

119TH CONGRESS
2D SESSION

S. _____

To amend the Internal Revenue Code of 1986 to improve the notice and review procedure with respect to multi-year bans on claiming credits.

IN THE SENATE OF THE UNITED STATES

Mr. BENNET introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Internal Revenue Code of 1986 to improve the notice and review procedure with respect to multi-year bans on claiming credits.

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. NOTICE AND REVIEW WITH RESPECT TO**
4 **MULTI-YEAR BANS ON CLAIMING CREDITS.**

5 (a) NOTICE.—

6 (1) IN GENERAL.—Section 6212(a) of the In-
7 ternal Revenue Code of 1986 is amended—

8 (A) by striking “If the” and inserting the
9 following:

10 “(1) NOTICE.—If the”,

1 (B) by striking “Such notice shall include
2 a notice” and inserting the following:

3 “(2) MATTERS INCLUDED.—Such notice shall
4 include—

5 “(A) a notice”,

6 (C) by striking period at the end of the
7 second sentence and inserting “, and”, and

8 (D) by adding at the end the following new
9 subparagraph:

10 “(B) in any case in which such deficiency
11 for a taxable year is attributable to the denial
12 of a credit under section 24, 25A, or 32, a
13 statement—

14 “(i) identifying the credit or credits
15 which are denied and providing the
16 grounds for each such denial,

17 “(ii) informing the taxpayer that, un-
18 less the denial is overturned on appeal, the
19 taxpayer will not be able to claim such
20 credit for any subsequent taxable year un-
21 less the taxpayer provides information re-
22 quired by the Secretary to demonstrate eli-
23 gibility for the credit, and

24 “(iii) in any case in which the Sec-
25 retary has made a determination to impose

1 a disallowance period under section
2 24(g)(1), 25A(b)(4)(A), or 32(k)(1), pro-
3 viding the grounds for such disallowance
4 period (and the length of the disallowance
5 period unless overturned on appeal).”.

6 (2) EFFECTIVE DATE.—The amendments made
7 by this subsection shall apply to notices mailed 36
8 months after the date of enactment of this Act.

9 (b) AUTHORITY OF THE TAX COURT.—

10 (1) IN GENERAL.—Section 6214 of the Internal
11 Revenue Code of 1986 is amended by redesignating
12 subsection (e) as subsection (f) and by inserting
13 after subsection (d) the following new subsection:

14 “(e) JURISDICTION WITH RESPECT TO MULTI-YEAR
15 BANS WITH RESPECT TO CERTAIN CREDITS.—

16 “(1) IN GENERAL.—The Tax Court shall have
17 jurisdiction—

18 “(A) to redetermine the imposition of any
19 disallowance period with respect to any credit
20 under section 24, 25A, or 32 for the taxable
21 year in which such disallowance period was im-
22 posed if the deficiency relates to such taxable
23 year, and

24 “(B) to determine whether any such dis-
25 allowance period should be imposed if claim

1 therefor is asserted by the Secretary in the an-
2 swer or an amended answer filed in accordance
3 with the rules of the Tax Court.

4 “(2) DISALLOWANCE PERIOD.—For purposes of
5 this subsection, the term ‘disallowance period’ has
6 the meaning given such term under section
7 6751(d).”.

8 (2) EFFECTIVE DATE.—The amendments made
9 by this subsection apply to petitions filed on or after
10 the date of enactment of this Act.

11 (3) TRANSITION RULE FOR REVIEW OF PRE-
12 VIOUSLY IMPOSED DISALLOWANCE PERIODS.—

13 (A) IN GENERAL.—In the case of any defi-
14 ciency which is attributable to an entry on the
15 return claiming a credit under section 24, 25A,
16 or 32 of the Internal Revenue Code of 1986 for
17 a taxable year in a disallowance period de-
18 scribed in subparagraph (B), the Tax Court
19 shall have jurisdiction to redetermine whether
20 the disallowance period was properly imposed.

21 (B) DISALLOWANCE PERIOD DE-
22 SCRIBED.—A disallowance period is described in
23 this subparagraph if the notice of the deficiency
24 under section 6212 of such Code for the taxable

1 year with respect to which the determination to
2 impose the disallowance period was made—

3 (i) did not include the grounds for
4 such disallowance period, and

5 (ii) was mailed before the date that is
6 36 months after the date of the enactment
7 of this Act.

8 (C) DISALLOWANCE PERIOD.—For pur-
9 poses of this paragraph, the term “disallowance
10 period” has the meaning given such term under
11 section 6751(d) of the Internal Revenue Code
12 of 1986 (as added by this Act).

13 (D) REFUNDS.—Notwithstanding section
14 6512(b)(1) of the Internal Revenue Code of
15 1986, in the case of a petition with respect to
16 a disallowance period described in subparagraph
17 (B), the Tax Court shall have jurisdiction to de-
18 termine the amount of an overpayment for any
19 taxable year in the disallowance period, and
20 such amount shall, notwithstanding section
21 6511, when the decision of the Tax Court has
22 become final, be credited or refunded to the
23 taxpayer. If a notice of appeal in respect of the
24 decision of the Tax Court is filed under section
25 7483 of such Code, the Secretary of the Treas-

1 ury (or the Secretary’s delegate) is authorized
2 to refund or credit the overpayment determined
3 by the Tax Court to the extent the overpayment
4 is not contested on appeal.

5 (c) BURDEN OF PRODUCTION.—

6 (1) IN GENERAL.—Section 7491(c) of the Inter-
7 nal Revenue Code of 1986 is amended—

8 (A) by striking “Notwithstanding” and in-
9 serting the following:

10 “(1) IN GENERAL.—Notwithstanding”.

11 (B) by striking “with respect to the liabil-
12 ity” and inserting “with respect to—

13 “(A) the liability”,

14 (C) by striking the period after “title” and
15 inserting “, and”,

16 (D) by adding at the end the following new
17 paragraph:

18 “(A) the application of any disallowance
19 period (as defined in section 6751(d)) to any
20 individual.”, and

21 (E) by adding at the end the following new
22 paragraph:

23 “(2) STANDARD OF PROOF FOR CERTAIN DIS-
24 ALLOWANCE PERIODS.—In the case of any court
25 proceeding with respect to any disallowance period

1 described in section 24(g)(1)(B)(i),
2 25A(b)(4)(A)(ii)(I), or 32(k)(1)(B)(i), the standard
3 of proof shall be the same standard as required in
4 a proceeding under section 7454(a).”.

5 (2) EFFECTIVE DATE.—The amendments made
6 by this subsection shall apply to court proceedings
7 beginning after the date that is 36 months after the
8 date of the enactment of this Act in connection with
9 disallowance periods (as defined in section 6751(d)
10 of the Internal Revenue Code of 1986, as added by
11 this Act) determined after such date.

12 (d) MODIFICATION OF DISALLOWANCE PERIOD.—

13 (1) CHILD TAX CREDIT.—Section 24(g)(1) of
14 the Internal Revenue Code of 1986 is amended—

15 (A) in subparagraph (B), by striking “for
16 which there was a final determination that the
17 taxpayer’s claim of credit under this section
18 was” each place it appears in clauses (i) and
19 (ii) and inserting “for which a notice of defi-
20 ciency has been sent under section 6212(a)
21 which notifies the taxpayer that the taxpayer’s
22 claim of credit under this section was denied, or
23 a determination that has become final under
24 section 7481 has been made by the Tax Court
25 to deny such claim,” and

1 (B) by adding at the end the following new
2 subparagraph:

3 “(C) ALLOWANCE OF PREVIOUSLY DENIED
4 CREDITS AFTER TAX COURT CONSIDERATION.—
5 Notwithstanding subparagraphs (A) and (B), a
6 taxable year shall not be treated as a taxable
7 year in the disallowance period if the Tax Court
8 determines that the disallowance period was not
9 properly imposed for such year pursuant to sec-
10 tion 6214(e).”.

11 (2) AMERICAN OPPORTUNITY TAX CREDIT.—
12 Section 25A(b)(4)(A) of the Internal Revenue Code
13 of 1986 is amended—

14 (A) in clause (ii), by striking “for which
15 there was a final determination that the tax-
16 payer’s claim of the American Opportunity
17 Credit under this section was” each place it ap-
18 pears in subclauses (I) and (II) and inserting
19 “for which a notice of deficiency has been sent
20 under section 6212(a) which notifies the tax-
21 payer that the taxpayer’s claim of credit under
22 this section was denied, or a determination that
23 has become final under section 7481 has been
24 made by the Tax Court to deny such claim,”,
25 and

1 (B) by adding at the end the following new
2 clause:

3 “(iii) ALLOWANCE OF PREVIOUSLY
4 DENIED CREDITS AFTER TAX COURT CON-
5 sideration.—Notwithstanding clauses (i)
6 and (ii), a taxable year shall not be treated
7 as a taxable year in the disallowance pe-
8 riod if the Tax Court determines that the
9 disallowance period was not properly im-
10 posed for such year pursuant to section
11 6214(e).”.

12 (3) EARNED INCOME TAX CREDIT.—Section
13 32(k)(1) of the Internal Revenue Code of 1986 is
14 amended—

15 (A) in subparagraph (B), by striking “for
16 which there was a final determination that the
17 taxpayer’s claim of credit under this section
18 was” each place it appears in clauses (i) and
19 (ii) and inserting “for which a notice of defi-
20 ciency has been sent under section 6212(a)
21 which notifies the taxpayer that the taxpayer’s
22 claim of credit under this section was denied, or
23 a determination that has become final under
24 section 7481 has been made by the Tax Court
25 to deny such claim,” and

1 (B) by adding at the end the following new
2 subparagraph:

3 “(C) ALLOWANCE OF PREVIOUSLY DENIED
4 CREDITS AFTER TAX COURT CONSIDERATION.—
5 Notwithstanding subparagraphs (A) and (B), a
6 taxable year shall not be treated as a taxable
7 year in the disallowance period if the Tax Court
8 determines that the disallowance period was not
9 properly imposed for such year pursuant to sec-
10 tion 6214(e).”.

11 (4) SUSPENSION OF RUNNING OF LIMITATIONS
12 PERIOD FILING OF A CLAIM FOR CREDIT OR RE-
13 FUND.—Section 6511(d) of the Internal Revenue
14 Code of 1986 is amended by adding at the end the
15 following new paragraph:

16 “(9) SPECIAL RULES RELATING TO DISALLOW-
17 ANCE PERIODS.—The running of the periods de-
18 scribed in subsections (a) and (b)(2) with respect to
19 any claim for a credit allowed under section 24,
20 25A, or 32 for any taxable year in a disallowance
21 period (as defined in section 6751(d)) shall be sus-
22 pended during any period in which the imposition of
23 such disallowance period is pending before the Tax
24 Court.”.

25 (5) EFFECTIVE DATE.—

11

1 (A) IN GENERAL.—The amendments made
2 by paragraphs (1), (2), and (3) shall apply to—

3 (i) taxable years beginning after the
4 date that is 36 months after the date of
5 the enactment of this Act, and

6 (ii) disallowance periods (as defined in
7 section 6751(d) of the Internal Revenue
8 Code of 1986, as added by this Act) in
9 taxable years beginning on or before such
10 date if the notice of deficiency for the tax-
11 able year with respect to which the deter-
12 mination to impose such disallowance pe-
13 riod was made was sent after such date.

14 (B) SUSPENSION OF RUNNING OF LIMITA-
15 TIONS PERIOD.—The amendment made by
16 paragraph (4) shall apply to petitions filed after
17 the date of the enactment of this Act.