



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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OFFICE OF THE CHIEF COUNSEL

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The Honorable Ron Johnson  
United States Senator  
517 East Wisconsin Avenue, Suite 408  
Milwaukee, WI 53202

Attention:

Dear Senator Johnson:

I am responding to your inquiry dated May 9, 2019, on behalf of your constituent, [REDACTED], who wrote about the history of allowing certain tax benefits to Amish taxpayers without requiring them to provide their qualifying children's Social Security numbers (SSNs). He questioned whether the First Amendment to the Constitution permits those taxpayers to continue to claim the child tax credit (CTC) after the enactment of the Tax Cuts and Jobs Act (TCJA).

[REDACTED], an enrolled agent, informed you that some taxpayers in the Amish communities were denied the CTCs this year because they did not include their qualifying children's SSNs on their 2018 tax return. He explained these taxpayers' sincerely held religious belief prevents them from obtaining SSNs for their qualifying children. He also noted that, through taxable year 2017, the IRS accommodated them by allowing personal exemption deductions and the CTC for these children. [REDACTED] explained that he believes the IRS implementation of a recent change in law that governs the administration of the CTC abridges the rights to exercise their religion freely.

The TCJA added special rules for 2018 through 2025 to the rules governing the administration of the CTC. Under one of those special rules, the amount of the credit has increased to \$2,000 for each qualifying child, up to \$1,400 of which is refundable as the additional child tax credit. Under another special rule, a taxpayer claiming the CTC must provide an SSN for each qualifying child claimed for the credit. The law provides that, for this purpose, the child's SSN must be issued before the due date of the return

by the Social Security Administration to a U.S. citizen or an alien authorized for employment in the United States.

As explained more fully in the program manager tax advice (Administration of the Child Tax Credit for Objectors to Social Security Numbers (issued on March 29, 2019, and available at <https://www.irs.gov/pub/iranoa/pmta-2019-02.pdf>)), which is enclosed, the Supreme Court and other Federal courts have long held that requiring a person to provide a dependent child's SSN in order to obtain a tax benefit (for example, CTC) or another government benefit is valid under the First Amendment to the Constitution if the statute requiring the SSN, as written, does not favor or disfavor a particular group and applies to all applicants and the use of the SSN clearly promotes a legitimate and important public interest. The new CTC rule requiring a qualifying child's SSN, as enacted by the Congress, does not favor or disfavor any particular group and applies to all taxpayers. In addition, the federal courts have long recognized the use of SSNs to further the legitimate and important public interest of applying the federal tax laws in a uniform and orderly manner.

Under the First Amendment and the Religious Freedom Restoration Act, the IRS is not required to provide administrative relief for taxpayers who have religious or conscience-based objections to obtaining SSNs. Nevertheless, it has been allowing those taxpayers certain tax benefits for which taxpayer identifying numbers (TINs) are required. The IRS can provide this administrative relief, because a TIN includes not only an SSN, which only the Social Security Administration may issue, but also numbers that the IRS may issue (for example, an ITIN for individuals ineligible for an SSN, or an ATIN, a temporary number for a child placed in prospective adoptive parents' households). In enacting the TCJA that included the new CTC rules, however, Congress unequivocally declared that the CTC should be allowable to only those taxpayers who provided qualifying children's SSNs. The IRS cannot change the clear statutory requirement.

In addition to requiring qualifying children's SSNs for CTC claims, the TCJA provided a new nonrefundable credit (popularly known as the credit for other dependents or ODC), which is a partial CTC (up to \$500 for each qualifying dependent). A taxpayer may claim the ODC for any qualifying dependent who is not a qualifying child for CTC purposes or for any qualifying child who does not have the SSN required for the CTC. We encourage your constituents to consider whether they may qualify for ODC for the qualifying children who do not have SSNs.

I hope this information is helpful. If you have any additional questions, please contact me or (Employee ID: ) at .

Sincerely,

Joanne B. Minsky  
Division Counsel  
Wage & Investment

Enclosure