, a tax credit is an amount allowable as a reduction of tax liability for the purpose of computing the tax or refund due. A tax credit reduces a taxpayer's liability dollar for dollar. Tax credits are available to all taxpayers who meet the eligibility requirements of the particular credit. If an amount allowable as a refundable credit exceeds the tax imposed by subtitle A of the Code (subtitle A) (reduced by any applicable nonrefundable credits), the amount of that excess is considered to be an overpayment of tax, which the IRS may credit against any existing Federal tax liabilities of the taxpayer and must, subject to certain mandatory offsets, refund any balance to the taxpayer. Sections 6401(b)(1) and 6402(a).

In general, to determine the overpayment amount attributable to a refundable tax

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[6] Memorandum Opinion for the General Counsel, Department of the Treasury, from Lanora C. Pettit, Deputy Assistant Attorney General, Office of Legal Counsel, *re: Status of the Refundable Portion of Certain Tax Credits as Federal Public Benefits*, 49 Op. O.L.C. __, at 2 (Nov. 19, 2025) (2025 OLC Opinion), available at *www.justice.gov/olc/media/1419131/dl*.

credit, an individual taxpayer first determines the taxpayer's taxable income for the tax year pursuant to section 63 of the Code and calculates the amount of tax on the taxable income pursuant to section 1 of the Code. The taxpayer then adds any additions to tax under chapter 1 of the Code (chapter 1), such as excess advance payments of the PTC and repayment of certain other credits, and other taxes imposed by subtitle A, such as the tax on self-employment income. Once the total subtitle A income tax liability is calculated, the taxpayer reduces that amount by the amount of the credits allowable under subparts A, B, D and G of part IV of subchapter A of chapter 1. If this reduced tax liability amount is exceeded by the amount of any refundable tax credits under subpart C of part IV of subchapter A of chapter 1, the excess is an overpayment available for refund, credit, or offset. *See* sections 6401(b)(1) and 6402(a) of the Code.

B. Adoption Tax Credit

Section 23 of the Code allows an individual to claim a tax credit for qualified adoption expenses paid or incurred in connection with an eligible child. Beginning in 2025, under section 23(a)(4), up to $5,000 (adjusted for inflation for future years) of the credit is refundable.[7] Section 23(b)(2)(A) imposes income limitations and section 23(h) provides several adjustments for inflation, such as on the income limitations, the cap on qualified adoption expenses, and the cap on the refundable portion of the credit. For example, for taxable year 2025, the adoption tax credit phases out for individuals with adjusted gross income (AGI) over $259,190 and is fully eliminated for individuals with AGI of $299,190 or more.

The adoption tax credit is claimed by an individual on a Federal income tax return, and Form 8839, *Qualified Adoption Expenses*. Section 23(f)(1) of the Code requires married individuals to file a joint return to claim the credit unless they meet

[7] Section 70402 of One Big Beautiful Bill Act (OBBBA), Pub. L. No. 119-21, 139 Stat. 72 (2025), added paragraph (4) to section 23(a) of the Code, effective for taxable years beginning after December 31, 2024.

certain requirements. Section 23(f)(2) of the Code requires the individual to provide the name, age, and tax identification number (TIN) of the adopted child.

C. Child Tax Credit

Section 24(h)(2) of the Code allows eligible taxpayers with a qualifying child or children to claim a CTC of up to $2,200 for 2025 (adjusted for inflation for future years) per qualifying child.[8] The CTC is made up of a nonrefundable and refundable component. If the taxpayer has insufficient Federal income tax liability, the taxpayer may be eligible for the refundable portion of the CTC, generally called the Additional Child Tax Credit (ACTC). The ACTC, under section 24(d) of the Code, is generally calculated using the earned income formula. This formula allows for a refundable credit equal to 15% of the taxpayer's earned income in excess of $2,500, up to a maximum of $1,700 per child for 2025 (adjusted for inflation for future years). Under section 24(h)(3) of the Code, the CTC (including the ACTC portion) phases out for taxpayers with modified AGI over $200,000 and married individuals who file joint returns with modified AGI over $400,000.[9] The actual modified AGI level at which the credit equals zero is dependent on the number of qualifying children of the taxpayer.

The CTC is claimed by a taxpayer on a Federal income tax return and Schedule 8812, *Credits for Qualifying Children and Other Dependents*. For taxable years beginning after December 31, 2024, section 24(h)(7) of the Code requires the taxpayer to include the social security number (SSN) of the qualifying child and of the taxpayer (or, in the case of a joint return, the SSN of at least one spouse).[10] For purposes of the CTC, an SSN qualifies only if it is issued—(i) to a citizen of the United States or pursuant to subclause (I) (or that portion of subclause (III) that relates to subclause (I))

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[8] Section 24(h)(2) of the Code was made permanent by section 70104 of the OBBBA, effective for taxable years beginning after December 31, 2024.
[9] The income thresholds under section 24(h)(3) were made permanent by section 70104 of the OBBBA, , effective for taxable years beginning after December 31, 2024.
[10] Section 24(h)(7) of the Code was amended by section 70104 of the OBBBA, effective for taxable years beginning after December 31, 2024.

of section 205(c)(2)(B)(i) of the Social Security Act (a work eligible SSN), and (ii) before the due date for such return. For taxpayers filing a joint return, only one spouse is required to have a work eligible SSN. The other spouse must have an SSN issued by the Social Security Administration or an individual taxpayer identification number (ITIN) issued by the IRS on or before the due date of the return.

D. American Opportunity Tax Credit

Section 25A(a)(1) of the Code allows an individual to claim a tax credit for qualified education expenses paid for an eligible student for the first four years of postsecondary education. Section 25A(b)(1) of the Code limits the maximum annual credit to $2,500 per eligible student. Under section 25A(i) of the Code, 40% of the credit amount is refundable. Under section 25A(d) of the Code, the available credit begins to phase out when the individual's modified AGI reaches $80,000 ($160,000 for joint filers) and is completely phased out at $90,000 ($180,000 for joint filers). Under section 25A(g)(7), an individual who is a nonresident alien for any portion of the taxable year cannot claim the AOTC unless the individual elects to be treated as a U.S. resident alien under section 6013(g) or (h) of the Code.

The AOTC is claimed by an individual on a Federal income tax return and Form 8863, *Education Credits (American Opportunity Credit and Lifetime Learning Credits)*. Section 25A(g)(6) of the Code requires married individuals to file a joint return to claim the AOTC, unless they meet certain requirements. For taxable years beginning after December 31, 2025, section 25A(g)(1) of the Code requires the individual to include the SSN of the individual filing the return and of the individual for whom the qualified education expenses were paid if such individual is other than the taxpayer or the taxpayer's spouse.[11] For purposes of the AOTC, an SSN must be a work eligible SSN

[11] Section 25A(g)(1) of the Code was amended by section 70605 of the OBBBA, effective for taxable years beginning after December 31, 2024.

issued to an individual by the Social Security Administration before the due date for such return.

E. Earned Income Credit

Section 32(a) of the Code allows taxpayers with earned income to claim a refundable tax credit in an amount calculated using the taxpayer's earned income and the credit percentage and income amount specified in section 32(b) of the Code. Eligibility for the credit and the amount allowed as a credit are based upon a number of factors, including the taxpayer's earned income, AGI, investment income, number of qualifying children of the taxpayer as of the end of the taxpayer's tax year, U.S. residency, and identification requirements. Section 32(c) of the Code requires the individual's qualifying children to meet the relationship, residency, and age requirements for purposes of claiming the credit. Section 32(c) of the Code also allows individuals who meet certain age and U.S. residency requirements to claim the EITC if they do not have qualifying children.

Individuals with income above certain thresholds, which vary based on marital status and number of qualifying children, are ineligible for the EITC. Section 32(c)(1)(D) of the Code does not allow an individual who is a nonresident alien for any portion of the taxable year to claim the credit unless the individual elects to be treated as a U.S. resident under section 6013(g) or (h) of the Code.

The EITC is claimed by an individual on a Federal income tax return. Section 32(d) of the Code requires married individuals to file a joint return to claim the credit, unless they meet certain requirements. If the individual is claiming the EITC for a qualifying child, the individual must also file Schedule EIC, *Earned Income Credit*. Section 32(m) of the Code requires the individual to provide the SSN for themselves, their spouse if married, and any qualifying children. For purposes of the EITC, the SSN must be (i) issued to an individual by the Social Security Administration (other than an

SSN issued pursuant to clause (II) (or the portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i)) of the Social Security Act), and (ii) issued on or before the due date for filing the return for the taxable year.

F. Premium Tax Credit

Section 36B provides a PTC to applicable taxpayers who meet certain eligibility requirements, and who enroll themselves, or enroll a member of the taxpayer's family, in a qualified health plan (QHP) through an Exchange. An individual is not eligible to enroll in a QHP if the individual is not, or is not reasonably expected to be for the entire period for which enrollment is sought, a citizen or national of the U.S., or an alien lawfully present in the U.S. *See* section 1312 of the Affordable Care Act (ACA) (42 U.S.C. 18032).[12] Section 36B(e)(1)(A) provides that if one or more individuals in a taxpayer's family (including the taxpayer) are aliens not lawfully present in the U.S., the enrollment premiums and adjusted monthly premiums for the applicable benchmark plan otherwise taken into account in determining the taxpayer's PTC must be reduced by the portion of such premiums attributable to the individuals who are aliens not lawfully present in the U.S. The OBBBA amended section 36B(e)(1) to provide that for tax years beginning after December 31, 2026, such premiums must also be reduced for aliens who are lawfully present in the U.S. but who are not eligible aliens, a narrower category of non-citizens.

G. Saver's Match

Section 6433 allows certain low- and moderate-income individuals who make qualified retirement savings contributions to receive matching contributions of up to $1,000 (Saver's Match contributions) paid by the Secretary of the Treasury or the

[12] The Affordable Care Act refers to the Patient Protection and Affordable Care Act (Pub. L. 111-148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152, enacted on March 30, 2010) and OBBBA. While the ACA does not define "lawfully present," it is defined in regulations and includes valid nonimmigrant status holders. *See* 45 CFR 155.20.

Secretary's delegate (Secretary) to applicable retirement savings vehicles for tax years beginning after December 31, 2026. Eligible individuals may elect to have matching contributions of less than $100 "treated as a credit allowed by subpart C of part IV of subchapter A of chapter 1." Section 6433(a)(2)(B).

H. Application of Federal Public Benefit Definition

PRWORA defines "Federal public benefit", in relevant part, to encompass certain types of benefits for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.[13] In analyzing this definition's application to individual refundable income tax credits, OLC first examined whether the refunded portion of such credits constitutes a "benefit."[14] OLC opined that the refunded portion of such credits is a benefit based on the ordinary meaning of the word since it results in a payment from the Federal government to the taxpayer that goes beyond a return of money paid by the taxpayer to the Federal government.[15]

OLC also opined that the refunded portion of individual refundable income tax credits provides a "payment" because it gives the taxpayer money that the taxpayer did not earn and would not have received but for the existence of the government program.[16] OLC distinguished the refunded portion of individual refundable income tax credits from an "ordinary tax refund," which it described as a return to the taxpayer of

[13] 8 U.S.C. 1611(c) defines "Federal public benefit as follows:
(1) Except as provided in paragraph (2), for purposes of this chapter the term "Federal public benefit" means—

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and
(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.

[14] 2020 OLC Opinion at 6-7.
[15] When describing how a refundable credit may provide a payment to a taxpayer who owes less tax than the amount of the credit, the 2020 OLC Opinion relies on sections 6401(b) and 6402 of the Code. *See* 2020 OLC Opinion at 1.
[16] *Id.* at 7.

his own money that Treasury had held until the taxpayer's net obligations for the tax period could be settled. Finally, OLC opined that the refunded portion of an individual refundable income tax credit is provided to an individual, household, or family eligibility unit (that is, the taxpayer, who is either an individual or the joint-filing members of a household) by an agency (the Treasury Department, through the IRS) or by appropriated funds of the United States (namely the permanent indefinite appropriation of amounts necessary for refunding internal revenue collections in 31 U.S.C. 1324).[17]

After concluding this general analysis, OLC next considered whether each of the EITC, ACTC, and AOTC falls within the kinds of benefits identified in 8 U.S.C. 1611(c)(1)(B), which are "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit or any other similar benefit. . . ."[18] OLC opined that both the EITC and the ACTC are welfare or other similar benefits and that the AOTC is a postsecondary education benefit. In 2025, OLC opined that the PTC is a health or similar benefit and the Saver's Match is a retirement or similar benefit.[19] In sum, OLC concluded that the refunded portion of the EITC, ACTC, AOTC, PTC, and Saver's Match are "Federal public benefits" as defined in PRWORA. The Treasury Department and the IRS incorporate the reasoning and conclusions of the 2020 and 2025 OLC Opinions for purposes of these proposed regulations unless otherwise described in this preamble.

The proposed regulations would apply PRWORA to the following individual refundable income tax credits: the (1) adoption tax credit, (2) CTC, (3) AOTC, and (4) EITC, collectively referred to as the "affected refundable tax credits" in this notice of proposed rulemaking. While the adoption tax credit, which was made partially

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[17] *Id. at 8.*
[18] 2020 OLC Opinion at 11-14; 2025 OLC Opinion at 16-19.
[19] 2025 OLC Opinion at 2 and 18-19.

refundable by the OBBBA[20], has not been addressed by OLC, it is included in the proposed regulations as a "similar benefit." Though the list of enumerated benefits in section 401(c)(1)(B) of PRWORA does not include any items that relate to adoption, the Department of Health and Human Services (HHS) has determined that Federal adoption assistance benefits are Federal public benefits.[21] The adoption tax credit, although not identical, is sufficiently similar to Federal adoption assistance benefits in that it provides a Federal incentive to promote adoptions, and thus, it would make sense to treat it the same way for purposes of PRWORA. Accordingly, the proposed regulations would treat the refunded portion of the adoption tax credit as a Federal public benefit within the meaning of PRWORA.

The proposed regulations would not apply PRWORA to the refunded portion of the PTC. Although OLC determined that the refunded portion of the PTC is a Federal public benefit for purposes of PRWORA, it stated that its conclusion does not automatically mean that all aliens who are not qualified aliens under PRWORA are ineligible to receive it, noting that "Congress can always supersede existing statutes, including PRWORA, with later-[en]acted laws."[22] OLC further noted that Congress addressed restrictions on the PTC by including specific statutory language on immigration status in two later-enacted statutes, the ACA and OBBBA. *See* section 36B(e) (limiting the PTC for the coverage of an alien to aliens lawfully present for tax years beginning before January 1, 2027, and to eligible aliens for tax years beginning after December 31, 2026). The proposed regulations would not apply PRWORA to the refunded portion of the PTC based on the view that these restrictions supersede and override PRWORA. Under both the ACA and OBBBA, Congress specifically addressed

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[20] However, the adoption credit previously was made fully refundable by the ACA for tax years 2010 and 2011. *See* section 10909 of the ACA.
[21] *See* HHS Notice 63 F.R. 41658 (August 4, 1998) (stating that HHS adoption assistance programs are generally Federal public benefits). This Notice was revised to include additional programs as Federal public benefits in 2025 (90 F.R. 31232) (July 14, 2025).
[22] 2025 OLC Opinion at 18.

immigration status as it relates to the computation of and eligibility for the PTC. As an example, under the ACA, Congress allowed only U.S. citizens, U.S. nationals, or "lawfully present" aliens to enroll in a QHP through an Exchange, and a taxpayer could only receive the PTC for the coverage of these enrollees. Congress also provided a special rule that allowed aliens lawfully present in the U.S. who were ineligible for Medicaid because of their immigration status to receive the PTC despite having household income that generally would make them ineligible for the PTC. *See* section 36B(c)(1)(B) as in effect for taxable years beginning on or before December 31, 2025. Thus, for PTC purposes, Congress not only restricted the allowance of the PTC on the basis of specific immigration status, but it specifically allowed those who were ineligible for Medicaid, due to the PRWORA limitations, to receive the PTC. Under the OBBBA, Congress further restricted aliens' eligibility for the PTC by disallowing a PTC for the coverage of aliens who are not "eligible aliens," a narrower category than qualified aliens under PRWORA. *See* section 36B(e)(2).

In addition, the OBBBA enacted a new program to be administered under the Code, the Trump Accounts Contribution Pilot Program. Although not a tax credit, section 6434 of the Code provides for a one-time, $1,000 pilot program contribution paid by the Secretary into an eligible child's Trump account.[23] Contributions under the Pilot Program are restricted to children who are U.S. citizens. *See* section 6434(c)(3). Accordingly, there is no need to determine whether the Trump Accounts Contribution Pilot Program is a Federal public benefit under PRWORA because, even if it is, the OBBBA provision limiting account contributions to U.S. citizens would supersede and override PRWORA.

Finally, regarding the Saver's Match, which is effective for tax years beginning in

[23] The Treasury Department and the IRS recently issued proposed regulations concerning section 6434. *Trump Accounts Contribution Pilot Program*, 91 FR 11203 (Mar. 9, 2026).

2027, the Treasury Department and IRS intend to promulgate proposed regulations regarding the Saver's Match separately.

Explanation of Provisions

I. *Refunded Portion of Certain Individual Refundable Income Tax Credits Are Federal Public Benefits Under PRWORA*

These proposed regulations would provide that PRWORA is applicable to the refunded portion of the affected refundable tax credits. Specifically, proposed §§1.23-2(a), 1.24-3(a), 1.25A-7(a), and 1.32-4(a) each would provide that, pursuant to PRWORA, aliens who are not qualified aliens are not eligible to receive the Federal public benefit of the refunded portion of the affected refundable tax credits under sections 23, 24, 25A and 32, respectively.

Proposed §1.32-4(b) would set forth definitions of the operative PRWORA terms that apply for purposes of applying proposed §1.32-4(a). For example, proposed §1.32-4(b)(1) would provide that for purposes of applying PRWORA to the refunded portion of the EITC, the term "alien" has the same definition as in section 101(a) of the Immigration and Nationality Act, Pub. L. No. 82-414, 66 Stat. 163, 8 U.S.C. 1101(a)(3). Proposed §1.32-4(b)(4) would provide that the term "qualified alien" has the same definition as in section 431(b) of PRWORA (8 U.S.C. 1641(b)). Finally, consistent with the OLC conclusion that the refunded portions of the affected refundable tax credits (that is, the portion that exceeds the individual's tax liability and generates an overpayment under 26 U.S.C. 6401(b)(1)) are Federal public benefits within the meaning of 8 U.S.C. 1611(c), proposed §1.32-4(b)(2) would adopt this same definition of a Federal public benefit for purposes of applying proposed §1.32-4(a). Sections 1.23-2(b), 1.24-3(b), and 1.25A-7(b), would adopt all of the PRWORA operative definitions applicable to the affected refundable tax credits by cross reference to §1.32-4(b).

II. *Definition of Refunded Portion of Refundable Tax Credit*

The proposed regulations would provide that only the refunded portion of an affected refundable tax credit is a Federal public benefit. Accordingly, if the taxpayer is eligible for the affected refundable tax credit under the Code, the proposed regulations would bar receipt only of the portion of the sum of those affected refundable tax credits that exceeds the income tax liability imposed by subtitle A (reduced by credits allowable under subparts A, B, D, and G of part IV of subchapter A of chapter 1).[24] Although the proposed definition of a Federal public benefit is similar to what is considered to be an overpayment in section 6401(b)(1), it is not the same because it is limited to affected refundable tax credits. If the taxpayer is not a U.S. citizen, U.S. national, or qualified alien, the amount considered to be the overpayment under section 6401(b) that is available for credit, offset, or refund, which may include other refundable tax credits that are not affected refundable tax credits, would be reduced by the amount of the Federal public benefit.

Proposed §§ 1.23-2(d), 1.24-3(d), 1.25A-7(d), and 1.32-4(d) would clarify who can receive the refunded portion of the affected refundable tax credit under PRWORA by providing that unless a taxpayer is a U.S. citizen, U.S national, or qualified alien, the taxpayer is not eligible to receive a refund, credit, or offset of the refunded portion of the affected refundable tax credit.

III. *Timing of Alien Status Determination*

As explained in the Background section of this preamble, to be a qualified alien, an individual must fall within one of the defined categories in 8 U.S.C. 1641(b) “at the time the alien applies for, receives, or attempts to receive a Federal public benefit.” The proposed regulations would provide that an alien must be a qualified alien, for purposes

[24] If a taxpayer claims more than one of the affected refundable tax credits (for example, both ACTC and AOTC), then the “refunded portion” of the affected refundable tax credits refers to the total amount of such credits exceeding tax liability. The claimed credit amounts are added together before determining the amount of the credits exceeding tax liability.

of receiving the refunded portion of the affected refundable tax credits, on the date the alien files a Federal income tax return first claiming the affected refundable tax credit. This rule would apply to the Federal income tax return first claiming the affected refundable tax credit, which may be, for example, an early return, amended return, or late return. Using the filing date the taxpayer first claimed the credit would best align Code and tax administration concepts with PRWORA's requirement that an alien be a qualified alien at the time the alien applies for, attempts to receive, or receives the Federal public benefit. In addition, under the Code, a taxpayer either claims or does not claim a credit, and portions of a single credit cannot be claimed at different times. Consequently, the date on which the taxpayer first claims the credit is the most appropriate date for determining whether the taxpayer satisfies PRWORA's qualified alien requirement for the Federal public benefit. Accordingly, sections 1.23-2(e), 1.24-3(e), 1.25A-7(e), and 1.32-4(e) of the proposed regulations would provide that each taxpayer claiming one or more of the affected refundable tax credits must be a U.S. citizen, U.S. national, or qualified alien on the date of filing an initial or amended Federal income tax return first claiming the credit for the taxable year in order to be eligible to receive the refunded portion of the tax credit. Proposed §§ 1.23-2(f), 1.24-3(f), 1.25A-7(f), and 1.32-4(f) would provide examples illustrating the applicability of the timing rule to the claim of the refunded portion of an affected refundable tax credit.

IV. *Joint Returns with Only One Spouse Meeting the Requirements Under PRWORA.*

The EITC, AOTC, and the adoption tax credit generally require married individuals to file a joint return to claim the credit. The CTC does not require spouses to file a joint return, but spouses may elect to file a joint return. If married individuals filing a joint return meet the Code's eligibility requirements of the specific refundable tax credit being claimed, and the amount of the affected refundable tax credit(s) exceeds the joint filers' tax liability, then the proposed regulations would require that one of the joint filers be a U.S. citizen, U.S. national, or qualified alien to receive the joint refund, credit, or offset of the refunded portion of any of the affected refundable tax credits. *See* proposed §§ 1.23-2(b), 1.24-3(b), 1.25A-7(b), and 1.32-4(b)(4).

V. *Self-Certification*

Under the proposed regulations, each individual (or one spouse in the case of a joint return) claiming an affected refundable tax credit that results in a Federal public benefit would be required to provide a declaration under penalty of perjury stating that the individual is a U.S. citizen, U.S. national, or qualified alien who is eligible to receive the claimed refund under PRWORA. This declaration or attestation would need to be made on the appropriate Federal income tax return, amended tax return, or schedule as required by the IRS. The IRS intends to update forms and instructions to reflect this requirement. Under section 6061(a) of the Code, all returns and refund claims must "be signed in accordance with forms or regulations prescribed by the Secretary." *See also* § 1.6061-1(a). These documents must also be "verified by a written declaration that [they are] made under the penalties of perjury." Section 6065 of the Code; *see also* §§ 1.6065-1(a), 301.6065-1, § 301.6402-2(b)(1). An individual who fails to provide the required declaration in the manner and on the form or schedule required by the IRS would not be eligible to receive the refunded portion of any of the affected refundable tax credits claimed on the return for the taxable year.

Section 7206 of the Code provides that willfully providing incorrect or untrue information on a tax return constitutes a felony. Penalties for violations of section 7206 include liability for a fine up to $100,000 and being sentenced to up to 3 years in prison. *See also* section 7207 of the Code. Additionally, 18 U.S.C. 1015(e) punishes as a felony any knowing false statement that one is a citizen or a national of the United States with the intent to obtain any Federal or State benefit or service. Finally, with respect to Federal public benefits, 18 U.S.C. 1001 provides that it is a felony to knowingly and willfully make any materially false, fictitious, or fraudulent statement or representation in any matter within the jurisdiction of any branch of the Federal Government.

Proposed Applicability Date

These proposed regulations are proposed to apply for taxable years ending on or after the date these regulations are published as final regulations in the ***Federal Register***.

Special Analyses

I. *Regulatory Planning and Review—Economic Analysis*

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The proposed regulations have been designated by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, July 4, 2025) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations. OIRA has determined that the proposed rulemaking is a significant regulatory action and subject to review under Executive Order 12866 and section 1(b) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB. The proposed rulemaking is not expected to be considered a regulatory action under Executive Order 14192 because it does not impose any more than de minimis regulatory costs.

A. Need for Regulation

Tax credits provide a dollar-for-dollar reduction in tax liability. When a tax credit is refundable, any portion of the credit that exceeds the taxpayer's liability may be refunded to the taxpayer. Because tax credits are typically designed to advance specific policy objectives, refundability ensures that low- and moderate-income taxpayers with little or no income tax liability can still benefit, thereby supporting the intended purpose of the credit. Some individual refundable income tax credits have similar eligibility requirements, but the specific rules generally differ across credits. For example, the EITC is intended to encourage work and requires taxpayers to have earned income; the CTC, designed to support families, conditions eligibility on the presence of qualifying children; and the AOTC is aimed at reducing the cost of higher education and requires enrollment of an eligible student in an eligible institution and payments of qualified expenses.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) defines the term "Federal public benefit" as "any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States." Under PRWORA, other than in limited exceptions, aliens who are not qualified aliens are not eligible for any Federal public benefits. The Treasury Department and the IRS have not previously considered individual refundable income tax credits to constitute Federal public benefits under PRWORA.

In 2020, in response to the Treasury's request for an opinion, the Office of Legal Counsel (OLC) at the Department of Justice opined (2020 Opinion) that the refunded portions of the EITC, CTC, and AOTC satisfies PRWORA's definition of a Federal public benefit. Subsequently in November 2025, in response to the Treasury's second request for an opinion, the OLC concluded in an opinion (2025 Opinion) that its 2020 Opinion reflects the best reading of the law and that the refunded portions of certain individual refundable income tax credits are within the meaning of Federal public benefits under PRWORA.

The proposed regulations would clarify how the term "Federal public benefit" as used in PRWORA applies to certain individual refundable income tax credits administered under the Code.

B. The Statute and the Proposed Regulations

The proposed regulations would apply PRWORA to the following four individual refundable income tax credits—the adoption tax credit, the CTC, the AOTC, and the EITC.

Section 23 of the Code allows eligible taxpayers to claim the adoption tax credit to offset the costs of adopting a child. Beginning in tax year 2025, up to $5,000 of the credit is refundable. To claim the credit, taxpayers must include on the return the Taxpayer Identification Number (TIN) of the adopted child. Married individuals must file a joint return to claim the credit unless exceptions apply.

Section 24 allows eligible taxpayers to claim the CTC of up to $2,200 for tax year 2025 (adjusted for inflation thereafter) for each qualifying child. The refundable portion of the CTC is referred to as the additional child tax credit (ACTC), which is calculated as 15 percent of the taxpayer's earned income in excess of $2,500, up to $1,700 per qualifying child for tax year 2025 (adjusted for inflation thereafter). To be eligible, the qualifying child and the taxpayer (or the taxpayer's spouse if filing jointly) must have work eligible SSNs issued before the due date of the tax return. For married individuals filing a joint return, if only one spouse meets the work eligible SSN requirements, the other spouse must have an SSN or Individual Taxpayer Identification number (ITIN) issued on or before the due date of the return. Married individuals who file separate returns are eligible to claim the CTC, but the credit begins to phase out at a lower income level than for those filing jointly.

Section 25A(a)(1) allows taxpayers to claim the AOTC for qualified education expenses paid for an eligible student for the first four years of postsecondary education. The maximum annual credit is $2,500 per student, and 40 percent of the credit amount is refundable. To be eligible, the taxpayer (or the taxpayer's spouse if filing jointly) and the student (if not the taxpayer or spouse) must have work eligible SSNs issued before the due date of the tax return. Married individuals must file a joint return to claim the credit unless exceptions apply.

Section 32 allows taxpayers with earned income to claim the EITC, which is fully refundable. The maximum EITC amount varies with the number of qualifying children the taxpayer has. For tax year 2025, the maximum credit amount is $649 for taxpayers with no qualifying child, $4,328 for taxpayers with one qualifying child, $7,152 for taxpayers with two qualifying children, and $8,046 for taxpayers with three or more qualifying children. To be eligible, the taxpayer (both spouses if filing jointly) as well as the qualifying child must have valid SSNs issued on or before the filing due date of the tax return. For the EITC, an SSN is not valid if it is issued solely to allow an individual to receive or apply for a Federal funded benefit. Married individuals must file a joint return to receive the credit unless exceptions apply.

Under sections 6401 and 6402 of the Code, when the amount of a refundable tax credit (under subpart C of part IV of subchapter A of chapter 1) exceeds the tax imposed by subtitle A (reduced by nonrefundable tax credits), the amount of that excess is treated as an overpayment of tax and may be refunded to the taxpayer. Specifically, under section 6402, the IRS may credit the overpayment against any Federal tax liabilities of the taxpayer and shall, subject to certain mandatory offsets, refund any balance to the taxpayer.

Under section 401(a) of PRWORA (8 U.S.C. 1611(a)), aliens who are not qualified aliens as defined in 8 U.S.C. 1641 are not eligible for any Federal public benefit as defined in PRWORA, with certain narrow exceptions. Section 431(b) of PRWORA (8 U.S.C. 1641(b)) defines a qualified alien as an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, meets certain alien status requirements, including "(1) an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act, (2) an alien who is granted asylum under section 208 of such Act, (3) a refugee who is admitted to the United States under section 207 of such Act, (4) an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least 1 year, (5) an alien whose deportation is being withheld under section 243(h) of such Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Public Law 104-208), (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980, (7) an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980), or (8) an individual who lawfully resides in the United States in accordance with a Compact of Free Association referred to in section 1612(b)(2)(G) of [title 8]." Qualified aliens also include aliens who have been battered or subject to extreme cruelty in the United States and meet certain requirements.

These proposed regulations would clarify that the eligibility restrictions under PRWORA mentioned above would apply to the refunded portion of the following four refundable tax credits—the adoption tax credit, the CTC, the AOTC, and the EITC. Furthermore, these proposed regulations would provide that only the refunded portion of an affected refundable tax credit is a Federal public benefit. Accordingly, if the taxpayer is eligible for the affected refundable tax credit under the Code, these proposed regulations would bar receipt only of the portion of the sum of those affected refundable tax credits that exceeds the income tax liability imposed by subtitle A (reduced by credits allowable under subparts A, B, D, and G of part IV of subchapter A of chapter 1). If the taxpayer is not a U.S. citizen, U.S. national, or qualified alien, the amount considered to be the overpayment under section 6401(b) that is available for credit, offset, or refund, which may include other refundable tax credits would be reduced by the amount of the Federal public benefit. The proposed regulations would also establish the timing, in accordance with PRWORA, for determining the taxpayer's eligibility for Federal public benefits administered under the Code. Finally, the proposed regulations would clarify the application to joint returns with only one spouse meeting the status requirements under PRWORA.

C. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

D. Affected Taxpayers

The Department of the Treasury and the IRS estimate that, for tax year 2026, 49 million Federal individual income tax returns (i.e., taxpayers) will claim at least one of the four affected refundable tax credits—the adoption tax credit, the CTC, the AOTC, and the EITC. Of these taxpayers, an estimated 24 million will claim an affected refundable tax credit that results in a Federal public benefit. The Department of the Treasury and the IRS do not have data on a taxpayer's qualified alien status with respect to PRWORA to precisely estimate the number of affected taxpayers. There is no direct data to estimate the number of non-qualified aliens whose claims for the affected refundable tax credits would be disallowed under the proposed regulation. A rough estimate based on data from the Social Security Administration shared with the IRS for tax administration, United States Citizenship and Immigration Services statistics,[25] and historical Department of Homeland Security estimates of non-immigrants residing in the U.S.[26] suggests that, of the 24 million taxpayers claiming the Federal public benefit, a range of 200,000 to 700,000 taxpayers (0.8 to 2.8 percent) would likely be ineligible to receive it for tax year 2026 because they do not meet the qualified alien status requirements under PRWORA. These estimated numbers of affected taxpayers assume static behavior and do not account for potential behavioral responses to the proposed rulemaking, once finalized, that would affect whether a taxpayer claims an affected refundable tax credit or whether the claim contains a refunded portion.

E. Economic Effects of the Proposed Regulations

These proposed regulations would implement PRWORA's requirements for Federal public benefits administered under the Code while minimizing taxpayer burden and other economic effects. In general, the proposed regulations, which would clarify the process for implementing PRWORA to the refunded portions of the affected refundable tax credits, are expected to have limited economic effects. Under the Code, taxpayers are generally required to have a valid SSN to be eligible for these credits. For tax year 2026, approximately only 200 thousand to 700 thousand taxpayers are estimated to be ineligible to receive the refund of the overpayment, have it credited against Federal tax liabilities, or use it to offset non-tax liabilities, due to the proposed regulations. The Department of the Treasury and the IRS do not have data on a taxpayer's qualified alien status with respect to PRWORA to precisely estimate the

[25] U.S. Citizenship and Immigration Services, *Immigration and Citizenship Data*. Available at www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data

[26] Department of Homeland Security, Office of Immigration Statistics, *Population Estimates of Nonimmigrants Residing in the United States: Fiscal Years 2017-2019*. Available at https://ohss.dhs.gov/sites/default/files/2023-2/ni_population_estimates_fiscal_years_2017_-_2019v2.pdf. Accessed August 3, 2026.

dollar amount that would be disallowed under the proposed regulations. The estimated average amount of Federal public benefits for all taxpayers whose claims include the refunded portion of at least one affected refundable tax credit is $3,656 in 2026. Applying this average Federal public benefit for all taxpayers to the estimated range of affected taxpayers translates into an estimate of $0.7 billion to $2.6 billion of disallowed credits. In addition, these taxpayers would still be eligible to receive the nonrefunded portion of the credits if they meet eligibility requirements for the credits. Given the limited scope, any potential behavioral responses by affected taxpayers to the proposed regulations, such as changes to the extensive or intensive margin of labor supply decisions, would not be expected to have a significant impact on the economy.

1. Identifying Claims of a Federal Public Benefit

Under the proposed regulations, taxpayers who claim any of the four affected refundable tax credits would need to identify whether their claim for the credits includes a Federal public benefit, which these proposed regulations would limit to the refunded portion of the credits. Tax software, if used by the taxpayer, is expected to automatically generate this amount based on information provided by taxpayers during the return preparation process. This would reduce the compliance burden for taxpayers using software to complete their tax returns. The Department of the Treasury and the IRS estimate that more than 96 percent of the Federal individual income tax returns use assistance from consumer or professional tax software.

2. Self-Certification of Eligibility for a Federal Public Benefit

As previously explained in the preamble, taxpayers claiming an affected refundable tax credit that results in a Federal public benefit would be required to provide a declaration or attestation, under the penalty of perjury, stating if they are U.S. citizens, U.S. nationals, or qualified aliens under PRWORA who are eligible for the Federal public benefit claimed. Taxpayers would provide a written declaration on the Federal income tax return or on a schedule attached to the return, as prescribed by the IRS, stating their status eligibility for the Federal public benefit claimed. To minimize compliance burden, taxpayers would not be required to provide a separate document attesting eligibility under PRWORA.

3. Alternatives Considered

a. Individuals required to self-certify eligibility status before identifying the receipt of a Federal public benefit

An alternative to the aforementioned self-certification process is first to require every individual who claims any of the four affected refundable tax credits to self-certify eligibility status and then require aliens who are not qualified aliens for Federal public benefits under PRWORA to calculate the amount of the overpayment they would not be eligible for.

Relative to the self-certification process, this alternative would subject fewer taxpayers to the identification of overpayments but would require more individuals, including those whose claim for the affected refundable tax credits does not have a refunded portion, to self-certify whether they are U.S. citizens, U.S. nationals, or qualified aliens under PRWORA. To restrict the attestation of eligibility status only to those who are required to self-certify under PRWORA, i.e., those who claim a Federal public benefit, the self-certification process would require that taxpayers claiming any of the affected refundable tax credits first identify the refunded portion of their claim and then only those whose claim has a refunded portion would self-certify eligibility status. Given the wide prevalence of the use of consumer or professional tax software in return preparation, the cost for this calculation of the refunded portion is expected to be insignificant for most taxpayers.

b. Joint returns with one spouse meeting the PRWORA requirements

For married individuals filing a joint return, under these proposed regulations, one spouse would be required to be a U.S. citizen, U.S. national, or qualified alien under

PRWORA for the married individuals to receive the full refunded portion of the affected refundable tax credits, have it credited against the couple's Federal tax liabilities, or use it to offset the couple's non-tax liabilities. An alternative approach would require married individuals with one spouse who is not a qualified alien to prorate the applicable credit or credits based on IRS-prescribed allocation rules that would account for each spouse's eligibility status and a range of considerations specific to each credit. For example, allocations for the EITC could be based on which spouse had earned income whereas allocations for the other credits could be based on the share of qualified expenses contributed by, or other factors attributable to, each spouse. This alternative is complex because it would subject joint filers claiming the affected refundable tax credits to new credit allocation rules and additional tax computations that would not have been required otherwise. In addition, depending on the credit and the allocation rules, the IRS may lack the necessary third-party information reports to verify the spouse's contributed expenses, income, or other factors used to determine the credit amount for which the qualified alien spouse is eligible. To reduce taxpayer burden and potential return errors, the proposed regulations provide that, for married individuals filing a joint return, if one spouse is a U.S. citizen, a U.S. national, or a qualified alien, then the other spouse would be treated as a qualified alien.

F. Summary

Based on the available data and analysis, the Treasury Department and the IRS estimate that the economic costs and benefits of the proposed regulations will be small. The Treasury Department and the IRS invite public comments on potential alternatives and additional data related to the economic effects that will result from these proposed regulations.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA) generally requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether that collection of information is mandatory, voluntary, or required to obtain or retain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the OMB.

The collections of information in these proposed regulations contain reporting and recordkeeping requirements that are necessary to ensure that individual refundable income tax credits are not received by aliens who are not qualified aliens pursuant to PRWORA. The collections will be used by the individual taxpayers claiming one or more of the affected refundable income tax credits to certify their legal status. The IRS will use the information for tax compliance purposes.

The proposed regulations include reporting requirements for taxpayers to self-certify under penalty of perjury that they are a U.S. citizen, U.S. national, or qualified alien who is eligible to receive the claimed refund as described in proposed §§1.23-1, 1.23-2, 1.24-2, 1.24-3, 1.25A-6, 1.25A-7, 1.32-1 and 1.32-4. Taxpayers will be able to complete this certification by completing Schedule 3-A, or other form as determined by the Treasury Secretary. Schedule 3-A, or its successor form, will be filed along with their 1040 tax return.

The likely respondents are individuals who file a Form 1040. For purposes of the PRA, the reporting requirements and associated burden will be included in the Paperwork Reduction Act Submissions associated with Form 1040 (OMB control number 1545-0074) and approved by the OMB in accordance with the PRA procedures under 5 CFR 1320.10.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law.

Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103. These recordkeeping requirements are considered general tax records under §1.6001-1(e) and are already approved by the OMB under 1545-0074. This proposed regulation is not creating or changing the general recordkeeping requirements under §1.6001-1(e).

III. *Regulatory Flexibility Act*

The Secretary of the Treasury hereby certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The proposed rules would not impose any requirement or obligation upon small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

IV. *Section 7805(f)*

Pursuant to section 7805(f) of the Code, the proposed regulations will be submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on their impact on small business.

V. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

VI. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Comments and Public Hearing

Pursuant to the Administrative Procedure Act at 5 U.S.C. 553(b)(4), a plain language summary of these proposed regulations is available on the rulemaking docket at *https://www.regulations.gov*.

Before the proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Specifically, the Treasury Department and the IRS request comments on the proposed rule of eligibility determination. All comments submitted will be available at *https://www.regulations.gov* or upon request.

A public hearing is being held on October 14, 2026, beginning at 10 a.m. ET at the Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed as well as the time to be devoted to each topic by **[INSERT DATE 45 DAYS**

AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. A period of ten minutes will be allocated to each person for making comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available free of charge at the hearing. If no outlines of the topics to be discussed at the hearing are received by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the ***Federal Register***.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have their name added to the building access list. The subject line of the email must contain the regulation number REG-119882-25 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG-119882-25.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-119882-25 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG-119882-25.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have their name added to the building access list. The subject line of the email must contain the regulation number REG-119882-25 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing in Person for REG-119882-25. Requests to attend the public hearing must be received by 5:00 p.m. ET on October 9, 2026.

Individuals who want to attend the public hearing telephonically without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG-119882-25 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG-119882-25. Requests to attend the public hearing must be received by 5:00 p.m. ET on October 9, 2026.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, contact the Publications and Regulations Section of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317-6901 (not a toll-free number) by at least October 8, 2026.

Statement of Availability of Documents

Opinions from the Office of Legal Counsel, Department of Justice, (OLC) that are cited in this preamble are available by visiting the OLC website at https://www.justice.gov/olc/opinions-main (if selected for official publication). If not selected for official publication, an opinion may be available at https://www.justice.gov/olc/olc-foia-electronic-reading-room if it has been posted publicly by the OLC as a matter of discretion, generally because it is the subject of repeated requests or of public or historical interest. The 2020 OLC Opinion cited in this preamble is currently available at the OLC's electronic reading room. The 2025 OLC Opinion cited in this preamble is available at the OLC's main opinions page.

Drafting Information

The principal authors of these proposed regulations are personnel from the Office of the Associate Chief Counsel (Income Tax & Accounting), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries for §§ 1.23-2, 1.24-3, 1.25A-7, and 1.32-4 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

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Section 1.23-2 also issued under 8 U.S.C. 1614.

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Section 1.24-3 also issued under 8 U.S.C. 1614.

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Section 1.25A-7 also issued under 8 U.S.C. 1614.

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Section 1.32-4 also issued under 8 U.S.C. 1614.

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Par. 2. Sections 1.23-1 and1.23-2 are added to read as follows:

§1.23-1 [Reserved]

§1.23-2 Application of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(a) *In general.* Section 23 of the Internal Revenue Code (Code) allows eligible individuals a credit of an amount determined under section 23 (section 23 credit) against the tax imposed by subtitle A of the Code for the taxable year. This section applies Title IV of PRWORA with respect to the refunded portion of the section 23 credit. *See* 8 U.S.C. 1611(a), (c)(1).

(b) *Definitions.* For the definition of terms used for purposes of this section, *see*

§1.32-4(b).

(c) *Refunded portion of the section 23 credit*—(1) *In general.* The refunded portion of the section 23 credit is the portion of the section 23 credit determined under section 23(a)(4) that exceeds the tax imposed on the taxpayer by subtitle A of the Code (reduced by credits allowable under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code).

(2) *Multiple individual refundable income tax credits claimed.* In the event the taxpayer has also claimed a refundable credit under sections 24, 25A, or 32 of the Code, or another individual refundable income tax credit for which the refunded portion is specified by the Secretary in regulations as subject to PRWORA, the taxpayer must first sum all such refundable credits claimed, and then calculate the portion of the sum of these credits that exceeds the tax imposed on the taxpayer by subtitle A of the Code (reduced by credits allowable under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code). The refunded portion of the section 23 credit is included within this portion.

(d) *Federal public benefit as applied to section 23.* The refunded portion of the taxpayer's section 23 credit is a Federal public benefit. A taxpayer who satisfies the requirements of section 23 is eligible to receive the refunded portion of the section 23 credit, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities, only if the taxpayer is a U.S. citizen, U.S. national, or qualified alien and so declares under penalty of perjury (on the appropriate Federal income tax return, amended tax return, or schedule as required by the IRS).

(e) *Determination for eligibility of refunded portion of section 23 credit.* For purposes of receiving the refunded portion of the section 23 credit, having it credited against the taxpayer's unpaid tax liabilities, or having it offset against specified non-tax liabilities, a taxpayer's status as a U.S. citizen, U.S. national, or qualified alien is determined on the date the taxpayer files the taxpayer's return for the taxable year that first claims the section 23 credit (without regard to whether the return is deemed by the Code to be filed on another date).

(f) *Examples.* The following examples illustrate the rules of this section. In each example below, the taxpayer meets the requirements under title 26 to claim the section 23 credit for the taxable year:

(1) *Example 1: Timely-filed return claiming the tax credit*. The due date of taxpayer A's return is April 15. A files A's return for the taxable year on April 15, claiming the section 23 credit. On April 15, A is a U.S. citizen, U.S. national, or qualified alien. Because A is a U.S. citizen, U.S. national, or qualified alien on the date A files A's return claiming the section 23 credit for the taxable year, A is eligible to receive the refunded portion of the section 23 credit, have it credited against A's unpaid tax liabilities, or have it offset against A's specified non-tax liabilities.

(2) *Example 2: Claiming the tax credit on an early return*. The due date of taxpayer B's return is April 15. B files B's return on February 1, claiming the section 23 credit. On February 1, B is a U.S. citizen, U.S. national, or qualified alien. Accordingly, B is eligible to receive the refunded portion of the section 23 credit, have it credited against B's unpaid tax liabilities, or have it offset against B's specified non-tax liabilities.

(3) *Example 3: Claiming the tax credit on a late return.* The due date of taxpayer C's return is April 15. C does not file Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, for the taxable year. On November 1, within the period of limitations prescribed in section 6511 of the Code on filing a claim for refund, C files C's return claiming the section 23 credit. On November 1, C is a U.S. citizen, U.S. national, or qualified alien. Accordingly, C is eligible to receive the refunded portion of the section 23 credit, have it credited against C's unpaid tax liabilities, or have it offset against C's specified non-tax liabilities.

(4) *Example 4: Claiming the tax credit on an amended return after a status change*. The due date of taxpayer D's return is April 15. D files D's return for the taxable year on April 15, claiming the section 23 credit. However, on April 15, D is not a U.S. citizen, U.S. national, or qualified alien. Accordingly, D is not eligible to receive the refunded portion of the section 23 credit, or to have it credited against D's unpaid tax liabilities or have it offset against D's specified non-tax liabilities. On December 1, D becomes a U.S. citizen, U.S. national, or qualified alien. On December 15, within the period of limitation prescribed in section 6511 on filing a claim for refund, D files an amended return for the taxable year, updating D's status under PRWORA. Although D is a U.S. citizen, U.S. national, or qualified alien on December 15, D was not a U.S. citizen, U.S. national, or qualified alien when D first claimed the section 23 credit, so D is not eligible to receive the refunded portion of the section 23 credit.

(5) *Example 5: Claiming the tax credit for the first time on an amended return after a status change*. Same facts as paragraph (f)(4) of this section (*Example 4*), except that D did not initially claim the section 23 credit when D filed on April 15 and rather claimed this credit for the first time on an amended return filed on December 15. Since D is a U.S. citizen, U.S. national, or qualified alien on December 15 when D first claimed the section 23 credit, D is eligible to receive the refunded portion of the section 23 credit.

(6) *Example 6: Determining the Federal Public Benefit when the taxpayer claims the section 23 tax credit and no other refundable tax credits*. Taxpayer E meets the section 23 requirements for a $6,120 adoption credit. The refundable amount of this credit, determined under section 23(a)(4), is $5,120. E claims no other individual refundable tax credits. E's subtitle A tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $648. Therefore, the refunded portion of the section 23 credit is $4,472. This amount, which is

the Federal public benefit, is calculated by subtracting $648 from $5,120. If E is an alien who is not a qualified alien, E is not eligible to receive the Federal public benefit of $4,472 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(7) *Example 7: Determining the Federal public benefit when the taxpayer claims multiple individual refundable income tax credits*. Taxpayer F meets the section 23 requirements for a $6,120 adoption credit and the section 32 requirements for a $1,054 earned income credit. The refundable amount of the section 23 credit, determined under section 23(a)(4), is $5,120. F claims no other individual refundable income tax credits. F's subtitle A tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $648. The sum of F's refundable tax credits claimed under subpart C of part IV of subchapter A of chapter 1 of the Code and subject to PRWORA is $6,174. The excess of $6,174 over $648, which is $5,526, includes the refunded portion of both the section 23 credit and the section 32 credit and is the Federal public benefit. If F is an alien who is not a qualified alien, F is not eligible to receive the Federal public benefit of $5,526 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(8) *Example 8: Determining the Federal Public Benefit when the taxpayer claims an individual refundable income tax credit subject to PRWORA and a refundable income tax credit not subject to PRWORA*. Taxpayer G meets the section 23 requirements for a $6,120 adoption credit. The refundable amount of this credit, determined under section 23(a)(4), is $5,120. G also has $250 of tax withheld from wages during the taxable year and is allowed, under section 31, a credit against subtitle A tax equal to that amount. The section 31 credit is an allowable refundable tax credit under subpart C of part IV of subchapter A of chapter 1 of the Code and is not

subject to PRWORA. G claims no other individual refundable tax credits. G's subtitle A tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $648. Therefore, the refunded portion of the section 23 credit is $4,472. This amount, which is the Federal public benefit, is calculated by subtracting $648 from $5,120. The $250 withholding credit is not included in the calculation of a Federal public benefit and can be received as a refund, credited against the taxpayer's unpaid tax liabilities, or offset against specified non-tax liabilities. If G is an alien who is not a qualified alien, G is not eligible to receive the Federal public benefit of $4,472 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(g) *Applicability date.* This section applies to taxable years ending on or after [date of publication of final regulations in the ***Federal Register***].

Par. 3. Sections 1.24-2 and 1.24-3 are added to read as follows:

§1.24-2 [Reserved]

§1.24-3 Application of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(a) *In general.* Section 24 of the Internal Revenue Code (Code) allows eligible individuals a credit of an amount determined under section 24 (section 24 credit) against the tax imposed by subtitle A of the Code for the taxable year. This section applies Title IV of PRWORA with respect to the refunded portion of the section 24 credit. *See* 8 U.S.C. 1611(a), (c)(1).

(b) *Definitions.* For the definition of terms used for purposes of this section, *see* §1.32-4(b).

(c) *Refunded portion of the section 24 credit*—(1) *In general.* The refunded portion of the section 24 credit is the portion of the section 24 credit determined under section 24(d) that exceeds the tax imposed on the taxpayer by subtitle A of the Code (reduced by credits allowable under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code).

(2) *Multiple individual refundable income tax credits claimed.* In the event the taxpayer has also claimed a refundable credit under sections 23, 25A, or 32 of the Code, or another individual refundable income tax credit for which the refunded portion is specified by the Secretary in regulations as subject to PRWORA, the taxpayer must first sum all such refundable credits claimed and then calculate the portion of the sum of these credits that exceeds the tax imposed on the taxpayer by subtitle A of the Code (reduced by credits allowable under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code). The refunded portion of the section 24 credit is included within this portion.

(d) *Federal public benefit as applied to section 24.* The refunded portion of the section 24 credit is a Federal public benefit. A taxpayer who satisfies the requirements of section 24 is eligible to receive the refunded portion of the section 24 credit, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities, only if the taxpayer is a U.S. citizen, U.S. national, or qualified alien and so declares under penalty of perjury (on the appropriate Federal income tax return, amended tax return, or schedule as required by the IRS).

(e) *Determination for eligibility of refunded portion of section 24 credit.* For purposes of receiving the refunded portion of the section 24 credit, having it credited against the taxpayer's unpaid tax liabilities, or having it offset against specified non-tax liabilities, a taxpayer's status as a U.S. citizen, U.S. national, or qualified alien is determined on the date the taxpayer files the taxpayer's return for the taxable year that first claims the section 24 credit (without regard to whether the return is deemed by the Code to be filed on another date).

(f) *Examples.* The following examples illustrate the rules of this section. In each example, the taxpayer meets the requirements under title 26 to claim the section 24 credit for the taxable year:

(1) *Example 1: Timely-filed return claiming the tax credit*. The due date of taxpayer A's return is April 15. A files A's return for the taxable year on April 15, claiming the section 24 credit (for one or more qualifying children). On April 15, A is a U.S. citizen, U.S. national, or qualified alien. Because A is a U.S. citizen, U.S. national, or qualified alien on the date A files A's return claiming the section 24 credit for the taxable year, A is eligible to receive the refunded portion of the section 24 credit, have it credited against A's unpaid tax liabilities, or have it offset against A's specified non-tax liabilities.

(2) *Example 2: Claiming the tax credit on an early return*. The due date of taxpayer B's return is April 15. B files B's return on February 1, claiming the section 24 credit (for one or more qualifying children). On February 1, B was a U.S. citizen, U.S. national, or qualified alien. Accordingly, B is eligible to receive the refunded portion of the section 24 credit, have it credited against B's unpaid tax liabilities, or have it offset against B's specified non-tax liabilities.

(3) *Example 3: Claiming the tax credit on a late return*. The due date of taxpayer C's return is April 15. C does not file Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, for the taxable year. On November 1, within the period of limitations prescribed in section 6511 of the Code on filing a claim for refund, C files C's return claiming the section 24 credit (for one or more qualifying children). On November 1, C is a U.S. citizen, U.S. national, or qualified alien. Accordingly, C is eligible to receive the refunded portion of the section 24 credit, have it credited against C's unpaid tax liabilities, or have it offset against C's specified non-tax liabilities.

(4) *Example 4: Claiming the tax credit on an amended return after a status*

change. The due date of taxpayer D's return is April 15. D files D's return for the taxable year on April 15, claiming the section 24 credit. However, on April 15, D is not a U.S. citizen, U.S. national, or qualified alien. Accordingly, D is not eligible to receive the refunded portion of the section 24 credit, or to have it credited against D's unpaid tax liabilities or have it offset against D's specified non-tax liabilities. On December 1, D becomes a U.S. citizen, U.S. national, or qualified alien. On December 15, within the period of limitation prescribed in section 6511 on filing a claim for refund, D files an amended return for the taxable year, updating D's status under PRWORA. Although D is a U.S. citizen, U.S. national, or qualified alien on December 15, D was not a U.S. citizen, U.S. national, or qualified alien when D first claimed the section 24 credit, so D is not eligible to receive the refunded portion of the section 24 credit.

(5) *Example 5: Claiming the tax credit for the first time on an amended return after a status change.* Same facts as paragraph (f)(4) of this section (*Example 4*), except that D did not initially claim the section 24 credit when D filed on April 15 and rather claimed this credit for the first time on an amended return filed on December 15. Since D is a U.S. citizen, U.S. national, or qualified alien on December 15 when D first claimed the section 24 credit, D is eligible to receive the refunded portion of the section 24 credit.

(6) *Example 6: Determining the Federal Public Benefit when the taxpayer claims the section 24 credit and no other refundable tax credits*. Taxpayer E meets the section 24 requirements for a $2,200 child tax credit. The refundable amount of this credit, determined under section 24(d), is $955. E claims no other individual refundable tax credits. E's subtitle A tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $706. Therefore, the refunded portion of the section 24(d) credit is $249. This amount, which is the Federal public benefit, is calculated by subtracting $706 from $955. If E is an alien who is not a

qualified alien, E is not eligible to receive the Federal public benefit of $249 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(7) *Example 7: Determining the Federal public benefit when the taxpayer claims multiple individual refundable income tax credits*. Taxpayer F meets the section 24 requirements for a $2,200 child tax credit and the section 32 requirements for a $2,272 earned income credit. The refundable amount of the section 24 credit, determined under section 24(d), is $955. F claims no other individual refundable tax credits. F's subtitle A tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $706. The sum of F's refundable tax credits claimed under subpart C of part IV of subchapter A of chapter 1 of the Code and subject to PRWORA is $3,227. The excess of $3,227 over $706, which is $2,521, includes the refunded portion of both the section 24(d) credit and the section 32 credit and is the Federal public benefit. If F is an alien who is not a qualified alien, F is not eligible to receive the Federal public benefit of $2,521 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(8) *Example 8: Determining the Federal Public Benefit when the taxpayer claims an individual refundable income tax credit subject to PRWORA and a refundable income tax credit not subject to PRWORA*. Taxpayer G meets the section 24 requirements for a $2,200 child tax credit. The refundable amount of this credit, determined under section 24(d), is $955. G also has $250 of tax withheld from wages during the taxable year and is allowed, under section 31, a credit against subtitle A tax equal to that amount. The section 31 credit is an allowable refundable tax credit under subpart C of part IV of subchapter A of chapter 1 of the Code and is not subject to PRWORA. G claims no other individual refundable tax credits. G's subtitle A tax

liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $706. Therefore, the refunded portion of the section 24 credit is $249. This amount, which is the Federal public benefit, is calculated by subtracting $706 from $955. The $250 withholding credit is not included in the calculation of a Federal public benefit and can be received as a refund, credited against the taxpayer's unpaid tax liabilities, or offset against specified non-tax liabilities. If G is an alien who is not a qualified alien, G is not eligible to receive the Federal public benefit of $249 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(g) *Applicability date.* This section applies to taxable years ending on or after [date of publication of final regulations in the ***Federal Register***].

Par. 4. Sections 1.25A-6 and 1.25A-7 are added to read as follows:

§1.25A-6 [Reserved]

§1.25A-7 Application of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(a) *In general.* Section 25A(a)(1) of the Internal Revenue Code (Code) allows eligible individuals a credit of an amount determined under section 25A(b) and (i) (section 25A(a)(1) credit) against the tax imposed by subtitle A of the Code for the taxable year. This section applies Title IV of PRWORA with respect to the refunded portion of the section 25A(a)(1) credit. *See* 8 U.S.C. 1611(a), (c)(1).

(b) *Definitions.* For the definition of terms used for purposes of this section, *see* §1.32-4(b).

(c) *Refunded portion of the section 25A(a)(1) credit*—(1) *In general*. The refunded portion of the section 25A(a)(1) credit is the portion of the section 25A(a)(1) credit determined under section 25A(i) that exceeds the tax imposed on the taxpayer by subtitle A of the Code (reduced by credits allowable under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code).

(2) *Multiple individual refundable income tax credits claimed.* In the event the taxpayer has also claimed a refundable credit under sections 23, 24, or 32 of the Code, or another individual refundable income tax credit for which the refunded portion is specified by the Secretary in regulations as subject to PRWORA, the taxpayer must first sum all such refundable credits claimed, and then calculate the portion of the sum of these credits that exceeds the tax imposed on the taxpayer by subtitle A of the Code (reduced by credits allowable under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code). The refunded portion of the section 25A(a)(1) credit is included within this portion.

(d) *Federal public benefit as applied to section 25A(a)(1).* The refunded portion of the taxpayer's section 25A(a)(1) credit is a Federal public benefit. A taxpayer who satisfies the requirements of section 25A(a)(1) is eligible to receive the refunded portion of the section 25A(a)(1) credit, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities, only if the taxpayer is a U.S. citizen, U.S. national, or qualified alien and so declares under penalty of perjury (on the appropriate Federal income tax return, amended tax return, or schedule as required by the IRS).

(e) *Determination for eligibility of refunded portion of section 25A(a)(1) credit.* For purposes of receiving the refunded portion of the section 25A(a)(1) credit, having it credited against the taxpayer's unpaid tax liabilities, or having it offset against specified non-tax liabilities, a taxpayer's status as a U.S. citizen, U.S. national, or qualified alien is determined on the date the taxpayer files the taxpayer's return for the taxable year that first claims the section 25A(a)(1) credit (without regard to whether the return is deemed by the Code to be filed on another date).

(f) *Examples.* The following examples illustrate the rules of this section. In each example below, the taxpayer meets the requirements under title 26 to claim the section 25A(a)(1) credit for the taxable year:

(1) *Example 1: Timely-filed return claiming the tax credit*. The due date of taxpayer A’s return is April 15. A files A’s return for the taxable year on April 15, claiming the section 25A(a)(1) credit. On April 15, A is a qualified alien within the meaning of 8 U.S.C. 1611(a). Because A was a U.S. citizen, U.S. national, or qualified alien on the date A files A’s return claiming the section 25A(a)(1) credit for the taxable year, A is eligible to receive the refunded portion of the section 25A(a)(1) credit, have it credited against A’s unpaid tax liabilities, or have it offset against A’s specified non-tax liabilities.

(2) *Example 2: Claiming the tax credit on an early return*. The due date of taxpayer B’s return is April 15. B files B’s return on February 1, claiming the section 25A(a)(1) credit. On February 1, B is a U.S. citizen, U.S. national, or qualified alien. Accordingly, B is eligible to receive the refunded portion of the section 25A(a)(1) credit, have it credited against B’s unpaid tax liabilities, or have it offset against B’s specified non-tax liabilities.

(3) *Example 3: Claiming the tax credit on a late return*. The due date of taxpayer C’s return is April 15. C does not file Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, for the taxable year. On November 1, within the period of limitations prescribed in section 6511 of the Code on filing a claim for refund, C files C’s return claiming the section 25A(a)(1) credit. On November 1, C is a U.S. citizen, U.S. national, or qualified alien. Accordingly, C is eligible to receive the refunded portion of the section 25A(a)(1) credit, to have it credited against C’s unpaid tax liabilities, or have it offset against C’s specified non-tax liabilities.

(4) *Example 4: Claiming the tax credit on an amended return after a status change*. The due date of taxpayer D’s return is April 15. D files D’s return for the

taxable year on April 15 claiming the section 25A(a)(1) credit. However, on April 15, D is not a U.S. citizen, U.S. national, or qualified alien. Accordingly, D is not eligible to receive the refunded portion of the section 25A(a)(1) credit, or to have it credited against D's unpaid tax liabilities or have it offset against D's specified non-tax liabilities. On December 1, D becomes a U.S. citizen, U.S. national, or qualified alien. On December 15, within the period of limitation prescribed in section 6511 on filing a claim for refund, D files an amended return for the taxable year, updating D's status under PRWORA. Although D is a U.S. citizen, U.S. national, or qualified alien on December 15, D was not a U.S. citizen, U.S. national, or qualified alien when D first claimed the section 25A(a)(1) credit, so D is not eligible to receive the refunded portion of the section 25A(a)(1) credit.

(5) *Example 5: Claiming the tax credit for the first time on an amended return after a status change.* Same facts as paragraph (f)(4) of this section (*Example 4*), except that D did not initially claim the section 25A(a)(1) credit when D filed on April 15 and rather claimed this credit for the first time on an amended return filed on December 15. Since D is a U.S. citizen, U.S. national, or qualified alien on December 15 when D first claimed the section 25A(a)(1) credit, D is eligible to receive the refunded portion of the section 25A(a)(1) credit.

(6) *Example 6: Determining the Federal Public Benefit when the taxpayer claims the section 25A(a)(1) credit and no other refundable tax credits*. Taxpayer E meets the section 25A(a)(1) requirements for a $2,500 American Opportunity Tax Credit. The refundable amount of this credit, determined under section 25A(i), is $1,000. E claims no other individual refundable tax credits. E's subtitle A tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $148. Therefore, the refunded portion of the section 25A(a)(1) credit is $852. This amount, which is the Federal public benefit, is calculated by subtracting

$148 from $1,000. If E is an alien who is not a qualified alien, E is not eligible to receive the Federal public benefit of $852 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(7) *Example 7: Determining the Federal public benefit when the taxpayer claims multiple individual refundable income tax credits*. Taxpayer F meets the section 25A(a)(1) requirements for a $2,500 American Opportunity Tax Credit and the section 32 requirements for a $1,110 earned income credit. The refundable amount of the section 25A(a)(1) credit, determined under section 25A(i), is $1,000. F claims no other individual refundable tax credits. F's subtitle A tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $812. The sum of F's refundable tax credits claimed under subpart C of part IV of subchapter A of chapter 1 of the Code and subject to PRWORA is $2,110. The excess of $2,110 over $812, which is $1,298, includes the refunded portion of both the section 25A(a)(1) credit and the section 32 credit and is the Federal public benefit. If F is an alien who is not a qualified alien, F is not eligible to receive the Federal public benefit of $1,298 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(8) *Example 8: Determining the Federal Public Benefit when the taxpayer claims an individual refundable income tax credit subject to PRWORA and a refundable income tax credit not subject to PRWORA*. Taxpayer G meets the section 25A(a)(1) requirements for a $2,500 American Opportunity Tax Credit. The refundable amount of this credit, determined under section 25A(i), is $1,000. G also has $250 of tax withheld from wages during the taxable year and is allowed, under section 31, a credit against subtitle A tax equal to that amount. The section 31 credit is an allowable refundable tax credit under subpart C of part IV of subchapter A of chapter 1 of the Code and is not subject to PRWORA. G claims no other individual refundable tax credits. G's subtitle A

tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $148. Therefore, the refunded portion of the section 25A(a)(1) credit is $852. This amount, which is the Federal public benefit, is calculated by subtracting $148 from $1,000. The $250 withholding credit is not included in the calculation of a Federal public benefit and can be received as a refund, credited against the taxpayer's unpaid tax liabilities, or offset against specified non-tax liabilities. If G is an alien who is not a qualified alien, G is not eligible to receive the Federal public benefit of $852 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(g) *Applicability date.* This section applies to taxable years ending on or after [date of publication of final regulations in the ***Federal Register***].

Par. 5. Sections 1.32-1 and 1.32-4 are added to read as follows:

§§1.32-1 [Reserved]

§1.32-4 Application of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(a) *In general.* Section 32 of the Internal Revenue Code (Code) allows eligible individuals a credit of an amount determined under section 32 (section 32 credit) against the tax imposed by subtitle A of the Code for the taxable year. This section applies Title IV of PRWORA with respect to the refunded portion of the section 32 credit. *See* 8 U.S.C. 1611(a), (c)(1).

(b) *Definitions.* The following definitions apply for purposes of this section:

(1) *Alien.* The term *alien* has the same meaning as provided in section 101(a) of the Immigration and Nationality Act, Public Law 82-414, 66 Stat. 163, 8 U.S.C. 1101(a)(3).

(2) *Federal public benefit.* The term *Federal public benefit* has the same meaning as provided in section 401 of PRWORA, 8 U.S.C. 1611(c).

(3) *PRWORA.* The term *PRWORA* means the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105, 2260-77, as amended.

(4) *Qualified alien.* The term *qualified alien* has the same meaning as provided in section 431 of PRWORA, 8 U.S.C. 1641(b). In case of married individuals filing a joint return, if one spouse is a U.S. citizen, U.S. national, or qualified alien, then the other spouse will be treated as a qualified alien for this purpose.

(5) *U.S. National.* The term *U.S. national* has the same meaning as provided the term *national of the United States* in section 101(a) of the Immigration and Nationality Act, Public Law 82-414, 66 Stat. 163, 8 U.S.C. 1101(a)(22).

(c) *Refunded portion of the section 32 credit*—(1) *In general.* The refunded portion of the section 32 credit is the portion of the section 32 credit that exceeds the tax imposed on the taxpayer by subtitle A of the Code (reduced by credits allowable under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code).

(2) *Multiple individual refundable income tax credits claimed.* In the event the taxpayer has also claimed a refundable credit under sections 23, 24, or 25A of the Code, or another refundable income tax credit for which the refunded portion is specified by the Secretary in regulations as subject to PRWORA, the taxpayer must first sum all such refundable credits claimed, and then calculate the portion of the sum of these credits that exceeds the tax imposed on the taxpayer by subtitle A of the Code (reduced by credits allowable under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code). The refunded portion of the section 32 credit is included within this portion.

(d) *Federal public benefit as applied to section 32.* The refunded portion of the taxpayer's section 32 credit is a Federal public benefit. A taxpayer who satisfies the requirements of section 32 is eligible to receive the refunded portion of the section 32 credit, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities, only if the taxpayer is a U.S. citizen, U.S. national, or qualified alien and so declares under penalty of perjury (on the appropriate Federal income tax return, amended tax return, or schedule as required by the IRS).

(e) *Determination for eligibility of the refunded portion of section 32 credit.* For purposes of receiving the refunded portion of the section 32 credit, having it credited against the taxpayer's unpaid tax liabilities, or having it offset against specified non-tax liabilities, a taxpayer's status as a U.S. citizen, U.S. national, or qualified alien is determined on the date the taxpayer files the taxpayer's return for the taxable year that first claims the section 32 credit (without regard to whether the return is deemed by the Code to be filed on another date).

(f) *Examples.* The following examples illustrate the rules of this section. In each example below, the taxpayer meets the requirements under the Code to claim the section 32 credit for the taxable year:

(1) *Example 1: Timely-filed return claiming the tax credit*. The due date of taxpayer A's return is April 15. A files A's return for the taxable year on April 15, claiming the section 32 credit. On April 15, A is a U.S. citizen, U.S. national, or qualified alien. Because A was a U.S. citizen, U.S. national, or qualified alien on the date of A files A's return claiming the section 32 credit for the taxable year, A is eligible to receive the refunded portion of the section 32 credit, have it credited against A's unpaid tax liabilities, or have it offset against A's specified non-tax liabilities.

(2) *Example 2: Claiming the tax credit on an early return*. The due date of taxpayer B's return is April 15. B files B's return on February 1, claiming the section 32 credit. On February 1, B is a U.S. citizen, U.S. national, or qualified alien. Accordingly, B is eligible to receive the refunded portion of the section 32 credit, have it credited against B's unpaid tax liabilities, or have it offset against B's specified non-tax liabilities.

(3) *Example 3: Claiming the tax credit on a late return*. The due date of taxpayer C's return is April 15. C does not file Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, for the taxable year. On November 1, within the period of limitations prescribed in section 6511 of the Code on filing a claim for refund, C files C's return claiming the section 32 credit. On November 1, C is a U.S. citizen, U.S. national, or qualified alien. Accordingly, C is eligible to receive the refunded portion of the section 32 credit, to have it credited against C's unpaid tax liabilities, or have it offset against C's specified non-tax liabilities.

(4) *Example 4: Claiming the tax credit on an amended return after a status change*. The due date of taxpayer D's return is April 15. D files D's return for the taxable year on April 15, claiming the section 32 credit. However, on April 15, D is not U.S. citizen, U.S. national, or a qualified alien. Accordingly, D is not eligible to receive the refunded portion of the section 32 credit, or to have it credited against D's unpaid tax liabilities or have it offset against D's specified non-tax liabilities. On December 1, D becomes a U.S. citizen, U.S. national, or qualified alien. On December 15, within the period of limitation prescribed in section 6511 on filing a claim for refund, D files an amended return for the taxable year, updating D's status under PRWORA. Although D is a U.S. citizen, U.S. national, or qualified alien on December 15, D was not a U.S. citizen, U.S. national, or qualified alien when D first claimed the section 32 credit, so D is not eligible to receive the refunded portion of the section 32 credit.

(5) *Example 5: Claiming the tax credit for the first time on an amended return after a status change.* Same facts as paragraph (f)(4) of this section (*Example 4*), except that D did not initially claim the section 32 credit when D filed on April 15 and rather claimed this credit for the first time on an amended return filed on December 15. Since D is a U.S. citizen, U.S. national, or qualified alien on December 15 when D first claimed the section 32 credit, D is eligible to receive the refunded portion of the section

32 credit.

(6) *Example 6: Determining the Federal Public Benefit when the taxpayer claims the section 32 credit and no other refundable tax credits*. Taxpayer E meets the section 32 requirements for a $2,272 earned income credit. E claims no other individual refundable tax credits. E's subtitle A tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $1,451. Therefore, the refunded portion of the section 32 credit is $821. This amount, which is the Federal public benefit, is calculated by subtracting $1,451 from $2,272. If E is an alien who is not a qualified alien, E is not eligible to receive the Federal public benefit of $821 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(7) E*xample 7: Determining the Federal public benefit when the taxpayer claims multiple individual refundable income tax credits*. Taxpayer F meets the section 32 requirements for a $2,272 earned income credit and the section 24 requirements for a $2,200 child tax credit. The refundable amount of the section 24 credit, determined under section 24(d), is $1,455. F claims no other individual refundable tax credits. F's subtitle A tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $706. The sum of F's refundable tax credits claimed under subpart C of part IV of subchapter A of chapter 1 of the Code and subject to PRWORA is $3,727. The excess of $3,727 over $706, which is $3,021, includes the refunded portion of both the section 32 credit and the section 24 credit and is the Federal public benefit. If F is an alien who is not a qualified alien, F is not eligible to receive the Federal public benefit of $3,021 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(8) *Example 8: Determining the Federal Public Benefit when the taxpayer claims an individual refundable income tax credit subject to PRWORA and a refundable*

income tax credit not subject to PRWORA. Taxpayer G meets the section 32 requirements for a $2,272 earned income credit. G also has $250 of tax withheld from wages during the taxable year and is allowed, under section 31, a credit against subtitle A tax equal to that amount. The section 31 credit is an allowable refundable tax credit under subpart C of part IV of subchapter A of chapter 1 of the Code and is not subject to PRWORA. G claims no other individual refundable tax credits. G's subtitle A tax liability, reduced by the credits allowed under subparts A, B, D, and G of part IV of subchapter A of chapter 1 of the Code, is $1,451. Therefore, the refunded portion of the section 32 credit is $821. This amount, which is the Federal public benefit, is calculated by subtracting $1,451 from $2,272. The $250 withholding credit is not included in the calculation of a Federal public benefit and can be received as a refund, credited against the taxpayer's unpaid tax liabilities, or offset against specified non-tax liabilities. If G is an alien who is not a qualified alien, G is not eligible to receive the Federal public benefit of $821 as a refund, have it credited against the taxpayer's unpaid tax liabilities, or have it offset against specified non-tax liabilities.

(g) *Applicability date.* This section applies to taxable years ending on or after [date of publication of final regulations in the ***Federal Register***].

Frank J. Bisignano,

Chief Executive Officer.

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