

**INTERSECTIONALITY IN THE TAX CODE:**  
**A PROPOSED CHANGE TO THE CHILD TAX CREDIT**  
**REQUIREMENTS TO TARGET FINANCIAL AID TO BLACK WOMEN AND**  
**CARETAKERS IN BLACK KINSHIP NETWORKS**

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**I. INTRODUCTION**

It is no secret that White Americans have more financial assets, money, and wealth than Black Americans. The median wealth of White people is ten times that of Black people in the United States.<sup>1</sup> A long history of slavery and racism has left America with a system that disproportionately benefits White taxpayers who have the power to shape tax policies that render the reality of Black Americans unseen.<sup>2</sup>

The intersectionality of racism and misogyny doubly disadvantages Black women in most socioeconomic aspects – including in the American tax system.<sup>3</sup> Black women who work in the labor market make the least amount in wages on average and are excluded from work-based income-security programs, which means they are the

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<sup>1</sup> See, DOROTHY A. BROWN, *THE WHITENESS OF WEALTH: HOW THE TAX SYSTEM IMPOVERISHES BLACK AMERICANS—AND HOW WE CAN FIX IT*, 18 (2022).

<sup>2</sup> See *id.* at 21 (noting that tax laws are “designed with white Americans in mind”).

<sup>3</sup> See generally Nyamagaga R. Gondwe, *The Tax-Invisible Labor Problem: Care Work, Kinship, and Income Security Programs in the Internal Revenue Code*, 102 B.U.L. REV. 2389, 2396 (2022).

least likely to benefit from the tax code.<sup>4</sup> This exclusion makes it harder for Black women to maintain economic stability.<sup>5</sup> And what about the women who do not contribute to the market economy? Women in the United States perform around 40 hours of unpaid care work in the home each week.<sup>6</sup> Any taxpayer that works in the home is completing valuable domestic labor that is invisible to the IRS. This lack of visibility reduces the taxpayer's eligibility for needed tax credits that help increase their wealth.<sup>7</sup> The Black population is more likely than other racial groups to use kinship networks to support each other with unpaid domestic work and childcare.<sup>8</sup>

The best way to compensate for the inequalities of America's racist past would be to completely revolutionize the tax code. The modern income tax system was created in 1913—it is only 110 years old—and it would be best to create a new system, rather than to work with the one we have.<sup>9</sup> Such an overhaul is, of course,

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<sup>4</sup> See generally *id.*

<sup>5</sup> See generally *id.*

<sup>6</sup> See *id.* at 2400 (One 2020 study found that "women perform unpaid household and care work amounting, on average, to 5.7 hours per day compared with 3.6 hours for men ... [and] women who are in the paid labor force full-time ... spend an average of 4.9 hours per day on unpaid household and care work, compared with 3.8 hours for their male counterparts.").

<sup>7</sup> See *id.* at 2394 ("The women who perform uncompensated care labor cannot count it toward social security retirement contributions or income security tax credits because the labor does not generate a market wage.").

<sup>8</sup> See generally Gondwe, *The Tax-Invisible Labor Problem*, *supra* note 3, and Julia J. Eger, *Legally Recognizing Fictive Kin Relationships: A Call for Action*, AMERICAN BAR ASSOCIATION (Mar. 1, 2022), [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january-december2022/fictivekin/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january-december2022/fictivekin/) (describing how fictive kin relationships is one that a child has with "an individual who is not related by birth, adoption, or marriage [...] but who has an emotionally significant relationship with the child.").

<sup>9</sup> See generally *History of Taxes*, THE TAX FOUND., <https://taxfoundation.org/taxedu/educationalresources/primer-history-of-taxes/> (last visited Dec.

highly improbable, so instead, this paper provides a look into an alternative way the current tax code can be used to give needed financial assistance to Black women who provide childcare through a new Child Tax Credit.

Part I of this paper will provide information on the ways Black women are disadvantaged by the tax system, due to the racism they experience in the job market, but also the invisibility of their labor in Black Kinship Networks (BKNs) and domestic care work. Part II of this paper will further expand on how discrimination against Black women harms the children in their care networks, and how the Child Tax Credit (CTC) is supposed to be an instrument to minimize financial strain on children. Part III of this paper will detail my proposed expansions on the CTC and how it would target financial aid to Black women and care networks.

## **II. BLACK WOMEN IN THE TAX SYSTEM**

### ***A. Racism in the Workplace***

Black workers face many disadvantages in the workplace. White workers are more likely to be given direct jobs with companies, while Black workers are more likely to be given contract jobs.<sup>10</sup> Contractors are ineligible for “asset building benefits,” which account for one-third of job wealth.<sup>11</sup> These benefits include health care, retirement, paid parental leave, and childcare.<sup>12</sup> “Many black women and men in

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15, 2023) (noting that the ratification of the 16<sup>th</sup> amendment in 1913 allowed the federal government to levy individual and business income taxes).

<sup>10</sup> See generally BROWN, *THE WHITENESS OF WEALTH*, *supra* note 1, at 143.

<sup>11</sup> *Id.* at 142-47.

<sup>12</sup> *Id.*

corporate America stretch their salaries to support extended family members who haven't had the same wealth-building opportunities," further lowering their individual wealth.<sup>13</sup> One way Black taxpayers stretch their finances is by making hardship withdrawals on retirement accounts—meaning they will take out money before retirement.<sup>14</sup> Nine percent of Black women have made a hardship withdrawal, which is the highest percentage by race and gender.<sup>15</sup> Early withdrawals from retirement accounts are taxed heavily.<sup>16</sup> In addition to the amount withdrawn being included in your taxable income, there is an additional ten percent income tax added on top.<sup>17</sup> In addition to financial aid, Black communities have historically helped each other by making social care networks, called Black Kinship Networks, or Fictive Kin Networks.<sup>18</sup>

***B. Black Kinship Networks Provide Support Care***

Black Kinship Networks (BKNs) are made up of single and married Black individuals who work together to share resources and services as a means of survival.<sup>19</sup> While the government tries to force the idea of a “nuclear” family on its citizens, many people hold other living arrangements. Black women living in different

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<sup>13</sup> *Id.* at 52.

<sup>14</sup> *Id.* at 154.

<sup>15</sup> *Id.* at 155.

<sup>16</sup> *Id.* at 154.

<sup>17</sup> *Id.*

<sup>18</sup> *See generally* Gondwe, *supra* note 3, at 2397 *and* Eger, *supra* note 7.

<sup>19</sup> *See* Gondwe, *supra* note 3, at 2397 (describing the care work that is shared among Black women in BKNs and how these networks have been shown to “reduce mortality risks and stress and anxiety, to improve individuals’ standard of living, and to assist with prisoner reintegration.”).

social and romantic situations will often use BKNs as a way of providing the type of care support to each other that is expected of women in nuclear families.<sup>20</sup> These services and resources are often exchanged or paid for with informal financial compensation.<sup>21</sup> Service exchanges go unrecognized by the American tax system, which only identifies formal financial transfers of wealth.<sup>22</sup> The tax system is one of the main tools the federal government uses for administering financial aid programs, but it is not effective in its goals because only recognized income is eligible for this aid.

The existence of BKNs shows that there is economic instability in Black communities, which “forces marginalized people to use their own limited resources to fill in those gaps.”<sup>23</sup> The kinship networks try to make up for the gaps in public care infrastructure, where the government is largely lacking. However, only individuals and families that make income in the marketplace are recognized for tax credits and these credits are based on their yearly taxable income.<sup>24</sup> Black women who are performing care work in the home, as well as for BKNs, are not acknowledged by the tax system, which “cuts off [their] access to key income-security tools.”<sup>25</sup> The lack of financial stability for these women perpetuates the necessity for BKNs.

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<sup>20</sup> *See generally id.*

<sup>21</sup> *Id.* at 2399.

<sup>22</sup> *Id.* at 2403.

<sup>23</sup> *See id.* at 2410.

<sup>24</sup> *See* Jacob Goldin & Ariel Jurow Kleiman, *Whose Child Is This? Improving Child-Claiming Rules in Safety-Net Programs*, 131 *YALE L.J.* 1719, 1729-31 (2022).

<sup>25</sup> *See* Gondwe, *supra* note 3, at 2413.

The financial precarity of Black women also means that their children will lack necessary resources. “Children living in poverty are more likely to live in families with complex care arrangements,” and that is reflected in the way BKNs provide childcare.<sup>26</sup> The current tax system, built on White norms, makes joint filing for married couples the standard. This assumes that nuclear families are the default and that married couples will equally divide their resources. The reality is that marriage rates have been significantly declining, leaving a large portion of children with single parents.<sup>27</sup> While around half of White adults are married, less than one-third of Black adults are married.<sup>28</sup> Many children are living in complex living arrangements, where they split time between two parents, live with nonparent relatives, or move frequently between many relatives’ and nonrelatives’ households.<sup>29</sup> All the people involved in supporting a child should receive financial aid to keep these children out of poverty.

### **III. THE CHILD TAX CREDIT**

#### ***A. Limits of the CTC in Extended Care Networks***

The Child Tax Credit (CTC) is one of the main tax credits used to help low-income taxpayers. The CTC phases-in when a taxpayer’s taxable income exceeds \$2,500 and it phases-out once a taxpayer’s income reaches \$200,000, or \$400,000 for joint filers.<sup>30</sup> This means the credit is not given to nonworking parents or those who

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<sup>26</sup> See Goldin & Kleiman, *supra* note 21, at 1726.

<sup>27</sup> *Id.* at 1723.

<sup>28</sup> See BROWN, THE WHITENESS OF WEALTH, *supra* note 1, at 57.

<sup>29</sup> See generally Goldin & Kleiman, *supra* note 21, at 1724.

<sup>30</sup> See, *id.* at 1730.

don't meet the \$2,500 threshold, and only a partial benefit is given to low-earning taxpayers.<sup>31</sup> Around forty-five percent of Black children are denied at least a portion of the federal CTC because their family's income is too low.<sup>32</sup>

During the Covid-19 pandemic, Congress decided to increase the effectiveness of the CTC for the 2021 tax year.<sup>33</sup> The American Rescue Plan Act (ARPA) removed the limits on the CTC's refundability, so all children could receive the credit, regardless of their family's working wages.<sup>34</sup> The maximum amount of the credit was increased to \$3,500 for children five and under, and \$3,000 for children aged six to seventeen.<sup>35</sup> The ARPA pulled a lot of children out of poverty that year.<sup>36</sup> Congress has since been discussing if this CTC expansion should be reinstated.<sup>37</sup>

The childcare provided by BKNs reveals how the current CTC is failing to meet the needs of many Black taxpayers and their children. Under the current CTC rules, only one person (or household, if filing jointly), can claim a child.<sup>38</sup> If a father files his taxes first, claiming his child, that leaves the mother unable to obtain the tax credit when she files, regardless of who actually provides the most support to the

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<sup>31</sup> *Id.*

<sup>32</sup> See, Brakeyshia R. Samms, *Hidden in Plain Sight: Race and Taxes in 2023 State Policy Debates*, 110 TAX NOTES STATE 277, 278 (2023).

<sup>33</sup> Goldin & Kleiman, *supra* note 21, at 1724.

<sup>34</sup> *Id.* at 1730-31.

<sup>35</sup> See Asha Glover, *Child Tax Credit Debate Threatens Year-End Tax Package*, LAW360 (Oct. 16, 2023), <https://www.law360.com/tax-authority/articles/1732626/print?section=tax-authority/federal>.

<sup>36</sup> See Chuck Marr, et al., *Any Year-End Tax Legislation Should Expand Child Tax Credit to Cut Child Poverty*, CTR. ON BUDGET AND POL'Y PRIORITIES (Nov. 7, 2023).

<sup>37</sup> See Glover, *supra* note 32 (explaining that Democrats and Republicans in the House would like to see a version of CTC expansion).

<sup>38</sup> See Goldin & Kleiman, *supra* note 21, at 1736.

child. There is also a six-month residency requirement.<sup>39</sup> So, if a child is moved between caretakers several times a year, it is likely that none of them are eligible to claim the CTC.

If a Black taxpayer decides to be a stay-at-home spouse, they are unrecognized by the tax system and ineligible for this credit. If a Black taxpayer provides childcare for a relative, this labor is unrecognized by the tax system, and they are ineligible for this credit. If a Black taxpayer takes in their grandchild for five months of the year, this labor is unrecognized by the tax system, and they are ineligible for this credit. These rules do not fit the needs of children and caretakers in BKNs.

***B. Redefining “Family” to Support Children in BKNs***

The rules for claiming the CTC should be changed to expand on what is defined as a “family” and “relative” so government programs target those who truly need it. “While Black children make up fourteen percent of children in the U.S., they make up twenty-five percent of children being raised in kinship arrangements,” because Black communities often rely on relatives and friends to meet their children’s needs.<sup>40</sup> Black women are mainly responsible for the unrecognized labor that goes into kinship care, which is why focus should be placed on targeting that demographic with a new CTC.

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<sup>39</sup> *Id.* at 1742.

<sup>40</sup> *See* Eger, *supra* note 8.



One area where BKNs have more legal recognition is in adoption and foster law. Finding a permanent home for children who cannot live with their parents is important, and it has been recognized that expanding the definition of who is a “relative” to that child beyond blood relation is often necessary. According to the Adoption and Safe Families Act, “if a child has been in foster care for at least 15 of the past 22 months, the state must file a petition to terminate the parents’ rights and concurrently work on finding an adoptive family. However, an exception can be made if ‘the child is being cared for by a relative.’”<sup>41</sup> Each state has its own adoption laws, but some are quite broad.

Maryland legally defines a “relative” as any adult “related by blood, marriage, or adoption within the fifth degree of consanguinity or affinity” or “who makes up the family support system, [...] godparents, friends of the family, or other adults who have a strong familial bond with the child.”<sup>42</sup> This legal definition recognizes a “relative” similarly to how Black communities would define a relative. Rules for claiming child tax credits in other countries are also more lenient than in the United States. For example, in the United Kingdom, nonparents can claim children, noncustodial parents can claim children they do not live with, and informal care arrangements are recognized.<sup>43</sup> In Australia, their Family Tax Benefit can be paid to

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<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> Goldin & Kleiman, *supra* note 21, at 1741.

“two or more households based on the percentage of time each household cares for a child.”<sup>44</sup> The U.S. should look to international and state laws to redefine the eligibility of the CTC for “relatives” of children.

#### **IV. A NEW CTC**

##### ***A. Remove the Phase-In Threshold***

The goal of the CTC is to pull children out of poverty by providing financial aid to their caretakers. This proposed Child Tax Credit would begin by removing the income phase-in. Anyone not earning income and taking care of a child would be eligible for the credit. This would allow domestic care workers, who don’t make a formal salary, to be recognized in the tax system and allow them to obtain needed tax credits.

The phase-out for the credit would remain at \$200,000 for an individual, or \$400,000 for joint filers. While there are many issues with joint-filing—which does not allow each individual spouse to gain wealth when there is one breadwinner in the family—that is beyond the limits of this paper. It will have to be assumed that spouses that jointly file will fairly share the tax credit to support their children and the primary childcare provider.

This CTC will also be a fully refundable credit. Every taxpayer who claims a child with less than \$200,000 taxable income will get the full amount credited to their

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<sup>44</sup> *Id.*

tax responsibility or be refunded what is left over. It is clear from the 2021 fiscal year that the ARPA pulled many children out of poverty and helped many women of color gain necessary financial support.<sup>45</sup> In fact, since the ARPA lapsed, child poverty has more than doubled.<sup>46</sup> By making the CTC a fully refundable credit, low-income, or no-income, Black women will have a chance to gain financial security to provide for their children and kin networks.

***B. Increase the Number of Taxpayers Claiming a Child***

The proposed CTC would allow up to four taxpayers to claim a child, in an effort to recognize the reality of extended care networks. There is a diversity of caregiving arrangements in the U.S., and it would be impossible for the laws to define how to recognize each of them. It also is paternalistic to create a system that dictates how individuals should use the financial aid given to them. Under this new CTC there would be one main caregiver of a child. Preference will go towards their parents, but any relative—loosely defined—may be recognized as the main caretaker. This main caretaker can then designate up to three other individuals to claim their child for credit. Those individuals will also claim the child as a dependent. This system will limit the ability for individuals to commit fraud by claiming just any child.

For example, a mother can be designated as the “main caretaker” while also designating the child’s father and two grandparents as caretakers. The father and

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<sup>45</sup> Marr, et al., *Any Year-End Tax Legislation Should Expand Child Tax Credit*, *supra* note 33.

<sup>46</sup> Samms, *supra* note 29, at 277.

grandparents will also claim the child, so each tax form filed matches. The main caretaker will be responsible for confirming that the people claiming their child are authorized. This scheme of designating and claiming caretakers should make this new system easily administrable. Computers should be able to check that only four caretakers are claiming one child, the designated names of caretakers match the names of those claiming a child, and then flag any inconsistencies.

The amount paid to each caretaker will vary slightly. There will be one amount paid to the main caretaker, and a second, lower amount paid to any other designated caretakers. While it would be best to recompensate individuals based on the percentage of support they give a child, it would not be administrable to have a system that accounts for each networks' varying childcare. The main caretaker should receive \$2,000 in credit, per child, while the designated caretakers will get \$1,500. The ARPA allowed all children aged five and under to obtain \$3,500 in tax credit.<sup>47</sup> Under this proposed plan, if a mother is the main caretaker, and she also designates her sister, who lives with her, to be a caretaker, combined, they would be making \$3,500 for the household. This reflects the same amount that was given by the ARPA. Any additional designated caretakers, if the mother chooses to designate one or two more, will be receiving \$1,500 in compensation.

### ***C. Limit Audits on CTC Claimers***

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<sup>47</sup> See Glover, *supra* note 32.

What would not be beneficial is to increase IRS audits on individuals claiming the CTC. Taxpayers who claim the Earned Income Tax Credit (EITC) are more likely to be audited, and these “audits reduced the likelihood of claiming the credit among likely EITC-eligible households by [thirty] to [forty] percentage points.”<sup>48</sup> Black taxpayers, in particular, are three to five times more likely to be audited than non-Black taxpayers.<sup>49</sup> The IRS mostly uses computers to track and process audits, but these computer systems are made by humans with implicit biases, and often target minority taxpayers.<sup>50</sup> It would be unhelpful if taxpayers claiming the CTC fell prey to aggressive auditing practices, which usually freeze tax refunds and discourage taxpayers from claiming the credits they are eligible for.<sup>51</sup>

Incomplete take-up due to the complexity of child-claiming rules is also a concern. This credit will further complicate the child-claiming rules, especially when it is first implemented. Tens of millions of dollars are already spent by the government and nonprofits to launch campaigns meant to educate taxpayers on their eligibility for credits.<sup>52</sup> Instead of putting money into auditing people, which is known to discourage claiming, money should be put towards educational efforts and research and development.

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<sup>48</sup> See Ariel Jurow Kleiman, et al., *The Faulty Foundations of the Tax Code: Gender and Racial Bias in Our Tax Laws*, NAT'L WOMEN'S LAW CTR. (2019).

<sup>49</sup> See Emily Satterthwaite, *Beyond Audits: Investigating the Role of Race in Various Tax Enforcement Settings*, TAX JOTWELL (Oct. 25, 2023).

<sup>50</sup> See Hadi Elzayn, et al., *Measuring and Mitigating Racial Disparities in Tax Audits*, SIEPR, at 2 (2023).

<sup>51</sup> *Id.*

<sup>52</sup> Goldin & Kleiman, *supra* note 21, at 1748.

In fact, the United States Congress is already attempting to expand the CTC. Republicans and Democrats, while both in favor of the expansion, are arguing about the cost of increasing research and development with it. “Democrats have been clear for the past year that any extension of the R&D tax break must be paired with changes to the child credit,” but Republicans are worried about the cost because “extending the COVID-era child credit would cost an estimated \$120 billion annually, while extending R&D amortization until 2025 would cost about \$20 billion.”<sup>53</sup> Limiting IRS auditing on those who claim the CTC and EITC could pay back a lot of the money that would be needed for R&D and the government could focus a portion of that money towards educational campaigns to encourage taxpayers to use the credits for which they are eligible.

## V. CONCLUSION

In 2018, child poverty cost the United States over \$1 trillion a year.<sup>54</sup> This was before the Covid-19 CTC expansion was passed. The reason for this large sum is that children who grew up in poverty tend to be less productive as adults, have higher health care costs, and higher crime costs.<sup>55</sup> While these are national issues, BKNs are the ones providing solutions, at a cost to domestic laborers. BKNs ameliorate these problems within Black communities by “reduc[ing] mortality risks and stress and

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<sup>53</sup> Glover, *supra* note 32.

<sup>54</sup> Jarrell Dillard & Augusta Saraiva, *Spiking Child Poverty Forces US States to Fill in Federal Void*, BLOOMBERG TAX (Oct. 2, 2023).

<sup>55</sup> *Id.* (discussing how researchers at Washington University found this statistic and that child poverty costs are around 5.4% of the US GDP).

anxiety, improv[ing] individuals' standard of living, and assist[ing] with prisoner reintegration.”<sup>56</sup>

While the government intends to use the tax system to provide needed relief to those in poverty, the current system is doing a poor job of hitting its goal. Black women have filled the gaps where the government has failed to pull each other out of poverty and provide survival support to their families and kin networks. These women have provided this invisible labor despite disparities in the job market, wealth distribution, and inequities in government aid. Their labor should be compensated, and an expansion of the Child Tax Credit is one way to give needed financial power to Black women who are providing childcare. Through this proposed Child Tax Credit, Black kinship networks will receive more recognition in the tax code and legal system.

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<sup>56</sup> See Gondwe, *supra* note 3, at 2398.