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PUBLIC LAW 104-188 [H.R. 3448]
AUGUST 20, 1996
SMALL BUSINESS JOB PROTECTION ACT OF 1996

104 P.L. 188; 110 Stat. 1755; 1996 Enacted H.R. 3448; 104 Enacted H.R. 3448

Note: Removal of Barriers to Interethnic Adoption was enacted as Title I, Subtitle H, Section 1808 of this Act. The relevant text is provided below.

TITLE I--SMALL BUSINESS AND OTHER TAX PROVISIONS

Subtitle H--Other Provisions

Sec. 1801. Exemption from diesel fuel dyeing requirements with respect to certain States.

Sec. 1802. Treatment of certain university accounts.

Sec. 1803. Modifications to excise tax on ozone-depleting chemicals.

Sec. 1804. Tax-exempt bonds for sale of Alaska Power Administration facility.

Sec. 1805. Nonrecognition treatment for certain transfers by common trust funds to regulated investment companies.

Sec. 1806. Qualified State tuition programs.

Sec. 1807. Adoption assistance.

Sec. 1808. Removal of barriers to interethnic adoption.

Sec. 1809. 6-month delay of electronic fund transfer requirement.

Subtitle H--Other Provisions

[*1807] **Sec. 1807. ADOPTION ASSISTANCE.**

(a) In General.--Subpart A of part IV of subchapter A of chapter 1 (relating to nonrefundable personal credits) is amended by inserting after section 22 the following new section:

23 "Sec. 23. ADOPTION EXPENSES.

"(a) Allowance of Credit.--

"(1) In general.-- In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter the amount of the qualified adoption expenses paid or incurred by the taxpayer.

"(2) Year credit allowed.-- The credit under paragraph (1) with respect to any expense shall be allowed--

"(A) for the taxable year following the taxable year during which such expense is paid or incurred,
or

"(B) in the case of an expense which is paid or incurred during the taxable year in which the adoption becomes final, for such taxable year.

"(b) Limitations.--

"(1) Dollar limitation.-- The aggregate amount of qualified adoption expenses which may be taken into account under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed \$ 5,000 (\$ 6,000, in the case of a child with special needs).

"(2) Income limitation.----

"(A) In general.--The amount allowable as a credit under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so allowable (determined without regard to this paragraph but with regard to paragraph (1)) as--

"(i) the amount (if any) by which the taxpayer's adjusted gross income exceeds \$ 75,000, bears to

"(ii) \$ 40,000.

"(B) Determination of adjusted gross income.--For purposes of subparagraph (A), adjusted gross income shall be determined--

"(i) without regard to sections 911, 931, and 933, and

"(ii) after the application of sections 86, 135, 137, 219, and 469.

"(3) Denial of double benefit.----

"(A) In general.--No credit shall be allowed under subsection (a) for any expense for which a deduction or credit is allowed under any other provision of this chapter.

[**1900] "(B) Grants.--No credit shall be allowed under subsection (a) for any expense to the extent that funds for such expense are received under any Federal, State, or local program.

"(c) Carryforwards of Unused Credit.--If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such taxable year. No credit may be carried forward under this subsection to any taxable year following the fifth taxable year after the taxable year in which the credit arose. For purposes of the preceding sentence, credits shall be treated as used on a first-in first-out basis.

"(d) Definitions.--For purposes of this section--

"(1) Qualified adoption expenses.-- The term 'qualified adoption expenses' means reasonable and necessary adoption fees, court costs, attorney fees, and other expenses--

"(A) which are directly related to, and the principal purpose of which is for, the legal adoption of an eligible child by the taxpayer,

"(B) which are not incurred in violation of State or Federal law or in carrying out any surrogate parenting arrangement,

"(C) which are not expenses in connection with the adoption by an individual of a child who is the child of such individual's spouse, and

"(D) which are not reimbursed under an employer program or otherwise.

"(2) Eligible child.-- The term 'eligible child' means any individual--

"(A) who--

"(i) has not attained age 18, or

"(ii) is physically or mentally incapable of caring for himself, and

"(B) in the case of qualified adoption expenses paid or incurred after December 31, 2001, who is a child with special needs.

"(3) Child with special needs.-- The term 'child with special needs' means any child if--

"(A) a State has determined that the child cannot or should not be returned to the home of his parents,

"(B) such State has determined that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of

which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance, and

"(C) such child is a citizen or resident of the United States (as defined in section 217(h)(3)).

"(e) Special Rules for Foreign Adoptions.--In the case of an adoption of a child who is not a citizen or resident of the United States (as defined in section 217(h)(3))--

[**1901] "(1) subsection (a) shall not apply to any qualified adoption expense with respect to such adoption unless such adoption becomes final, and

"(2) any such expense which is paid or incurred before the taxable year in which such adoption becomes final shall be taken into account under this section as if such expense were paid or incurred during such year.

"(f) Filing Requirements.--

"(1) Married couples must file joint returns.-- Rules similar to the rules of paragraphs (2), (3), and (4) of section 21(e) shall apply for purposes of this section.

"(2) Taxpayer must include tin.----

"(A) In general.-- No credit shall be allowed under this section with respect to any eligible child unless the taxpayer includes (if known) the name, age, and TIN of such child on the return of tax for the taxable year.

"(B) Other methods.--The Secretary may, in lieu of the information referred to in subparagraph (A), require other information meeting the purposes of subparagraph (A), including identification of an agent assisting with the adoption.

"(g) Basis Adjustments.--For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

"(h) Regulations.--The Secretary shall prescribe such regulations as may be appropriate to carry out this section and section 137, including regulations which treat unmarried individuals who pay or incur qualified adoption expenses with respect to the same child as 1 taxpayer for purposes of applying the dollar limitation in subsection (b)(1) of this section and in section 137(b)(1).".

(b) Exclusion of Amounts Received Under Employer's Adoption Assistance Programs.--Part III of subchapter B of chapter 1 (relating to items specifically excluded from gross income) is amended by redesignating section 137 as section 138 and by inserting after section 136 the following new section:

137 "Sec. 137. ADOPTION ASSISTANCE PROGRAMS.

"(a) In General.--Gross income of an employee does not include amounts paid or expenses incurred by the employer for qualified adoption expenses in connection with the adoption of a child by an employee if such amounts are furnished pursuant to an adoption assistance program.

"(b) Limitations.--

"(1) Dollar limitation.-- The aggregate amount excludable from gross income under subsection (a) for all taxable years with respect to the adoption of a child by the taxpayer shall not exceed \$ 5,000 (\$ 6,000, in the case of a child with special needs).

"(2) Income limitation.-- The amount excludable from gross income under subsection (a) for any taxable year shall be reduced (but not below zero) by an amount which bears the same ratio to the amount so excludable (determined without regard to this paragraph but with regard to paragraph (1)) as--

[**1902] "(A) the amount (if any) by which the taxpayer's adjusted gross income exceeds \$ 75,000, bears to

"(B) \$ 40,000.

"(3) Determination of adjusted gross income.-- For purposes of paragraph (2), adjusted gross income shall be determined--

"(A) without regard to this section and sections 911, 931, and 933, and

"(B) after the application of sections 86, 135, 219, and 469.

"(c) Adoption Assistance Program.--For purposes of this section, an adoption assistance program is a separate written plan of an employer for the exclusive benefit of such employer's employees--

"(1) under which the employer provides such employees with adoption assistance, and

"(2) which meets requirements similar to the requirements of paragraphs (2), (3), (5), and (6) of section 127(b). An adoption reimbursement program operated under section 1052 of title 10, United States Code (relating to armed forces) or section 514 of title 14, United States Code (relating to members of the Coast Guard) shall be treated as an adoption assistance program for purposes of this section.

"(d) Qualified Adoption Expenses.--For purposes of this section, the term 'qualified adoption expenses' has the meaning given such term by section 23(d) (determined without regard to reimbursements under this section).

"(e) Certain Rules To Apply.--Rules similar to the rules of subsections (e), (f), and (g) of section 23 shall apply for purposes of this section.

"(f) Termination.--This section shall not apply to amounts paid or expenses incurred after December 31, 2001."

(c) Conforming Amendments.--

(1) Subparagraph (C) of section 25(e)(1) is amended by inserting "and section 23" after "this section".

(2) Sections 86(b)(2)(A) and 135(c)(4)(A) are each amended by inserting "137," before "911".

(3) Clause (i) of section 219(g)(3)(A) is amended by inserting ", 137," before "and 911".

(4) Clause (ii) of section 469(i)(3)(E) is amended to read as follows:

"(ii) the amounts excludable from gross income under sections 135 and 137,".

(5) Subsection (a) of section 1016 is amended by striking "and" at the end of paragraph (24), by striking the period at the end of paragraph (25) and inserting ", and", and by adding at the end the following new paragraph:

"(26) to the extent provided in sections 23(g) and 137(e)."

(6) The table of sections for subpart A of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 22 the following new item:

"Sec. 23. Adoption expenses."

(7) The table of sections for part III of subchapter B of chapter 1 is amended by striking the item relating to section 137 and inserting the following:

"Sec. 137. Adoption assistance programs.

"Sec. 138. Cross reference to other Acts."

[**1903] (d) <26 USC 23 note> Study and Report.--The Secretary of the Treasury shall study the effect on adoptions of the tax credit and gross income exclusion established by the amendments made by this section and shall submit a report regarding the study to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives not later than January 1, 2000.

(e) Effective Date.--The amendments made by this section shall apply to taxable years beginning after December 31, 1996.

[*1808] **Sec. 1808. REMOVAL OF BARRIERS TO INTERETHNIC ADOPTION.**

(a) State Plan Requirements .--Section 471(a) of the Social Security Act (42 U.S.C 671(a)) is amended-

(1) by striking "and" at the end of paragraph (16);

(2) by striking the period at the end of paragraph (17) and inserting "; and"; and

(3) by adding at the end the following:

"(18) not later than January 1, 1997, provides that neither the State nor any other entity in the State that receives funds from the Federal Government and is involved in adoption or foster care placements may--

"(A) deny to any person the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child, involved; or

"(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved."

(b) Enforcement .--Section 474 of such Act (42 U.S.C. 674) is amended by adding at the end the following:

"(d)(1) If, during any quarter of a fiscal year, a State's program operated under this part is found, as a result of a review conducted under section 1123A, or otherwise, to have violated section 471(a)(18) with respect to a person or to have failed to implement a corrective action plan within a period of time not to exceed 6 months with respect to such violation, then, notwithstanding subsection (a) of this section and any regulations promulgated under section 1123A(b)(3), the Secretary shall reduce the amount otherwise payable to the State under this part, for that fiscal year quarter and for any subsequent quarter of such fiscal year, until the State program is found, as a result of a subsequent review under section 1123A, to have implemented a corrective action plan with respect to such violation, by--

"(A) 2 percent of such otherwise payable amount, in the case of the 1st such finding for the fiscal year with respect to the State;

"(B) 3 percent of such otherwise payable amount, in the case of the 2nd such finding for the fiscal year with respect to the State; or

"(C) 5 percent of such otherwise payable amount, in the case of the 3rd or subsequent such finding for the fiscal year with respect to the State. In imposing the penalties described in this paragraph, the Secretary shall not reduce any fiscal year payment to a State by more than 5 percent.

"(2) Any other entity which is in a State that receives funds under this part and which violates section 471(a)(18) during a [**1904] fiscal year quarter with respect to any person shall remit to the Secretary all funds that were paid by the State to the entity during the quarter from such funds.

"(3)(A) Any individual who is aggrieved by a violation of section 471(a)(18) by a State or other entity may bring an action seeking relief from the State or other entity in any United States district court.

"(B) An action under this paragraph may not be brought more than 2 years after the date the alleged violation occurred.

"(4) This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978."

(c) <42 USC 1996b> Civil Rights .--

(1) Prohibited conduct.-- A person or government that is involved in adoption or foster care placements may not--

(A) deny to any individual the opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the individual, or of the child, involved; or

(B) delay or deny the placement of a child for adoption or into foster care, on the basis of the race, color, or national origin of the adoptive or foster parent, or the child, involved.

(2) Enforcement.-- Noncompliance with paragraph (1) is deemed a violation of title VI of the Civil Rights Act of 1964.

(3) No effect on the indian child welfare act of 1978.-- This subsection shall not be construed to affect the application of the Indian Child Welfare Act of 1978.

(d) Conforming Amendment.--Section 553 of the Howard M. Metzenbaum Multiethnic Placement Act of 1994 (42 U.S.C. 5115a) is repealed.