

Congress of the United States
Washington, DC 20515

April 21, 2026

The Honorable Scott Bessent
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C., 20220

Dear Secretary Bessent:

We are alarmed that the Department of Treasury (Treasury) is planning to usurp Congressional authority and issue regulations that contradict clearly defined statutes in the Internal Revenue Code (IRC). On November 20, 2025, Treasury issued a press release that it will issue regulations to “clarify” that the refunded portions of the Earned Income Tax Credit (EITC), the Additional Child Tax Credit (ACTC), the American Opportunity Tax Credit (AOTC), and the Saver’s Match Credit, are “federal public benefits” within the meaning of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).¹

The rules regarding the eligibility criteria for these credits are clearly defined by Congress in the IRC. Congress has modified these credits since PRWORA was enacted (most recently in Public Law 119-21 (2025)) but has never made the changes that Treasury is now proposing. As such, Congress clearly did not intend to import PRWORA’s limits on eligibility for federal public benefits to noncitizens into these credits. Treasury’s announcement suggesting they will seek to reclassify the refundable amount of these credits as a “federal public benefit” would clearly differ from and contradict what Congress has specified in law.

Additionally, the refundable portion of individual tax credits is not “similar” to Federal public benefits outlined in 8 U.S.C. 1611. For purposes of PRWORA, this section defines “Federal public benefit” to mean “any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, *or any other similar benefit* for which for which payments or assistance are provided to an individual, household, or family

¹ Press release: Treasury Moves to Prevent Abuse of Refundable Tax Credit Benefits by Illegal Aliens, November 20, 2025, available at <https://home.treasury.gov/news/press-releases/sb0321>. We also note, this press release is in response to the Department of Justice (DOJ) issuing an opinion on this topic. See Department of Justice Slip Opinion, Status of the Refundable Portion of Certain Tax Credits as Federal Public Benefits, November 19, 2025, available at <https://www.justice.gov/olc/media/1419131/dl>.

eligibility unit by an agency of the United States or by appropriated funds of the United States.”²(Emphasis added.) The Federal benefits listed in the statute are meant to help meet the needs of vulnerable populations who are unable to maintain themselves at a basic level. In contrast, these refundable tax credits, such as the ACTC, EITC, and Saver’s Match are provided to incentivize certain types of behavior, such as working or saving for retirement.

Notably, in the long, laundry list of “Federal public benefits” in the statute, the term “tax credits” is glaringly omitted. Federal income taxes have been around since 1913 when the 16th Amendment to the U.S. Constitution was ratified.³ Certainly, Congress was aware of federal income taxes and could have included “tax credits” in the list if desired when PRWORA was enacted (1996) or subsequently modified. The argument that refundable credits are Federal public benefits is not tenable.

Finally, Treasury draws an untenable distinction between refundable credits and non-refundable credits, deductions, exclusions, and exemptions. Under Section 6401(b)(1) of the IRC, if the amount of refundable credits exceeds a taxpayer’s tentative income tax liability, “the amount of such excess shall be considered an overpayment” and is therefore refundable. When a taxpayer qualifies for a refundable tax credit and receives a tax refund, that refund is a product of both the refundable tax credit and the taxpayer’s tentative tax liability (and, consequently, the attributes that determine that tentative liability). And to the taxpayer, whether an extra dollar in their pocket comes from a deduction, a nonrefundable credit, or a refundable credit (or, for that matter, from an exemption or exclusion) is meaningless. Treasury has failed to distinguish these tax mechanisms for the purpose of theoretical treatment under PRWORA. These refundable credits have their own eligibility criteria outlined in the IRC, which can only be adjusted by changes to the code itself.

Congress clearly expressed that it did not intend to overlay PRWORA’s eligibility criteria for “federal public benefits” on top of the statutory criteria for federal tax credits in the IRC. We urge Treasury to respect Congress’s authority and refrain from unabashedly attempting to rewrite eligibility for these tax credits. Treasury must not abuse its discretion to write regulations implementing the IRC by overwriting the requirements clearly outlined in law.

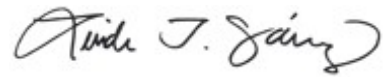
Sincerely,

² [8 USC Ch. 14: RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS](#)

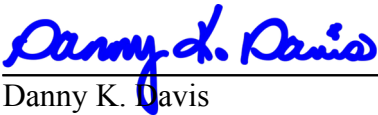
³ [16th Amendment to the U.S. Constitution: Federal Income Tax \(1913\) | National Archives](#)



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Linda T. Sánchez
Member of Congress



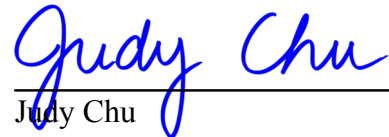
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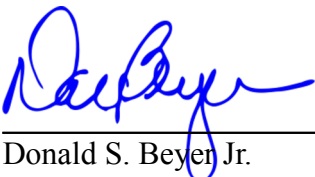
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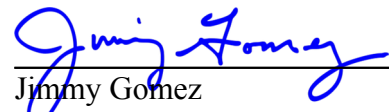
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