

The Confusing History of the Child Care Tax Benefit

By Stephen McCurley

Of all proposals to create a benefit for volunteer work, none has had so speckled a history as the child care tax benefit for volunteers.

The concept is very basic: Any person who must pay for child care services in order to do volunteer work will be able to take a tax benefit for the amount paid out. The impact of such a tax benefit could have a significant impact, both on the total amount of volunteer time donated in this country, and on the time of day during which volunteer work could be done.

The Historical Labyrinth

At the national level, this simple idea has had an unduly complicated past. The confusion has stemmed from gaps in the Internal Revenue Code, and their subsequent interpretation by the courts and the Internal Revenue Service.

Under current tax law, all out-of-pocket expenses a volunteer can deduct must fall within the Internal Revenue Code's allowance of charitable contributions (as interpreted in section 1.170A-1(g) of the Income Tax Regulations). Under that provision a volunteer can deduct unreimbursed expenses made incident to the rendition of services to a qualifying organization.

But does that provision allow for deduction of child care expenses? As Hamlet would say, "There's the rub."

In 1972 a volunteer named Susan Meehan in Washington, D.C., asked the Internal Revenue Service for an opinion on whether she could deduct the child care expenses she was incurring to do charity work. Ten months later, in early 1973, following the usual ponderous IRS processes, Meehan received a personal letter ruling from the IRS. The letter informed her that she could legitimately deduct her child care expenses as long as she was doing work for a tax-exempt charity and the work was the reason for having a babysitter. (Note: Personal letter rulings apply only to the individual under discussion, and not necessarily to anyone else.)

In December 1973, however, the IRS apparently decided that its previous decision, as expressed to Meehan, was not acceptable. In Revenue Ruling 73-597, IRS ruled that child care ex-

penses did not constitute allowable charitable contributions, reasoning that:

Since expenses for child care and household services have been held to be 'personal' expenses that have only an 'indirect and tenuous' connection to a taxpayer's rendition of business services, expenses for child care and household services are 'personal' expenses that have the same 'indirect and tenuous' connection to rendition of charitable services.

"Personal" expenditures do not qualify as being "charitable" in nature, since they are considered to be for your own benefit rather than that of the receiving organization. They aren't considered "out-of-pocket," since presumably you are the one receiving the benefit from them. This is the same reasoning that prevents you from deducting the cost of your own lunch when you do volunteer work: You can't deduct the meal because you had the benefit of eating it.

To the IRS, then, child care expenses were considered disallowable as charitable contributions. (Revenue rulings apply to everyone.)

This situation remained stable, basically, from 1973 to 1978. Then, in early 1978, the U.S. Tax Court's Small Tax Case Division rejected the IRS' argument and decided that a volunteer's child care expenses should be deductible. The court reasoned that child care expenses were analogous to auto expenses, which volunteers may deduct from their taxes.

Unfortunately for us, however, the decisions of the Small Tax Court are, like personal letter rulings, individual in nature and not binding on the IRS in regard to other cases. The only decision of widespread application on this subject is the 1973 revenue ruling disallowing the deduction of child care expenses by volunteers, and that is still the current position of the IRS.

You can, of course, strike a blow for principle and try to deduct it anyway. They can, of course, disallow it. And they will.

Doing Something About It

If this makes you angry, or at least makes you wonder about the omniscience of the IRS, you're in good company. Ever since the 1973 revenue ruling, people have been trying to change this situation.

At the national level, Rep. Quillen of Tennessee has introduced a bill in the past few sessions on Congress that simply would change the Internal Revenue Code itself to allow for the deduction of child care expenses. That is how child care expenses for working parents came to be deductible. Quillen's bill would allow a deduction of up to \$400 per month for volunteers for governmental, charitable, and social welfare organizations.

Recent changes in the tax code, however, have given us a potentially better alternative than the Quillen proposal. The Tax Reform Act of 1976 made the deduction for working parents into a child care tax credit; the volunteer child care benefit could be piggybacked onto that.

At the state level, similar proposals have been introduced. In 1973, for example, the California legislature considered a child care tax deduction bill. It stalled among other reasons, due to the inability of the sponsors to provide estimates of the revenue impact of the bill. NCVA is now attempting to remedy this problem through economic examinations of past studies of volunteer work and charitable giving.

Like all volunteer bills, none of these proposals stands much chance without strong support from the field. If you're interested, and willing to do a little work, raise the subject with your local volunteer group. We'll be willing to provide whatever information we can, as will the other national volunteer groups and associations.