

114TH CONGRESS  
2D SESSION

# H. R. 5238

To amend the Internal Revenue Code of 1986 to provide an income tax credit for the costs of certain infertility treatments, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2016

Mr. LEWIS introduced the following bill; which was referred to the Committee on Ways and Means

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## A BILL

To amend the Internal Revenue Code of 1986 to provide an income tax credit for the costs of certain infertility treatments, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Family Act of 2016”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

7 (1) The American Society of Reproductive Med-  
8 icine recognizes infertility as a disease, and the Cen-  
9 ters for Disease Control and Prevention have de-  
10 scribed infertility as an emerging public health pri-

1 ority in the United States. Globally, the World  
2 Health Organization also formally recognizes infer-  
3 tility as a disease.

4 (2) According to the National Survey of Family  
5 Growth of the Centers for Disease Control and Pre-  
6 vention, approximately 3,000,000 women in the  
7 United States had trouble conceiving or carrying a  
8 pregnancy to term.

9 (3) A portion of those 3,000,000 women are  
10 cancer survivors who were diagnosed as infants, chil-  
11 dren, or young adults. Their treatments included  
12 chemotherapy, radiation, and surgery which have led  
13 to irreparable damage to their reproductive systems.

14 (4) Military families notably are also impacted  
15 by infertility as a result of lower extremity war inju-  
16 ries arising from the perils of modern warfare. For  
17 active duty individuals, frequent changes in perma-  
18 nent duty station, combat deployments, and training  
19 rotations complicate access to fertility treatments. In  
20 addition, active duty individuals or veterans have no  
21 coverage for in vitro fertilization (IVF) through their  
22 military health insurance and must pay out of pock-  
23 et for those expenses, even within military treatment  
24 facilities.

1           (5) For many, the cost of treatment for the dis-  
2           ease of infertility is prohibitive. According to the  
3           American Society for Reproductive Medicine, the  
4           cost per cycle of IVF is approximately \$12,500, and  
5           on average couples require at least 2 cycles. Many  
6           couples have to choose between their desire to estab-  
7           lish a family and their future financial well-being.

8           (6) Medical insurance coverage for infertility  
9           treatments is sparse and inconsistent at the State  
10          level. Only 8 States have passed laws to require com-  
11          prehensive infertility coverage, and under those  
12          State laws employer-sponsored plans are exempt;  
13          therefore, coverage for treatments such as IVF is  
14          limited. According to Mercer's 2005 National Survey  
15          of Employer-Sponsored Health Plans, IVF was vol-  
16          untarily covered by 19 percent of large employer-  
17          sponsored health plans and only 11 percent of small  
18          employer-sponsored health plans. Even in States  
19          with coverage mandates, out-of-pocket expenses for  
20          these treatments are significant.

21          (7) According to the latest National Survey of  
22          Family Growth, African-American and Hispanic  
23          women are more likely to be infertile than Caucasian  
24          women, yet studies indicate that they are less likely  
25          to use infertility services.

1 **SEC. 3. CREDIT FOR CERTAIN INFERTILITY TREATMENTS.**

2 (a) IN GENERAL.—Subpart A of part IV of sub-  
3 chapter A of chapter 1 of the Internal Revenue Code of  
4 1986 is amended by inserting before section 24 the fol-  
5 lowing new section:

6 **“SEC. 23A. CREDIT FOR CERTAIN INFERTILITY TREAT-**  
7 **MENTS.**

8 “(a) ALLOWANCE OF CREDIT.—In the case of an eli-  
9 gible individual, there shall be allowed as a credit against  
10 the tax imposed by this chapter for the taxable year an  
11 amount equal to 50 percent of the qualified infertility  
12 treatment expenses paid or incurred during the taxable  
13 year.

14 “(b) LIMITATIONS.—

15 “(1) DOLLAR LIMITATION.—The amount of the  
16 credit under subsection (a) for any taxable year shall  
17 not exceed the excess (if any) of—

18 “(A) the dollar amount in effect under sec-  
19 tion 23(b)(1) for the taxable year, over

20 “(B) the aggregate amount of the credits  
21 allowed under subsection (a) for all preceding  
22 taxable years.

23 “(2) INCOME LIMITATION.—

24 “(A) IN GENERAL.—The amount otherwise  
25 allowable as a credit under subsection (a) for  
26 any taxable year (determined after the applica-

1           tion of paragraph (1) and without regard to  
2           this paragraph and subsection (c)) shall be re-  
3           duced (but not below zero) by an amount which  
4           bears the same ratio to the amount so allowable  
5           as—

6                   “(i) the amount (if any) by which the  
7                   taxpayer’s adjusted gross income exceeds  
8                   the dollar amount in effect under clause (i)  
9                   of section 23(b)(2)(A); bears to

10                   “(ii) \$40,000.

11                   “(B) DETERMINATION OF ADJUSTED  
12                   GROSS INCOME.—For purposes of subparagraph  
13                   (A), adjusted gross income shall be determined  
14                   without regard to sections 911, 931, and 933.

15                   “(3) DENIAL OF DOUBLE BENEFIT.—

16                   “(A) IN GENERAL.—No credit shall be al-  
17                   lowed under subsection (a) for any expense for  
18                   which a deduction or credit is taken under any  
19                   other provision of this chapter.

20                   “(B) GRANTS.—No credit shall be allowed  
21                   under subsection (a) for any expense to the ex-  
22                   tent that reimbursement or other funds in com-  
23                   pensation for such expense are received under  
24                   any Federal, State, or local program.

1           “(C) INSURANCE REIMBURSEMENT.—No  
2           credit shall be allowed under subsection (a) for  
3           any expense to the extent that payment for  
4           such expense is made, or reimbursement for  
5           such expense is received, under any insurance  
6           policy.

7           “(c) CARRYFORWARDS OF UNUSED CREDIT.—

8           “(1) RULE FOR YEARS IN WHICH ALL PER-  
9           SONAL CREDITS ALLOWED AGAINST REGULAR AND  
10          ALTERNATIVE MINIMUM TAX.—If the credit allow-  
11          able under subsection (a) exceeds the limitation im-  
12          posed by section 26(a)(2) for such taxable year re-  
13          duced by the sum of the credits allowable under this  
14          subpart (other than this section), such excess shall  
15          be carried to the succeeding taxable year and added  
16          to the credit allowable under subsection (a) for such  
17          succeeding taxable year.

18          “(2) LIMITATION.—No credit may be carried  
19          forward under this subsection to any taxable year  
20          after the 5th taxable year after the taxable year in  
21          which the credit arose. For purposes of the pre-  
22          ceding sentence, credits shall be treated as used on  
23          a first-in, first-out basis.

24          “(d) QUALIFIED INFERTILITY TREATMENT EX-  
25          PENSES.—For purposes of this section:

1           “(1) IN GENERAL.—The term ‘qualified infer-  
2           tility treatment expenses’ means amounts paid or in-  
3           curred for the treatment of infertility via in vitro  
4           fertilization if such treatment is—

5                   “(A) provided by a licensed physician, li-  
6                   censed surgeon, or other licensed medical prac-  
7                   titioner, and

8                   “(B) administered with respect to a diag-  
9                   nosis of infertility by a physician licensed in the  
10                  United States.

11           “(2) TREATMENTS IN ADVANCE OF INFER-  
12           TILITY ARISING FROM MEDICAL TREATMENTS.—In  
13           the case of expenses incurred in advance of a diag-  
14           nosis of infertility for fertility preservation proce-  
15           dures which are conducted prior to medical proce-  
16           dures that, as determined by a physician licensed in  
17           the United States, may cause involuntary infertility  
18           or sterilization, such expenses shall be treated as  
19           qualified infertility treatment expenses—

20                   “(A) notwithstanding paragraph (1)(B),

21                   and

22                   “(B) without regard to whether a diagnosis  
23                   of infertility subsequently results.

24           Expenses for fertility preservation procedures in ad-  
25           vance of a procedure designed to result in infertility

1 or sterilization shall not be treated as qualified infer-  
2 tility treatment expenses.

3 “(3) INFERTILITY.—The term ‘infertility’  
4 means the inability to conceive or to carry a preg-  
5 nancy to live birth, including iatrogenic infertility re-  
6 sulting from medical treatments such as chemo-  
7 therapy, radiation or surgery. Such term does not  
8 include infertility or sterilization resulting from a  
9 procedure designed for such purpose.

10 “(e) ELIGIBLE INDIVIDUAL.—For purposes of this  
11 section, the term ‘eligible individual’ means an indi-  
12 vidual—

13 “(1) who has been diagnosed with infertility by  
14 a physician licensed in the United States, or

15 “(2) with respect to whom a physician licensed  
16 in the United States has made the determination de-  
17 scribed in subsection (d)(2).

18 “(f) MARRIED COUPLES MUST FILE JOINT RE-  
19 TURNS.—Rules similar to the rules of paragraphs (2), (3),  
20 and (4) of section 21(e) shall apply for purposes of this  
21 section.”.

22 (b) CONFORMING AMENDMENTS.—

23 (1) The table of sections for subpart A of part  
24 IV of subchapter A of chapter 1 of the Internal Rev-  
25 enue Code of 1986 is amended by inserting before



1 the item relating to section 24 the following new  
2 item:

“Sec. 23A. Credit for certain infertility treatments.”.

3 (2) Section 23(c)(1) of such Code is amended  
4 by striking “25D” and inserting “23A, 25D,”.

5 (3) Section 25(e)(1)(C) of such Code is amend-  
6 ed by inserting “23A,” before “25D,”.

7 (4) Section 25D(c) of such Code is amended by  
8 inserting “and section 23A” after “other than this  
9 section”.

10 (5) Section 1400C(d) of such Code is amended  
11 by striking “section 25D” and inserting “sections  
12 23A and 25D”.

13 (c) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 December 31, 2016.

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