

Ronald Reagan Presidential Library
Digital Library Collections

This is a PDF of a folder from our textual collections.

Collection: Barr, William: Files
Folder Title: [Economic Equity Act of 1983] (5)
Box: 5

To see more digitized collections visit:

<https://reaganlibrary.gov/archives/digital-library>

To see all Ronald Reagan Presidential Library inventories visit:

<https://reaganlibrary.gov/document-collection>

Contact a reference archivist at: reagan.library@nara.gov

Citation Guidelines: <https://reaganlibrary.gov/citing>

National Archives Catalogue: <https://catalog.archives.gov/>

1 the employee or Member dies or remarries before attaining
 2 age 60 and an increased annuity is provided for that spouse
 3 in accordance with this subchapter.

4 “(4) An annuity payable under this subsection to a
 5 spouse or former spouse shall commence on the day after the
 6 employee or Member dies and shall terminate on the last day
 7 of the month before the former spouse’s death or remarriage
 8 before attaining age 60.

9 “(5) Section 8340 of this title shall not apply to any
 10 annuity under this subsection, unless authorized under regu-
 11 lations prescribed by the Office.

12 “(d)(1) Section 8345(f) of this title shall not apply—

13 “(A) to any annuity payable under subsection (a)
 14 or (b) to any former spouse if the amount of that annu-
 15 ity varies by reason of a spousal agreement or court
 16 order under section 8345(k), or an election under sec-
 17 tion 8339(j), from the amount which would be calcu-
 18 lated under subsection (a)(1) or (b)(1), as the case may
 19 be, in the absence of such spousal agreement, court
 20 order, or election; and

21 “(B) to any annuity payable under subsection (c).

22 “(2) A former spouse is not entitled to an annuity under
 23 this subchapter based upon the service of an employee or
 24 Member unless the former spouse elects to receive it instead
 25 of any other annuity to which the former spouse may be en-

1 titled under this subchapter or any retirement system for
2 Government employees on the basis of a marriage to some-
3 one other than the employee or Member.”.

4 (2) Section 8332 of title 5, United States Code, relating
5 to creditable service, is amended by adding at the end thereof
6 the following new subsection:

7 “(m)(1) Service of an employee or Member shall be con-
8 sidered creditable service for purposes of applying provisions
9 of this subchapter relating to former spouses if such service
10 would be creditable—

11 “(A) under subsection (k) (1) or (2) but for the
12 fact an election was not made under subsection (k)(1)
13 or a special contribution was not made under subsec-
14 tion (k)(2), and

15 “(B) under section 8334(d) but for the fact that a
16 refund of contributions has not been repaid unless the
17 former spouse received under this subchapter a portion
18 of the lump sum (or a spousal agreement or court
19 order provided otherwise).

20 “(2) A former spouse shall not be considered as married
21 to an employee or Member for periods assumed to be credit-
22 able service under section 8341(d)(2) of this title.”.

23 (3)(A) Section 8341(b) of title 5, United States Code,
24 relating to survivor spouse annuities, is amended by adding
25 at the end thereof the following new paragraph:

1 “(4) Notwithstanding the preceding paragraphs in this
2 subsection and subsection (d), the amount of the annuity cal-
3 culated under this subsection for a surviving spouse in any
4 case in which there is also a surviving former spouse who
5 qualifies for an annuity under section 8341A(b) with respect
6 to the same employee or Member may not exceed 55 percent
7 of the portion (if any) of the base for survivor benefits which
8 remains available under section 8341A(b)(4)(B).”.

9 (B) Section 8341(d) of title 5, United States Code, relat-
10 ing to survivor spouse annuities in the case of death in serv-
11 ice, is amended by adding at the end thereof the following
12 new sentence: “Any surviving former spouse shall be entitled
13 to an annuity under section 8341A(b) as if the employee or
14 Member died after being entitled to an annuity under this
15 subchapter.”.

16 (4)(A) Section 8342(a) of title 5, United States Code,
17 relating to lump-sum benefits, is amended by striking out “is
18 entitled” and inserting in lieu thereof “(and any former
19 spouse of such employee or Member, in accordance with sub-
20 section (j)) are entitled”.

21 (B) Section 8342 of title 5, United States Code, is
22 amended by adding at the end thereof the following:

23 “(j) Unless otherwise expressly provided by any spousal
24 agreement or court order under section 8345(k) of this title,

1 the amount of an employee's or Member's lump-sum credit
2 payable to a former spouse shall be—

3 “(1) if the former spouse was married to the em-
4 ployee or Member throughout the period of creditable
5 service, 50 percent of the lump-sum credit to which
6 such employee or Member would be entitled in the ab-
7 sence of this subsection, or

8 “(2) if such former spouse was not married to the
9 employee or Member throughout the period of his cred-
10 itable service, an amount equal to such former spouse's
11 pro rata share of 50 percent of such lump-sum credit.

12 The lump-sum credit of the employee or Member shall be
13 reduced by the amount of the lump-sum credit payable to the
14 former spouse.”.

15 (5) Section 8344 of title 5, United States Code, relating
16 to annuities and pay on reemployment, is amended by
17 redesignating subsection (e) as subsection (f) and by inserting
18 after subsection (d) the following new subsection:

19 “(e) The Office shall prescribe regulations to provide for
20 the application of this section in any case in which an annu-
21 itant has a former spouse entitled to an annuity under section
22 8341A of this title.”.

23 (6) The table of sections for subchapter III of chapter
24 83 of title 5, United States Code, is amended by inserting
25 after section 8338 the following new item:

"8341A. Former spouse annuities."

1 (c)(1) Section 8339(j) of title 5, United States Code, re-
2 lating to election of survivor annuities, is amended to read as
3 follows:

4 "(j)(1)(A) Except to the extent provided otherwise under
5 a written election under subparagraph (B) or (C), if at the
6 time of retirement an employee or Member is married (or has
7 a former spouse who has not remarried before attaining age
8 60), the employee or Member shall receive a reduced annuity
9 and provide a survivor annuity under section 8341(b) for the
10 employee's or Member's spouse or a survivor annuity under
11 section 8341A(b) for the former spouse, or a combination of
12 such annuities, as the case may be.

13 "(B) At the time of retirement, a married employee or
14 Member and the employee's or Member's spouse may jointly
15 elect to waive a survivor annuity for that spouse under sec-
16 tion 8341(b) (or under section 8341A(b) if the spouse later
17 qualifies as a former spouse under section 8332(25)), or to
18 reduce such a survivor annuity by designating a portion of
19 the annuity of the employee or Member as the base for the
20 survivor benefit. Any such election shall be in writing and
21 shall be acknowledged before a notary public. In the event
22 the marriage is dissolved following an election for such a re-
23 duced annuity and the spouse qualifies as a former spouse,
24 the base used in calculating any annuity of the former spouse
25 under section 8341A(b) may not exceed the portion of the

1 employee's or Member's annuity designated under this
2 subparagraph.

3 “(C) If an employee or Member has a former spouse, the
4 employee or Member and such former spouse may jointly
5 elect by spousal agreement under section 8345(k) to waive a
6 survivor annuity under section 8341A(b) for that former
7 spouse if the election is made (i) before the end of the 12-
8 month period after the divorce or annulment involving that
9 former spouse becomes final or (ii) at the time of retirement,
10 whichever occurs first.

11 “(D) The Office of Personnel Management may pre-
12 scribe regulations under which an employee or Member may
13 make an election under subparagraph (B) or (C) without the
14 employee's or Member's spouse or former spouse if the em-
15 ployee or Member establishes to the satisfaction of the Office
16 that the employee or Member does not know, and has taken
17 all reasonable steps to determine, the whereabouts of the
18 spouse or former spouse.

19 “(2) The annuity of an employee or Member providing a
20 survivor benefit under section 8341(b) (or section 8341A(b)),
21 excluding any portion of the annuity not designated or com-
22 mitted as a base for any survivor annuity, shall be reduced by
23 2½ percent of the first \$3,600 plus 10 percent of any
24 amount over \$3,600. The reduction under this paragraph

1 shall be calculated before any reduction under section
2 8341A(a)(5).

3 “(3) An annuity which is reduced under this subsection
4 or any similar prior provision of law to provide a survivor
5 benefit for a spouse shall, if the marriage of the employee or
6 Member is dissolved, be recomputed and paid for each month
7 during which the employee or Member is not married (or is
8 remarried if there is no election in effect under the following
9 sentence) as if the annuity had not been reduced, subject to
10 any reduction required to provide a survivor benefit under
11 section 8341A (b) or (c). Upon remarriage the retired em-
12 ployee or Member may irrevocably elect, by means of a
13 signed writing received by the Office within one year after
14 such remarriage, to receive during such marriage a reduction
15 in annuity for the purpose of allowing an annuity for the new
16 spouse of the annuitant in the event such spouse survives the
17 annuitant. Such reduction shall be equal to the reduction in
18 effect immediately before the dissolution of the previous mar-
19 riage (unless such reduction is adjusted under section
20 8341A(b)(5)), and shall be effective the first day of the first
21 month beginning one year after the date of remarriage.

22 “(4) The Office shall, on an annual basis—

23 “(A) inform each employee and Member of the
24 rights of election under this subsection; and

1 “(B) to the maximum extent practicable, inform
2 spouses or former spouses of employees and Members
3 of their rights under this subchapter.”.

4 (2) Section 8339(k)(1) of title 5, United States Code,
5 relating to annuities for individuals having insurable inter-
6 ests, is amended by inserting after “an unmarried employee
7 or Member” the following: “who does not have a former
8 spouse for whose benefit a reduction is made in the em-
9 ployee’s or Member’s annuity”.

10 (3) Section 8341(b)(1) of title 5, United States Code, is
11 amended by striking out “unless the employee or Member
12 has notified the Office” and all that follows and inserting in
13 lieu thereof the following: “unless an election has been made
14 under section 8339(j)(1) or, in the case of remarriage, an
15 election has not been made under section 8339(j)(3).”.

16 (4) Section 8344(a) of title 5, United States Code, relat-
17 ing to annuities and pay on reemployment, is amended by
18 striking out “unless, at the time of claiming the increase pay-
19 able under subparagraph (A), the annuitant notifies the Office
20 of Personnel Management in writing that he does not desire
21 the survivor annuity to be increased” and inserting in lieu
22 thereof “unless the annuitant and the annuitant’s spouse
23 jointly elect to the contrary at the time in a written election
24 acknowledged before a notary public”.

1 (d) Section 8345(j) of title 5, United States Code, relat- 1
2 ing to court orders concerning the dissolution of marriage, is 2
3 amended to read as follows: 3

4 “(j)(1)(A) In the case of any employee or Member who 4
5 has a former spouse who is covered by a court order or who 5
6 is a party to a spousal agreement— 6

7 “(i) any right of the former spouse to any annuity 7
8 under section 8341A(a) in connection with any retire- 8
9 ment or disability annuity of the employee or Member, 9
10 and the amount of any such annuity; 10

11 “(ii) any right of the former spouse to a survivor 11
12 annuity under section 8341A (b) or (c), and the amount 12
13 of any such annuity; and 13

14 “(iii) any right of the former spouse to any pay- 14
15 ment of a lump-sum credit under section 8342; 15

16 shall be determined in accordance with that spousal agree- 16
17 ment or court order, if and to the extent expressly provided 17
18 for in the terms of that spousal agreement or court order. 18

19 “(B) This paragraph shall not apply in the case of any 19
20 spousal agreement or court order which, as determined by 20
21 the Office of Personnel Management, is inconsistent with the 21
22 requirements of this subchapter. 22

23 “(2) Except with respect to obligations between em- 23
24 ployees or Members and former spouses, payments under this 24
25 subchapter which would otherwise be made to an employee 25

1 or Member based upon the employee's or Member's service
2 shall be paid (in whole or in part) by the Office to another
3 individual to the extent expressly provided for in the terms of
4 any order or any court decree of legal separation, or the
5 terms of any court order or court-approved property settle-
6 ment agreement incident to any court decree of legal
7 separation.

8 “(3) Paragraphs (1) and (2) shall apply only to payments
9 made under this subchapter for periods beginning after the
10 date of receipt by the Office of written notice of such decree,
11 order, or agreement, and such additional information and
12 such documentation as the Office may require.

13 “(4) Any payment under this subsection to an individual
14 bars recovery by any other individual.

15 “(5) The 10-year requirement of section 8331(25), or
16 any other provision of this subchapter, shall not be construed
17 to affect the rights any spouse or individual formerly married
18 to an employee or Member may have, under any law or rule
19 of law of any State or the District of Columbia, with respect
20 to an annuity of an employee or Member under this
21 subchapter.”.

22 (e)(1) Any current or former employee or Member in the
23 Civil Service Retirement and Disability System who on the
24 effective date, has a former spouse shall receive a reduced
25 annuity and provide a survivor annuity for such former

1 spouse under section 8341A(b) of title 5, United States Code,
2 if—

3 (A) the employee or Member so elects by means
4 of a spousal agreement, or

5 (B) a court order so provides.

6 (2)(A) If the employee or Member has not retired under
7 such system on or before the effective date, an election under
8 subsection (e)(1)(A) may be made, or a court order under sub-
9 section (e)(1)(B) may be issued, at any time before retirement.

10 (B) If the employee or Member has retired under such
11 system on or before the effective date of this Act, an election
12 under subsection (e)(1)(A) may be made, or a court order
13 under subsection (e)(1)(B) may be issued, within such period
14 after the effective date as the Office of Personnel Manage-
15 ment may prescribe.

16 (C) In any case in which an employee or Member is
17 married and has been married for more than one year, an
18 election under subsection (e)(1)(A) may only be made with
19 the written concurrence of the spouse of the employee or
20 Member.

21 (D) For purposes of applying subchapter III of chapter
22 83 of title 5, United States Code, any such election or court
23 order shall be treated the same as if it were a spousal agree-
24 ment or court order under section 8345(k) of title 5, United
25 States Code.

1 (3)(A) An election under subsection (e)(1)(A) may pro-
2 vide for a survivor benefit based on all or any portion of that
3 part of the annuity of the employee or Member which is not
4 designated or committed as a base for survivor benefits for a
5 spouse or any other former spouse of the employee or
6 Member. The employee or Member and the employee's or
7 Member's spouse may make an election under section
8 8339(j)(1)(B) of title 5, United States Code, prior to the time
9 of retirement for the purpose of allowing survivor benefits to
10 be provided under this subsection.

11 (B) A court order under subsection (e)(1)(B) may provide
12 for an annuity for a former spouse which does not exceed
13 that former spouse's pro rata share of 55 percent of the full
14 amount of the annuity of employee or Member.

15 (4) The amount of the reduction in the employee's or
16 Member's annuity shall be determined in accordance with
17 section 8339(b)(2) of title 5, United States Code. Such reduc-
18 tion shall be effective as of—

19 (A) the commencing date of the employee's or
20 Member's annuity, in the case of an election under
21 paragraph (2)(A), or

22 (B) the effective date of this Act, in the case of an
23 election under paragraph (2)(B).

1 (5) In the case of an employee or Member who died
2 before the effective date of this Act after becoming entitled to
3 an annuity and who—

4 (A) at the time the employee or Member became
5 entitled to an annuity was married and did not elect
6 not to provide for a survivor annuity for any surviving
7 spouse under section 8339(j)(1) of title 5, United States
8 Code;

9 (B) subsequently was divorced from the spouse to
10 whom the employee or Member was married at the
11 time of retirement;

12 (C) died and was not married at the time of death,
13 the individual to whom the employee or Member was married
14 at the time the employee or Member retired shall be entitled
15 to an annuity under section 8341 of title 5, United States
16 Code, as if married to the member at the time of death if the
17 individual is qualified as a former spouse.

18 (6) For purposes of this section, the terms “former
19 spouse”, “employee”, “Member”, “court order”, and “spou-
20 sal agreement” have the same meanings as when used in
21 subchapter III of chapter 83 of title 5, United States Code.

22 (f)(1) The provisions of this Act shall take effect begin-
23 ning on the 120th day after the date of the enactment of this
24 Act.

1 (2) The preceding subsections of this section regarding
2 the rights of former spouses to any annuity under section
3 8341A(a) of title 5, United States Code, shall apply in the
4 case of any individual who after the effective date of this Act
5 becomes a former spouse of an individual who separates from
6 the service after such date.

7 (3) Except to the extent provided in paragraph (5), the
8 provisions of this section regarding the rights of former
9 spouses to receive survivor annuities under subchapter III of
10 chapter 83 of such title 5 shall apply in the case of any indi-
11 vidual who after the effective date of this Act becomes a
12 former spouse of a current or former employee or Member in
13 the Civil Service Retirement and Disability System.

14 DISPLACED HOMEMAKERS TAX CREDIT

15 SEC. 109. (a) Paragraph (1) of section 51(d) of the
16 Internal Revenue Code of 1954 (relating to members of
17 targeted groups) is amended—

18 (1) by striking out “or” at the end of subpara-
19 graph (F);

20 (2) by striking out the period at the end of sub-
21 paragraph (G) and inserting in lieu thereof a comma
22 and “or,”; and

23 (3) by adding at the end thereof the following new
24 paragraph:

1 “(H) a displaced homemaker (as defined by
 2 paragraph (7) of section 3 of the Comprehensive
 3 Employment Training Act Amendments of 1978
 4 (29 U.S.C. 802)).”

5 (b) Paragraph (4) of section 51(c) of such Code (defining
 6 wages) is amended by striking out “1981” and inserting in
 7 lieu thereof “1986”.

8 (c) The amendments made by subsection (a) shall apply
 9 with respect to amounts paid or incurred after December 31,
 10 1980, in taxable years after such date.

11 TITLE II—DAY CARE PROGRAM

12 CREDIT FOR CERTAIN HOUSEHOLD AND DEPENDENT CARE 13 EXPENSES

14 SEC. 201. (a) ALLOWANCE OF CREDIT.—Subsection (a)
 15 of section 44A of the Internal Revenue Code of 1954
 16 (relating to expenses for household and dependent care serv-
 17 ices necessary for gainful employment) is amended to read as
 18 follows:

19 “(a) ALLOWANCE OF CREDIT.—In the case of an indi-
 20 vidual who maintains a household which includes as a
 21 member one or more qualifying individuals (as defined in sub-
 22 section (b)(1)), there shall be allowed as a credit against the
 23 tax imposed by this chapter for the taxable year an amount
 24 equal to the product of—

1 “(1) the employment-related expenses paid by
2 such individual during the taxable year, multiplied by

3 “(2) the greater of—

4 “(A) the percentage equal to—

5 “(i) 60 percent, reduced by

6 “(ii) 1 percent for each \$500 of such in-
7 dividual’s adjusted gross income for such tax-
8 able year, or fraction thereof, which is in
9 excess of \$10,000, or

10 “(B) 20 percent.”.

11 (b) CREDIT MAY EXCEED TAX LIABILITY.—Section

12 44A of such Code is amended—

13 (1) by striking out subsection (b), and

14 (2) by redesignating subsections (c) through (g) as
15 subsections (b) through (f), respectively.

16 (c) DOLLAR LIMITATION.—Subsection (e) of section
17 44A of such Code (as redesignated by subsection (b)) is
18 amended to read as follows:

19 “(c) DOLLAR LIMITATION.—

20 “(1) IN GENERAL.—The amount of the employ-
21 ment-related expenses incurred during any taxable year
22 which may be taken into account under subsection (a)
23 shall not exceed—

1 “(A) \$2,500 if there is one qualifying individ-
2 ual with respect to the taxpayer for such taxable
3 year, or

4 “(B) \$5,000 if there are two or more qualify-
5 ing individuals with respect to the taxpayer for
6 such taxable year.

7 “(2) CHILD UNDER 2 YEARS OF AGE.—If a quali-
8 fied individual with respect to the taxpayer is under 2
9 years of age for any part of the taxable year, para-
10 graph (1) shall be applied by substituting ‘\$3,700’ for
11 ‘\$2,500’ and ‘\$7,500’ for ‘\$5,000’.”.

12 (d) EARNED INCOME LIMITATION.—Paragraph (2) of
13 subsection (d) of section 44A of such Code (as redesignated
14 by subsection (b)) is amended to read as follows:

15 “(2) SPECIAL RULE FOR SPOUSE WHO IS A STU-
16 DENT OR INCAPABLE OF CARING FOR HIMSELF.—

17 “(A) IN GENERAL.—In the case of a spouse
18 who is a student or a qualifying individual de-
19 scribed in subsection (b)(1)(C), for purposes of
20 paragraph (1), such spouse shall be deemed for
21 each month during which such spouse is a full-
22 time student at an educational institution, or is
23 such a qualifying individual, to be gainfully em-
24 ployed and to have earned income of not less
25 than—

1 “(i) \$210 if subsection (c)(1)(A) applies
2 for the taxable year, or

3 “(ii) \$420 if subsection (c)(1)(B) applies
4 for the taxable year.

5 In the case of any husband and wife, this para-
6 graph shall apply with respect to only one spouse
7 for any one month.

8 “(B) SPECIAL RULE FOR CHILD UNDER 2.—

9 If subsection (c)(2) applies to a taxpayer, subpara-
10 graph (A) shall be applied by substituting ‘\$315’
11 for ‘\$210’ and ‘\$630’ for ‘\$420’.”.

12 (e) COORDINATION OF ADVANCED PAYMENT OF
13 CREDIT; TABLES.—Section 44A of such Code is amended
14 by adding at the end thereof the following new subsections:

15 “(g) TABLES.—The amount of the credit allowed by
16 this section shall be determined under tables prescribed by
17 the Secretary.

18 “(h) COORDINATION OF ADVANCE PAYMENTS OF
19 CREDIT.—

20 “(1) RECAPTURE OF EXCESS ADVANCE PAY-
21 MENTS.—If any payment is made to the individual by
22 an employer under section 3508 during any calendar
23 year, then the tax imposed by this chapter for the indi-
24 vidual’s last taxable year beginning in such calendar

1 year shall be increased by the aggregate amount of
2 such payments.

3 “(2) RECONCILIATION OF PAYMENTS ADVANCED
4 AND CREDIT ALLOWED.—Any increase in tax under
5 paragraph (1) shall not be treated as tax imposed by
6 this chapter for purposes of determining the amount of
7 any credit (other than the credit allowed by subsection
8 (a)) allowable under this subpart.”

9 (f) ADVANCE PAYMENT OF CREDIT.—Chapter 25 of
10 such Code (relating to the general provisions of employment
11 taxes) is amended by adding at the end thereof the following
12 new section:

13 “SEC. 3508. ADVANCE PAYMENT OF CREDIT FOR HOUSEHOLD
14 AND DEPENDENT CARE EXPENSES.

15 “(a) GENERAL RULE.—Except as otherwise provided
16 in this section, every qualified employer making payment of
17 wages to an employee with respect to whom a dependent
18 care eligibility certificate is in effect shall, at the time of
19 paying such wages, make an additional payment to such em-
20 ployee equal to such employee’s dependent care advance
21 amount.

22 “(b) DEPENDENT CARE ELIGIBILITY CERTIFICATE.—
23 For purposes of this section, a dependent care eligibility cer-
24 tificate is a statement furnished by an employee to an em-
25 ployer which—

1 “(1) certifies that the employee will be eligible to
2 receive the credit provided by section 44A for the tax-
3 able year,

4 “(2) certifies that the employee does not have a
5 dependent care eligibility certificate in effect for the
6 calendar year with respect to the payment of wages by
7 another employer,

8 “(3) states whether or not the employee’s spouse
9 has a dependent care eligibility certificate in effect, and

10 “(4) contains such other information as the Secre-
11 tary may prescribe by regulations.

12 A certificate shall be treated as being in effect with respect to
13 a spouse if such a certificate will be in effect on the first
14 status determination date following the date on which the
15 employee furnishes the statement in question.

16 “(c) DEPENDENT CARE ADVANCE AMOUNT.—For pur-
17 poses of this title, the term ‘dependent care advance amount’
18 means, with respect to any payroll period, the amount deter-
19 mined—

20 “(1) on the basis of—

21 “(A) the employee’s wages from the em-
22 ployer for such period, and

23 “(B) the employment-related expenses paid
24 by the employee during such period, and

1 “(2) in accordance with tables prescribed by the
2 Secretary which indicate that portion of the credit al-
3 lowed the employee under section 44A which is attrib-
4 utable to such period.

5 “(d) QUALIFIED EMPLOYER.—For purposes of this sec-
6 tion, the term ‘qualified employer’ means an employer who
7 employs more than 50 individuals at any time during the
8 calendar year in which the wages are paid.

9 “(e) SPECIAL RULES.—Under regulations prescribed by
10 the Secretary—

11 “(1) payments made by an employer under sub-
12 section (a) shall be treated in the same manner as pro-
13 vided in section 3507(d), and

14 “(2) the provisions of section 3507(e) shall apply
15 to dependent care eligibility certificates.”.

16 (g) REFUNDABILITY OF THE CREDIT.—Subsection (b)
17 of section 6401 of such Code (relating to amounts treated as
18 overpayments) is amended to read as follows:

19 “(b) EXCESSIVE CREDITS.—If the amount allowable as
20 credits under section 31 (relating to tax withheld on wages),
21 section 39 (relating to certain uses of gasoline, special fuels,
22 and lubricating oil), section 43 (relating to earned income
23 credit), and section 44A (relating to expenses for household
24 and dependent care services necessary for gainful employ-
25 ment) exceeds the tax imposed by subtitle A (reduced by the

1 credits allowable under subpart A of part IV of subchapter A
2 of chapter 1, other than the credits allowable under sections
3 31, 39, 43, and 44A), the amount of such excess shall be
4 considered an overpayment. For purposes of the preceding
5 sentence, any credit allowed under paragraph (1) of section
6 32 (relating to withholding of tax on nonresident aliens and
7 on foreign corporations) to a nonresident alien individual for a
8 taxable year with respect to which an election under section
9 6013 (g) or (h) is in effect shall be treated as an amount
10 allowable as a credit under section 31.”.

11 (h) CONFORMING AMENDMENTS.—

12 (1) Paragraph (5) of section 44A(e) of such Code
13 (as redesignated by subsection (b) of this Act) is
14 amended by striking out “subsection (c)(1)” and insert-
15 ing in lieu thereof “subsection (b)(1)”.

16 (2) Sections 44C(b)(5), 44D(b)(5), 44E(e)(1),
17 55(b)(2), and 56(c) of such Code are amended by strik-
18 ing out “and 43” and inserting in lieu thereof “43, and
19 44A”.

20 (3) Paragraph (4) of section 6201(a) of such Code
21 (relating to assessment authority) is amended to read
22 as follows:

23 “(4) ERRONEOUS CREDIT.—If on any return or
24 claim for refund of income taxes under subtitle A there
25 is an overstatement of the credit allowable by section

1 39 (relating to certain uses of gasoline, special fuels,
 2 and lubricating oil), section 43 (relating to earned
 3 income), or section 44A (relating to expenses for
 4 household and dependent care services necessary for
 5 gainful employment), the amount so overstated which
 6 is allowed against the tax shown on the return or
 7 which is allowed as a credit or refund may be assessed
 8 by the Secretary in the same manner as in the case of
 9 a mathematical or clerical error appearing upon the
 10 return, except that the provisions of section 6213(b)(2)
 11 (relating to abatement of mathematical or clerical error
 12 assessments) shall not apply with regard to any assess-
 13 ment under this paragraph.”.

14 (4) Paragraph (8) of section 6012(a) of such Code
 15 (relating to persons required to make returns of
 16 income) and paragraph (7) of section 6051(a) of such
 17 Code (relating to receipts for employees) are each
 18 amended by inserting “or section 3508 (relating to ad-
 19 vance payment of household and dependent care
 20 credit)” after “credit”).

21 (5) Subsection (d) of section 6302 of such Code
 22 (relating to mode or time of collection) is amended by
 23 adding at the end thereof the following new paragraph:

"(3) For treatment of dependent care advance amounts as payment of withholding and FICA taxes, see section 3508(d)."

1 (6) Subsection (a) of section 53 of such Code (re-
2 lating to limitation of credit allowed by section 44B
3 based on amount of tax) is amended—

4 (A) by inserting "and" at the end of para-
5 graph (5),

6 (B) by striking out ", and" at the end of
7 paragraph (6) and inserting in lieu thereof a
8 period, and

9 (C) by striking out paragraph (7).

10 (7) Subsection (b) of section 6096 of such Code
11 (relating to designation of income tax payments) is
12 amended by striking out "44A,".

13 (i) The amendments made by this section shall apply to
14 taxable years beginning after December 31, 1980.

15 EXCLUSION OF DEPENDENT CARE ASSISTANCE FROM THE
16 INCOME OF EMPLOYEES

17 SEC. 202. (a) EXCLUSION FROM INCOME.—Part III of
18 subchapter B of chapter 1 of the Internal Revenue Code of
19 1954 (relating to items specifically excluded from income) is
20 amended by redesignating section 128 as section 129 and
21 inserting after section 127 the following new section:

22 "SEC. 128. DEPENDENT CARE ASSISTANCE PROGRAMS.

23 "(a) IN GENERAL.—Gross income of an employee does
24 not include amounts paid or expenses incurred by the em-

1 ployer for dependent care assistance to such employee if the 1 an
 2 assistance is furnished pursuant to a program which is de- 2 sis
 3 scribed in subsection (d). 3 (a)

4 “(b) EARNED INCOME LIMITATION.— 4

5 “(1) IN GENERAL.—The amount excluded from 5
 6 the income of an employee under subsection (a) for any 6
 7 taxable year shall not exceed— 7

8 “(A) in the case of an employee who is not 8
 9 married at the close of such taxable year, the 9
 10 earned income of such employee for such taxable 10
 11 year, or 11

12 “(B) in the case of an employee who is mar- 12
 13 ried at the close of such taxable year, the lesser 13
 14 of— 14

15 “(i) the earned income of such employee 15
 16 for such taxable year, or 16

17 “(ii) the earned income of the spouse of 17
 18 such employee for such taxable year. 18

19 “(2) SPECIAL RULE FOR CERTAIN SPOUSES.— 19

20 For purposes of paragraph (1), the provisions of section 20
 21 44A(e)(2) shall apply in determining the earned income 21
 22 of a spouse who is a student or incapable of caring for 22
 23 himself. 23

24 “(c) PAYMENTS TO RELATED INDIVIDUALS.—No 24
 25 amount paid or expenses incurred during the taxable year of 25

1 an employee by an employer in providing dependent care as-
2 sistance to such employee shall be excluded under subsection
3 (a) if such amount was paid directly to an individual—

4 “(1) with respect to whom, for such taxable year,
5 a deduction is allowable under section 151(e) (relating
6 to personal exemptions for dependents) to such em-
7 ployee or the spouse of such employee, or

8 “(2) who is a child of such employee (within the
9 meaning of section 151(e)(3)) under the age of 19 at
10 the close of such taxable year.

11 “(d) DEPENDENT CARE ASSISTANCE PROGRAM.—

12 “(1) IN GENERAL.—For purposes of this section a
13 dependent care assistance program is a separate writ-
14 ten plan of an employer for the exclusive benefit of his
15 employees to provide such employees with dependent
16 care assistance. The program must meet the require-
17 ments of paragraphs (2) through (6) of this subsection.

18 “(2) ELIGIBILITY.—The program shall benefit
19 employees who qualify under a classification set up by
20 the employer and found by the Secretary not to be dis-
21 criminatory in favor of employees who are officers,
22 owners, or highly compensated, or their dependents.
23 For purposes of this paragraph, there shall be excluded
24 from consideration employees not included in the pro-
25 gram who are included in a unit of employees covered

1 by an agreement which the Secretary of Labor finds
2 to be a collective bargaining agreement between
3 employee representatives and one or more employers,
4 if there is evidence that dependent care benefits were
5 the subject of good faith bargaining between such em-
6 ployee representatives and such employer or employ-
7 ers.

8 “(3) PRINCIPAL SHAREHOLDERS OR OWNERS.—

9 Not more than 25 percent of the amounts paid or in-
10 curred by the employer for dependent care assistance
11 during the year may be provided for the class of indi-
12 viduals who are shareholders or owners (or their
13 spouses or dependents), each of whom (on any day of
14 the year) owns more than 5 percent of the stock or of
15 the capital or profits interest in the employer.

16 “(4) NO FUNDING REQUIRED.—A program re-
17 ferred to in paragraph (1) is not required to be funded.

18 “(5) NOTIFICATION OF ELIGIBLE EMPLOYEES.—

19 Reasonable notification of the availability and terms of
20 the program must be provided to eligible employees.

21 “(6) STATEMENT OF EXPENSES.—The plan shall

22 furnish to an employee, on or before January 31, a
23 written statement showing the amounts paid or ex-
24 penses incurred by the employer in providing depend-

1 ent care assistance to such employee during the previ-
2 ous calendar year.

3 “(e) DEFINITIONS AND SPECIAL RULES.—For pur-
4 poses of this section—

5 “(1) DEPENDENT CARE ASSISTANCE.—The term
6 ‘dependent care assistance’ means the payment of, or
7 provision of, those services which if paid for by the
8 employee would be considered employment-related ex-
9 penses under section 44A(c)(2) (relating to expenses for
10 household and dependent care services necessary for
11 gainful employment).

12 “(2) EARNED INCOME.—The term ‘earned
13 income’ shall have the meaning given such term in
14 section 43(c)(2), but such term shall not include any
15 amounts paid or expenses incurred by an employer for
16 dependent care assistance to an employee.

17 “(3) EMPLOYEE.—The term ‘employee’ includes,
18 for any year, an individual who is an employee within
19 the meaning of section 401(c)(1) (relating to self-
20 employed individuals).

21 “(4) EMPLOYER.—An individual who owns the
22 entire interest in an unincorporated trade or business
23 shall be treated as his own employer. A partnership
24 shall be treated as the employer of each partner who is
25 an employee within the meaning of paragraph (3).

1 “(5) CONTRIBUTION RULES.—

2 “(A) OWNERSHIP OF STOCK.—Ownership of
3 stock in a corporation shall be determined in ac-
4 cordance with the rules provided under subsec-
5 tions (d) and (e) of section 1563 (without regard
6 to section 1563(e)(3)(C)).

7 “(B) INTEREST IN UNINCORPORATED
8 TRADE OR BUSINESS.—The interest of an em-
9 ployee in a trade or business which is not incorpo-
10 rated shall be determined in accordance with reg-
11 ulations prescribed by the Secretary, which shall
12 be based on principles similar to the principles
13 which apply in the case of subparagraph (A).

14 “(6) UTILIZATION TEST NOT APPLICABLE.—A
15 dependent care assistance program shall not be held or
16 considered to fail to meet any requirements of subsec-
17 tion (d) merely because of utilization rates for the dif-
18 ferent types of assistance made available under the
19 program.

20 “(7) DISALLOWANCE OF EXCLUDED AMOUNTS
21 AS CREDIT OR DEDUCTION.—No deduction or credit
22 shall be allowed under any other section of this chapter
23 for any amount excluded from income by reason of this
24 section.”.

25 (b) EXCLUSION FROM WAGES.

1 (1) EMPLOYMENT TAXES AND COLLECTION OF
 2 INCOME TAX.—Subtitle C of such Code is amended by
 3 striking out “section 127” in section 3121(a)(18) (re-
 4 lating to the Federal Insurance Contributions Act),
 5 section 3306(b)(13) (relating to the Federal Unemploy-
 6 ment Tax Act), and section 3401(a)(19) (relating to
 7 collection of income at source on wages) and inserting
 8 in lieu thereof “section 127 or 128”.

9 (2) SOCIAL SECURITY ACT.—Subsection (q) of
 10 section 209 of the Social Security Act (defining wages)
 11 is amended by striking out “section 127” and inserting
 12 in lieu thereof “section 127 or 128”.

13 (c) EFFECTIVE DATE.—The amendments made by this
 14 section shall apply to taxable years beginning after December
 15 31, 1980.

16 TITLE III—ARMED FORCES

17 AMENDMENTS TO TITLE 10, UNITED STATES CODE

18 SEC. 301. (a)(1) Section 4712(d) of title 10, United
 19 States Code, is amended by striking out clauses (1) through
 20 (9) and inserting in lieu thereof the following:

21 “(A) A beneficiary named in the will of the de-
 22 ceased to receive the property.

23 “(B) The surviving spouse or legal representative.

24 “(C) A child of the deceased.

25 “(D) A parent of the deceased.

1 “(E) A brother or sister of the deceased.

2 “(F) The next of kin of the deceased.”.

3 (2) Paragraph (2) of section 4713(a) of such title is
4 amended by striking out clauses (A) through (I) and inserting
5 in lieu thereof the following:

6 “(A) A beneficiary named in the will of the de-
7 ceased to receive the property.

8 “(B) The surviving spouse or legal representative.

9 “(C) A child of the deceased.

10 “(D) A parent of the deceased.

11 “(E) A brother or sister of the deceased.

12 “(F) The next of kin of the deceased.”.

13 (b)(1) Section 5896(a) of such title is amended—

14 (A) by striking out “male” each place it appears
15 in clauses (1) and (2);

16 (B) by striking out “male officers of the Naval
17 Reserve and eligible women officers appointed under
18 section 5581 of this title before the effective date of
19 the Defense Officer Personnel Management Act” in
20 clause (3) and inserting in lieu thereof “officers”;

21 (C) by striking out “male officers of the Naval
22 Reserve and Women Officers appointed under section
23 5581 of this title before the effective date of the De-
24 fense Officer Personnel Management Act” in clause (4)
25 and inserting in lieu thereof “officers”;

1 (D) by striking out "or the Medical Service
2 Corps" in clauses (3) and (4) and inserting in lieu
3 thereof "the Medical Service Corps, or the Nurse
4 Corps";

5 (E) by inserting "and" at the end of clause (3);

6 (F) by striking out the semicolon at the end of
7 clause (4) and inserting in lieu thereof a period; and

8 (G) by striking out clauses (5), (6), (7), and (8).

9 (2) Section 5896 of such title is further amended by
10 striking out subsection (b) and redesignating subsections (c)
11 through (f) as subsections (b) through (e), respectively.

12 (c)(1) Section 5897 of such title is amended—

13 (A) by striking out "Male officers" at the begin-
14 ning of clauses (1) through (4) of subsection (b) and in-
15 serting in lieu thereof "Officers";

16 (B) by striking out clauses (5), (6), and (7) of sub-
17 section (b);

18 (C) by redesignating clause (8) of subsection (b) as
19 clause (5); and

20 (D) by striking out subsections (c) and (d) and in-
21 serting in lieu thereof the following:

22 "(c) A board convened under this chapter that recom-
23 mends officers of the Naval Reserve in the grade of lieuten-
24 ant or lieutenant (junior grade) in the Medical Corps, the
25 Judge Advocate General's Corps, the Chaplain Corps, the

1 Dental Corps, the Medical Service Corps, or the Nurse Corps
2 for promotion shall certify in its report that, in the opinion of
3 a majority of the members of the board, the officers recom-
4 mended are selected as fitted to assume the duties of the next
5 higher grade.”.

6 (2) Section 5898 of such title is amended—

7 (A) by striking out “(a)” at the beginning of sub-
8 section (a) and by striking out “, except as provided in
9 subsection (b) of this section,” in the second sentence
10 of such subsection; and

11 (B) by striking out subsection (b).

12 (d) Section 5899 of such title is amended—

13 (1) by striking out “male officer of the Naval Re-
14 serve, or a woman officer appointed under section
15 5581 of this title before the effective date of the De-
16 fense Officer Personnel Management Act,” and insert-
17 ing in lieu thereof “officer of the Naval Reserve” in
18 subsection (a);

19 (2) by striking out “male” each place it appears
20 in subsection (b); and

21 (3) by striking out subsections (c) and (d) and re-
22 designating subsections (e) through (h) as subsections
23 (c) through (f), respectively.

24 (e)(1) Section 6403 of such title is repealed.

1 (2) The table of sections at the beginning of chapter 573
2 of such title is amended by striking out the item relating to
3 section 6403.

4 (f)(1) Section 9712(d) of such title is amended by strik-
5 ing out clauses (1) through (9) and inserting in lieu thereof
6 the following:

7 "(A) A beneficiary named in the will of the de-
8 ceased to receive the property.

9 "(B) The surviving spouse or legal representative.

10 "(C) A child of the deceased.

11 "(D) A parent of the deceased.

12 ~~"(E) A brother or sister of the deceased.~~

13 "(F) The next of kin of the deceased."

14 (2) Paragraph 2 of section 9713(a) of such title is
15 amended by striking out clauses (A) through (I) and inserting
16 in lieu thereof the following:

17 "(A) A beneficiary named in the will of the de-
18 ceased to receive the property.

19 "(B) The surviving spouse or legal representative.

20 "(C) A child of the deceased.

21 "(D) A parent of the deceased.

22 "(E) A brother or sister of the deceased.

23 "(F) The next of kin of the deceased."

24 (g) The amendments made by this section shall become
25 effective on October 1, 1981.