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Adopting Tax Credits: The Federal Government's Special Need to Adopt Missouri's Adoption Tax Credit

*Joseph Link**

ABSTRACT

HB 429 passed the Missouri Legislature and was signed into law by Governor Mike Parson on April 22, 2021. The legislation intends to relieve the financial burden on parents who are seeking adoption of a child or disabled person. The law has undergone major reforms in recent history. Missouri's 2021 HB 429 amended the Special Needs Adoption Tax Credit Act and thereby decreased the requirements imposed on taxpayers to receive the tax benefits offered by the state to aid in adoption expenses. In addition, it expanded the state's ability to offer the credit beyond the means of usual nonrefundable credits--by turning the credit into one that could be transferred, sold, or refunded to the taxpayer.

The Missouri reform is poised to be the model for a failing federal tax credit aimed at reducing adoption cost burdens on lower-income families, which is currently being utilized more by higher-income earners. This article examines the newly amended Missouri Adoption Tax Credit to show its superior framework as a result of the amendment and contrasts this with issues in the current federal framework. This article ultimately concludes that the federal government should adopt Missouri's 2021 HB 429 in its own capacity in order to decrease poverty and better assist lower-income families.

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I. INTRODUCTION

Adoption is a serious commitment for adoptive parents and involves a multitude of major commitments and sacrifices. For example: Parents can expect to give up individual freedoms; take on added responsibilities of another human being fed, cleaned, and cared for; and add extensive costs that are required for the raising and acquisition of a child.¹ State and federal governments generously give tax benefits to adoptive parents who are willing to take on the significant cost of adopting a child.² The federal government also offers a credit for parents of children who are not adopted at all as a separate generosity.³

Private adoptions through an agency can range in cost from \$30,000-\$60,000.⁴ While public agency adoptions typically cost less than \$1,000, most of these adoptions include children who are more difficult for families to take on the added responsibility, such as older-aged children or children with special needs.⁵ When expanding beyond “public agency” adoptions, the costs begin to add up quickly which may include the following: home study fees (ensuring the placement home is a safe and right fit for the child), search fees (advertisements and consulting fees for locating the child sought), birthing mother expenses (if an infant is being sought after, all birth expenses), legal fees, and travel.⁶

Adoption is clearly a beneficial process to the child, the adoptive parents, and society. In comparison to the historical alternatives of

1. Maryalene LaPonsie, *How Much Does It Cost to Raise a Child?*, U.S. NEWS & WORLD REP. (Sept. 7, 2022, 4:44 PM), <https://money.usnews.com/money/personal-finance/articles/how-much-does-it-cost-to-raise-a-child> (stating that the median income household would average about \$290,014 in child-raising expenses, not including college expenses).

2. Ryan Hanlon & Becky Wilmoth, *Understanding the Adoption Tax Credit*, ADOPTION ADVOC., Feb. 2021, at 5.

3. Sabrina Parys & Tina Orem, *Child Tax Credit 2023-2024: What It Is, Requirements and How to Claim*, NERDWALLET (Nov. 9, 2023), <https://www.nerdwallet.com/article/taxes/qualify-child-child-care-tax-credit> (noting the child tax credit offered by the federal government is up to \$2,000 in 2023 with \$1,600 of that being potentially refundable).

4. Taryn Phaneuf, *How Much Does It Cost to Adopt a Child?*, NERDWALLET (Apr. 20, 2023), <https://www.nerdwallet.com/article/finance/adoption-cost>.

5. *Id.*; *Domestic Public Agency / Foster Care Adoptions*, GATEWAY TO SOLS., <https://www.gatewaytosolutions.org/family-planning/the-adoption-pathway/domestic-public-agency-foster-care-adoptions> (last visited Nov. 25, 2023).

6. Phaneuf, *supra* note 4.

slavery, death, child-prostitution, and the like, Western society is in a much better position to give opportunities to children who are unsupported by their birth parents.⁷ Through modern adoption, a family in want and need of a child is able to be connected with a child who is in need (and most likely want) of a family. Modern adoption as most know it began in Massachusetts with the Adoption of Children Act of 1851,⁸ and it continues to develop further as a child-centered approach.⁹

While some have argued that there are flaws in the adoption process,¹⁰ an analysis of data collected from the 1970s through early 2000s showed that adoption resulted in an overall net benefit on children affected by the current process.¹¹ The benefit was overwhelmingly large on those children who suffered from neglect or abuse in their early life or exposure to illicit drugs in utero.¹² Thus, adoption should be encouraged for those who are ready and willing to take on the task of taking a child in, and financing the adoption process should not be a burden that the states or the federal government allows to get in the way. Therefore, state and federal governments should help to alleviate the financial burden on willing parents by budgeting funds to help parents with the costs. Although the federal government is under no obligation to offer tax credits,¹³ both the federal government and many states offer some benefits.¹⁴

7. Dana E. Johnson, *Adoption and the Effect on Children's Development*, EARLY HUM. DEV. 39 (2002).

8. Carolyn J. Head, *Adopting the Right Incentives: Encouraging People to Adopt in the Medical Age*, 9 J.L. ECON. & POL'Y 717, 719 (2013); Susan Dusza Guerra Leksander, *Striving Towards Ethical Adoption Practice*, HARV. L.: PETRIE-FLOM CTR. (May 11, 2022), <https://blog.petrieflom.law.harvard.edu/2022/05/11/striving-towards-ethical-adoption-practice>.

9. Johnson, *supra* note 7, at 40.

10. Meg Henderson, *Adoption: Why the System is Ruining Lives*, GUARDIAN (Oct. 31, 2012, 4:00 PM), <https://www.theguardian.com/society/2012/oct/31/adoption-why-system-ruining-lives> (“Until something is done to sort a system that is clearly flawed and not fit for [its] purpose, there needs to be an end to the call for faster universal adoption.”).

11. *See generally* Johnson, *supra* note 7, at 51.

12. *Id.* at 40.

13. *See generally* Jeannette Bennett, *The Purpose and History of Federal Income Taxes*, FED. RSRV. BANK ST. LOUIS (Mar. 20, 2018) <https://www.stlouisfed.org/open-vault/2018/march/purpose-history-federal-income-taxes> (showing that one of the first credits offered was in 1975 under “The Tax Reduction Act of 1975”).

14. I.R.C. § 23; MO. REV. STAT. § 135.327 (2023); 35 ILL. COMP. STAT. 5/227 (2023); OKLA. STAT. tit. 68, § 2357.601 (2023).

This article discusses the benefits of tax credits on lower and middle-income families. Tax credits are a “dollar-for-dollar reduction in tax liability” offered by a taxing authority, usually the government.¹⁵ They are applied after one’s tax liabilities are calculated for the year.¹⁶ In other words, if someone owes the government money at the end of the year, a credit will help offset this tax liability.¹⁷ If a taxpayer owes the government \$5,000 at the end of the year, a \$1,000 tax credit will reduce the taxpayer’s liability to \$4,000.¹⁸ Most tax credits are non-refundable, meaning that if the credit exceeds the tax liability the credit does not result in a tax refund to the taxpayer.¹⁹ A refundable credit is a tax credit that is able to be refunded if a taxpayer’s credit exceeds the liability.²⁰ For example, if a taxpayer owes the government \$500 at the end of the year, a \$1,000 tax credit will not only reduce the taxpayer’s liability to \$0, but it will also result in a \$500 payment to the taxpayer. Simply put, a refundable credit is able to be utilized, no matter the tax liability for the year.²¹

II. LEGAL BACKGROUND

A. History of the Credit

Missouri reformed the state’s aforementioned adoption tax credit in 2021, as a result of bipartisan efforts in the state to provide expanded benefit to taxpayers seeking to utilize the credit.²² The pushed-through legislation was “deeply personal” for some, such as Missouri House Speaker Rob Vescovo who spent 15 months of his childhood in the foster care system.²³ It was also personal for the

15. Susannah Snider, *What Is a Refundable Tax Credit? Understand the Difference Between Refundable and Nonrefundable Tax Credits*, U.S. NEWS & WORLD REP. (May 9, 2019, 10:59 AM), <https://money.usnews.com/money/personal-finance/taxes/articles/what-is-a-refundable-tax-credit>.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. Snider, *supra* note 15.

22. Tessa Weinberg, *Parson Signs into Law Bills That Provide Tax Credits for Foster, Adoptive Families*, MO. INDEP. (Apr. 22, 2021, 4:02 PM), <https://missouri-independent.com/2021/04/22/parson-signs-into-law-bills-that-provide-tax-credits-for-foster-adoptive-families>.

23. *Id.*

governor of Missouri, Mike Parson, who was thrilled to welcome a son and daughter-in-law via the adoption process.²⁴

However, the credit has gone through some significant changes to get to where it is today.²⁵ The Special Needs Adoption Tax Credit was first offered in 1988 and was called the “Special Needs Adoption Tax Credit Act,”²⁶ but it is now simply called the “Adoption Tax Credit Act.”²⁷ The Missouri legislature passed the original Special Needs Adoption Tax Credit Act to allow families to receive a tax credit for up to \$10,000 to assist with adopting a special needs child.²⁸ The credit was for “nonrecurring adoption expenses for each child adopted,” as long as each individual child was eligible for the credit.²⁹ Those nonrecurring expenses included and still include, “reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which [we]re directly related to the legal adoption of a child,” as long as such fees and expenses did not violate state or other laws.³⁰ The tax credit was previously able to be rolled into the following tax year, up to a maximum of a five-year period, but it was not a refundable credit.³¹

This credit, however, was limited to the adoption of children with what the state labeled as “special needs” in order to encourage these types of adoptions, which³² included two qualifications: (1) the child cannot or should not be returned home to the child’s parents, and (2) the child “has a specific factor or condition such as age, membership in a sibling group, medical condition or diagnosis, or disability because of which it is reasonable to conclude that such child cannot be easily placed with adoptive parents.”³³ In other words, special needs is a showing that the child is of additional need that requires he or she be given additional care. By providing this credit, the state is indirectly helping to fund these additional expenses associated with special needs adoption.

24. *Id.*

25. *See generally* MO. REV. STAT. § 135.327 (2023).

26. S.B. 402, 1987 84th Gen. Assemb., Reg. Sess. (Mo. 1987).

27. § 135.325.

28. § 135.327.

29. *Id.*

30. § 135.326.

31. § 135.333.

32. MO. REV. STAT. § 135.327 (2023).

33. § 135.326; *see also* 42 U.S.C. § 673.

Another historic legislative effort worth noting about the history of the credit was the push for the adoption of children who are residents of the state of Missouri or wards of the state of Missouri. In 2013, Missouri's legislature passed another reform bill that specifically called for the credit program to only be used for special needs children who are either residents of Missouri or wards of a resident of Missouri.³⁴ A ward is defined as "a person in a guardianship."³⁵ Further, a guardianship is "a legal status."³⁶ This legal status as a guardian allows the guardian of the ward to make certain decisions for the ward, such as, financial decisions, health decisions, residence decisions, and social restriction decisions.³⁷

However, reform from the bill was short-lived as residents did not utilize the reformed credit to its fullest potential.³⁸ The utilization of the credit before requiring that the child be a resident or the ward of a resident of the state was at \$1,036,226 for the fiscal year of 2012.³⁹ Just eight years later, the redemption of the tax credit was at \$29,404 for 2020.⁴⁰ That is a devastating decrease of over 97% within an eight-year period. The glaring difference in those years is the requirement for the child to be a ward of a resident of the state or a resident of the state. There was a \$2 million maximum that was allowed to be claimed as credits before the 2021 reform,⁴¹ which showed that the tax credit was not being utilized as intended by the legislature.

B. The Current Statutory Framework

The current version of the statute took effect in 2022.⁴² It still allows for a tax credit on nonrecurring adoption expenses up to \$10,000, as the previous statute did, but the enactment allowed for

34. S.B. 20, 15, & 19, 2013 97th Gen. Assemb. Reg. Sess. (Mo. 2013).

35. *Guardianship in Missouri*, MO. PROT. & ADVOC. SERVS., <https://www.moadvocacy.org/resources/guardianship> (last visited Oct. 18, 2023).

36. *Id.*

37. *Id.* Although, please note that these rights of a guardian are not dispositive as a ward has some rights of his or her own that can regulate or question the guardian's power over the ward. MO. REV. STAT. § 475.361(2018).

38. See COMM. ON LEGIS. RSCH. OVERSIGHT DIV., L.R. No.: 0318S.06F, H. 101st Gen. Assemb. Reg. Sess. at 3–4 (Mo. 2021).

39. *Id.*

40. *Id.*

41. *Id.*

42. MO. REV. STAT. § 135.327; *Special Needs Adoption Tax Credit (ATC)*, MO. DEP'T REVENUE, <https://dor.mo.gov/tax-credits/atc.html> (last visited Oct. 6, 2023).

taxpayers to take the credit even if the child did not have special needs.⁴³ The statute also makes it explicitly clear that the adoption no longer needs to be of a child that is a resident of Missouri nor the ward of a resident of Missouri.⁴⁴ However, the Missouri legislature took a step to ensure that priority was still given to families who adopt children with special needs.⁴⁵ The priority allows for a first priority in the monetary benefit to be given to said families who still adopt a child with special needs.⁴⁶ This priority benefit is useful because there is a \$6 million cap on the amount of credits able to be taken per year.⁴⁷ For example, if there were 600 taxpayers claiming the full \$10,000 credit amount in 2023, after the 600th taxpayer, no other taxpayers would be allowed to utilize the credit. There is one major caveat to this priority ranking: it is only in effect until 2024.⁴⁸ The \$6 million cumulative cap for the credit being taken by Missouri taxpayers will be removed for fiscal years beginning on or after July 1, 2024.⁴⁹

In addition to removing the cap in 2024, the credit will increase annually based on the Consumer Price Index.⁵⁰ Adding in the inflation adjustment will increase the tax beyond the original \$10,000 in order to help adoptive parents with increasing costs.⁵¹ This built-in adjustment increases the taxpayer's credit potential without getting the legislature involved.

There are also some new accountability measures in place in order to ensure the tax credits are being claimed in good faith. Some citizens of the state may disagree with offering a credit under the idea that bad actors could abuse it.⁵² Some examples of accountability measures

43. § 135.327; MO. DEP'T REVENUE, *supra* note 42.

44. § 135.327 (stating the adoption credit is allowed "regardless of whether such child is a special needs child" and "regardless of whether the child adopted is a resident or ward of a resident of [Missouri] at the time the adoption is initiated").

45. *Id.*

46. § 135.327; MO. DEP'T REVENUE, *supra* note 42.

47. § 135.327.

48. MO. REV. STAT. § 135.327 (2023); MO. DEP'T REVENUE, *supra* note 42.

49. § 135.327.

50. § 135.327; MO. DEP'T REVENUE, *supra* note 42.

51. Tiffany Lam-Balfour & Alieza Durana, *The Current Inflation Rate is 3.2%. Here's Why It Matters*, NERDWALLET (Nov. 14, 2023), <https://www.nerdwallet.com/article/investing/inflation>.

52. Alternatively, there may be other reasons for people to disagree with offering tax credits at all. *See* Preston Brashers, *Most Tax Credits Are Bad Tax Policy*, HERITAGE FOUND. (Jan. 24, 2022), <https://www.heritage.org/taxes/commentary/most-tax-credits-are-bad-tax-policy>, but this current article assumes the highest and best use of tax credits.

include the following: 50% of the credit is available to the taxpayer in the year the child is placed within the home;⁵³ the other 50% is available at the finalization of the adoption;⁵⁴ and forbidding “double-dipping” when there is another federal, state, or local tax credit that covers the same expenses as covered by this statute.⁵⁵ This prevention of double-dipping also includes exclusion of the amount available for crediting based on deductions that were taken for the expenses based on federal, state, or local law.⁵⁶ Missouri also only allows for the credit to cover actual expenses.⁵⁷ Lastly, the statute notes that if the child is put into the care of the state either by a juvenile court (permanently or temporarily) or by placement in a foster home with no intent to return to the adoptive home, the credit shall be reduced in an amount equal to the costs incurred by the state regarding the child’s care, maintenance, treatment, and services.⁵⁸

Another benefit of the current tax credit is that it does not only cover those under the age of 18,⁵⁹ which are generally the only age group most people think about when thinking of “children.” This benefit was specifically expanded in 2021 to include those who are 18 or older and mentally or physically incapable of caring for himself or herself.⁶⁰ In addition, businesses are able to utilize the tax credit as well;⁶¹ a business may assist its employee with the one-time costs associated with a good faith attempt of adopting a child.⁶² The business or the adopting parent(s) may claim the tax credit, but not both.⁶³ For example, if an employer pays \$10,000 to cover the entire nonrecurring adoption expenses for someone who is a Missouri resident, the business may claim the entire credit for that child while the parent may not claim any.

53. MO. REV. STAT. § 135.327 (2023).

54. *Id.*

55. MO. REV. STAT. § 135.329 (2023).

56. *Id.*

57. § 135.327.

58. MO. REV. STAT. § 135.335 (2023); *see generally* MO. REV. STAT. § 453.005 (stating that the “[adoption provisions] shall be construed so as to promote the best interests and welfare of the child in recognition of the entitlement of the child to a permanent and stable home,” which allows for a judge to use this statute to ensure that the child is taken care of in the best possible way).

59. § 135.326.

60. H.B. 429, 2021 101st Gen. Assemb. Reg. Sess. (Mo. 2021).

61. § 135.327; MO. DEP’T REVENUE, *supra* note 42.

62. § 135.327; MO. DEP’T REVENUE, *supra* note 42.

63. § 135.327; MO. DEP’T REVENUE, *supra* note 42.

These tax credits may be taken against “any liability incurred by a taxpayer under the provisions of chapter 143 [Income Tax], chapter 147 [Corporation Franchise Tax], chapter 148 [Financial Institution Tax], and chapter 153 [Public Utilities Taxation],” which are all state-assessed taxes.⁶⁴ Individuals are most likely to take it against the income tax liabilities accrued while corporations are more likely to credit the income tax or the other liabilities. Since it is a state tax credit, it may not be taken against a taxpayer's federal tax liabilities.

III. LEGAL ISSUE

The federal adoption tax credit, which is the counterpart to Missouri's Adoption Tax Credit, is unworkable and becoming less useful to lower-income families who are looking to adopt. The federal counterpart was passed in 1996 under the Small Business Job Protection Act of 1996,⁶⁵ eight years after Missouri's implementation of its own Special Needs Adoption Tax Credit Act.⁶⁶ The federal tax credit started at a \$5,000 maximum for the expenses of the adoption of a child, with a \$6,000 maximum if the child was special needs.⁶⁷ The limitations were similar to Missouri's with no “double deduction” benefits allowed, and the expenses must have been expenses related to adoption with certain restrictions.⁶⁸ The federal legislation was enacted to assist the special needs foster care system.⁶⁹ However, with the federal government's framework, over two-thirds of the tax credit in 2007 went to those families who have incomes above \$75,000.⁷⁰

Since the federal government, and even more so, the state government, has a limited amount of resources that it can use without significantly increasing the tax burden on an already over-taxed population, the benefits of essentially giving the tax credit to only the higher-

64. § 135.326.

65. *See generally* Small Business Job Protection Act of 1996, 1996 Enacted H.R. 3448, 104 Enacted H.R. 3448, 110 Stat. 1755, 1899.

66. S.B. 402, 1987 84th Gen. Assemb., Reg. Sess. (Mo. 1987).

67. Small Business Job Protection Act of 1996 § 23.

68. *Id.* (noting the major restrictions based on Modified Adjusted Gross Income, exclusions for grants already used on these expenses, disallowing spouses from utilizing the credit for adoption of the other spouse's child, and employer-reimbursed expenses).

69. Rob Geen, *The Adoption Tax Credit: Is it an Effective Approach to Promote Foster Care Adoption?*, CHILD TRENDS RSCH. BRIEF, Publication #2007-24 at 1 (Aug. 2007).

70. *Id.* at 2.

income earners is currently misplaced. Also, in addition to the benefit of helping lower-income families, adoption is much less costly to the government than keeping children in foster care.⁷¹ Specifically, it is twice as costly to keep a child in the governmental foster care system than to have the child adopted into a loving home.⁷² Additionally, in 2006, “every dollar spent on adoption from foster care, the government yield[ed] about \$3 in benefits both from the money saved on foster care as well as the increased expectancy of the child’s future earnings.”⁷³ These sort of 3x returns are well-worth the investment by the government into supporting families taking on children, but the federal government needs to be encouraging such activity in a different manner as the current system of encouraging adoption via tax credits is not working.⁷⁴

The current federal legislation has been updated and is now a bit more comparable with the Missouri statutes such as the new \$10,000 maximum credit (adjustable for inflation).⁷⁵ Similarly, there is a denial of a “double-dipping” into tax credits that disallows any kind of repeat credit-taking by a taxpayer who is receiving tax credits for the same expenses under some other federal, state, or local tax incentives.⁷⁶ The adoption expenses covered are also generally the same as Missouri’s.⁷⁷ There is also a preference in special needs adoptions but in a different way than Missouri. The federal statute allows for an automatic granting of the tax credit to those families adopting a child with special needs as defined by the statute regardless of a showing of the expenses associated with the adoption.⁷⁸ The federal statute

71. Head, *supra* note 8, at 717.

72. *Id.*

73. *Id.* at 728.

74. *See* Geen, *supra* note 69 at 2 (stating that 2/3 of the taxpayers taking the credit are families with income over \$75,000).

75. I.R.C. § 23 (indicating that the \$10,000 maximum shall be increased pursuant to I.R.C. § 1(f)(3) after December 31, 2002); MO. REV. STAT. § 135.327 (indicating that the \$10,000 maximum shall be increased pursuant to the Consumer Price Index after January 1, 2024).

76. I.R.C. § 23.

77. *Id.* (defining qualified expenses as “reasonable and necessary adoption fees, court costs, attorney fees, and other expenses” which are not illegal or reimbursed by an employer and are associate with the adoption of a child).

78. *Id.*

also allows peremptory fees to be paid, such as a home study test or other expenses that occur before a child is even identified.⁷⁹

There is a benefit from the federal credit that is not available in the Missouri framework. In the Internal Revenue Code, there is a provision that an employer's payments toward an employee will be excluded from gross income if they are pursuant to an employer's "Adoption Assistance Program."⁸⁰ The employer can provide much needed funding to a family who is in need of the cash presently via stipends or bonuses in order to pay for adoption and related expenses and these extra payments will not be included in the taxpayer's gross income.⁸¹ There is, of course, a limit to this exclusion of income as well; the exclusion is equal to the credit amount available under the separate statute⁸² Additionally, another limitation is that the expenses must not overlap—there must be separate expenses covered by that of the employer's adoption assistance⁸³

There is also a limit to the amount of income a person may have in a taxable year in order to still be eligible for the tax credit and taxable income deduction.⁸⁴ The current upper limit where the tax credit and exclusion are completely phased out is a Modified Adjusted Gross Income ("MAGI") of \$263,410,⁸⁵ but some might say this benefit is hardly needed for people of such high income.⁸⁶ The lower limit for 2023 is \$223,410, where there is no exclusion if the MAGI is somewhere below that amount.⁸⁷ Simply put, the credit starts to be phased out at \$223,410 and is completely phased out at \$263,410.⁸⁸

In general, "gross income means all income from whatever source derived, including . . . [c]ompensation for services, including [] fringe

79. *Topic No. 607, Adoption Credit and Adoption Assistance Programs*, IRS, <https://www.irs.gov/taxtopics/tc607> (Oct. 18, 2023).

80. I.R.C. § 137.

81. *Id.*

82. *Id.* (starting the exclusion at \$10,000 but being adjusted for inflation as time progresses).

83. *Instructions for Form 8839 (2022)*, IRS, <https://irs.gov/instructions/i8839> (Mar. 10, 2023).

84. IRS, *supra* note 79.

85. IRS, *supra* note 79.

86. *Cf.* Dr. David Hope, *Tax Cuts For The Wealthy Only Benefit The Rich: Debunking Trickle-down Economics*, LONDON SCH. ECON. & POL. SCI. (Jan. 24, 2023), <https://www.lse.ac.uk/research/research-for-the-world/economics/tax-cuts-for-the-wealthy-only-benefit-the-rich-debunking-trickle-down-economics>.

87. IRS, *supra* note 79.

88. *Id.*

benefits, and similar items.”⁸⁹ However, income may be excluded when provided for in the code.⁹⁰ In this instance, there is an exclusion for the income realized as a payment from employer to employee pursuant to an adoption assistance program. Since there is an exclusion, the taxpayer is given a break on the portion of income allowed under the applicable section.⁹¹

The good news for the taxpayer is that the Internal Revenue Service (“IRS”) allows the credit and the exclusion to be stackable when it comes to federal taxes, which means that the taxpayer not only gets to claim up to the statutory amount as a credit on their taxes, but the taxpayer can also exclude from gross income up to the statutory amount paid by the employer for adoption expenses.⁹² However, the IRS also takes a position that is against the taxpayer in that the taxpayer is not allowed to take more than the maximum allowable credit for the “same adoption effort,”⁹³ which means that if a child is sought after in 2018 and then finally adopted in 2022, the maximum amount for 2022 is the credit minus what was taken for expenses on the same adoption effort in 2018.

The problem with the current federal credit framework is that many low-income taxpayers are not actually having to pay taxes to the federal government because their income is so low,⁹⁴ so they are unable to utilize the credit since it is nonrefundable.⁹⁵ According to the Urban Institute and Brookings Institution, “About 12 percent of households in the bottom income quintile will pay federal income tax in 2020.”⁹⁶ Simply put, “In many cases, low-income households owe no income tax.”⁹⁷ This is due to a large amount of already-offered tax deductions, such as the standard deduction given to taxpayers (which may be more than the taxpayer makes in a year already), and credits, such as child tax credits.⁹⁸ This is also due to the already low tax rate

89. I.R.C. § 61.

90. *Id.*

91. In this case, I.R.C. § 137.

92. IRS, *supra* note 83.

93. IRS, *supra* note 79.

94. *How Does the Federal Tax System Affect Low-Income Households?*, TAX POL’Y CTR.: URB. INST. & BROOKINGS INST., <https://www.taxpolicycenter.org/briefing-book/how-does-federal-tax-system-affect-low-income-households> (last visited Oct. 6, 2023).

95. I.R.C. § 23.

96. TAX POL’Y CENTER: URB. INST. & BROOKINGS INST., *supra* note 94.

97. *Id.*

98. *Id.*

being assessed on low levels of income.⁹⁹ On the other hand, employers overall were the largest category of direct tax in 2014 with businesses paying 13.5% of all taxes paid that year.¹⁰⁰ Since employers generally need to make a profit in order to stay open for business, they likely have tax liabilities more often than not, which could open a door to pursuing a more productive tax credit as discussed below:

“Which income group to prefer when it comes to awarding tax benefits is not a legitimate policy issue. Quite simply, there is no legitimate reason to favor higher-income adoptive families over middle- or lower-income adoptive families.¹⁰¹ Yet the existing tax benefit structure does just that.”¹⁰²

In order to expound upon the discrepancy between the lower- and higher-income earners, take, for example, a taxpayer's gross income is only \$27,000, and the taxpayer is filing as “married filing jointly” for the year of 2023. The standard deduction takes the gross income down to \$0 taxable income.¹⁰³ Say the couple also spent \$5,000 on qualified adoption expenses¹⁰⁴ and does not live in a state where the credit is refundable. Since the taxpayer has no tax burden for the year with the federal government, they are unable to be reimbursed for their qualified adoption expenses spent in 2023.¹⁰⁵ Now, take a different example. Say a couple, married filing jointly, makes \$100,000 and is only going to take the standard deduction.¹⁰⁶ This couple, making \$100,000 will have a taxable income that is higher than \$0.¹⁰⁷ Next, say they spent similar expenses to the first couple discussed

99. I.R.S. News Release IR-2022-182 (Oct. 18, 2022).

100. Scott Hodge, *U.S. Businesses Pay or Remit 93 Percent of All Taxes Collected in America*, TAX FOUND. (May 2, 2019), <https://taxfoundation.org/data/all/federal/businesses-pay-remit-93-percent-of-taxes-in-america>.

101. *Id.*

102. *Id.*

103. *See* I.R.S. News Release IR-2022-182 (Oct. 18, 2022) (stating the standard deduction for couples married filing jointly is \$27,700 in 2023).

104. As defined in I.R.C. § 23.

105. *Id.* (which is under the division in the Code titled “Nonrefundable personal credits §§ 21–26”).

106. *See* I.R.S. News Release IR-2022-182 (Oct. 18, 2022) (stating the standard deduction for couples married filing jointly is \$27,700 in 2023).

107. *See Id.* (Oct. 18, 2022) (stating the standard deduction for couples married filing jointly is \$27,700 in 2023; thus, the couple will have \$72,300 in taxable income assuming no other deductions apply).

(\$5,000 on qualified adoption expenses¹⁰⁸). The couple making \$100,000 will be able to take the credit up to the maximum amount of tax liability owed the federal government.¹⁰⁹ This does not seem to be an equitable outcome that allows for much utilization for low-income families.

The Senate Report shows that the original Adoption Promotion and Stability Act was enacted in order to provide assistance to those trying to adopt.¹¹⁰ The Adoption Promotion and Stability Act's provision for the adoption tax credit was extended permanently, or until Congress changes its mind and alters the current provisions, by the American Taxpayer Relief Act,¹¹¹ but this Act did not allow for the tax to be refundable to the taxpayer.¹¹² The Senate Report outlines that the Senate "believes that the financial costs of the adoption process should not be [a] barrier to adoption."¹¹³ With that said, the federal government has a way to actually achieve their legislative goal for those of lower incomes, like that of the first example given in the previous paragraph.

IV. SOLUTION & IMPLEMENTATION

Missouri has enacted a solution to the problem of lower-income citizens not being able to utilize the adoption tax credit. Missouri allows for the credit to be refundable to the taxpayer in cases where the credit exceeds the taxpayer's liability to the state for taxes within that year.¹¹⁴ Although the federal statute allows for a rollover similar to Missouri's previous tax credit,¹¹⁵ lower-income families would benefit greatly if the federal government were to amend the current framework to make it a refundable tax credit. It is argued that the credit would be far more helpful if it were refundable.¹¹⁶

108. As defined in I.R.C. § 23.

109. *Id.*

110. S. REP. NO. 104-279, at 3 (1996).

111. Justin Bryan & Tony Zammit, *Feature Story: American Taxpayers Relief Act (ALTRA): ALTRA Brings Sense of Confidence*, 38 MONT. LAW. 36, 38 (Feb. 2013).

112. Head, *supra* note 8, at 718.

113. S. REP. NO. 104-279 (1996) at 3.

114. MO. REV. STAT. § 135.333 (confirming, however, that the tax credit shall not be allowed for adoptions where tax credits are issued in the tax year beginning on or before December 31, 2023).

115. I.R.C. § 23.

116. Hanlon & Wilmoth, *supra* note 5. ("[The credit] helps many families, but could help many more families if it were refundable.")

Some in the federal government, particularly United States Senators Kevin Cramer and Bob Casey, have introduced legislation to propose exactly that.¹¹⁷ The proposed bipartisan legislation is entitled the Adoption Tax Credit of 2023,¹¹⁸ and, if passed as currently proposed, this uniquely bipartisan legislation would make the federal adoption tax credit completely refundable.¹¹⁹ The changing of the code to allow for the refund would affect thousands of families in the United States for the better,¹²⁰ as it has in the past.¹²¹ This legislation is supported by at least 13 Democrats and at least 10 Republicans.¹²² One of the sponsoring Senators, Kevin Cramer, a Republican from North Dakota, is also Co-Chair of the Congressional Coalition of Adoption, the largest bicameral, bipartisan caucus in Congress.¹²³ With that being said, the legislation should have some heavy support behind it in order to be able to pass both houses as this beacon of hope for families struggling to adopt children could prove beneficial to those families;¹²⁴ it would thus be beneficial to political movements who support the legislation as evinced by the many other Representatives in the House also sponsoring a similar bill.¹²⁵ The legislation introduced in

117. *Sens. Cramer, Casey Introduce Legislation to Make Adoption Tax Credit Refundable*, KEVIN CRAMER U.S. SEN. FOR N.D. (Sept. 21, 2023), <https://www.cramer.senate.gov/news/press-releases/sens-cramer-casey-introduce-legislation-to-make-adoption-tax-credit-refundable>; *Casey, Cramer Introduce Legislation To Make Adoption Tax Credit Fully Refundable*, BOB CASEY U.S. SEN. FOR PA. (Sept. 21, 2023), <https://www.casey.senate.gov/news/releases/casey-cramer-introduce-legislation-to-make-adoption-tax-credit-fully-refundable>; see *infra* note 126.

118. Adoption Tax Credit Refundability Act of 2023, 118 S. § 2895 (2023).

119. KEVIN CRAMER U.S. SEN. FOR N.D., *supra* note 118; BOB CASEY U.S. SEN. FOR PA., *supra* note 118.

120. KEVIN CRAMER U.S. SEN. FOR N.D., *supra* note 118; BOB CASEY U.S. SEN. FOR PA., *supra* note 118 (noting that allowing children to be placed in loving homes with families able to care for them is the ultimate goal of this bipartisan legislation).

121. KEVIN CRAMER U.S. SEN. FOR N.D., *supra* note 118; BOB CASEY U.S. SEN. FOR PA., *supra* note 118 (claiming that data from 2011 shows that about 62% of families that filed the tax credit were able to be refunded at least part of the credit).

122. KEVIN CRAMER U.S. SEN. FOR N.D., *supra* note 118; BOB CASEY U.S. SEN. FOR PA., *supra* note 118.

123. KEVIN CRAMER U.S. SEN. FOR N.D., *supra* note 118.

124. *Policy Basics: The Earned Income Tax Credit*, CTR. ON BUDGET & POL'Y PRIORITIES (Apr. 28, 2023), <https://www.cbpp.org/research/federal-tax/the-earned-income-tax-credit> (stating that one certain tax credit, the earned income tax credit, "lifted about 5.6 million people above the poverty line, including nearly 3 million children").

125. *Reps. Davis, Moore, Moore, Feenstra, Bacon, and Kamlager-Dove Honor National Foster Care Month with Bipartisan Legislation to Help Foster Youth Find*

the House is the same as the one introduced in the Senate,¹²⁶ but they did not reference the other chambers' bills respectively.

In addition to the credit being refundable, Missouri allows for the tax credit to be transferred or sold.¹²⁷ This gives each taxpayer more control over their overall tax obligations and refunds.¹²⁸ If the taxpayer needs cash to cover the costs of the adoption at the beginning of the year, he or she will not need to wait until the following filing period to get the much-needed cash. This is a way to allow willing buyers and sellers to benefit from this tax credit on an open market.

The last major piece of the Missouri tax credit that the federal framework should adopt to decrease the discrepancy between the benefit going to higher income rather than lower income taxpayers would be to allow the credit for employers.¹²⁹ As discussed above, employers are one of the largest direct tax categories.¹³⁰ Thus, it follows that the company could take on the inherent "risk" that the taxpayer (the employer) has no tax liability for the year. This "taking on the risk" could be implemented by the employer if it chooses to pay the employee directly for adoption expenses or the employer chooses to pay the expenses on behalf of the employee. The employer, like the individual taxpayer, would only be able to take the tax credit if they had a tax liability for the year.

One part of the federal framework that Missouri does not currently allow but could benefit from is the allowance of both an employer-given adoption assistance exclusion from the taxpayer's income and the credit itself¹³¹ The federal credit requires that the credit be used for expenses that do not overlap,¹³² which prevents double-dipping

Permanent Families via Adoption, CONGRESSMAN DANNY K. DAVIS REPRESENTING 7TH DIST. ILL. (May 25, 2023), <https://davis.house.gov/media/press-releases/rep-davis-moore-moore-feenstra-bacon-and-kamlager-dove-honor-national-0>.

126. Adoption Tax Credit Refundability Act of 2023, 118 H.R. § 3662 (2023); Adoption Tax Credit Refundability Act of 2023, 118 S. § 2895 (2023).

127. MO. REV. STAT. § 135.327 (stating that the credit may be sold or transferred with the condition that the credit must be sold at a discount rate of 75% or greater).

128. *Take Advantage of Transferable Tax Credits with the National Tax Benefit Exchange*, ADP, <https://www.adp.com/spark/articles/2022/05/take-advantage-of-transferable-tax-credits-with-the-national-tax-benefit-exchange.aspx> (last visited Nov. 26, 2023).

129. *Id.*

130. Hodge, *supra* note 100.

131. I.R.C. § 23.

132. IRS, *supra* note 83.

that the government wants to avoid when giving credits.¹³³ The federal system offers protection from the credit being overutilized by “double-dipping,” and Missouri should consider adopting that facet of the federal credit.

V. CONCLUSION

The federal government's adoption of an adoption tax credit system modeled off of Missouri statutes would be a success for both low-income and middle-income earners in the United States who are looking to adopt children of their own. Creating this additional benefit would not only benefit the taxpayer,¹³⁴ but it would also benefit the children who are adopted in response to the increased benefit of the tax credits available. Perhaps the largest benefitting party would be the government who would see a three-to-one increase on their financial investment in adoption over foster care.¹³⁵

The credit is being contemplated currently by the federal legislature,¹³⁶ but Missouri has actually enacted a way for the tax credit to be refundable showing its potential usefulness and credibility.¹³⁷ Although Missouri has not experienced a year where the taxpayer is eligible for a refund, beginning January 1, 2024, and in subsequent years,¹³⁸ lower-income adoptive parents will finally have the full capability of reaping the benefits of refundable tax credits intended to help them with the burdensome costs of adopting. The federal government would benefit by following Missouri's lead by helping families of all economic backgrounds to adopt children,¹³⁹ therefore, the

133. See I.R.C. § 23(b)(3) titled “Denial of double benefit.”

134. See generally TROY SEGAL, *Tax Credit: What It Is, How It Works, What Qualifies, Three Types*, INVESTOPEDIA <https://www.investopedia.com/terms/t/tax-credit.asp> (Feb. 12, 2023) (outlining that the government offering tax credits are “more favorable” than tax deductions and are generally beneficial to a taxpayer).

135. Head, *supra* note 8, at 728.

136. Nathaniel S. Hibben, *The Inequitable Tax Benefits of Adoption*, 4 LIBERTY U.L. REV. 135, 146 (2009).

137. MO. REV. STAT. § 135.327.

138. § 135.333.

139. Weinberg, *supra* note 22; Austin Huguélet, *New Tax Credits for Missourians Who Adopt, Foster Children Become Law*, SPRINGFIELD NEWS-LEADER (Apr. 3, 2021, 6:49 PM), <https://www.news-leader.com/story/news/politics/2021/04/23/missouri-tax-credit-foster-care-parents-adoption-becomes-law-mo-gov-mike-parson/7356813002>; Jeanne Kuang, *Missouri Lawmakers Send Tax Benefits for Foster, Adoptive Parents to Parson's Desk*, KANSAS CITY STAR (Apr. 12, 2021, 5:38 PM), <https://www.kansascity.com/news/politics-government/article250618344.html>;

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federal government should follow in Missouri's footsteps and reap the plentiful rewards of growing its investment, allowing children and families to unite, and importantly, assisting lower-income families.

Alisa Nelson, *Effort to Boost Missouri Adoptions Awaits Governor's Decision*, MISSOURINET (June 14, 2023), <https://www.missourinet.com/2023/06/14/effort-to-boost-missouri-adoptions-awaits-governors-decision>.