Congressional Research Service
Informing the legislative debate since 1914

Legal Authority for Aliens to Claim Refundable Tax Credits: In Brief

Updated December 1, 2015

Congressional Research Service
https://crsreports.congress.gov
R44290

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The question is frequently asked whether aliens who enter or remain in the United States in violation of federal immigration law (called unlawfully present aliens for purposes of this report) are permitted to claim refundable tax credits. There is no general provision in the Internal Revenue Code (IRC) prohibiting unlawfully present aliens from claiming refundable tax credits. Rather, the restrictions that exist are established on a credit-by-credit basis. For example, one credit—the earned income tax credit (EITC)—requires that taxpayers provide work-authorized Social Security numbers (SSNs) for themselves, a spouse if filing a joint return, and any qualifying children. Because of this requirement, aliens who are not authorized to work in the United States are ineligible for the credit. This treatment can be contrasted with another credit, the additional child tax credit, which does not have an SSN requirement and can be claimed by taxpayers regardless of their immigration or work authorization status.

A related issue is whether any refundable tax credits are "Federal public benefits" under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Section 401 of that act disallows such benefits to unlawfully present aliens. If any refundable tax credits were federal public benefits, it could be argued the credits should be disallowed to these aliens, even if the IRC does not contain such a restriction. It appears the IRS does not interpret PRWORA to apply to refundable tax credits. No court has examined this issue, and Congress has not taken any action to address it legislatively. Thus, at this time, the only clear restrictions on the ability of unlawfully present aliens to claim refundable tax credits are those found in the IRC.

Contents

Refundable Tax Credits 1
Eligibility Under the IRC 1
Prohibitions on Nonresident Aliens 2
SSN Requirement 2
Requirement that Aliens Be "Lawfully Present" 3
Eligibility Under PRWORA 5

Tables

Table 1. Current and Recently Expired Refundable Tax Credits 1
Table 2. Eligibility of Unlawfully Present Aliens to Claim Refundable Tax Credits Under the IRC 4

Appendixes

Appendix. CRS Reports on Refundable Tax Credits 9

Contacts

Author Information 9

Determining whether aliens who enter or remain in the United States in violation of federal immigration law (called unlawfully present aliens for purposes of this report) are permitted to claim refundable tax credits under federal law requires answering two questions. The first is whether these individuals may claim the credits under the Internal Revenue Code (IRC). The second is whether any refundable tax credits are "Federal public benefits" under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), in which case it could be argued that any such credit should be disallowed to unlawfully present aliens regardless of whether the IRC contains such a restriction. This report first provides a list of refundable tax credits and then examines these two questions.

Refundable Tax Credits

Tax credits reduce a taxpayer's tax liability dollar-for-dollar, up to the value of the credit. Refundable credits, unlike nonrefundable credits, can be larger than a taxpayer's income tax liability, with the taxpayer receiving the difference as a cash payment from the IRS in the form of a tax refund. **Table 1** lists the current and recently expired refundable tax credits. A list of CRS reports that provide information on these credits can be found in the **Appendix** to this report.

Table 1. Current and Recently Expired Refundable Tax Credits

IRC Section	Current Credit
IRC §24	Additional child tax credit (ACTC), which is the refundable portion of the child tax credit.
IRC §25A	American opportunity tax credit for tuition and related expenses (partially refundable).
IRC §32	Earned income tax credit (EITC), which is available to low-income taxpayers and based on their earnings and number of children.
IRC §35	Health coverage tax credit for insurance costs of individuals receiving trade adjustment assistance or benefits from pension plans taken over by the Pension Benefit Guaranty Corp.
IRC §31	Credit for tax withheld on wages.
IRC §33	Credit for tax withheld at source for nonresident aliens and foreign corporations.
IRC §34	Credit for fuel excise taxes paid on fuel used for nontaxable uses.
IRC §36B	Premium assistance credit for people purchasing insurance on health care exchanges.
IRC §37	Credit for overpayment of tax.
	Recently Expired Credits
IRC §36	First-time homebuyer credit, which effectively expired in 2010.
IRC §36A	Making Work Pay credit, which was available in 2009 and 2010.
IRC §36C	Adoption expenses credit, which was refundable for 2010 and 2011.
IRC §6428	Recovery rebate credit in the Economic Stimulus Act of 2008 ("2008 stimulus credit").

Source: Congressional Research Service, based on the Internal Revenue Code.

Eligibility Under the IRC

The first question in determining whether unlawfully present aliens may claim refundable tax credits is whether this is permitted under the Internal Revenue Code (IRC). There is no general rule in the IRC that prohibits unlawfully present aliens from claiming refundable tax credits.

Rather, the restrictions that exist are established on a credit-by-credit basis. As discussed below, there are three types of restrictions: (1) prohibitions on nonresident aliens (defined below) from claiming a credit; (2) requirements that taxpayers provide Social Security numbers (SSNs) in order to claim a credit; and (3) a restriction that only aliens who are "lawfully present" may claim a credit.

Prohibitions on Nonresident Aliens

Some credits are denied to nonresident aliens, and thus any unlawfully present alien who is a nonresident alien would be ineligible to claim them. For purposes of federal income tax law, individuals who are not U.S. citizens are classified as being either a resident or nonresident alien.[1] In general, an individual is a resident alien if he or she is a lawful permanent resident (LPR) at any time during the year or is present in the United States for a significant period of time during the current and previous two years ("substantial presence test").[2] In general, other noncitizens are nonresident aliens.[3] Unlawfully present aliens are categorized as either a resident or nonresident alien under these same rules.

As shown in **Table 2**, only two existing credits—the EITC and American Opportunity tax credit—contain provisions denying the credit to nonresident aliens.[4] Two recently expired credits—the Making Work Pay credit and the 2008 stimulus credit—were denied to nonresident aliens, and the now-expired First-Time Homebuyer credit was not available for purchases by nonresident aliens.[5]

SSN Requirement

Some credits are denied to taxpayers without Social Security numbers (SSNs).

Credits With an SSN Requirement

As shown in **Table 2**, only the EITC currently contains an SSN requirement.[6] In order to claim the EITC, taxpayers must provide SSNs for themselves, a spouse if filing a joint return, and any qualifying children. The SSNs must be valid for work purposes (i.e., the SSN holder is authorized to work in the United States).[7] Some aliens have SSNs that are issued for non-work purposes,[8] but individuals with these types of SSNs may not claim the EITC.

---

[1] For more information, see CRS Report RS21732, *Federal Taxation of Aliens Working in the United States*, by Erika K. Lunder.

[2] 26 U.S.C. §§7701(b)(1)(A), (b)(3). The individual must be in the United States for at least 31 days during the current year and at least 183 days during the current and previous two years, counting all the qualifying days in the current year, 1/3 of the days in the immediate prior year, and 1/6 of the days in the earliest year.

[3] Numerous exceptions and special rules apply. For more information, see CRS Report RS21732, *Federal Taxation of Aliens Working in the United States*, by Erika K. Lunder.

[4] 26 U.S.C. §§32(c)(1)(D), 25A(g)(7).

[5] 26 U.S.C. §§36A(d)(1)(A)(i), 6428(e)(3)(A), 36(d).

[6] 26 U.S.C. §32(c)(1)(D), (m).

[7] 26 U.S.C. §32(m); *see also* 42 U.S.C. §405(c)(2)(B)(i) (alien eligibility for SSNs); 20 C.F.R. §422.104 (same).

[8] Valid non-work reasons are (1) to satisfy a federal statute or regulation that requires an SSN in order to receive a federally funded benefit to which the individual has otherwise established entitlement; or (2) to satisfy a state or local law that requires an SSN in order to receive public assistance benefits to which the individual has otherwise established entitlement and the individual is "legally in the United States." *See* 20 C.F.R. §422.104(a)(3). SSA will not assign a non-work SSN solely for the purpose of filing tax returns (although previously it had done so). S*ee* SSA, *Social*

The now-expired Making Work Pay and 2008 stimulus credits contained SSN requirements, although they did not specify that the SSN be valid for work purposes.[9] Also, for the 2008 stimulus credit, the SSN requirement did not apply to a joint return if at least one spouse was a member of the Armed Forces during the taxable year.[10]

One issue that arises with SSN requirements for tax credits is that some resident aliens who are currently not lawfully present may have once lawfully received an SSN and could attempt to use the SSN to claim a credit. While the statutory language is silent on this matter, it appears Congress intended to limit the EITC and 2008 stimulus credit to taxpayers currently authorized to work in the United States.[11]

Credits Without an SSN Requirement

For the other refundable credits, such as the additional child tax credit, taxpayers may claim the credit using an SSN or an individual taxable identification number (ITIN). ITINs are issued by the IRS to taxpayers who are not eligible for SSNs.[12] ITINs are unique identifying numbers that these individuals use to file tax returns and otherwise comply with their federal tax law responsibilities.[13] Being assigned an ITIN does not affect an individual's immigration status, and unlawfully present aliens may receive ITINs.

SSNs and Residency Status

A legal requirement that a taxpayer provide an SSN in order to claim a credit is not duplicative of a restriction that denies nonresident aliens from claiming the credit. Having an SSN or ITIN does not denote whether an individual is a resident or nonresident alien. Some resident aliens are ineligible for SSNs and therefore have ITINs, while some nonresident aliens have SSNs.

Requirement that Aliens Be "Lawfully Present"

Under the Patient Protection and Affordable Care Act (P.L. 111-148, ACA), individuals who buy health insurance through an exchange are eligible for a refundable premium assistance tax credit.[14] Aliens who are not "lawfully present," as that term is defined in regulations

---

Security Number for Noncitizens, at https://www.socialsecurity.gov/pubs/EN-05-10096.pdf; CRS Report R43840, *Federal Income Taxes and Noncitizens: Frequently Asked Questions*, by Erika K. Lunder and Margot L. Crandall-Hollick.

[9] 26 U.S.C. §§36A(d)(1)(B), 6428(e)(3)(A)&(h).

[10] 26 U.S.C. §6428(h)(3).

[11] *See, e.g.*, P.L. 104-193, §451 (header reads "Earned income credit denied to individuals not authorized to be employed in the United States"); H.Rept. 104-651, at 1457 ("The Committee does not believe that individuals who are not authorized to work in the United States should be able to claim the [EITC]"); Staff of J. Comm. On Taxation, DESCRIPTION OF THE CHAIRMAN'S MODIFICATION TO THE PROVISIONS OF THE "ECONOMIC STIMULUS ACT OF 2008," JCX-11-08 (2008) (descriptive header to the explanation of the SSN requirement for the 2008 stimulus credit reads "Deny the basic credit and the qualifying child credit to illegal immigrants").

[12] 26 U.S.C. §6109; 26 C.F.R. § 301-6109-1.

[13] For more information on ITINs, see CRS Report R43840, *Federal Income Taxes and Noncitizens: Frequently Asked Questions*, by Erika K. Lunder and Margot L. Crandall-Hollick.

[14] 26 U.S.C. §36B.

implementing ACA,[15] are ineligible for the credit.[16] This is because the credit is only available for months during which a person purchases health insurance through the ACA exchanges, and aliens who are not "lawfully present" are prohibited from buying insurance through an exchange.[17] However, an individual who is not "lawfully present" may claim the credit for an eligible family member (for example, a parent who is not "lawfully present" may file a tax return claiming the credit if he or she has children who meet the credit's qualifications).[18]

Table 2. Eligibility of Unlawfully Present Aliens to Claim Refundable Tax Credits Under the IRC

Credit	Unlawfully Present Aliens Who Are "Nonresident Aliens"	Unlawfully Present Aliens Who Are "Resident Aliens"
Additional Child Tax Credit	No provision barring eligibility (but child must be a U.S. citizen, national, or resident). IRC §24.	No provision barring eligibility (but child must be a U.S. citizen, national, or resident). IRC §24(c)(2).
American Opportunity Tax Credit	Generally ineligible. IRC §25A(g)(7).	No provision barring eligibility. IRC §25A(g)(1).
Earned Income Tax Credit	Generally ineligible. IRC §32(c)(1)(D).	Taxpayer must provide SSN valid for work purposes for him/herself, spouse if filing jointly, and qualifying children. IRC §32(c)(1), (m).
Health Coverage Tax Credit	No provision barring eligibility. IRC §35.	No provision barring eligibility. IRC §35.
Premium Assistance Credit (effective 2014)	Generally ineligible because aliens who are not "lawfully present," as defined by regulations implementing ACA, are not eligible to buy insurance through the ACA exchanges and are not counted when computing the value of the credit. IRC §36B(e).	
Tax Withheld on Wages	No provision barring eligibility. IRC §31.	No provision barring eligibility. IRC §31.

[15] *See* 45 C.F.R. §152.2; 26 C.F.R. §1.36B-1(g). For information on the definition and how it is used in ACA, see CRS Report R43561, *Treatment of Noncitizens Under the Affordable Care Act*, by Alison Siskin and Erika K. Lunder.

[16] Notably, while "lawfully present" is defined by regulation implementing ACA to include aliens granted deferred action, there is an exception for those granted deferred action through the Obama Administration's 2012 Deferred Action for Childhood Arrivals (DACA) initiative. 45 C.F.R. §152.2(4)(vii), (8). In November 2014, President Obama announced the commencement of an immigration initiative which would, among other things, (1) expand the scope of aliens eligible for grants of relief under the 2012 DACA initiative; and (2) establish a DACA-like initiative for unlawfully present alien parents of U.S. citizens and LPRs. It is unclear whether the regulation's 2012 DACA exception would apply to aliens granted deferred action through the 2014 expansion of DACA. The other deferred action beneficiaries under the 2014 initiatives would appear to qualify for the credit under the existing regulations, although the Administration reportedly may take action to exclude them. *See* Jason Millman & Juliet Eilperin, *Obama's Order Won't Extend Obamacare to Undocumented Immigrants*, WASH. POST (Nov. 19, 2014). For information on DACA and the 2014 initiatives, see CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*, by Andorra Bruno; CRS Legal Sidebar WSLG1437, *Fifth Circuit Declines to Lift Injunction Barring Implementation of the Obama Administration's 2014 Deferred Action Programs*, by Kate M. Manuel and Sarah S. Herman.

[17] 42 U.S.C. §18032(f)(3); 26 U.S.C. §36B(c)(2). For more information on ACA's applicability to noncitizens, see CRS Report R43561, *Treatment of Noncitizens Under the Affordable Care Act*, by Alison Siskin and Erika K. Lunder.

[18] 26 C.F.R. §1.36B-2(b)(4). *See also* 26 U.S.C. §36B(e); 42 U.S.C. §18071(e); 26 C.F.R. §1.36B-3 (rules for calculating the credit for mixed-status families).

Credit	Unlawfully Present Aliens Who Are "Nonresident Aliens"	Unlawfully Present Aliens Who Are "Resident Aliens"
Tax Withheld at Source on Nonresident Aliens and Foreign Corps.	No provision barring eligibility. IRC §33.	Not applicable. IRC §33.
Fuel Excise Taxes (Nontaxable Uses)	No provision barring eligibility. IRC §34.	No provision barring eligibility. IRC §34.
Overpayment of Tax	No provision barring eligibility. IRC §§37, 6401.	No provision barring eligibility. IRC §§37, 6401.
	Recently Expired Credits	
Adoption Expenses Credit	No provision barring eligibility. Former IRC §36C.	No provision barring eligibility. Former IRC §36C.
First-Time Homebuyer Credit	Not allowed for purchase of residence by a nonresident alien. IRC §36(d).	No provision barring eligibility. IRC §36.
Making Work Pay Credit	Ineligible. IRC §36A(d)(1)(A)(i).	Taxpayer must provide SSN for him/herself, unless filing jointly and spouse has SSN. IRC §36A(d)(1)(B).
2008 Stimulus Credit	Ineligible. Former IRC §6428(e)(3)(A).	Taxpayer must generally provide SSN for him/herself, spouse if filing jointly, and qualifying children. Former IRC §6428(h).

Source: Congressional Research Service, based on the Internal Revenue Code.

Eligibility Under PRWORA

The second question is whether any refundable tax credits are subject to Section 401 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), which generally bars unlawfully present aliens from receiving any "Federal public benefit."[19] If any refundable tax credit is such a benefit, it could be argued that aliens subject to Section 401's restrictions may not claim the credit, regardless of whether the IRC contains such a prohibition.[20] "Federal public benefit" is defined in Section 401(c)(1) as,

> (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.[21]

[19] P.L. 104-193, § 401, *codified at* 8 U.S.C. §1611. For further discussion of PRWORA's restrictions, see CRS Report R43221, *Noncitizen Eligibility for Public Benefits: Legal Issues*, by Kate M. Manuel.

[20] *See* PRWORA §401(a), *codified at* 8 U.SC. §1611(a) ("Notwithstanding any other provision of law ... , an alien who is not a qualified alien ... is not eligible for any Federal public benefit ... "). For a discussion of how this language has been interpreted, see CRS Report R43221, *Noncitizen Eligibility for Public Benefits: Legal Issues*, by Kate M. Manuel.

[21] *Codified at* 8 U.S.C. §1611(c).

It appears the IRS permits unlawfully present aliens to claim any refundable tax credit that is not restricted under the IRC.[22] In other words, while the IRS has not released a public statement or guidance on this issue, it appears the agency does not consider any refundable tax credits to be subject to Section 401.

No court has examined the issue of whether refundable tax credits are federal public benefits under PRWORA. So long as the IRS permits unlawfully present aliens to claim any credit without an IRC restriction, there is a question as to whether that position could be challenged in court. This is because it appears doubtful that anyone would be personally injured—a necessary prerequisite to have standing to sue[23]—by the IRS's decision to allow the credit.[24] Thus, if the IRS does not interpret Section 401 to include refundable tax credits, this could be a de facto permissible interpretation by the agency, unless Congress were to address the matter legislatively.

If the issue were to come before a court, there appears to be support for the IRS's apparent determination that refundable credits are not federal public benefits. For example, Section 401 does not expressly include refundable tax credits, and it could therefore be argued that Congress did not include them in the list of federal public benefits because it understood them to be excluded.[25] One could also argue that refundable tax credits are not federal public benefits because tax benefits are not traditionally thought of as the types of "grants" or qualifying "benefits" referred to in Section 401, and there is no clear evidence in the legislative history that Congress intended such credits to be treated as such.[26]

Additional support could be found in PRWORA Section 432(a), which directs the Attorney General to consult with the Secretary of Health and Human Services when promulgating regulations for verifying the immigration status of applicants for federal benefits, but does not require consultation with the Treasury Department, thus arguably suggesting tax benefits were understood not to be affected.[27] Support might also be found in other congressional action: Congress included in PRWORA an SSN requirement for the EITC and subsequently enacted legislation to impose an SSN requirement for the 2008 stimulus and Making Work Pay credits and to deny the premium assistance credit to unlawfully present aliens. These actions would

---

[22] *See, e.g.,* Treas. Inspector General for Tax Admin., *Individuals Who Are Not Authorized to Work in the United States Were Paid $4.2 Billion in Refundable Credits*, 2011-41-061, July 7, 2011.

[23] *See* Allen v. Wright, 468 U.S. 737, 751 (1984) (to have constitutional standing, a party must establish personal injury by allegedly unlawful conduct fairly traceable to the defendant and that the injury is redressable in court).

[24] *See, e.g.,* DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 344-45 (2006) (individuals generally do not have standing in their status as taxpayers to bring suit for allegedly unlawful taxation because any injury is too generalized and remote).

[25] *See, e.g.,* Iselin v. United States, 270 U.S. 245, 250 (1926) (given the "particularization and detail" with which Congress had set out the categories of ticket sales subject to taxation, interpreting the statute to cover another category would amount to "enlargement" of the statute rather than "construction" of it); *but see* NationsBank v. Variable Annuity Life Ins. Co., 513 U.S. 251, 257 (1995) (a statutory listing may be "exemplary, not exclusive").

[26] Report language refers only to the EITC, noting that pre-PRWORA law was silent as to the eligibility of aliens for certain programs, including school lunch and nutrition, Head Start, and the EITC. H.Rept. 104-725, at 379 (1996); H.Rept. 104-651, at 1443-44 (1996). This shows Congress was aware of the EITC, but does not offer solid evidence of intent to treat it as a federal public benefit, particularly since Section 401 has been interpreted to not include other listed programs (e.g., Head Start). *See* HHS, *Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA); Interpretation of 'Federal Public Benefit,'* 63 Fed. Reg. 41,658, 41,659 (Aug. 4, 1998). The EITC's SSN requirement was enacted by PRWORA Section 451, but the legislative history is silent on how Section 451 interacts with Section 401. It should also be noted that, even if the legislative history provided better evidence of congressional intent, courts differ in their reliance on legislative history. *See* CRS Report 97-589, *supra* note 18 (discussing the uncertain role of legislative history when interpreting statutes).

[27] *Codified at* 8 U.S.C. §1642(a).

arguably be unnecessary had Congress believed that PRWORA Section 401 applied to refundable tax credits.[28]

On the other hand, it might be argued that at least some refundable tax credits could be a "grant" under Section 401(c)(1)(A) or a "benefit" under Section 401(c)(1)(B). Since the key terms are not defined statutorily nor do they appear to be terms of art (i.e., have a generally accepted meaning in law),[29] a court might look to their customary and ordinary meanings.[30] In general, "grant" is defined as "a sum of money given by an organization, especially a government, for a particular purpose"; "benefit" is "a payment made by the state or an insurance scheme to someone entitled to receive it"; and "assistance" is "the provision of money, resources, or information to help someone."[31] Furthermore, in other contexts, courts have interpreted "other similar benefits" in PRWORA to mean services that "assist people with economic hardship" or could potentially "create [an] incentive for illegal immigration."[32]

These definitions might support the argument that some refundable tax credits could be federal public benefits due to their refundable nature and purpose. Such a determination would likely depend on the specific characteristics of each credit.[33] For example, in other contexts, courts have held the EITC to be public assistance for purposes of state law because of its refundable, grant-like nature and purpose of assisting low-income families.[34] However, some courts have held that the child tax credit is not such a benefit since, unlike the EITC, it is not limited to assisting low-income families.[35] As these cases illustrate, a court might not reach the same conclusion for each

[28] *But see* United States v. Price, 361 U.S. 304, 313 (1960) ("the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one").

[29] Language similar to Section 401 is found in other statutes, but it does not appear any court has looked at whether these statutes apply to refundable tax credits. *See* 8 U.S.C. §1621; 18 U.S.C. §506; 18 U.S.C. Appx. §5F1.6; 21 U.S.C. §862.

[30] *See* Asgrow Seed Co. v. Winterboer, 513 U.S. 179, 187 (1995) ("When terms used in a statute are undefined, we give them their ordinary meaning," and looking to the dictionary for such meaning).

[31] Oxford Dictionaries, http://oxforddictionaries.com/definition/grant?region=us&q=grant; http://oxforddictionaries.com/definition/benefit?q=benefit; http://oxforddictionaries.com/definition/assistance?q=assistance.

[32] Fajeh v. Steel City Corp., 813 N.E.2d 697, 707 (Ohio App. 2004); County of Alameda v. Agustin, 2007 Cal. App. Unpub. LEXIS 7665, at *10 (1st App. Dist., Div. One, Sept. 24, 2007). For further discussion, see CRS Report R43221, *Noncitizen Eligibility for Public Benefits: Legal Issues*, by Kate M. Manuel.

[33] It seems unlikely Section 401 would ever be interpreted to include the credits in IRC Sections 31, 33, 34, and 37. Taxpayers claiming these credits are being credited for taxes paid or had paid more tax than required, and the credits are merely the means by which the government accounts for or gives the money back. Thus, they seem fundamentally different from the types of payments or benefits listed in Section 401. Furthermore, the government's refusal to credit or pay over the refunds could be a violation of the Takings Clause of the Fifth Amendment, which could also influence a court's reading of Section 401 since courts generally try to interpret statutes to avoid constitutional issues. *See* Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 575 (1988).

[34] *See* Riggs v. Riggs, 622 N.W. 2d 861, 867 (Neb. 2001) (holding EITC was a "means-tested public assistance benefit" for purposes of state child support guidelines because "though it is given effect through the tax laws, the earned income credit is in substance an item of social welfare legislation, intended to provide low income families with the very means by which to live") (internal citations omitted); In the Matter of Longstreet, 246 B.R. 611, 614-15 (Bankr. S.D. Iowa 2000) (stating that the EITC, because of its refundability, "goes beyond mere tax relief to become, in essence, a grant" and holding that the credit was a public assistance benefit for purposes of Iowa bankruptcy law because its refundable nature meant it could "be construed as a government aid payment" and such payments fall within the plain meaning of the term "public assistance benefit"); In re Jones, 107 B.R. 751, 752 (Bankr. D. Id. 1989) (holding EITC was federal public assistance for purposes of Idaho bankruptcy law "due to its nature as social welfare relief").

[35] *See, e.g., In Re*: Beltz, 263 B.R. 525, 529 (Bankr. W.D. Ky. 2001) (rejecting debtors' claim that the child tax credit was a public assistance benefit under Kentucky bankruptcy law because the credit's "primary purpose is not to provide tax relief to low income families. Rather, the intent of the credit, as evidenced by legislative history, is primarily to

credit, concluding that some would meet the criteria while others would not, depending on the specific characteristics of each credit.

There appears to be justification for concluding that refundable tax credits are not federal public benefits under PRWORA Section 401, but there is also arguably support for determining that some might be, depending on their characteristics and purpose. Until the IRS, a court, or Congress addresses whether any refundable credits are federal public benefits, the only clear restrictions on the ability of aliens to claim them are those found in the IRC (see **Table 2**).

benefit middle class Americans" and it seemed unlikely that low-income families could claim the refundable part of the credit due to the way it was calculated); *In re* Steinmetz, 261 B.R. 32, 34 (Bankr. D. Id. 2001) (holding the ACTC was not public assistance because "the high income threshold adopted by Congress before the credit starts to phase out clearly indicates the credit was not intended as a form of public assistance legislation").

Appendix. CRS Reports on Refundable Tax Credits

The following CRS reports provide information on specific refundable tax credits:

- Earned Income Tax Credit: CRS Report R43805, *The Earned Income Tax Credit (EITC): An Overview*, by Gene Falk and Margot L. Crandall-Hollick.
- Additional Child Tax Credit: CRS Report R41873, *The Child Tax Credit: Current Law and Legislative History*, by Margot L. Crandall-Hollick.
- American Opportunity Tax Credit: CRS Report R41967, *Higher Education Tax Benefits: Brief Overview and Budgetary Effects*, by Margot L. Crandall-Hollick.
- Health Coverage Tax Credit: CRS Report RL32620, *Health Coverage Tax Credit*, by Bernadette Fernandez.
- Making Work Pay Credit: CRS Report R40969, *Withholding of Income Taxes and the Making Work Pay Tax Credit*, by John J. Topoleski.
- Adoption Tax Credit: CRS Report RL33633, *Tax Benefits for Families: Adoption*, by Julie M. Whittaker
- First-Time Homebuyer Tax Credit: CRS Report RL34664, *The First-Time Homebuyer Tax Credit*, by Carol A. Pettit.

Author Information

Erika K. Lunder
Legislative Attorney

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.