

TITLE 26

Internal Revenue Code

1992 edition (first session of 102nd Congress, 1991)

1. Tax imposed.

(a) Married individuals filing joint returns and surviving spouses. -- There is hereby imposed on the taxable income of --

(1) every married individual (as defined in section 7703) who makes a single return jointly with his spouse under section 6013, and

(2) every surviving spouse (as defined in section 2(a)),

a tax determined in accordance with the following table:

If taxable income is: The tax is:

Not over \$32,450 15% of taxable income.

Over \$32,450 but not over \$78,400 \$4,867.50, plus 28% of

the excess over \$32,450.

Over \$78,400 \$17,733.50, plus 31% of

the excess over \$78,400.

(b) Heads of households. -- There is hereby imposed on the taxable income of every head of household (as defined in section 2 (b)) a tax determined in accordance with the following table:

If taxable income is: The tax is:

Not over \$26,050 15% of taxable income.

Over \$26,050 but not over \$67,200 \$3,907.50, plus 28% of

the excess over \$26,050.

Over \$67,200 \$15,429.50, plus 31% of

the excess over \$67,200.

(c) Unmarried individuals (other than surviving spouses and heads of households). -- There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b) who is not a married individual (as defined in section 7703) a tax determined in accordance with the following table:

If taxable income is: The tax is:

Not over \$19,450 15% of taxable income.

Over \$19,450 but not over \$47,050 \$2,917.50, plus 28% of the excess over \$19,450.

Over \$47,050 \$10,645.50, plus 31% of

the excess over \$47,050.

(d) Married individuals filing separate returns. -- There is hereby imposed on the taxable income of every married individual (as defined in section 7703) who does not make a single return jointly with his spouse under section 6013, a tax determined in accordance with the following table:

If taxable income is: The tax is:

Not over \$16,225 15% of taxable income.

Over \$16,225 but not over \$39,200 \$2,433.75, plus 28% of the excess over \$16,225.

Over \$39,200 \$8,866.75, plus 31% of

the excess over \$39,200.

(e) Estates and trusts. -- there is hereby imposed on the taxable income of --

(1) every estate, and

(2) every trust,

taxable under this subsection a tax determined in accordance with the following table:

If taxable income is: The tax is:

Not over \$3,300 15% of taxable income.

Over \$3,300 but not over \$9,900 \$495, plus 28% of the excess over \$9,900.

Over \$9,900 \$2,343, plus 31% of the

excess over \$9,900.

(f) Adjustments in tax tables so that inflation will not result in tax increases. --

(1) In General. -- Not later than December 15 of 1990, and each subsequent calendar year, the Secretary shall prescribe tables which shall apply in lieu of the tables contained in subsections (a), (b), (c), (d), and (e) with respect to taxable years beginning in the succeeding calendar year.

(2) Method of prescribing tables. -- The table which under paragraph (1) is to apply in lieu of the table contained in subsections (a), (b), (c), (d), or (e), as the case may be, with respect to taxable years beginning in any calendar year shall be prescribed --

(A) by increasing the minimum and maximum dollar amounts for each rate bracket for which a tax imposed under such table by the cost-of-living adjustment for such calendar year,

(B) by not changing the rate applicable to any rate bracket as adjusted under subparagraph (A), and

(C) by adjusting the amounts setting forth the tax to the extent necessary to reflect the adjustments in the rate brackets.

(3) Cost-of-living adjustment. -- For purposes of paragraph (2), the cost-of-living adjustment for any calendar year is the percentage (if any) by which --

(A) the CPI for the preceding calendar year, exceeds

(B) the CPI for the calendar year 1989.

(4) CPI for any calendar year. -- For purposes of paragraph (3), the CPI for any calendar year is the average of the Consumer Price Index as of the close of the 12-month period ending on August 31 of such calendar year.

(5) Consumer Price Index. -- For purposes of paragraph (4), the term "Consumer Price Index" means the last Consumer Price Index for all-urban consumers published by the Department of Labor. For purposes of the preceding sentence, the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1986 shall be used.

(6) Rounding. --

(A) In general. -- If any increase determined under paragraph (2)(A), section 63(c)(4), Section 68(b)(2) or section 151(d)(4) is not a multiple of \$50, such increase shall be rounded to the next lowest multiple of \$50.

(B) Table for married individuals filing separately. -- In the case of a married individual filing a separate return, subparagraph (A) (other than with respect to subsection (c)(4) of section 63 (as it applies to subsections (c)(5)(A) and (f) of such section) and section 151(d)(4)(A)) shall be applied by substituting "\$25" for "\$50" each place it appears.

(g) Certain unearned income of minor children taxed as if parent's income. --

(1) In general. -- In the case of any child to whom this subsection applies, the tax imposed by this section shall be equal to the greater of --

(A) the tax imposed by this section without regard to this subsection, or

(B) the sum of --

(i) the tax which would be imposed by this section if the taxable income of such child for the taxable year were reduced by the net unearned income of such child, plus

(ii) such child's share of the allocable parental tax.

(2) Child to whom subsection applies. -- This subsection shall apply to any child for any taxable year if --

(A) such child has not attained age 14 before the close of the taxable year, and

(B) either parent of such child is alive at the close of the taxable year.

(3) Allocable parental tax. -- For purposes of this subsection --

(A) In general. -- the term "allocable parental tax" means the excess of --

(i) the tax which would be imposed by this section on the parent's taxable income if such income included the net unearned income of all children of the parent to whom this subsection applies, over

(ii) the tax imposed by this section on the parent without regard to this subsection.

For purposes of clause (i), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

(B) Child's share. -- A child's share of any allocable parental tax shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child's net unearned income bears to the aggregate net unearned income of all children of such parent to whom this subsection applies.

(C) Coordination with section 644. -- If tax is imposed under section 644(a)(1) with respect to the sale or exchange of any property of which the parent was the transferor, for purposes

of applying subparagraph (A) to the taxable year of the parent in which such sale or exchange occurs --

(i) taxable income of the parent shall be increased by the amount treated as included in gross income under section 644(a)(2)(A)(i), and

(ii) the amount described in subparagraph (A)(ii) shall be increased by the amount of the excess referred to in section 644(a)(2)(A).

(D) Special rule where parent has different taxable year. -  
- Except as provided in regulations, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year.

(4) Net unearned income. -- For purposes of this subsection

(A) In general. -- The term "net unearned income" means the excess of --

(i) the portion of the adjusted gross income for the taxable year which is not attributable to earned income (as defined in section 911(d)(2)), over

(ii) the sum of --

(I) the amount in effect for the taxable year under section 63(c)(5)(A) relating to limitation non standard deduction in the case of certain dependents), plus

(II) the greater of the amount described in subclause (I) or, if the child itemizes his deductions for the taxable year, the amount of the itemized deductions allowed by this chapter for the taxable year which are directly connected with the production of the portion of adjusted gross income referred to in clause (i)

(B) Limitation based on taxable income. -- The amount of the net unearned income for any taxable year shall not exceed the individual's taxable income for such taxable year.

(5) Special rules for determining parent to whom subsection applies. -- For purposes of this subsection, the parent whose taxable income shall be taken into account shall be --

(A) in the case of parents who are not married (within the meaning of section 7703), the custodial parent (within the meaning of section 152(e)) of the child, and

B) In the case of married individuals filing separately, the individual with the greater taxable income.

(6) Providing of parent's TIN. -- The parent of any child to whom this subsection applies for any taxable year shall provide the TIN of such parent to such child and such child shall include such TIN on the child's return of tax imposed by this section for such taxable year.

(7) Election to claim certain unearned income of child on parent's return. --

(A) In general. -- If --

(i) any child to whom this subsection applies has gross income for the taxable year only from interest and dividends (including Alaska Permanent Fund dividends).

(ii) such gross income is more than \$500 and less than \$5,000.

(iii) no estimated tax payments for such year are made in the name and TIN of such child, and no amount has been deducted and withheld under section 3406, and

(iv) the parent of such child (as determined under paragraph (5)) elects the application of subparagraph (B), such child shall be treated (other than for purposes of this paragraph) as having no gross income for such year and shall not be required to file a return under section 6012.

(B) Income included on parent's return. -- In the case of a parent making the election under this paragraph --

(i) the gross income of each child to whom such election applies (to the extent the gross income of such child exceeds \$1,000) shall be included in such parent's gross income of the taxable year,

(ii) the tax imposed by this section for such year with respect to such parent shall be the amount equal to the sum of --

(I) the amount determined under this section after the application of clause (i), plus

(II) for each such child, the lesser of \$75 or 15 percent of the excess of the gross income of such child over \$500, and

(iii) any interest which is an item of tax preference under section 57(a)(5) of the child shall be treated as an item of tax preference of such parent (and not of such child).

(C) Regulations. -- The secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph.

(h) Maximum capital gains rate. -- If a taxpayer has a net capital gain for any taxable year, then the tax imposed by this section shall not exceed the sum of --

(1) a tax computed at the rates and in the same manner as if this subsection had not been enacted on the greater of --

(A) taxable income reduced by the amount of the net capital gain, or

(B) the amount of taxable income taxed at a rate below 28 percent, plus

(2) a tax of 28 percent of the amount of taxable income in excess of the amount determined under paragraph (1).

## 2. Definitions and special rules.

(a) Definition of surviving spouse. --

(1) In general. -- For purposes of section 1, the term "surviving spouse" means a taxpayer --

(A) whose spouse died during either of his two taxable years immediately preceding the taxable year, and

(B) who maintains as his home a household which constitutes for the taxable year the principal place of abode (as a member of such household) of a dependent (i) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the taxpayer, and (ii) with respect to whom the taxpayer is entitled to a deduction for the taxable year under section 151.

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) Limitations. -- Notwithstanding paragraph (1), for purposes of section 1 a taxpayer shall not be considered to be a surviving spouse --

(A) if the taxpayer has remarried at any time before the close of the taxable year, or

(B) unless, for the taxpayer's taxable year during which his spouse died, a joint return could have been made under the provisions of section 6013 (without regard to subsection (a)(3) thereof).

(3) Special rule where deceased spouse was in missing status. -- If an individual was in a missing status (within the meaning of section 6013(f)(3)) as a result of service in a combat zone (as determined for purposes of section 112) and if such

individual remains in such status until the date referred to in subparagraph (A) or (B), then, for purposes of paragraph (1)(A), the date on which such individual died shall be treated as the earlier of the date determined under subparagraph (A) or the date determined under subparagraph (B):

(A) the date on which the determination is made under section 556 of title 37 of the United States Code or under section 5566 of title 5 of such Code (whichever is applicable) that such individual died while in such missing status, or

(B) except in the case of the combat zone designated for purposes of the Vietnam conflict, the date which is 2 years after the date designated under section 112 as the date of termination of combatant activities in that zone.

(b) Definition of head of household. --

(1) In general. -- For purposes of this subtitle, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, is not a surviving spouse (as defined in subsection (a)), and either --

(A) maintains as his home a household which constitutes for more than one-half of such taxable year the principal place of abode, as a member of such household, of --

(i) a son, stepson, daughter, or stepdaughter of the taxpayer, or a descendant of a son or daughter of the taxpayer, but if such son, stepson, daughter, stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the person is entitled to a deduction for the taxable year for such person under section 151 (or would be so entitled but for paragraph (2) or (4) of subsection 152(e)), or

(ii) any other person who is a dependent of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such person under section 151, or

(B) maintains a household which constitutes for such taxable year the principal place of abode of the father or mother of the taxpayer, if the taxpayer is entitled to a deduction for the taxable year for such father or mother under section 151.

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

(2) Determination of status. -- For purposes of this subsection --

(A) A legally adopted child of a person shall be considered a child of such person by blood;

(B) an individual who is legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married;

(C) a taxpayer shall be considered as not married at the close of his taxable year if at any time during the taxable year his spouse is a nonresident alien; and

(D) a taxpayer shall be considered as married at the close of his taxable year if his spouse (other than a spouse described in subparagraph (C) died during the taxable year.

(3) Limitations. -- Notwithstanding paragraph (1), for purposes of this subtitle a taxpayer shall not be considered to be a head of a household --

(A) if at any time during the taxable year he is a nonresident alien; or

(B) by reason of an individual who would not be a dependent for the taxable year but for --

(i) paragraph (9) of section 152(a), or

(ii) subsection (C) of section 152.

(c) Certain married individuals living apart. -- For purposes of this part, an individual shall be treated as not married at the close of the taxable year if such individual is so treated under the provisions of section 7703(b).

(d) Nonresident aliens. -- In the case of a nonresident alien individual, the taxes imposed by sections 1 and 55 shall apply only as provided by section 871 or 877.

### 3. Tax tables for individuals

(a) Imposition of tax table tax. --

(1) In general. -- In lieu of the tax imposed by section 1, there is hereby imposed for each taxable year on the taxable income of every individual --

(A) who does not itemize his deductions for the taxable year, and

(B) whose taxable income for such taxable year does not exceed the ceiling amount,

a tax determined under tables, applicable to such taxable year, which shall be prescribed by the Secretary and which shall be in such form as he determines appropriate. In the table so prescribed, the amounts of the tax shall be computed on the basis of the rates prescribed by section 1.

(2) Ceiling amount defined. -- For purposes of paragraph (1), the term "Ceiling amount" means, with respect to any taxpayer, the amount (not less than \$20,000) determined by the Secretary for the tax rate category in which such taxpayer falls.

(3) Authority to prescribe tables for taxpayers who itemize deductions. -- The Secretary may provide that this section shall apply also for any taxable year to individuals who itemize their deductions. Any tables prescribed under the preceding sentence shall be on the basis of taxable income.

(b) Section inapplicable to certain individuals. -- This section shall not apply to --

(1) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in annual accounting period, and

(2) an estate or trust.

(c) Tax treated as imposed by section 1. -- For purposes of this title, the tax imposed by this section shall be treated as tax imposed by section 1.

(d) Taxable income. -- Whenever it is necessary to determine the taxable income of an individual to whom this section applies, the taxable income shall be determined under section 63.

## 11. Tax imposed

(a) Corporations in general. -- A tax is hereby imposed for each taxable year on the taxable income of every corporation.

(b) Amount of tax. --

(1) In general. -- The amount of the tax imposed by subsection (a) shall be the sum of --

(A) 15 percent of so much of the taxable income as does not exceed \$50,000,

(B) 25 percent of so much of the taxable income as exceeds \$50,000 but does not exceed \$75,000, and

(C) 34 percent of so much of the taxable income as exceeds \$75,000.

In the case of a corporation which has taxable income in excess of \$100,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (i) 5 percent of such excess, or (ii) \$11,750.

(2) Certain personal service corporations not eligible for graduated rates. -- Notwithstanding paragraph (1), the amount of the tax imposed by subsection (a) on the taxable income of a qualified personal service corporation (as defined in section 448(d)(2)) shall be equal to 34 percent of the taxable income.

(C) Exceptions. -- Subsection (a) shall not apply to a corporation subject to a tax imposed by --

(1) section 594 (relating to mutual savings banks conducting life insurance business),

(2) subchapter L (sec. 801 and following, relating to insurance companies), or

(3) subchapter M (sec. 851 and following, relating to regulated investment companies and real estate investment trusts)

(d) Foreign corporations. -- In the case of a foreign corporation, the taxes imposed by subsection (a) and section 55 shall apply only as provided by section 882.

#### 15. Effect of changes

(a) General rule. -- If any rate of tax imposed by this chapter changes, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then --

(1) tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and

(2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

(b) Repeal of tax.-- For purposes of subsection (a) --

(1) if a tax is repealed, the repeal shall be considered a change of rate; and

(2) the rate for the period after the repeal shall be zero.

(c) Effective date of change. -- For purposes of subsections (a) and (b) --

(1) if the rate changes for taxable years "beginning after" or "ending after" a certain date, the following day shall be considered the effective date of the change; and

(2) if a rate changes for taxable years "beginning on or after" a certain date, that date shall be considered the effective date of the change.

(d) Section not to apply to inflation adjustments. -- This section shall not apply to any change in rates under subsection (f) of section 1 (relating to adjustments in tax tables so that inflation will not result in tax increases).

(e) References to highest rate. -- If the change referred to in subsection (a) involves a change in the highest rate of tax imposed by section 1 or 11(b), any reference in this chapter to such highest rate (other than in a provision imposing a tax by reference to such rate) shall be treated as a reference to the weighted average of the highest rates before and after the change determined on the basis of the respective portions of the taxable year before the date of the change and on or after the date of the change.

## 21. Expenses for household and dependent care services necessary for gainful employment

(a) Allowance of credit. --

(1) in general. -- In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1)), there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2) paid by such individual during the taxable year.

(2) Applicable percentage defined. -- For purposes of paragraph (1), the term "applicable percentage" means 30 percent reduced (but not below 20 percent) by 1 percentage point for each \$2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds \$10,000.

(b) Definitions of qualifying individual and employment-related expenses. -- For purposes of this section --

(1) Qualifying individual. -- The term "qualifying individual" means --

(A) a dependent of the taxpayer who is under the age of 13 and with respect to whom the taxpayer is entitled to a deduction under section 151(c),

(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.

(2) Employment-related expenses. --

(A) In general. -- The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

(i) expenses for household services, and

(ii) expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight.

(B) Exception. -- Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of --

(i) a qualifying individual described in paragraph (1)(A),  
or

(ii) a qualifying individual (not described in paragraph (1)(A)) who regularly spends at least 8 hours each day in the taxpayer's household.

(C) Dependent care centers. -- Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if --

(i) such center complies with all applicable laws and regulations of a State or unit of local government, and

(ii) the requirements of subparagraph (B) are met.

(D) Dependent care center defined. -- For purposes of this paragraph, the term "dependent care center" means any facility which --

(i) provides care for more than six individuals (other than individuals who reside at the facility), and

(ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) Dollar limit on amount creditable. -- The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed --

(1) \$2,400 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or

(2) \$4,800 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.

The amount determined under paragraph (1) or (2) (whichever is applicable) shall be reduced by the aggregate amount excludable from gross income under section 129 for the taxable year.

(d) Earned income limitation. --

(1) In general. -- Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed --

(A) in the case of an individual who is married at the close of such year, such individual's earned income for such year, or

(B) in the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of his spouse for such year.

(2) Special rule for spouse who is a student or incapable of caring for himself. -- In the case of a spouse who is a student or a qualifying individual described in subsection (b)(1)(C), for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than --

(A) \$200 if subsection (c)(1) applies for the taxable year, or

(B) \$400 if subsection (c)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

(e) Special rules. -- For purposes of this section --

(1) Maintaining household. -- An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse).

(2) Married couples must file joint return. -- If the taxpayer is married at the close of the taxable year, the credit

shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

(3) Marital status. -- An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) Certain married individuals living apart. -- If --

(A) an individual who is married and who files a separate return --

(i) Maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household,

such individuals shall not be considered as married.

(5) Special dependency test in case of divorced parents, etc. -- If --

(A) paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, and

(B) such child is under the age of 13 or is physically or mentally incapable of caring for himself,

in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described subparagraph (A) or (B) of subsection (b)(1) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying individual with respect to the noncustodial parent.

(6) Payments to related individuals. -- No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual --

(A) with respect to whom, for the taxable year, a deduction under section 151(c)(3) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

(7) Student. -- The term "student" means an individual who during each of 5 calendar months during the taxable year is a full-time student at an educational organization.

(8) Educational organization. -- The term "educational organization" means an educational organization described in section 170(b)(1)(A)(ii).

(9) Identifying information required with respect to service provider. -- No credit shall be allowed under subsection (a) for any amount paid to any person unless --

(A) the name, address, and taxpayer identification number of such person are included on the return claiming the credit, or

(B) if such person is an organization described in section 501(c)(3) and exempt from tax under section 501(a), the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required.

(f) Regulations. -- The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

22. Credit for the elderly and the permanently and totally disabled

(a) General rule. -- In the case of a qualified individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of such individual's section 22 amount for such taxable year.

(b) Qualified individual. -- For purposes of this section, the term "qualified individual" means any individual --

(1) who has attained age 65 before the closed of the taxable year, or

(2) who retired on disability before the close of the taxable year and who, when he retired, was permanently and totally disabled.

(c) Section 22 amount. -- For purposes of subsection (a) -

(1) In general. -- An individual's section 22 amount for the taxable year shall be the applicable initial amount determined under paragraph (2), reduced as provided in paragraph (3) and in subsection (d).

(2) Initial amount. --

(A) In general. -- Except as provided in subparagraph (B), the initial amount shall be --

(1) \$5,000 in the case of a single individual, or a joint return where only one spouse is a qualified individual,

(ii) \$7,500 in the case of a joint return where both the spouses are qualified individuals, or

(iii) \$3,750 in the case of a married individual filing a separate return.

(B) Limitation in case of individuals who have not attained age 65. --

(1) In general. -- In the case of a qualified individual who has not attained age 65 before the close of the taxable year, except as provided in clause (ii), the initial amount shall not exceed the disability income for the taxable year.

(I) if both spouses have not attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of such spouses' disability income, or

(II) if one spouse has attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of \$5,000 plus the disability income for the taxable year of the spouse who has not attained age 65 before the close of the taxable year.

(iii) Disability income. -- For purposes of this subparagraph, the term "disability income" means the aggregate amount includable in the gross income of the individual for the taxable year under section 72 or 105(a) to the extent such amount constitutes wages (or payment in lieu of wages) for the period during which the individual is absent from work on account of permanent and total disability.

(3) reduction. --

(A) In general. -- The reduction under this paragraph is an amount equal to the sum of the amounts received by the individual (or, in the case of a joint return, by either spouse) as a pension or annuity or as a disability.

(1) which is excluded from gross income and payable under -

(I) title II of the Social Security Act,

(II) the Railroad Retirement Act of 1974, or

(III) a law administered by the Veterans' Administration, or

(ii) which is excluded from gross income under any provision of law not contained in this title.

Nor reduction shall be made under clause (i)(III) for any amount described in section 104(a)(4).

(B) Treatment of certain workmen's compensation benefits. -  
- For purposes of subparagraph (A), any amount treated as a social security benefit under section 86(d)(3) shall be treated as a disability benefit received under title II of the Social Security Act.

(d) Adjusted gross income limitation. -- If the adjusted gross income of the taxpayer exceeds --

(1) \$7,500 in the case of single individual,

(2) \$10,000 in the case of a joint return, or

(3) \$5,000 in the case of married individual filing a separate return,

the section 22 amount shall be reduced by one-half of the excess of the adjusted gross income over \$7,500, \$10,000, or \$5,000, as the case may be.

(e) Definitions and special rules. -- For purposes of this section --

(1) Married couple must file joint return. -- Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the credit provided by this section shall be allowed only if the taxpayer and his spouse file a joint return for taxable year.

(2) Marital status. -- Marital status shall be determined under section 7703.

(3) Permanent and total disability defined. -- An individual is permanently and totally disable if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to be permanently and totally disable unless he furnishes proof of the existence thereof in such form and manner, and at such times, as the Secretary may require.

(f) Nonresident alien ineligible for credit. -- No credit shall be allowed under this section to any nonresident alien.

## 23. Residential energy credit

(a) General rule. -- In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of --

(1) the qualified energy conservation expenditure, plus

(2) the qualified renewable energy source expenditures.

(b) Qualified expenditures. -- For purposes of subsection

(a) --

(1) Energy conservation. -- In the case of any dwelling unit, the qualified energy conservation expenditures are 15 percent of so much of the energy conservation expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed \$2,000.

(2) Renewable energy source. -- In the case of any dwelling unit, the qualified renewable energy source expenditures are 40 percent of so much of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed \$10,000.

(3) Prior expenditures by taxpayer on same residence taken into account. -- If for any prior year a credit was allowed to the taxpayer under this section with respect to any dwelling unit by reason of energy conservation expenditures or renewable energy source expenditures, paragraph (1) or (2) (whichever is appropriate) shall be applied for the taxable year with respect to such dwelling unit by reducing each dollar amount contained in such paragraph by the prior year expenditures taken into account under such paragraph.

(4) Minimum dollar amount. -- No credit shall be allowed under this section with respect to any return for any taxable year if the amount which would (but for this paragraph) be allowed with respect to such return is less than \$10.

(5) Carryforward of unused credit. --

(A) In general. -- 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 and section 25), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(B) No carryforward to taxable years beginning after December 31, 1987. -- No amount may be carried under subparagraph (A) to any taxable year beginning after December 31, 1987.

(c) Definitions and special rules. -- For purposes of this section --

(1) Energy conservation expenditures. -- The term "energy conservation expenditure" means an expenditure made on or after April 20, 1977, by the taxpayer for insulation or any other energy-conserving component (or for the original installation of

such insulation or other component) installed in or on a dwelling unit --

(A) which is located in the United States,

(B) which is used by the taxpayer as his principal residence, and

(C) the construction of which was substantially completed before April 20, 1977.

(2) Renewable energy source expenditure. --

(A) In general. -- The term "renewable energy source expenditure" means an expenditure made on or after April 20, 1977 by the taxpayer for renewable energy source property installed in connection with a dwelling unit --

(i) which is located in the United States, and

(ii) which is used by the taxpayer as his principal residence.

(B) Certain labor and other costs included. -- The term "renewable energy source expenditure" includes --

(i) expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of renewable energy source property, and

(ii) expenditures for an onsite well drilled for any geothermal deposit (as defined in section 613(e)(3)), but only if the taxpayer has not elected under section 263(c) to deduct any portion of such expenditures.

(C) Swimming pool, etc., used as storage medium. -- The term "renewable energy source expenditure" does not include any expenditure properly allocable to a swimming pool used as an energy storage medium which has a primary function other than the function of such storage.

(D) Certain solar panels. -- No solar panel installed as a roof (or portion thereof) shall fail to be treated as renewable energy source property solely because it constitutes a structural component of the dwelling on which it is installed.

(3) Insulation. -- The term "insulation" means any item --

(A) which is specifically and primarily designed to reduce when installed in or on a dwelling (or water Heater) the heat loss or gain of such dwelling (or water Heater),

(B) the original use of which begins with the taxpayer,

(C) which can reasonably be expected to remain in operation for at least 3 years, and

(D) which meets the performance and quality standards (if any) which --

(i) have been prescribed by the Secretary by regulations, and

(ii) are in effect at the time of the acquisition of the item.

(4) Other energy-conserving component. -- The term "other energy-conserving component" means any item (other than insulation) --