

TITLE 26 - INTERNAL REVENUE CODE**Subtitle A - Income Taxes****CHAPTER 1 - NORMAL TAXES AND SURTAXES****Subchapter A - Determination of Tax Liability****PART IV - CREDITS AGAINST TAX****Subpart A - Nonrefundable Personal Credits****§ 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 for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual, 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 35 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 \$15,000.

(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 (as defined in section 152 (a)(1)) who has not attained age 13,
- (B)** a dependent of the taxpayer (as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B)) who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year, or
- (C)** the spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as the taxpayer for more than one-half of such taxable year.

(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) \$3,000 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or
- (2) \$6,000 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 not 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) \$250 if subsection (c)(1) applies for the taxable year, or
- (B) \$500 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) Place of abode

An individual shall not be treated as having the same principal place of abode of the taxpayer if at any time during the taxable year of the taxpayer the relationship between the individual and the taxpayer is in violation of local law.

(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

(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

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

such individual shall not be considered as married.

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

If—

(A) 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 in subparagraph (A) or (B) of subsection (b)(1) (whichever is appropriate) with respect to the custodial parent (as defined in section 152 (e)(4)(A)), 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) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

(B) who is a child of the taxpayer (within the meaning of section 152 (f)(1)) 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

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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.

(10) Identifying information required with respect to qualifying individuals

No credit shall be allowed under this section with respect to any qualifying individual unless the TIN of such individual is included on the return claiming the credit.

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 94–455, title V, § 504(a)(1), Oct. 4, 1976, 90 Stat. 1563, § 44A; amended Pub. L. 95–600, title I, § 121(a), Nov. 6, 1978, 92 Stat. 2779; Pub. L. 97–34, title I § 124 (a)–(d), Aug. 13, 1981, 95 Stat. 197, 198; Pub. L. 98–21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; renumbered § 21 and amended Pub. L. 98–369, div. A, title IV, §§ 423(c)(4), 471 (c), 474 (c), July 18, 1984, 98 Stat. 801, 826, 830; Pub. L. 99–514, title I, § 104(b)(1), Oct. 22, 1986, 100 Stat. 2104; Pub. L. 100–203, title X, § 10101(a), Dec. 22, 1987, 101 Stat. 1330–384; Pub. L. 100–485, title VII, § 703(a)–(c)(1), Oct. 13, 1988, 102 Stat. 2426, 2427; Pub. L. 104–188, title I, § 1615(b), Aug. 20, 1996, 110 Stat. 1853; Pub. L. 107–16, title II, § 204(a), (b), June 7, 2001, 115 Stat. 49; Pub. L. 107–147, title IV, § 418(b), Mar. 9, 2002, 116 Stat. 57; Pub. L. 108–311, title II, §§ 203, 207 (2), (3), Oct. 4, 2004, 118 Stat. 1175, 1177; Pub. L. 109–135, title IV, § 404(b), Dec. 21, 2005, 119 Stat. 2634; Pub. L. 110–172, § 11(a)(1), Dec. 29, 2007, 121 Stat. 2484.)

Amendment of Section

For termination of amendment by section 901 of Pub. L. 107–16, see Effective and Termination Dates of 2001 Amendment note below.

Prior Provisions

A prior section 21 was renumbered section 15 of this title.

Amendments

2007—Subsec. (e)(5)(B). Pub. L. 110–172 substituted “section 152 (e)(4)(A)” for “section 152 (e)(3)(A)” in concluding provisions.

2005—Subsec. (b)(1)(B). Pub. L. 109–135 inserted “(as defined in section 152, determined without regard to subsections (b)(1), (b)(2), and (d)(1)(B))” after “dependent of the taxpayer”.

2004—Subsec. (a)(1). Pub. L. 108–311, § 203(a), substituted “In the case of an individual for which there are 1 or more qualifying individuals (as defined in subsection (b)(1)) with respect to such individual” for “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))”.

Subsec. (b)(1). Pub. L. 108–311, § 203(b), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “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.”

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Subsec. (e)(1). Pub. L. 108–311, § 203(c), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: “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).”

Subsec. (e)(5). Pub. L. 108–311, § 207(2), struck out “paragraph (2) or (4) of” before “section 152 (e)” in subpar. (A) and substituted “as defined in section 152 (e)(3)(A)” for “within the meaning of section 152 (e)(1)” in concluding provisions.

Subsec. (e)(6)(B). Pub. L. 108–311, § 207(3), substituted “section 152 (f)(1)” for “section 151 (c)(3)”.

2002—Subsec. (d)(2)(A). Pub. L. 107–147, § 418(b)(1), substituted “\$250” for “\$200”.

Subsec. (d)(2)(B). Pub. L. 107–147, § 418(b)(2), substituted “\$500” for “\$400”.

2001—Subsec. (a)(2). Pub. L. 107–16, §§ 204(b), 901, temporarily substituted “35 percent” for “30 percent” and “\$15,000” for “\$10,000”. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(1). Pub. L. 107–16, §§ 204(a)(1), 901, temporarily substituted “\$3,000” for “\$2,400”. See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (c)(2). Pub. L. 107–16, §§ 204(a)(2), 901, temporarily substituted “\$6,000” for “\$4,800”. See Effective and Termination Dates of 2001 Amendment note below.

1996—Subsec. (e)(10). Pub. L. 104–188 added par. (10).

1988—Subsec. (b)(1)(A). Pub. L. 100–485, § 703(a), substituted “age of 13” for “age of 15”.

Subsec. (c). Pub. L. 100–485, § 703(b), inserted at end: “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.”

Subsec. (e)(5)(B). Pub. L. 100–485, § 703(a), substituted “age of 13” for “age of 15”.

Subsec. (e)(9). Pub. L. 100–485, § 703(c)(1), added par. (9).

1987—Subsec. (b)(2)(A). Pub. L. 100–203 inserted at end “Such term shall not include any amount paid for services outside the taxpayer’s household at a camp where the qualifying individual stays overnight.”

1986—Subsecs. (b)(1)(A), (e)(6)(A). Pub. L. 99–514, § 104(b)(1)(A), substituted “section 151 (c)” for “section 151 (e)”.

Subsec. (e)(6)(B). Pub. L. 99–514, § 104(b)(1)(B), substituted “section 151 (c)(3)” for “section 151 (e)(3)”.

1984—Pub. L. 98–369, § 471(c), renumbered section 44A of this title as this section.

Subsec. (a)(1). Pub. L. 98–369, § 474(c)(2), (3), substituted “subsection (b)(1)” for “subsection (c)(1)” and “subsection (b)(2)” for “subsection (c)(2)”.

Subsec. (b). Pub. L. 98–369, § 474(c)(1), redesignated subsec. (c) as (b). Former subsec. (b), which provided that the credit allowed by subsec. (a) could not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under sections 33, 37, 38, 40, 41, 42, and 44, was struck out.

Subsec. (c). Pub. L. 98–369, § 474(c)(1), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 98–369, § 474(c)(1), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(2). Pub. L. 98–369, § 474(c)(4), substituted “subsection (b)(1)(C)” for “subsection (c)(1)(C)” in introductory provisions.

Subsec. (d)(2)(A). Pub. L. 98–369, § 474(c)(5), substituted “subsection (c)(1)” for “subsection (d)(1)”.

Subsec. (d)(2)(B). Pub. L. 98–369, § 474(c)(6), substituted “subsection (c)(2)” for “subsection (d)(2)”.

Subsec. (e). Pub. L. 98–369, § 474(c)(1), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(5). Pub. L. 98–369, § 474(c)(7), substituted “subsection (b)(1)” for “subsection (c)(1)” in provisions following subpar. (B).

Pub. L. 98–369, § 423(c)(4), amended par. (5) generally, substituting subpars. (A) and (B) reading:

“(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 15 or is physically or mentally incapable of caring for himself,”

for former provisions:

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“(A) a child (as defined in section 151 (e)(3)) who is under the age of 15 or who is physically or mentally incapable of caring for himself receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement, and

“(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year.”

and substituted in concluding text “(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” for “, as the case may be, with respect to that parent who has custody for a longer period during such calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to such other parent.”

Subsecs. (f), (g). Pub. L. 98–369, § 474(c)(1), redesignated subsecs. (f) and (g) as (e) and (f), respectively.

1983—Subsec. (b)(2). Pub. L. 98–21 substituted “relating to credit for the elderly and the permanently and totally disabled” for “relating to credit for the elderly”.

1981—Subsec. (a). Pub. L. 97–34, § 124(a), designated existing provisions as par. (1), substituted “the applicable percentage” for “20 percent” in par. (1) as so designated, and added par. (2).

Subsec. (c)(2)(B). Pub. L. 97–34, § 124(c), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (c)(2)(C), (D). Pub. L. 97–34, § 124(d), added subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 97–34, § 124(b)(1)(A), substituted “\$2,400” for “\$2,000”.

Subsec. (d)(2). Pub. L. 97–34, § 124(b)(1)(B), substituted “\$4,800” for “\$4,000”.

Subsec. (e)(2)(A). Pub. L. 97–34, § 124(b)(2)(A), substituted “\$200” for “\$166”.

Subsec. (e)(2)(B). Pub. L. 97–34, § 124(b)(2)(B), substituted “\$400” for “\$333”.

1978—Subsec. (f)(6). Pub. L. 95–600 substituted provision disallowing a credit for any amount paid by a taxpayer to an individual with respect to whom, for the taxable year, a deduction under section 151 (e) is allowable either to the taxpayer or his spouse or who is a child of the taxpayer who has not attained the age of 19 at the close of the taxpayer year and defining “taxpayer year” for provision disallowing a credit for any amount paid by the taxpayer to an individual bearing a relationship described in section 152 (a)(1) through (8), or a dependent described in section 152 (a)(9), except that a credit was allowed for an amount paid by a taxpayer to an individual with respect to whom, for the taxable year of the taxpayer in which the service was performed, neither the taxpayer nor his spouse was entitled to a deduction under section 151 (e), provided the service constituted employment within the meaning of section 3121 (b).

Effective Date of 2005 Amendment

Pub. L. 109–135, title IV, § 404(d), Dec. 21, 2005, 119 Stat. 2634, provided that: “The amendments made by this section [amending this section and sections 152 and 223 of this title] shall take effect as if included in the provisions of the Working Families Tax Relief Act of 2004 [Pub. L. 108–311] to which they relate.”

Effective Date of 2004 Amendment

Amendment by Pub. L. 108–311 applicable to taxable years beginning after Dec. 31, 2004, see section 208 of Pub. L. 108–311, set out as a note under section 2 of this title.

Effective Date of 2002 Amendment

Pub. L. 107–147, title IV, § 418(c), Mar. 9, 2002, 116 Stat. 58, provided that: “The amendments made by this section [amending this section and sections 23 and 137 of this title] shall take effect as if included in the provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 [Pub. L. 107–16] to which they relate.”

Effective and Termination Dates of 2001 Amendment

Pub. L. 107–16, title II, § 204(c), June 7, 2001, 115 Stat. 50, provided that: “The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 2002.”

Amendment by Pub. L. 107–16 inapplicable to taxable, plan, or limitation years beginning after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such years as if such amendment had never been enacted, see section 901 of Pub. L. 107–16, set out as a note under section 1 of this title.

Effective Date of 1996 Amendment

Section 1615(d) of Pub. L. 104–188 provided that:

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“(1) In general.—The amendments made by this section [amending this section and sections 151, 6109, 6213, and 6724 of this title] shall apply with respect to returns the due date for which (without regard to extensions) is on or after the 30th day after the date of the enactment of this Act [Aug. 20, 1996].

“(2) Special rule for 1995 and 1996.—In the case of returns for taxable years beginning in 1995 or 1996, a taxpayer shall not be required by the amendments made by this section to provide a taxpayer identification number for a child who is born after October 31, 1995, in the case of a taxable year beginning in 1995 or November 30, 1996, in the case of a taxable year beginning in 1996.”

Effective Date of 1988 Amendment

Section 703(d) of Pub. L. 100–485 provided that: “The amendments made by this section [amending this section and sections 129 and 6109 of this title] shall apply to taxable years beginning after December 31, 1988.”

Effective Date of 1987 Amendment

Section 10101(b) of Pub. L. 100–203, as amended by Pub. L. 100–647, title II, § 2004(a), Nov. 10, 1988, 102 Stat. 3598, provided that:

“(1) In general.—The amendment made by subsection (a) [amending this section] shall apply to expenses paid in taxable years beginning after December 31, 1987.

“(2) Special rule for cafeteria plans.—For purposes of section 125 of the Internal Revenue Code of 1986, a plan shall not be treated as failing to be a cafeteria plan solely because under the plan a participant elected before January 1, 1988, to receive reimbursement under the plan for dependent care assistance for periods after December 31, 1987, and such assistance included reimbursement for expenses at a camp where the dependent stays overnight.”

Effective Date of 1986 Amendment

Amendment by Pub. L. 99–514 applicable to taxable years beginning after Dec. 31, 1986, see section 151(a) of Pub. L. 99–514, set out as a note under section 1 of this title.

Effective Date of 1984 Amendment

Amendment by section 423(c)(4) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

Section 475(a) of Pub. L. 98–369 provided that: “The amendments made by this title [probably means subtitle F (§§ 471–475) of title IV of Pub. L. 98–369, which enacted sections 25, 38, and 39 of this title, amended this section and sections 12, 15, 22 to 24, 27 to 35, 37, 39 to 41, 44A, 44C to 44H, 45 to 48, 51, 52, 55, 56, 86, 87, 103, 108, 129, 168, 196, 213, 280C, 381, 383, 401, 404, 409, 441, 527, 642, 691, 874, 882, 901, 904, 936, 1016, 1033, 1351, 1366, 1374, 1375, 1441, 1442, 1451, 3507, 6013, 6096, 6201, 6211, 6213, 6362, 6401, 6411, 6420, 6421, 6427, 6501, 6511, 7701, 7871, 9502, and 9503 of this title, repealed sections 38, 40, 44, 44B, 50A, 50B, and 53 of this title, and enacted provisions set out as notes under sections 30, 33, 46, and 48 of this title] shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years.”

Effective Date of 1983 Amendment

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual’s annuity starting date was deferred under section 105 (d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual’s first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

Effective Date of 1981 Amendment

Section 124(f) of Pub. L. 97–34 provided that:

“(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and enacting section 129 of this title] shall apply to taxable years beginning after December 31, 1981.

“(2) The amendments made by subsection (e)(2) [amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1981.”

Effective Date of 1978 Amendment

Section 121(b) of Pub. L. 95–600 provided that: “The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1978.”

Effective Date

Section applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

Program To Increase Public Awareness

Pub. L. 101-508, title XI, § 11114, Nov. 5, 1990, 104 Stat. 1388-414, provided that: "Not later than the first calendar year following the date of the enactment of this subtitle [Nov. 5, 1990], the Secretary of the Treasury, or the Secretary's delegate, shall establish a taxpayer awareness program to inform the taxpaying public of the availability of the credit for dependent care allowed under section 21 of the Internal Revenue Code of 1986 and the earned income credit and child health insurance under section 32 of such Code. Such public awareness program shall be designed to assure that individuals who may be eligible are informed of the availability of such credit and filing procedures. The Secretary shall use appropriate means of communication to carry out the provisions of this section."