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In Aid of the Working Poor: The Proper Treatment of Payroll Taxes in Calculating Benefits Under the Aid to Families with Dependent Children Program

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IN AID OF THE WORKING POOR: THE PROPER TREATMENT OF PAYROLL TAXES IN CALCULATING BENEFITS UNDER THE AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM

INTRODUCTION

Aid to Families with Dependent Children (AFDC) was enacted by Congress in 1935[1] as an anti-poverty entitlement program[2] designed to provide minimum subsistence[3] to impoverished children[4] and their adult caretakers.[5] For many years AFDC has also provided substantial

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1. Social Security Act (Act), ch. 531, §§ 401-406, 49 Stat. 620, 627-29 (1935) (current version at 42 U.S.C.A. §§ 601-615 (West 1983)). The program was known originally as "Aid to Dependent Children." *Id.* § 401, 49 Stat. at 627. In 1962, the name of the program was changed to "Aid and Services to Needy Families with Children," and the assistance provided therein was retitled "Aid to Families with Dependent Children." Pub. L. No. 87-543, § 104(a)(1), (3), 76 Stat. 185 (1962).

2. Goldberg v. Kelly, 397 U.S. 254, 262 (1970); *see* Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 Yale L.J. 1245, 1255 (1965); *cf.* Grey, *Property and Need: The Welfare State and Theories of Distributive Justice*, 28 Stan. L. Rev. 877, 897 (1976) (There exists "a right in each person to have his basic material needs met by his society to the extent he is unable to meet them by his own efforts."). AFDC was one of four categorical public assistance programs created by the Social Security Act, Rosado v. Wyman, 397 U.S. 397, 407-08 & n.10 (1970), to combat the effects of the Depression on those individuals historically vulnerable to economic distress: the elderly, the blind, the disabled, and dependent children. Social Security Act, ch. 531, 49 Stat. 620, 620 (1935); *see* Schweiker v. Hogan, 457 U.S. 569, 572 & n.2 (1982); Statutory History of the United States: Income Security ix (R. Stevens ed. 1970) [hereinafter cited as Statutory History].

3. Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 620 (1979); E. Durbin, Welfare Income and Employment 20 (1969); *see* Shea v. Vialpando, 416 U.S. 251, 253 (1974) (AFDC plans must set forth an amount necessary to maintain a family at subsistence level); Goldberg v. Kelly, 397 U.S. 254, 265 (1970) (welfare meets the "basic demands of subsistence").

4. *See* 42 U.S.C.A. § 606(a) (West 1983). For the purposes of the AFDC program, a "dependent child" is a "needy child" under the age of eighteen "who has been deprived of parental support or care by reason of the death, continued absence from the home . . . or physical or mental incapacity of a parent" and who is living in the home of a parent or other relative. *Id.*

5. 42 U.S.C. § 601 (1976). For the purposes of this Note, the term "caretaker" shall be used to refer to the parents or relatives with whom the dependent child is living.

The Act was drafted originally to assist only needy dependent children. *See* Burns v. Alcala, 420 U.S. 575, 581 (1975); Social Security Act, ch. 531, § 401, 49 Stat. 620, 627 (1935). In 1950, its scope was broadened to provide financial assistance and services to the parents or relatives with whom the child is living. Social Security Act Amendments of 1950, ch. 809, § 323(a), 64 Stat. 477, 551; *see* Social Security Act Amendments of 1956, ch. 836, § 312(a), 70 Stat. 807, 848-49 (modification of statutory purpose to address interests of child's parents or relatives). Under the current Act, assistance to families expressly includes money payments needed to meet the needs of a relative with whom a child is living. 42 U.S.C. § 606(b) (Supp. V

assistance to working families on the brink of self-sufficiency.[6] For these families, monthly welfare[7] payments are not a form of guaranteed income[8] but rather income supplements intended to protect the worker from the vagaries of low-paying or erratic employment.[9]

The AFDC program is based on a system of "cooperative federalism."[10] To be eligible for matching federal funds,[11] each state must comply with the requirements imposed by the Social Security Act (Act)[12] and the Department of Health and Human Services (HHS).[13]

1981). Statistics indicate that 3.6 million families receive AFDC assistance, comprising 10.6 million individuals. Soc. Security Bull., Feb. 1984, table M-30, at 48 (Dec. 1981 figures). Of these, approximately 7.1 million are children. *Id.*

6. *See* U.S. Commission on Civil Rights, A Growing Crisis: Disadvantaged Women and Their Children 29 (1983) [hereinafter cited as Disadvantaged Women]; S. Levitan, Programs in Aid of the Poor for the 1980's 35 (4th ed. 1980).

7. "Welfare" is generally understood to encompass all public assistance programs to the needy. *See* M. Anderson, Welfare 29-30 (1978); A. Dobelstein, Politics, Economics, and Public Welfare 5 (1980). For the purposes of this Note, "welfare" shall be used narrowly to refer solely to AFDC. This usage has been adopted by other commentators. *See, e.g.*, S. Levitan, *supra* note 6, at 28; Lampman, *Goals and Purposes of Social Welfare Expenditures*, in Welfare Reform in America 5 (P. Sommers ed. 1982); Comment, *The 1981 AFDC Amendments: Rhetoric and Reality*, 8 U. Dayton L. Rev. 81, 82 (1982) [hereinafter cited as *Rhetoric and Reality*].

8. *See* 42 U.S.C. § 601 (1976). AFDC authorizes cash payments to eligible families in amounts "consistent with the maintenance of continuing parental care and protection." *Id.* In situations where the recipient family has no other source of income, this payment functions as an income guarantee. R. Williams, Public Assistance and Work Effort 1 (1975).

9. L. Beeghley, Living Poorly in America 82 (1983); R. Williams, *supra* note 8, at 16-17; *see* E. Durbin, *supra* note 3, at 21-22; M. Sanger, Welfare of the Poor 24 (1979); Lynn, *A Decade of Policy Developments in the Income-Maintenance System*, in A Decade of Federal Antipoverty Programs 56 (R. Haveman ed. 1977).

10. King v. Smith, 392 U.S. 309, 316 (1968); *accord* Shea v. Vialpando, 416 U.S. 251, 253 (1974) (same); Dandridge v. Williams, 397 U.S. 471, 478 (1970) (same); *cf.* Harris v. McRae, 448 U.S. 297, 308 (1980) (Medicaid program operates under "cooperative federalism system") (quoting King v. Smith, 392 U.S. 309, 316 (1980)).

11. Califano v. Westcott, 443 U.S. 76, 79 (1979); King v. Smith, 392 U.S. 309, 316 (1968); *see* 42 U.S.C. § 603(a)(1) (1976 & Supp. V 1981). The federal government's contribution to each state's aid package varies by state, ranging from a minimum of 50% to as much as 78%; nationally, 54% of all AFDC benefits is paid for by the federal government, 40% is borne by the states and six percent added by the localities. Solomon, Congressional Research Service, Senate Committee on the Budget, 97th Cong., 1st Sess., *Benefit Adjustments in the Aid to Families With Dependent Children (AFDC) Program*, in Indexation of Federal Programs 421 (Comm. Print May 1981).

12. 42 U.S.C.A. §§ 602(a), (b), 604 (West 1983); *see* King v. Smith, 392 U.S. 309, 317 (1968); McCoog v. Hegstrom, 690 F.2d 1280, 1284 (9th Cir. 1982); National Welfare Rights Org. v. Mathews, 533 F.2d 637, 640 (D.C. Cir. 1976); Arizona State Dep't of Pub. Welfare v. Department of Health, Educ. & Welfare, 449 F.2d 456, 460-61 (9th Cir. 1971), *cert. denied*, 405 U.S. 919 (1972).

13. 42 U.S.C. § 604 (1976); *see* Hagans v. Lavine, 415 U.S. 528, 530 n.1 (1974) (quoting King v. Smith, 392 U.S. 309, 316-17 (1968)); Philadelphia Citizens in

The states, however, are given considerable latitude in administering their programs.[14] Each state determines a standard of need reflecting the estimated cost to feed, clothe and house a family of a given size at subsistence level.[15] It then computes a schedule of benefits based on that standard.[16] Ultimately, a recipient's grant represents the difference between the state-determined need standard and the recipient's own income,[17] calculated according to statutory and administrative guidelines.[18]

Historically, government regulations have favored the applicant. A working caretaker's income typically was adjusted by specified exemptions and expense and incentive deductions to obtain the smallest possible amount of statutory income for the purposes of determining

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Action v. Schweiker, 669 F.2d 877, 880 (3d Cir. 1982). The Department of Health and Human Services succeeded the Department of Health, Education, and Welfare (HEW) as administering agency of the AFDC program. *See* Department of Education Reorganization Act, Pub. L. No. 96-88, § 509, 93 Stat. 668, 695 (1979) (codified at 20 U.S.C. § 3508 (1982)).

14. Dandridge v. Williams, 397 U.S. 471, 478 (1970) (quoting King v. Smith, 392 U.S. 309, 318-19 (1968)); *see* Jefferson v. Hackney, 406 U.S. 535, 542 (1972); Rosado v. Wyman, 397 U.S. 397, 408 (1970). The Act was originally drafted to maximize a state's administrative and financial independence. *See* Social Security Act, ch. 531, § 401, 49 Stat. 620, 627 (1935).

15. 45 C.F.R. § 233.20(a)(3)(ii) (1983) ("Need standard means the money value assigned by the State to the basic and special needs it recognizes as essential for applicants and recipients . . . ."); *see* Shea v. Vialpando, 416 U.S. 251, 253 (1974); Turner v. Prod, 707 F.2d 1109, 1111 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); RAM v. Blum, 533 F. Supp. 933, 937 (S.D.N.Y. 1982). States may establish their need standards as an itemized amount for each expense, as several sums covering different groups of expenses, or as a single amount reflecting the entire estimated monthly budget. Solomon, *supra* note 11, at 422.

16. Turner v. Prod, 707 F.2d 1109, 1111 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984). A state may set benefit levels below its need standard by, for example, imposing a benefits ceiling that is less than the need standard or by limiting payments to a fixed percentage of an applicant's determined need. Rosado v. Wyman, 397 U.S. 397, 408-09 & nn.12-13 (1970); *see* Jefferson v. Hackney, 406 U.S. 535, 539-40 (1972); Dandridge v. Williams, 397 U.S. 471, 473 (1970); Bourgeois v. Stevens, 532 F.2d 799, 803 (1st Cir. 1976); D. Macarov, Work and Welfare: The Unholy Alliance 60 (1980); Solomon, *supra* note 11, at 423.

17. Shea v. Vialpando, 416 U.S. 251, 253 (1974); *see* 42 U.S.C. § 602(a)(7) (Supp. V 1981); 45 C.F.R. § 233.20(a)(3)(ii)(A), (viii) (1983). An applicant's income is computed on an individual basis. Shea v. Vialpando, 416 U.S. at 260; *see* 45 C.F.R. § 233.20(a)(3)(ii)(D) (1983).

18. *See* 45 C.F.R. § 233.20(a)(3)(ii)(A) (1983). Income, for the purpose of determining need, is measured according to 42 U.S.C. § 602(a)(7) (1976 & Supp. 1981); specified amounts may then be subtracted from that figure under 42 U.S.C.A. § 602(a)(8) (West 1983). Sections controlling lump sum payments, 42 U.S.C. § 602(a)(17) (Supp. 1981), stepparent's income, *id.* § 602(a)(31), and advanced tax credits, *id.* § 602(d)(1), also affect the characterization and treatment of an applicant's income. *See* Philadelphia Citizens in Action v. Schweiker, 669 F.2d 877, 879-80 (3d Cir. 1982).

need.[19] Lower statutory income resulted in larger benefits[20] which, it was hoped, would provide a better quality of life for America's dependent children.[21]

In 1981, Congress passed the Omnibus Budget Reconciliation Act (OBRA),[22] a massive enactment designed to reduce federal spending in nearly all areas.[23] Particularly vulnerable was AFDC's program in aid of the working poor.[24] In order to maximize the funds available to the "truly needy,"[25] Congress substantially limited the amount and

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19. Turner v. Prod, 707 F.2d 1109, 1117 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); *see, e.g.*, 45 C.F.R. § 233.20 (a)(3)(iv)(A) (1981) (amended 1982) (states are to exclude all reasonable working expenses from income); *id.* § 233.20(a)(11)(iv) (each month states are to disregard from income the first $30 of a working recipient's earnings plus one third of the remainder before determining need).

20. *See* X v. McCorkle, 333 F. Supp. 1109, 1115 (D.N.J. 1970) (purpose of income disregards was to increase payments to recipients to reflect changes in cost of living and to encourage work effort), *modified on other grounds sub nom.* Engelman v. Amos, 404 U.S. 23 (1971) (per curiam); *see also* Swasey v. Whalen, 562 F.2d 831, 837 (1st Cir. 1977) (by maximizing the reductive effect of earned income, assistance payments are reduced).

21. *See* Sweeney v. Affleck, 560 F. Supp. 1118, 1126 (D.R.I. 1983) (purpose of AFDC program is to provide for the welfare of children); S. Rep. No. 1589, 87th Cong., 2d Sess. 28 (exclude from income consideration a portion of earned income to provide for children's future needs) [hereinafter cited as S. Rep. No. 1589], *reprinted in* 1962 U.S. Code Cong. & Ad. News 1943, 1970.

22. Pub. L. No. 97-35, 95 Stat. 357 (1981) (codified as amended in scattered sections of U.S.C.).

23. S. Rep. No. 139, 97th Cong., 1st Sess. 2 [hereinafter cited as S. Rep. No. 139], *reprinted in* 1981 U.S. Code Cong. & Ad. News 396, 397. OBRA's provisions were intended to cut the average annual growth of federal spending by one half while allowing for an increase in defense spending. *Id.* HHS estimated that the statutory changes to AFDC alone would produce $6 billion in savings to the federal government within five years. 47 Fed. Reg. 5648 (1982) (Regulatory Impact Analysis).

24. Congressional Budget Office Staff Memorandum Summary (Apr. 14, 1981) [hereinafter cited as Budget Memorandum]. Over half of the budget cuts authorized by OBRA affected programs designed to serve low-income families, such as those with incomes of less than 150% of federal poverty guidelines. *Id.*

25. Bell v. Hettleman, 558 F. Supp. 386, 389 (D. Md.), *aff'd sub nom.* Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983); *see* Philadelphia Citizens in Action v. Schweiker, 669 F.2d 877, 879 (3d Cir. 1982); S. Rep. No. 139, *supra* note 23, at 504, *reprinted in* 1981 U.S. Code Cong. & Ad. News, at 770-71. HHS Secretary Richard Schweiker defined the "truly needy" as "those people who, through no fault of their own, have no choice but to rely on Government programs for their basic needs." *Administration's Proposed Savings in Unemployment Compensation, Public Assistance, and Social Services Programs: Hearings Before the Subcomm. on Public Assistance and Unemployment Compensation of the House Comm. on Ways & Means*, 97th Cong., 1st Sess. 25 (1981) (statement of Richard Schweiker, Secretary of HHS) [hereinafter cited as *Hearings on Proposed Savings*].

number of income deductions available to an employed caretaker[26] and reorganized the formula used by the states to determine eligibility and need.[27] The most significant changes affected sections 602(a)(7)[28] and (a)(8)[29] of AFDC which govern how the states ascertain and adjust income for the purpose of determining need.[30]

Following the enactment of the OBRA amendments, some states began to treat amounts mandatorily withheld from a working recipient's paycheck[31] as "income" when calculating that family's monthly AFDC grant.[32] Consequently, payroll taxes,[33] which historically were

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26. *See* James v. O'Bannon, 715 F.2d 794, 808-09 (3d Cir. 1983); Philadelphia Citizens in Action v. Schweiker, 669 F.2d 877, 879-80 (3d Cir. 1982); 42 U.S.C.A. §§ 602(a)(7), (8) (West 1983).

27. *See* Philadelphia Citizens in Action v. Schweiker, 669 F.2d 877, 879-80 (3d Cir. 1982); Nishimoto v. Sunn, 561 F. Supp. 692, 693 (D. Hawaii 1983); 42 U.S.C.A. §§ 602(a)(7), (8), (18), (31) & (d) (West 1983); 47 Fed. Reg. 5648 (1982) (Regulatory Impact Analysis).

28. *Compare* 42 U.S.C. § 602(a)(7)(A) (Supp. V 1981) *with* 42 U.S.C. § 602(a)(7) (1976).

29. *Compare* 42 U.S.C. § 602(a)(8) (Supp. V 1981) *with* 42 U.S.C. § 602 (a)(8) (1976).

30. *See* RAM v. Blum, 564 F. Supp. 634, 649 (S.D.N.Y. 1983) (A family's income is established according to (a)(7) and income disregards are applied according to (a)(8).).

31. These mandatory payroll deductions are also referred to as payroll taxes or withholdings. They consist of federal income taxes that are withheld pursuant to 26 U.S.C. § 3402 (1982), state taxes, municipal taxes, and Social Security or Federal Income Contributions Act (FICA) taxes. FICA taxes provide for old-age, survivorship, disability and health insurance and are withheld pursuant to 26 U.S.C. §§ 3101, 3102 (1982).

32. *E.g.*, Clark v. Helms, 576 F. Supp 1095, 1102 (D.N.H. 1983) (overturned state practice of treating taxes as income); RAM v. Blum, 564 F. Supp. 634, 650 (S.D.N.Y. 1983) (same); Williamson v. Gibbs, 562 F. Supp. 687, 688 (W.D. Wash. 1983) (same); Nishimoto v. Sunn, 561 F. Supp. 692, 694 (D. Hawaii 1983) (same); Turner v. Woods, 559 F. Supp. 603, 607 (N.D. Cal. 1982) (same), *aff'd sub nom.* Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); Bell v. Hettleman, 558 F. Supp. 386, 396 (D. Md.) (upheld state practice of treating taxes as income), *aff'd sub nom.* Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983); James v. O'Bannon, 557 F. Supp. 631, 641-42 (E.D. Pa. 1982) (same), *aff'd*, 715 F.2d 794 (3d Cir. 1983); Dickenson v. Petit, 536 F. Supp. 1100, 1111 (D. Me.) (same), *aff'd on other grounds*, 692 F.2d 177 (1st Cir. 1982). Because state eligibility for matching federal funds is conditioned on the HHS Secretary's approval of its welfare plan, 42 U.S.C. § 604 (1976), an interpretation of the OBRA enactments by HHS in effect dictates each state's policy relating to the determination of income and, ultimately, need. *See Turner v. Woods*, 559 F. Supp. at 607. In litigation, HHS has taken the position that taxes should be treated as income. *James v. O'Bannon*, 715 F.2d at 795; *Bell v. Hettleman*, 558 F. Supp. at 388; *RAM v. Blum*, 533 F. Supp. at 943. This interpretation is persuasive, however, only to the extent that it is supported by the AFDC statute and appropriate regulations. *Id.* States need not defer to administrative construction if it is inconsistent with the letter or the spirit of the Act. *See* Southeastern Community College v. Davis, 442 U.S. 397, 411 (1979).

33. See *supra* note 31.

excluded from income consideration under (a)(7),[34] could now be deducted, or "disregarded," from income only as one of a number of work expenses[35] subject to a seventy-five dollar limit which was added to (a)(8) by OBRA.[36] The cost of any work expenses or taxes over that limit is therefore not taken into account in determining need, although a necessary expenditure has been made. As a result, need is measured against a larger income figure and welfare payments are reduced, even though the recipient's disposable income has not changed.[37]

Several courts, however, have held that treating withheld taxes as income is inconsistent with section (a)(7) of the AFDC statute which controls the determination of income.[38] These courts reason that payroll taxes are non-income items that are exempted from income under section (a)(7) before the seventy-five dollar work expense deduction of section (a)(8) can be taken.[39]

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34. *See* Turner v. Prod, 707 F.2d 1109, 1116 (9th Cir. 1983) (payroll deductions were "already absent" from income used to determine need), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); RAM v. Blum, 564 F. Supp. 634, 638 (S.D.N.Y. 1983) ("long-standing interpretation of 'income' as not including mandatory payroll deductions"); Williamson v. Gibbs, 562 F. Supp. 687, 688 (W.D. Wash. 1983) ("income" means gross income minus payroll deductions). *But see* James v. O'Bannon, 715 F.2d 794, 796 (3d Cir. 1983) (Taxes have been deducted from gross earnings as "personal expenses" since 1969.).

35. Work expenses include the cost of tools, materials, special uniforms, or transportation. 45 C.F.R. § 233.20(a)(6)(iv) (1983).

36. Omnibus Budget Reconciliation Act of 1981, Pub. L. No. 97-35, § 2301, 95 Stat. 357, 843 (codified at 42 U.S.C. § 602(a)(8)(A)(ii) (Supp. V 1981)).

37. *Cf.* Shea v. Vialpando, 416 U.S. 251, 264 (1974) ("[Work-related] expenses reduce the level of actually available income, and if not deducted from gross income will not produce a corresponding increase in AFDC assistance."); *Hearings on Proposed Savings, supra* note 25, at 90 (statement of Christine Pratt-Marston, National Anti-Hunger Coalition) ("[OBRA's changes] would mean that women who accept low-paying jobs but still need welfare to support their families would be made ineligible for welfare even though their needs and circumstances have not changed."); Danziger & Plotnick, *The War on Income Poverty: Achievements and Failures*, in Welfare Reform in America 39 (P. Sommers ed. 1982) ("direct taxes are ignored, and so the amount of income available for household consumption spending is overstated").

38. *E.g.*, RAM v. Blum, 564 F. Supp. 634, 650 (S.D.N.Y. 1983); Nishimoto v. Sunn, 561 F. Supp. 692, 694 (D. Hawaii 1983); *see, e.g.*, Turner v. Prod, 707 F.2d 1109, 1124 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); Clark v. Helms, 576 F. Supp. 1095, 1102 (D.N.H. 1983); Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 789-90 (S.D.N.Y. 1983); Williamson v. Gibbs, 562 F. Supp. 687, 689 (W.D. Wash. 1983); RAM v. Blum, 533 F. Supp. 933, 949 (S.D.N.Y. 1982).

39. *See* Turner v. Prod, 707 F.2d 1109, 1116 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); RAM v. Blum, 564 F. Supp. 634, 648-49 (S.D.N.Y. 1983); RAM v. Blum, 533 F. Supp. 933, 943 (S.D.N.Y. 1982).

Resolution of this issue is of critical concern to Americans at or near the poverty level. Exclusion of mandatory payroll taxes from income consideration could mean as much as fifty or sixty extra dollars each month for eligible families[40]—approximately ten percent of the disposable income of families living at or below the poverty level.[41] Nearly 230,000 households[42] containing approximately 500,000 children[43] could benefit by this exemption. In view of the severe financial

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40. *See* Turner v. Prod, 707 F.2d 1109, 1112 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984). In 1982, a California recipient working full time, for a full year, at minimum wage would have had $59.52 in taxes withheld from his or her monthly paycheck. *Id.* As a rule, however, the average amount of monthly payroll deductions affecting AFDC wage-earners is much higher. *See, e.g.*, James v. O'Bannon, 715 F.2d 794, 799 (3d Cir. 1983) (plaintiff reported $100.53 in withholdings); *Turner v. Prod*, 707 F.2d at 1112 (average deduction in California is $83); Dickenson v. Petit, 536 F. Supp. 1100, 1107-08 (D. Me.) (plaintiffs reported monthly payroll deductions of $136.54, $62.44 and $160.02 respectively), *aff'd on other grounds*, 692 F.2d 177 (1st Cir. 1982). The practical effect of including taxes as income is to reduce aid payments to working recipients by the amounts of their payroll withholding. *Turner v. Prod*, 707 F.2d at 1111-12.

41. *See* Bureau of the Census, U.S. Dep't of Commerce, Statistical Abstract of the United States: 1982-83, at 417 (103d ed. 1982) (annual poverty level income for family of three was $7,250 in 1981) [hereinafter cited as Statistical Abstract]. The poverty level is a nationally measured index based on income required to provide a family of a given size an adequate standard of living. *See id.* at 417; S. Levitan, *supra* note 6, at 2. The figure, updated every year to reflect changes in consumer prices and graduated according to family size, is based on the cost of a minimum diet, trebled to estimate a low-income family's expected cost of living. *Id.* In 1980, full-time employment at minimum wage paid an income of $6,448, for the entire year, well under the $6,570 poverty level for a family of three. Disadvantaged Women, *supra* note 6, at 17. Including payroll taxes as income would have a significant adverse effect on recipient children; such a practice, therefore, is inconsistent with the goals of the AFDC statute. See *infra* notes 92-106 and accompanying text. It has been recognized that "[a] procedure which directly or indirectly lessens the benefits flowing to the dependent child should not be approved." Doe v. Gillman, 479 F.2d 646, 648 (8th Cir. 1973), *cert. denied*, 417 U.S. 947 (1974); *see* King v. Smith, 392 U.S. 309, 325 (1968) (paramount purpose of AFDC is to protect needy children); Smith v. Huecker, 531 F.2d 1355, 1356 (6th Cir. 1976) (same); Gardenia v. Norton, 425 F. Supp. 922, 925 (D. Conn. 1976) (same).

42. 47 Fed. Reg. 5660 (1982) (Discussion of Major Provisions and Response to Comments).

43. In December 1981, the AFDC program made aid payments to more than 10.6 million individuals in 3.6 million families. Soc. Security Bull., Feb. 1984, table M-30, at 48; *see* Statistical Abstract, *supra* note 41, table 559, at 343 (1979 figures). Of this group, approximately 7.1 million were children, Soc. Security Bull., Feb. 1984, Table M-30, at 48; *see* Statistical Abstract, *supra* note 41, Table 559, at 343 (1979 figures), comprising nearly two-thirds of all AFDC recipients; *see Spending Reduction Proposals: Hearings Before the Senate Comm. on Finance*, 97th Cong., 1st Sess. 217 (1981) (statement of Marian Wright Edelman, President, Children's Defense Fund) [hereinafter cited as *Hearings on Spending Reduction*]. The average size of recipient families is approximately the same for working and non-working mothers, *compare* L. Dixon & M. Storfer, Office of Policy and Economic Research, New York City Human Resources Administration, Trends in the Characteristics of AFDC

straits confronting the working poor, it has been recognized that "any diminution of the income to which [the recipient] would otherwise be entitled is an extremely important matter."[44]

This Note analyzes the payroll exemption question raised by sections 602(a)(7) and (a)(8). Part I examines the demographics of poverty in America. The scope, language and legislative history of AFDC are analyzed in Part II. Part III discusses the social and economic considerations implicit in the debate over the exclusion of payroll taxes from income. Based on these factors, the Note concludes that mandatory payroll deductions should be excluded from income for the purpose of determining need under AFDC.

I. The Demographics of Poverty

Despite the federal government's continued commitment to the goals embraced by AFDC,[45] poverty programs in America have become increasingly decentralized[46] and s a consequence, susceptible to extremes among the individual states.[47] In over half the states, the maximum payments leave recipients needy by the states' own standards.[48] In the South, for example, where approximately forty percent

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Families in New York City: 1969-1979, table 3, at 10 (67% of all AFDC cases have one or two children) *with id.* at 30 (63.9% of working recipients have one or two children). This accounts for approximately 2.2 children per case. *Id.* at iii. Therefore, it can be inferred that the 230,000 households with earned income, see *supra* note 42 and accompanying text, contain approximately 500,000 children.

44. Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 791-92 (S.D.N.Y. 1983).

45. See *infra* notes 92-106 and accompanying text.

46. L. Greene, Free Enterprise Without Poverty 39 (1981); *see* S. Levitan, *supra* note 6, at 17. The AFDC program is typically administered by county and municipal agencies that often have great discretion in determining eligibility and need. *See* R. Williams, *supra* note 8, at 40. Consequently, state AFDC programs and income maintenance programs like it are often marred by inconsistencies, confusion and gaps in coverage. Lynn, *supra* note 9, at 103.

47. Rosado v. Wyman, 397 U.S. 397, 408 (1970) ("States have traditionally been at liberty to pay as little or as much as they choose, and there are, in fact, striking differences in the degree of aid provided among the States."); *see* L. Greene, *supra* note 46, at 39. See *infra* notes 51-53 and accompanying text.

48. Solomon, *supra*, note 11, at 422; *see* Illinois Welfare Rights Org. v. Trainor, 438 F. Supp. 269, 272 (N.D. Ill. 1977); *see also* Jefferson v. Hackney, 406 U.S. 535, 545 (1972) (states need not adhere to their standards of need in awarding benefits). Neither the Act nor the federal regulations require states to adjust their standards of need to reflect current prices; consequently, these need standards are often penurious and many years out of date. Solomon, *supra* note 11, at 422; *see* S. Levitan, *supra* note 6, at 30; Pearldaughter & Schneider, *Women and Welfare: The Cycle of Female Poverty*, 10 Golden Gate L. Rev. 1043, 1063 & n.92 (1980). The last time states were required by law to conform their need levels to the existing cost of living was in 1969. 42 U.S.C. § 602(a)(23) (1976); *see Jefferson v. Hackney*, 406 U.S. at 542.

of the nation's poor reside,[49] families must survive on as much as two hundred and fifty dollars per month less than families living in the North.[50] In eight Southern states AFDC payments averaged less than one hundred and fifty dollars a month per family.[51] In contrast, many Northern and Western states disburse an average of over three hundred dollars per month to needy families,[52] and in eight of these states, benefits exceed three hundred and fifty dollars.[53] Consequently, the severity of a family's poverty may depend not on its actual needs but on the relative largesse of its domicile state.

The group most severely affected by these disparities are families headed by women.[54] Female-headed households, which constitute over eighty percent of all AFDC cases,[55] have historically been left at the lowest end of the income scale. Hampered by inadequate training,[56] low market valuations of their skills,[57] non-professional sex-role

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49. *See* Statistical Abstract, *supra* note 41, table 732, at 443 (1979 figures). In 1979, 11,276,000 Southerners in 16 states lived below poverty level, compared to 16,107,000 in the remaining 34 states. *Id.*

50. *Id.* table 557, at 342. See *infra* notes 51, 53 and accompanying text. These figures are tempered by the fact that the cost of living in the South is less than that in the North. *See id.*, table 769, at 468 (1982 figures) (low-income family with school children in the Northeast could expect to spend $78.40 a week on food; in the South, the same items would cost $73.10). This difference, however, is not sufficient to offset the huge benefits disparities between North and South. For example, a family living in Georgia would receive an average of $133 in monthly AFDC benefits; in Connecticut, the same family would receive $355.

51. Statistical Abstract, *supra* note 41, table 557, at 342 (Alabama-$110; Arkansas-$145; Georgia-$133; Louisiana-$148; Mississippi-$88; South Carolina-$107; Tennessee-$113; Texas-$109) (1980 figures).

52. *See id.* In 1980, the national average monthly AFDC payment per family per state was $280. *Id.* This figure represents the total amount of AFDC payments received by recipient families each month from combined federal, state and local contributions. See *supra* note 11 and accompanying text.

53. Statistical Abstract, *supra* note 41, table 557, at 342 (Alaska-$359; California-$399; Connecticut-$358; Hawaii-$386; Michigan-$379; New York-$371; Washington-$365; Wisconsin-$366) (1980 figures).

54. *See* S. Levitan, *supra* note 6, at 4.

55. Disadvantaged Women, *supra* note 6, at 27; M. Sanger, *supra* note 9, at 19. In New York City, female-headed families comprised 91% of AFDC recipients. L. Dixon & M. Storfer, *supra* note 43, at 5; *see* Pearldaughter & Schneider, *supra* note 48, at 1052-55.

56. Pearldaughter & Schneider, *supra* note 48, at 1053 & n.47; *see* S. Levitan, *supra* note 6, at 11; R. Williams, *supra* note 8, at 11.

57. Pearldaughter & Schneider, *supra* note 48, at 1055, 1058; *see* Disadvantaged Women, *supra* note 6, at 19. The concept of "comparable worth," which provides that employees of equal value should be compensated at equal rates, assumes that many jobs performed by women are undervalued precisely because women perform them. *Id.* at 25-26; *see* American Fed'n of State, County, & Mun. Employees v. State of Washington, 33 Fair Emp. Prac. Cas. (BNA) 808, 819-20 (W.D. Wash. 1983); Hartmann, *Capitalism, Patriarchy, and Job Segregation by Sex*, in Women and the Workplace 168 n.100 (1976).

socialization[58] and the demands of child rearing,[59] these women are often locked into low-paying, blue-collar or service jobs without hope of significant income growth.[60] For many women, therefore, AFDC serves as a buffer against low-paying and frequently erratic employment by providing an income supplement when job earnings are insufficient to meet their families' needs.[61] For other women, AFDC provides a temporary means of support until their infant children are old enough to attend day care programs while their mothers seek employment.[62]

An individual's dependence on welfare, therefore, is not always obviated by employment.[63] Most AFDC caretakers not presently em-

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58. Disadvantaged Women, *supra* note 6, at 19, 23. One commentator recently recognized that:

> Although it is true that most women today expect to work or have worked, sex-role socialization in general and vocational preparation in particular do not prepare women to be the *primary* breadwinner. Instead, the traditional emphasis has been on jobs, rather than careers, and on making job choices that emphasize flexibility and adaptability, rather than income potential. Thus, women faced with the necessity of being the sole source of support for themselves and their children are handicapped.

Pearce, *Feminization of Ghetto Poverty*, Society, Nov.-Dec. 1983, at 70, 70-71 (emphasis in original). *See generally* C. Epstein, Women's Place 50-85 (1970) (discussion of the causes and implications of sex typing by women themselves); Laws, *Work Aspirations of Women: False Leads and New Starts*, in Women and the Workplace 33-49 (1976) (same).

59. S. Levitan, *supra* note 6, at 12; R. Williams, *supra* note 8, at 15; Lipman-Blumen, *Homosocial Theory of Sex Roles*, in Women and the Workplace 20 (1976). *See generally* Boulding, *Familial Constraints on Women's Work Roles*, in Women and the Workplace 95-117 (1976) (history of the impact of family obligations on women's occupational prospects). Affordable child care facilities would ameliorate this situation, *see* Disadvantaged Women, *supra* note 6, at 12-13, but often these facilities are far from adequate, especially in poorer areas where they are needed most. *See* Pearldaughter & Schneider, *supra* note 48, at 1054 & n.52; Sklar, *Workfare and Poor Families*, America, Jan. 15, 1983, at 26, 28.

60. Disadvantaged Women, *supra* note 6, at 17, 20-21; S. Levitan, *supra* note 6, at 11; R. Williams, *supra* note 8, at 16; *see* M. Sanger, *supra* note 9, at 22; Pearldaughter & Schneider, *supra* note 48, at 1055. Forcing aid recipients to participate in mandatory workfare programs or to train for low-income jobs often has the same effect. Disadvantaged Women, *supra* note 6, at 29.

61. R. Williams, *supra* note 8, at 16-17; *see* Disadvantaged Women, *supra* note 6, at 17; S. Levitan, *supra* note 6, at 12; Pearldaughter & Schneider, *supra* note 48, at 1085-86. Female-headed families typically cannot survive on the mothers' earnings without some external support, at least until their general economic and social condition changes. *See* Mead, *The Life Cycle and Its Variations: The Division of Roles*, 96 Daedalus 871, 874 (1967).

62. *See* R. Williams, *supra* note 8, at 15. See *supra* note 59 and accompanying text. In New York City, for example, nearly two-thirds of all working recipients had no children younger than nine; 90.4% of the mothers seeking work had no children under the age of six. L. Dixon & M. Storfer, *supra* note 43, at 28.

63. Sawhill, *Discrimination and Poverty Among Women Who Head Families*, in Women and the Workplace 201, 206 (1976) ("[N]o amount of work effort on the part of female heads of families will go very far in reducing their poverty and dependence on welfare as long as these women face such low wages in the market."); *see* S. Levitan, *supra* note 6, at 34-35.

ployed have worked at some time during their adult lives[64]—and would refuse welfare if they could find a job which would adequately support their families.[65] Notwithstanding the popular representation of welfare families as career public-aid dependents, most caretakers turn to AFDC as a matter of necessity, not choice, and then only for limited periods of time.[66] Because every dollar from AFDC is significant to the working poor, it is imperative that benefits accurately reflect need. Consequently, diminishing benefits by treating taxes as income only exacerbates conditions already engendered by intrastate aid disparities and economic hardship.

II. The Scope and Interpretation of Sections 602(a)(7) and (a)(8)

A. *Scope*

From 1941, when section 602(a)(7) first took effect,[67] until the passage of OBRA in 1981, payroll taxes were routinely excluded from

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64. R. Williams, *supra* note 8, at 16; *see* S. Levitan, *supra* note 6, at 34 (only one-quarter of AFDC mothers have no prior work experience); M. Sanger, *supra* note 9, at 21 (approximately 80% of AFDC mothers in New York City have prior work experience).

65. D. Macarov, *supra* note 16, at 139; *see* M. Sanger, *supra* note 9, at 34; R. Williams, *supra* note 8, at 15; Shapiro, *Special Report: From Welfare to Work*, Ford Foundation Letter, Apr. 1, 1984, at 2 (quoting Marion Pines, Director, Mayor's Office of Manpower Resources, Baltimore, Md.). An adult's decision to accept welfare is usually premised on the basic economic question: "Can I keep my family fed and healthy based on my employability and the wages I earn?" Disadvantaged Women, *supra* note 6, at 29; *cf.* M. Sanger, *supra* note 9, at 26 (families may enroll in AFDC programs to help relieve exceptional medical needs exceeding their financial resources).

66. *See* S. Levitan, *supra* note 6, at 34-35 (75% of all welfare cases closed within three years). In New York City, for example, the median number of years on assistance is 2.6 years. L. Dixon & M. Storfer, *supra* note 43, at 39. Poverty, generally, is not a static condition and there appears to be considerable fluctuation between self-support and poverty, a circumstance reflected in the volatility of the welfare rolls. Disadvantaged Women, *supra* note 6, at 3; S. Levitan, *supra* note 6, at 4; Coe, *Welfare Dependency: Fact or Myth?*, Challenge, Sept.-Oct. 1982, at 43, 45; Lynn, *supra* note 9, at 98. Often, a recipient's employment prospects and work effort are inversely proportional to the length of her welfare dependence. *See* M. Sanger, *supra* note 9, at 48; Pearce, *supra* note 58, at 74. Those who receive welfare payments for short periods of time are more likely to be totally dependent on them, at least until they are able to regain economic independence. L. Beeghley, *supra* note 9, at 82; Pearce, *supra* note 58, at 74. In contrast, those whose reliance on welfare spans years tend to use their AFDC benefits as supplements in conjunction with earnings and other sources of income, a circumstance attesting to their marginal employability and poor prospects for higher paying, self-supporting jobs. *Id.*; *see* L. Dixon & M. Storfer, *supra* note 43, at 20, 39 (Black families tend to be dependent on welfare for longer periods of time than either white or Hispanic recipients, but as a group they also demonstrate a stronger attachment to the labor force.).

67. Social Security Act Amendments of 1939, ch. 666, § 401(b), 53 Stat. 1360, 1379 (effective July 1, 1941) (codified as amended at 42 U.S.C. § 602(a)(7) (1976 &

income.[68] OBRA, however, amended sections 602(a)(7) and (a)(8) and substantially changed the way need—and income—are to be calculated. Under the statute as amended, states continue to characterize and compute "income" pursuant to (a)(7) for the purpose of determining need;[69] applicants, however, are no longer permitted to adjust

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Supp. V 1981)). This enactment instructed states to take into consideration "any other income or resources" possessed by a child—and, since 1962, that of any relative claiming aid—for the purposes of determining need. Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 106(b), 76 Stat. 172, 188 (codified as amended at 42 U.S.C. § 602(a)(7) (1976 & Supp. V 1981)).

68. James v. O'Bannon, 715 F.2d 794, 797 (3d Cir. 1983); RAM v. Blum, 564 F. Supp. 634, 644-45 (S.D.N.Y. 1983); *see* Turner v. Woods, 559 F. Supp. 603, 611 (N.D. Cal. 1982), *aff'd sub nom.* Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984).

The exemption of payroll taxes from income was distinct from the deduction of "expenses reasonably attributable to the earning of . . . income" as authorized by the 1962 amendment to § 602(a)(7). Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 106(b), 76 Stat. 172, 188; *see* Turner v. Prod, 707 F.2d 1109, 1120 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984). Taxes, therefore, were deducted from income not because they were "work expenses," but because they were not income. *Turner v. Woods*, 559 F. Supp. at 614; *see* Williamson v. Gibbs, 562 F. Supp. 687, 688-89 (W.D. Wash. 1983); RAM v. Blum, 533 F. Supp. 933, 946 (S.D.N.Y. 1982). *But see* James v. O'Bannon, 715 F.2d 794, 796-97 (3d Cir. 1983) (Mandatory payroll deductions such as tax withholdings were work-related expenses under pre-OBRA law.); Bell v. Hettleman, 558 F. Supp. 386, 391 (D. Md.) (same), *aff'd sub nom.* Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983); Dickenson v. Petit, 536 F. Supp. 1100, 1114 (D. Me.) (same), *aff'd on other grounds*, 692 F.2d 177 (1st Cir. 1982). Courts that consider mandatory payroll deductions to be a work-related expense rely on dictum from Shea v. Vialpando, 416 U.S. 251, 255 (1974) ("Thus, while Colorado continued to allow individualized treatment of mandatory payroll deductions and child care costs, all other work-related expenses were subjected to a uniform allowance . . . ."). *See, e.g.*, *James v. O'Bannon*, 715 F.2d at 796-97; *Bell v. Hettleman*, 558 F. Supp. at 392; *Dickenson v. Petit*, 536 F. Supp. at 1114. The dictum in *Shea* is weak authority, however, because of the dearth of legislative or administrative history supporting such a conclusion and the unlikelihood that the Court would have overruled the consistent interpretation of section (a)(7) in such an off-handed manner. Turner v. Woods, 559 F. Supp. at 612 n.6. In any event, before OBRA, there was little need to distinguish between items that were excluded because they were "not income" and those excluded as "work expenses" because both were subtracted from income in full in order to calculate benefits. RAM v. Blum, 564 F. Supp. 634, 644 (S.D.N.Y. 1983).

69. 42 U.S.C. § 602(a)(7) (Supp. V 1981); *see* 45 C.F.R. § 233.20(a)(3)(ii)(D) (1983). OBRA did not disturb the language instructing states to "take into consideration any other income and resources" of an individual claiming aid. *See* RAM v. Blum, 564 F. Supp. 634, 638 (S.D.N.Y. 1983). *Compare* 42 U.S.C. § 602(a)(7) (1976) *with* 42 U.S.C. § 602(a)(7)(A) (Supp. V 1981). As a result, interpretation of this clause should not change because other portions of this and related subsections were modified by OBRA. *See* RAM v. Blum, 533 F. Supp. 933, 945-46 (S.D.N.Y. 1982) (Because the "income" language of (a)(7) has never been modified, subsequent

their monthly earnings by the total amount of work expenses they have incurred during that period. Instead, under section 602(a)(8), the total monthly work expense deduction is limited to seventy-five dollars of an applicant's "earned income."[70] This limit applies regardless of special circumstances, the nature of the work, or disparities in working costs among the states.[71]

By separating the work expense provision, now calculated under section (a)(8),[72] from the determination of income, which continues to be calculated under (a)(7),[73] OBRA caused two interpretations to conflict. According to the federal regulations, mandatory payroll taxes are to be excluded from "income" as determined by (a)(7),[74] but are counted as a part of "earned income" for the purpose of applying the (a)(8) work expense disregards.[75] The treatment of mandatory payroll taxes, therefore, hinges on its characterization either as a work expense, subject to the seventy-five dollar limit set by section (a)(8), or as an item previously exempted from income, governed by section (a)(7).

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amendments of (a)(7)—including OBRA—are not pertinent to the interpretation of this language.); 1A C. Sands, Sutherland Statutory Construction § 22.33, at 191 (4th ed. 1972) (provisions of the original act which are repeated in the amendment are considered a continuation of the original law).

70. 42 U.S.C. § 602(a)(8)(A)(ii) (Supp. V 1981). The subsection provides in pertinent part: "[T]he State agency . . . shall disregard from the earned income of any child or relative applying for or receiving aid to families with dependent children . . . the first $75 of the total of such earned income for such month . . . ." *Id.* Although the statute does not expressly identify the flat $75 disregard with work expenses, it has generally been referred to as a standardized work expense deduction. *See, e.g.*, James v. O'Bannon, 715 F.2d 794, 797 (3d Cir. 1983); Turner v. Prod, 707 F.2d 1109, 1112 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); RAM v. Blum, 564 F. Supp. 634, 638 (S.D.N.Y. 1983); *see also* Joint Explanatory Statement of the Committee of Conference, H.R. Rep. No. 208, 97th Cong., 1st Sess. 653, 979 (the $75 disregard is "in lieu of itemized work expenses"), *reprinted in* 1981 U.S. Code Cong. & Ad. News 1010, 1341.

71. *See* 45 C.F.R. § 233.20(a)(2)(v) (1983) (States cannot treat work expenses as a "special need item" in order to adjust an applicant's standard of need and thereby compensate her for expenses incurred.).

72. 42 U.S.C. § 602(a)(8)(A)(ii) (Supp. V 1981).

73. *Id.* § 602(a)(7)(A).

74. 45 C.F.R. § 233.20(a)(3)(ii)(D) (1983). This regulation states that after all disregards and allowances have been applied, a state in determining need shall consider "[n]et income . . . and resources available for current use." *Id.* Courts have held that this regulation, and hence (a)(7) to which it refers, excludes withheld taxes from income consideration. *See* Turner v. Prod, 707 F.2d 1109, 1124 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); RAM v. Blum, 564 F. Supp. 634, 647-48 (S.D.N.Y. 1983); Williamson v. Gibbs, 562 F. Supp. 687, 688 (W.D. Wash. 1983). *But see* James v. O'Bannon, 715 F.2d 794, 806-07 (3d Cir. 1983).

75. 45 C.F.R. § 233.20(a)(6)(iv) (1983) ("[T]he term 'earned income' means the total amount, irrespective of personal expenses, such as income-tax deductions, lunches, and transportation to and from work.").

B. *Language and Legislative History of Sections 602(a)(7) and (a)(8)*

1. Textual Language

The terms of the statute[76] most pertinent to this analysis— "income," "earned income," and the seventy-five dollar disregard included in section (a)(8)—are not defined in the statute[77] and therefore are of little help in determining the proper treatment of mandatory payroll taxes. Consequently, it is necessary to examine the legislative history of the Act to discover its meaning and purpose.

2. Legislative History

a. *Meaning of "Income"*

In 1939, Congress added to the AFDC statute section 602(a)(7) which required states to take an applicant's "income" into consideration when determining need.[78] At that time, the Chairman of the Social Security Board, Arthur Altmeyer, indicated that "income" should comprise only those amounts actually available to the applicant so that the calculation of benefits would more accurately reflect her family's need.[79] Immediately following the enactment of 602(a)(7) but before it was to take effect, the Social Security Board, which had drafted the language, promulgated a regulatory policy statement reaffirming its position that the income used to determine need should actually be available.[80] Accordingly, from 1941 to 1962, states rou-

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76. The starting point of statutory construction is the plain meaning of the language itself. *See* United States v. Turkette, 452 U.S. 576, 580 (1981); Ernst & Ernst v. Hochfelder, 425 U.S. 185, 197 (1976) (quoting Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975) (Powell, J., concurring)); 2A C. Sands, *supra* note 69, § 46.01, at 48.

77. Turner v. Woods, 559 F. Supp. 603, 609 (N.D. Cal. 1982), *aff'd sub nom.* Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); *see* 42 U.S.C.A. § 602(a)(7), (8) (West 1983); *see also* James v. O'Bannon, 715 F.2d 794, 802 (3d Cir. 1983) ((a)(7) and (a)(8) have been subject to different interpretations).

78. See *supra* note 67. The statute as originally enacted left open the possibility that a recipient family with an employed member could realize an income in excess of its state's standard of need. RAM v. Blum, 564 F. Supp. 634, 638 (S.D.N.Y. 1983); *see* Arizona State Dep't of Pub. Welfare v. Department of Health, Educ. & Welfare, 449 F.2d 456, 469 n.19 (9th Cir. 1971), *cert. denied*, 405 U.S. 919 (1972).

79. *Hearings Relative to the Social Security Act Amendments of 1939 Before the House Comm. on Ways and Means*, 76th Cong., 1st Sess. 2254 (1939) (testimony of Arthur Altmeyer, Chairman of the Social Security Board); *see* RAM v. Blum, 564 F. Supp. 634, 638-39 & n.9 (S.D.N.Y. 1983); Turner v. Woods, 559 F. Supp. 603, 610-11 (N.D. Cal. 1982), *aff'd sub nom.* Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984).

80. *See* Turner v. Prod, 707 F.2d 1109, 1115 & n.8 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984) (citing Policy Statement of Social Security Board at 2 (Dec. 20, 1940)); RAM v. Blum, 564 F. Supp. 634, 639 n.14

tinely exempted payroll withholdings as non-income items before determining need.[81]

In 1962, (a)(7) was amended to allow the deduction of work-related expenses from income.[82] When Congress replaced this open-ended work expense provision in (a)(7) with a standardized disregard in (a)(8) in 1981, it is likely Congress knew that withheld payroll taxes historically had been considered non-income items.[83] Congress' deci-

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(S.D.N.Y. 1983) (same); Bell v. Hettleman, 558 F. Supp. 386, 390-91 n.5 (D. Md.) (same), *aff'd sub nom.* Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983). The statement provided first that the income must actually exist; second, it must be available to the applicant, that is, "actually on hand or ready for use when it is needed"; third, if converted into cash, the income must have an appreciable effect on meeting the requirements of the applicant; and fourth, no income should be included that was already being put to its most beneficial and necessary use. RAM v. Blum, 564 F. Supp. 634, 639 n.14 (S.D.N.Y. 1983) (citing Policy Statement of Social Security Board at 2 (Dec. 20, 1940)). As a result of this policy, FICA taxes were immediately excluded from (a)(7) income consideration; this rationale was later extended by inference to allow similar treatment of mandatory income tax withholding. *See* Turner v. Prod, 707 F.2d 1109, 1114-15 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984).

81. *See* Turner v. Woods, 559 F. Supp. 603, 611 (N.D. Cal. 1982), *aff'd sub nom.* Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983), *cert granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984). See *supra* notes 67-68 and accompanying text.

82. Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 106(b), 76 Stat. 172, 188 (codified as amended at 42 U.S.C. § 602(a)(7) (1976 & Supp. V 1981)). Congress recognized that a state's failure to reduce income in the amount of work expenditures actually penalized a recipient's attempts at self-sufficiency. S. Rep. No. 1589, *supra* note 21, at 18 ("Under existing law if these work expenses are not considered in determining need, they have the effect of providing a disincentive to working since that portion of the family budget spent for work expenses has the effect of reducing the amount available for food, clothing, and shelter."), *reprinted in* 1962 U.S. Code Cong. & Ad. News 1943, 1960. This amendment also reflected a significant change in Congress' attitude toward AFDC recipients and a willingness to adapt the program to accommodate the realities of modern poverty. In 1935, when the program was first proposed, self-sufficiency of recipient families via private employment was a solution neither anticipated nor, arguably, desired. *See* Batterton v. Francis, 432 U.S. 416, 418-19 (1977); Burns v. Alcala, 420 U.S. 575, 581-82 (1975); *see also* Report of the Committee on Economic Security (Jan. 15, 1935) (the plight of children will not be aided by employment), *reprinted in* Statutory History, *supra* note 2, at 92; H.R. Rep. No. 615, 74th Cong., 1st Sess. 10 (1935) (recipient mother was not considered "a potential breadwinner"; rather, her time was best devoted to the care of her young children), *reprinted in* Statutory History, *supra* note 2, at 152.

83. *See* Saxbe v. Bustos, 419 U.S. 65, 74 (1971); 2A C. Sands, *supra* note 69, § 49.03, at 233; *cf.* S. Rep. No. 139, *supra* note 23, at 501 (Congress aware of regulatory interpretations with respect to work deductions), *reprinted in* 1981 U.S. Code Cong. & Ad. News at 767. Congress is presumed to know of and tacitly endorse administrative and judicial interpretations attaching to a statute when it re-enacts that statute without change. *See* Albemarle Paper Co. v. Moody, 422 U.S. 405, 414 n.8 (1975). This is particularly true when Congress retains a portion of a statute after

sion not to amend or clarify the term "income," therefore, evinces an intent to affirm the earlier meaning, a meaning reinforced by forty years of consistent administrative application.[84]

It has been argued, however, that this interpretation of income is misguided: Because payroll taxes arise specifically out of earned, as distinguished from ordinary, income, section (a)(8)—which regulates all disregards from earned income—should control.[85] Moreover, proponents of this view argue that the deliberate removal of the work expense provision from (a)(7) and the delineation of specific allowable disregards in (a)(8)[86] indicate a congressional intent to limit deductions from a recipient's countable income to those enumerated in (a)(8). This view, therefore, would preclude a separate exemption of payroll taxes under (a)(7).

This position, however, fails to consider that the statutory instructions relating to the calculation of income stand alone without regard to the administrative guidelines for computing section (a)(8)'s disregards.[87] Moreover, there is nothing in the legislative history which

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making significant changes in accompanying segments. Lorillard v. Pons, 434 U.S. 575, 581 (1978). Consequently, absent clear indications in the legislative history that Congress intended to characterize payroll taxes as work expenses, it would be appropriate to infer Congress' adherence to the long-standing policy of excluding payroll taxes from income consideration. *See* Turner v. Prod, 707 F.2d 1109, 1116 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); RAM v. Blum, 533 F. Supp. 933, 946 (S.D.N.Y. 1982).

84. Turner v. Prod, 707 F.2d 1109, 1116 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); *see* RAM v. Blum, 564 F. Supp. 634, 644-45 (S.D.N.Y. 1983). Such long-standing and consistent administrative interpretation is entitled to considerable deference. EEOC v. Associated Dry Goods Corp., 449 U.S. 590, 600 n.17 (1981).

85. *See* James v. O'Bannon, 715 F.2d 794, 802 (3d Cir. 1983); Bell v. Hettleman, 558 F. Supp. 386, 393 (D. Md.), *aff'd sub nom.* Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983).

86. *See* Dickenson v. Petit, 569 F. Supp. 636, 639-40 (D. Me. 1983), *aff'd*, 728 F.2d 23 (1st Cir. 1984); Bell v. Hettleman, 558 F. Supp. 386, 393 (D. Md.), *aff'd sub nom.* Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983); Dickenson v. Petit, 536 F. Supp. 1100, 1114-15 (D. Me.), *aff'd on other grounds*, 692 F.2d 177 (1st Cir. 1982).

87. RAM v. Blum, 564 F. Supp. 634, 648-49 (S.D.N.Y. 1983); Williamson v. Gibbs, 562 F. Supp. 687, 689 (W.D. Wash. 1983); RAM v. Blum, 533 F. Supp. 933, 943 (S.D.N.Y. 1982); *see* Turner v. Prod, 707 F.2d 1109, 1116 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984). The first part of (a)(7) instructs states to consider income "except as may be otherwise provided in paragraph (8)." 42 U.S.C. § 602(a)(7) (1976 & Supp. V 1981). This clause, inserted in 1968 when the work incentive provisions of (a)(8) were enacted, Social Security Amendments of 1967, Pub. L. No. 90-248, § 202(b), 81 Stat. 821, 881 (1968) (codified as amended at 42 U.S.C. § 602(a)(7) (1976 & Supp. V 1981)), operated not as a limitation but as an enhancement of an applicant's income by ensuring that the (a)(8) disregards would be applied. This has no effect on the meaning of (a)(7) itself. *See* Turner v. Prod, 707 F.2d at 1116; Clark v. Helms, 576 F. Supp. 1095, 1101 (D.N.H. 1983); RAM v. Blum, 533 F. Supp. at 943. *But see* Bell v. Hettleman, 558 F.

suggests that (a)(8) controls all deductions and exclusions from income.[88] The specific deductions enumerated in (a)(8) were drafted to guarantee that they would be recognized,[89] not to prohibit independent exemptions implicit in the ascertainment of income.[90] Consequently, the historical exclusion of payroll taxes as non-income items under section (a)(7) should continue unimpaired by the application of section (a)(8).[91] This construction of "income" as used in subsection (a)(7) is reinforced by the goals Congress hoped to achieve through AFDC as a whole.

b. *Legislative Purpose*

Since its enactment in 1935, the AFDC program has encompassed broad humanitarian purposes which have never been repudiated. Congress' primary objective was to help states relieve the impoverished condition of dependent children deprived of adequate parental

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Supp. 386, 393 (D. Md.), *aff'd sub nom.* Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983); Dickenson v. Petit, 569 F. Supp. 636, 639-40 (D. Me. 1983), *aff'd*, 728 F.2d 23 (1st Cir. 1984).

88. *See* Turner v. Prod, 707 F.2d 1109, 1117 (9th Cir. 1983) (language instructing that (a)(8) disregards be taken before calculating (a)(7) income was added when (a)(7) still controlled work expense deductions), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 1984); Clark v. Helms, 576 F. Supp. 1095, 1101 (D.N.H. 1983) (historically, (a)(8) neither supplanted nor limited application of (a)(7)); RAM v. Blum, 564 F. Supp. 634, 638 (S.D.N.Y. 1983) (application of (a)(7) remains unchanged despite subsequent addition of (a)(8) disregards); 42 U.S.C. § 602(a)(7)(B) (Supp. V 1981) (provision allowing states to exclude up to $1,000 of an applicant's resources in determining need enforced independently of (a)(8)).

89. S. Rep. No. 744, 90th Cong., 1st Sess. 157-58 (work incentive disregard) [hereinafter cited as S. Rep. No. 744], *reprinted in* 1967 U.S. Code Cong. & Ad. News 2834, 2994; S. Rep. No. 1589, *supra* note 21, at 18 (work expense deduction), *reprinted in* 1962 U.S. Code Cong. & Ad. News at 1960; *see* RAM v. Blum, 564 F. Supp. 634, 649 (S.D.N.Y. 1983). The purpose of (a)(8) before OBRA was to maximize AFDC benefits available to the working poor, specifically by disregarding certain income amounts from earnings. Turner v. Prod, 707 F.2d 1109, 1116 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); *see* S. Rep. No. 744, *supra*, at 157-58, *reprinted in* 1967 U.S. Code Cong. & Ad. News at 2994-95; *Rhetoric and Reality*, *supra* note 7, at 86.

90. *See* Turner v. Prod, 707 F.2d 1109, 1116-17 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); RAM v. Blum, 564 F. Supp. 634, 649 (S.D.N.Y. 1983); Williamson v. Gibbs, 562 F. Supp. 687, 689 (W.D. Wash. 1983).

91. Clark v. Helms, 576 F. Supp. 1095, 1101 (D.N.H. 1983); *see* Turner v. Woods, 559 F. Supp. 603, 610 (N.D. Cal. 1982), *aff'd sub nom.* Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984).

support.[92] A second purpose, codified during the 1950's,[93] was to strike at the roots of family poverty by helping the parents of dependent children achieve economic independence and self-sufficiency.[94] This subtle shift in the program's emphasis from poverty relief to prevention is evidenced by a series of policy-oriented decisions made by Congress to assist the caretaker as well as the child.

For example, when Congress changed the program's name from "Aid to Dependent Children" to "Aid to Families with Dependent Children,"[95] it implemented the provision authorizing work expense disregards.[96] In doing so, it implicitly recognized that welfare supplements to income may be necessary to meet needs unsatisfied by a recipient's earnings.[97] Five years later, Congress incorporated substantial work incentive disregards to encourage employment among AFDC recipients.[98] Thus, AFDC is a manifestation of Congress' belief that government should help families with dependent children when the private market cannot.

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92. 42 U.S.C.A. §§ 601, 606(a) (West 1983); *see* Dandridge v. Williams, 397 U.S. 471, 478-79 (1970); King v. Smith, 392 U.S. 309, 313 (1968); Statutory History, *supra* note 2, at 152.

93. Social Security Amendments of 1956, ch. 836, § 312(a), 70 Stat. 807, 848-49 (codified as amended at 42 U.S.C. § 601 (1976)).

94. *Id.* This enactment amended the program's statement of purpose by providing financial assistance "to help such parents or relatives to attain the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection." *Id.* In 1962, this purpose was further amended to affirm Congress' commitment of public aid to the working poor: Financial assistance would be available not only to help adults achieve economic independence but also to "retain [the] capability" for it. Public Welfare Amendments of 1962, Pub. L. No. 87-543, § 104(c)(2), 76 Stat. 173, 186 (codified at 42 U.S.C. § 601 (1976)); *cf.* Batterton v. Francis, 432 U.S. 416, 419 (1977) (AFDC plays a significant role in relieving need caused by unemployment.).

95. See *supra* note 1.

96. 42 U.S.C. § 602(a)(7) (1976), *amended by* 42 U.S.C. § 602(a)(7) (Supp. V 1981).

97. *See* S. Rep. No. 1589, *supra* note 21, at 18, *reprinted in* 1962 U.S. Code Cong. & Ad. News at 1960. Because the disregard afforded by this provision and the $75 standardized work expense deduction that replaced it are available only to employed AFDC recipients, 42 U.S.C. § 602(a)(8)(B)(i)(I), (II) (1976 & Supp. V 1981), it is evident that Congress had anticipated that poorly paid workers with families would qualify for and receive AFDC benefits. Moreover, the current statute indicates that AFDC is available even to those employed full time. *See id.* § 602(a)(8)(A)(ii) (Supp. V 1981). In 1980, two million fully employed women earned below minimum wage, Disadvantaged Women, *supra* note 6, at 21; consequently, Congress' provision for supplemental aid in the form of AFDC is not inappropriate. *See* Anderson v. Burson, 300 F. Supp. 401, 404 (N.D. Ga. 1968) (state providing aid supplements to recipients with outside income must likewise provide wage supplements to fully employed recipients if they too demonstrate need).

98. Social Security Amendments of 1967, Pub. L. No. 90-248, § 202(b), 81 Stat. 821, 881 (1968). This provision allowed applicants to disregard the first $30 of their

Because the statute is silent as to the treatment of mandatory payroll withholdings, the expressed congressional goal in enacting AFDC should be dispositive.[99] The exclusion of payroll taxes from consideration as income is consistent with this purpose because it increases a working recipient's benefits in the amount temporarily withheld from her.[100] Moreover, Congress' purpose as articulated in the statute's preface precludes any interpretation that would defeat the goals of helping caretakers attain or retain self-sufficiency.[101] Consistent with these goals, payroll tax exclusion not only ensures that children will receive benefits that more accurately represent their needs,[102] but also provides that recipients can attain greater economic independence without jeopardizing their children's well-being because of higher tax rates.[103]

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monthly earned income plus one-third of the remainder from the income figure used in (a)(7) to determine need. *Id.* By reducing a recipient's benefits by only two-thirds of her earned income rather than by the whole amount, thereby leaving one-third of her earnings as an incentive to work, Congress hoped to encourage "members of public assistance families to take employment and . . . increase their earnings to the point where they become self-supporting." S. Rep. No. 744, *supra* note 89, at 158, *reprinted in* 1967 U.S. Code Cong. & Ad. News at 2995.

99. *See* Chapman v. Houston Welfare Rights Org., 441 U.S. 600, 608 (1979) (statutes should be interpreted in light of the purposes Congress sought to serve); United States v. Bornstein, 423 U.S. 303, 310 (1976) (same); 2A C. Sands, *supra* note 69, § 45.09, at 29 (legislative purpose represents a starting point for judicial inquiry as to the meaning of the statute). Courts have an obligation to respect the plain meaning of a statute as revealed by its language, purpose and history even when the appropriate administrative agency issues its own interpretation of the statute. Southeastern Community College v. Davis, 442 U.S. 397, 411 (1979).

100. Turner v. Prod, 707 F.2d 1109, 1124 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 790-91 (S.D.N.Y. 1983); RAM v. Blum, 533 F. Supp. 933, 949 (S.D.N.Y. 1982); *see* Williamson v. Gibbs, 562 F. Supp. 687, 689 (W.D. Wash. 1983).

101. 42 U.S.C. § 601 (1976); *see* Williamson v. Gibbs, 562 F. Supp. 687, 689 (W.D. Wash. 1983); Turner v. Woods, 559 F. Supp. 603, 615 (N.D. Cal. 1982), *aff'd sub nom.* Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984).

102. RAM v. Blum, 533 F. Supp. 933, 949 (S.D.N.Y. 1982). The *RAM* court observed:

> In adding Section [602(a)(7) to AFDC], Congress sought to [assist needy families] by assuring that the limited funds available would indeed be distributed to "needy" families. Logically, the extent of a family's "need" depends on the funds that it has available to it, ready for use to meet the necessities of life. Certainly, mandatory payroll deductions are not, in any sense of the word, funds that are *available* to an individual or his family.

Id. (emphasis in original) (citations omitted).

103. RAM v. Blum, 564 F. Supp. 634, 646-47 (S.D.N.Y. 1983); *see* M. Anderson, *supra* note 7, at 50-52 (compelling the working poor to suffer high taxes impairs their nascent attempts at self-sufficiency). In enacting the work incentive provisions of AFDC, Congress equated economic self-sufficiency with higher earned wages. *See* S. Rep. No. 744, *supra* note 89, at 157-58, *reprinted in* 1967 U.S. Code Cong. & Ad.

Congressional purpose necessarily guides judicial interpretation of the statute.[104] Although OBRA reforms affect the calculation of income, they do not alter these fundamental goals.[105] Interpretation of the newly amended sections, therefore, must not only heed congressional intent in enacting OBRA, but also must conform to the expressed purposes that OBRA left unchanged.[106]

C. *Goals of OBRA*

The legislative history of the OBRA amendments reflects two broad congressional purposes. The first purpose, manifested by the seventy-five dollar limit on work expense deductions, embraces administrative goals: reducing government spending,[107] fostering greater uniformity of benefits among the states,[108] curbing falsification of expense records and easing administrative burdens,[109] as well as encouraging applicants to make use of all income and resources at their disposal.[110] OBRA's second purpose is more philosophical: minimizing the extent and duration of welfare dependency without endangering the "truly needy."[111]

News at 2994-95. If, by increasing earnings, a recipient forfeits AFDC income supplements in the amount of her increasing tax obligation, the program would contain disincentives to work that it is likely Congress neither foresaw nor intended. Turner v. Prod, 707 F.2d 1109, 1122-23 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984). See *infra* notes 191-96 and accompanying text.

104. See *supra* note 99.

105. James v. O'Bannon, 715 F.2d 794, 809 (3d Cir. 1983); Turner v. Prod, 707 F.2d 1109, 1121 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); RAM v. Blum, 533 F. Supp. 933, 946-47 (S.D.N.Y. 1982); *see* S. Rep. No. 139, *supra* note 23, at 508 (OBRA reaffirms original goals of AFDC), *reprinted in* 1981 U.S. Code Cong. & Ad. News at 775.

106. Turner v. Prod, 707 F.2d 1109, 1121 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); Clark v. Helms, 576 F. Supp. 1095, 1102 (D.N.H. 1983).

107. See *infra* notes 115-28 and accompanying text.

108. See *infra* notes 129-34 and accompanying text.

109. See *infra* notes 135-39 and accompanying text.

110. See *infra* notes 140-54 and accompanying text.

111. S. Rep. No. 139, *supra* note 23, at 507, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 774; *see* Philadelphia Citizens in Action v. Schweiker, 669 F.2d 877, 879 (3d Cir. 1982); Bell v. Hettleman, 558 F. Supp. 386, 389 (D. Md.), *aff'd sub nom.* Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983). See *supra* note 25 and accompanying text. In a statement before the Senate Finance Committee, then-Secretary of HHS Richard Schweiker indicated five goals which the Reagan Administration hoped to achieve by the welfare reforms to be implemented by OBRA: 1) limiting eligibility to those most in need; 2) strengthening work requirements; 3) making AFDC a "temporary safety net" for those unable to support themselves; 4) promoting self-reliance and individual responsiblity; and 5) improving administration. *Hearings on Spending Reduction*, *supra* note 43, at 32 (statement of Richard Schweiker, Secretary of HHS).

Because the treatment of payroll taxes is not specifically addressed by OBRA, it may be inferred that Congress did not intend to alter the long-standing practice of excluding withheld taxes from income.[112] A contrary inference, in fact, has been termed "fundamentally at odds with the policy aims articulated in [OBRA's] legislative history."[113] Proponents of the inclusion view, however, rely on OBRA's underlying goals to justify counting taxes as income.[114] It is necessary, therefore, to examine the mandatory payroll tax issue in the context of OBRA's objectives.

1. Administrative Purpose of OBRA

a. *Budgetary Impact*

The foremost purpose of the OBRA-AFDC reforms is to restrain government spending on social programs.[115] Drafters of the OBRA legislation estimated that the federal government could save as much as one billion dollars each year as a result of the income-calculation changes.[116] Any interpretation of the OBRA reforms that would maxi-

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112. Turner v. Prod, 707 F.2d 1109, 1121 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); *see* Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 790 (S.D.N.Y. 1983); Williamson v. Gibbs, 562 F. Supp. 687, 689 (W.D. Wash. 1983).

113. RAM v. Blum, 564 F. Supp. 634, 647 (S.D.N.Y. 1983); *see* Turner v. Prod, 707 F.2d 1109, 1124 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 790 (S.D.N.Y. 1983); Williamson v. Gibbs, 562 F. Supp. 687, 689 (W.D. Wash. 1983). In light of the concerns embodied in the AFDC portion of the OBRA legislation, *see* S. Rep. No. 139, *supra* note 23, at 501-02 (reduce disparities among the states, simplify administration, and minimize error and abuse), *reprinted in* 1981 U.S. Code Cong. & Ad. News at 768, it is unlikely that Congress considered the mandatory payroll deduction question at all when it altered the work expenses disregard provision. Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 791 (S.D.N.Y. 1983).

114. See *infra* notes 115-60 and accompanying text.

115. *See* S. Rep. No. 139, *supra* note 23, at 2, 501-03, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 397, 767-69. See *supra* notes 23-24 and accompanying text. The Senate Budget Committee itemized the estimated savings it hoped to achieve by curtailing or eliminating specific aspects of the AFDC program. *See* S. Rep. No. 139, *supra* note 23, at 501-20, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 767-87. The largest savings arise out of adjustments affecting an applicant's statutory income, for example: limiting earned income disregards, *id.* at 503 ($374 million savings in fiscal year 1982), *reprinted in* 1981 U.S. Code Cong. & Ad. News at 769; counting the value of food stamps and housing subsidies, *id.* at 504 ($100 million), *reprinted in* 1981 U.S. Code Cong. & Ad. News at 770; and considering stepparents' income in determining need, *id.* at 507 ($108 million), *reprinted in* 1981 U.S. Code Cong. & Ad. News at 773.

116. *Hearings on Spending Reduction*, *supra* note 43, at 48 (testimony of Richard Schweiker, Secretary of HHS). The cumulative savings for fiscal years 1982 through 1984 were projected at close to $4 billion. S. Rep. No. 139, *supra* note 23, table at 19,

mize cost savings such as counting taxes as income certainly contributes to this fiscally conservative purpose. Such an interpretation, however, is not presumptively consistent with congressional intent.[117]

For example, inclusion of taxes may actually foster dependency because the reduction of benefits in the amount of taxes not available for use may make it more costly for a recipient to work than to rely passively on welfare.[118] If recipients make the expected and economically rational decision to maximize gain and quit work, dependency is actually increased.[119] Because no work requirement is imposed on AFDC families containing one or more children under the age of three,[120] quitting work is a realistic and practical solution to the problems caused by low wages and even lower benefits.[121] Not only would such a result be socially undesirable but it would also result in a higher degree of welfare dependency and reduced government savings in contravention of congressional purpose.[122]

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reprinted in 1981 U.S. Code Cong. & Ad. News at 411. The Department of Health & Human Services estimated savings of $6 billion. 47 Fed. Reg. 5648 (1982) (Regulatory Impact Analysis).

117. Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 791 (S.D.N.Y. 1983).

118. *See* Shea v. Vialpando, 416 U.S. 251, 264 (1974); Turner v. Prod, 707 F.2d 1109, 1122-23 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984). In *Turner*, the plaintiff's penalty—the difference between her post-OBRA benefits and the total for which she would be eligible if unemployed—would be $189 a month under the payroll tax inclusion view. *Id.* at 1122. This penalty attributable to taxes is widespread. RAM v. Blum, 564 F. Supp. 634, 647 n.30 (S.D.N.Y. 1983).

119. See *infra* notes 192-93. The court in Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984), observed that "[t]he choice is between working and not working. If the disincentive provided is strong enough, there is no reason to believe that AFDC recipients will work in order to pay handsomely for the privilege." *Id.* at 1123; *see* Disadvantaged Women, *supra* note 6, at 28-29; *cf. Rhetoric and Reality*, *supra* note 7, at 90 (discussing the impact of OBRA's modified work incentive provisions on work effort).

120. A mother caring for a child between the ages of three and six may be required, at the discretion of the administering state agency, to enroll in a community work program if child care is available, S. Rep. No. 139, *supra* note 23, at 509, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 776, but is exempt from having to participate in government-sponsored work incentive programs. 42 U.S.C. § 602(a)(19)(A)(v) (1976 & Supp. V 1981). Sanctions imposed by AFDC, 42 U.S.C. § 602(a)(19)(F), relate only to individuals eligible for or registered in these work programs. *Id.* § 602(a)(19)(F)(i)-(v) (1976 & Supp. V 1981); *see Hearings on Spending Reduction*, *supra* note 43, at 10 (statement of Richard Schweiker, Secretary of HHS). *But see* Anderson v. Burson, 300 F. Supp. 401, 404 (N.D. Ga. 1968) (there is no federally protected right of an AFDC mother to refuse employment).

121. *Hearings on Proposed Savings*, *supra* note 25, at 46 (statement of Rep. Chisholm); Disadvantaged Women, *supra* note 6, at 28-29; M. Anderson, *supra* note 7, at 50; *see* S. Levitan, *supra* note 6, at 16; Kasper, *Welfare Payments and Work Incentive: Some Determinants of the Rates of General Assistance Payments*, 3 J. Hum. Resources 86, 90 (1968).

122. Turner v. Prod, 707 F.2d 1109, 1123 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); *see* 127 Cong. Rec. H7137 (daily ed. Oct.

In practice, including monthly taxes as income is untenable because it invariably distorts the calculation of need and at times even perpetrates injustice. States historically have had the right to count yearly tax refunds as income available to the applicant to reduce her need,[123] and many provide for this calculation in their AFDC rules. If payroll taxes are also treated as income each month, the resulting hardship to the recipient is severe. Although she actually receives the value of the tax only once, the process of including both the monthly withheld tax and the annual refunds as income attributes this value to her twice.[124] To prevent this injustice, the state could forego counting the annual refund as income, but that solution would produce the absurd result that monthly withholdings are counted as income although unavailable while the lump sum refund payment—representing cash in hand—is ignored.[125]

In contrast, excluding withheld taxes from income is a more judicious application of the AFDC's income calculation sections. This interpretation comports both with case law defining tax refunds as income[126] and with the section of OBRA requiring all states to treat lump sum payments as income when received.[127] Moreover, this inter-

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7, 1981) (remarks of Rep. Schroeder). An impact report by the Congressional Budget Office estimated that the government would lose up to 30% of its projected savings because of the disincentives incorporated into OBRA. *See Why Welfare Rolls May Grow*, Bus. Wk., Mar. 29, 1982, at 166 [hereinafter cited as *Welfare Rolls*].

123. *See, e.g.*, Vaessen v. Woods, 182 Cal. Rptr. 725, 727 (Cal. App. 1982); Curry v. Blum, 73 A.D.2d 965, 966, 424 N.Y.S.2d 450, 452 (1980); Steere v. State Dep't of Pub. Welfare, 308 Minn. 390, 399, 243 N.W.2d 112, 118 (1976); *see also* Annot., 3 A.L.R.4th 1074 (1981) (general discussion). *But see* Kaisa v. Chang, 396 F. Supp. 375, 377 (D. Hawaii 1975) (Tax refunds are not income for the purpose of determining AFDC eligibility or need.).

124. *See* Williamson v. Gibbs, 562 F. Supp. 687, 688 (W.D. Wash. 1983) (having counted taxes as income throughout the year, state may not again count as income the tax refund); Turner v. Woods, 559 F. Supp. 603, 615 n.11 (N.D. Cal. 1982) (the practice of counting payroll taxes as income when withheld and again when refunded results in an "injustice bordering on the Kafkaesque"), *aff'd sub nom.* Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984). HHS has recognized the injustice of this practice in the context of tax credits. *See* 47 Fed. Reg. 5660 (1982) (If the amount of a tax credit is counted each month as though it were received, it may not be counted again when it is received in a lump sum.) (Discussion of Major Provisions and Response to Comments). See *supra* notes 140-54 and accompanying text.

125. The regulations expressly provide that states must treat as income any amounts received as nonrecurring lump sum payments during that month. 45 C.F.R. § 233.20(a)(3)(ii)(D) (1983); *see* 42 U.S.C. § 602(a)(17)(A) (Supp. V 1981). This provision therefore governs the characterization of a working applicant's annual tax refund check.

126. See *supra* note 123 and accompanying text.

127. *See* 42 U.S.C. § 602(a)(17)(A) (Supp. V 1981).

pretation produces a fairer and more accurate determination of resources at relatively little expense to the government. Although reducing an applicant's monthly reported income will result in greater federal and state spending each month in the amount of the withheld taxes, these expenditures will ultimately be offset dollar-for-dollar when the recipient receives her tax refund.[128] Consequently, exclusion of taxes does not jeopardize the long-term cost-saving objectives of OBRA.

b. *Uniformity*

A second purpose of the OBRA reforms is to foster uniformity among the states in their treatment of AFDC recipients.[129] Concerned that inconsistent and at times parsimonious interpretations of the work expense provision in section 602(a)(7) produced inequitable results among the states,[130] Congress instituted the flat seventy-five dollar work expense disregard in section (a)(8) to be applied nationwide.[131] No purpose, however, would be served by including payroll taxes within its purview.[132]

Unlike work expenses, payroll taxes cannot be inconsistently deducted.[133] Withholdings for federal and Social Security taxes are uni-

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128. In certain situations, the receipt of a large refund, when added to an applicant's ordinary monthly earnings, will make the recipient ineligible for assistance that month. *See* 42 U.S.C. § 602(a)(17)(A) (Supp. V 1981); 45 C.F.R. § 233.20(a)(3)(ii)(D) (1983). Moreover, any portion of the refund check that exceeds the state's standard of need when combined with other income will be carried over to succeeding months, *see* 42 U.S.C. § 602(a)(17)(B) (Supp. V 1981), until it no longer affects the applicant's eligibility. *See id.*; 47 Fed. Reg. 5655-56 (1982) (Discussion of Major Provisions and Response to Comments). Consequently, by not including withholdings as income, every dollar paid out under AFDC in the amount of the refund will later produce one dollar in savings to the government from continued ineligibility. In cases in which the earnings and, correspondingly, the tax refund are collectively lower than the standard of need, the savings all occur in the the same month, in the form of comparatively smaller AFDC grants for that month.

129. *See* Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 790 (S.D.N.Y. 1983); S. Rep. No. 139, *supra* note 23, at 501-02, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 768.

130. *See* S. Rep. No. 139, *supra* note 23, at 501, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 767-68; S. Levitan, *supra* note 6, at 34 (states not uniform in defining work expenses).

131. *See* 42 U.S.C. § 602(a)(8)(A)(ii) (Supp. V 1981).

132. Congress' plan to eliminate variations among the states would in fact be frustrated by including state and local taxes as income. RAM v. Blum, 564 F. Supp. 634, 646 (S.D.N.Y. 1983). This is because states imposing higher taxes will disburse correspondingly lower benefits and thereby exacerbate existing interstate inequalities.

133. *See* Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 791 (S.D.N.Y. 1983). State agencies can take no liberties in determining the amount of the exemption accorded to payroll taxes because these monthly amounts are plainly indicated on the

form nationwide, and consequently, uniform treatment of taxes among the states existed without the seventy-five dollar standard. Moreover, despite upholding uniformity as a goal of the OBRA reforms, Congress has historically been reluctant to rectify the significant benefit-level disparities already existing among the states.[134] It would therefore be inappropriate to extend the uniformity justification to include payroll taxes as work expenses under section 602(a)(8).

c. *Administrative Complexity and Fraud*

A third goal of the standard seventy-five dollar work expense deduction is to control the fraud and minimize the administrative complexity that result from the states' attempts to itemize and subtract work expenses from income under section (a)(7).[135] The seventy-five dollar disregard not only eliminates the need for a uniform definition of work expenses, but also simplifies administration by reducing numerous and unverifiable expense claims to a standard figure. Expenditures for materials and services such as transportation, uniforms, lunches and equipment were traditionally deducted in full,[136] creating a situation that encouraged applicants to inflate their expense records or resist prudence in spending.[137] The flat disregard directly addresses and resolves this problem.

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face of the applicant's payroll stub. *See* Turner v. Prod, 707 F.2d 1109, 1124 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984).

134. In 1979, President Carter proposed legislation that would have reduced the inequalities in the present system by providing guaranteed minimum support from the food stamp and AFDC programs equalling 65% of the poverty level. President's Message to Congress on the Proposed Welfare Reform Legislation, 1979 Pub. Papers 938, 940 [hereinafter cited as 1979 President's Message]; *see* S. Levitan, *supra* note 6, at 55. A decade earlier, President Nixon proposed reforms establishing a standardized national minimum that states could augment but not reduce. President's Address to the Nation on Domestic Programs, 1969 Pub. Papers 639-41, *reprinted in* Statutory History, *supra* note 2, at 884-88. Neither reform was implemented.

135. Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 790 (S.D.N.Y. 1983); RAM v. Blum, 564 F. Supp. 634, 646 (S.D.N.Y. 1983) (quoting S. Rep. No. 139, *supra* note 23, at 501-02, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 768); *see* Turner v. Woods, 559 F. Supp. 603, 613 (N.D. Cal. 1982), *aff'd sub nom.* Turner v. Prod, 707 F.2d 1109 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984).

136. *See* Shea v. Vialpando, 416 U.S. 251, 264 (1974); Dickenson v. Petit, 536 F. Supp. 1100, 1119-20 (D. Me.), *aff'd on other grounds*, 692 F.2d. 177 (1st Cir. 1982); *see also* 42 U.S.C. § 602(a)(7) (1976) (states must take into consideration "any" reasonable work expense), *amended by* 42 U.S.C. § 602(a)(7) (Supp. V 1981).

137. *Hearings on Spending Reduction*, *supra* note 43, at 32 (statement of Richard Schweiker, Secretary of HHS); *see* S. Rep. No. 139, *supra* note 23, at 501 (one purpose of $75 cap was to limit the amount of work expenses claimed), *reprinted in* 1981 U.S. Code Cong. & Ad. News at 768; Disadvantaged Women, *supra* note 6, at 28 (open-ended work expense deduction afforded no incentive to economize) (citing John Svahn, Commissioner of Social Security).

In contrast to these problematic expenditures are payroll taxes. Plainly recorded on each paycheck submitted by the working applicant to the welfare agency,[138] payroll withholdings are easily verified and tabulated and give rise to neither fraud nor administrative complication.[139] The process of excluding taxes thus presents none of the problems sought to be rectified by the standardized deduction. This rationale, therefore, does not support the inference that OBRA intended taxes to be included as income.

d. *Earned Income Tax Credits*

A fourth purpose of OBRA is to encourage applicants to exhaust all other available resources before requesting AFDC aid.[140] A principle resource identified by Congress is the Earned Income Tax Credit (EITC)[141] that eligible low-income workers are permitted to receive in the form of pro-rated advance payments as part of their regular paychecks.[142] This advanced credit, paid out as a separate item distin-

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138. *See* Turner v. Prod, 707 F.2d 1109, 1124 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984).

139. *See id.* (withheld amounts are easily verified and administratively uncomplicated); RAM v. Blum, 533 F. Supp. 933, 946 (S.D.N.Y. 1982) ("[M]andatory payroll deductions are paradigmatic examples of amounts that *are not* subject to being falsified and *are not* difficult for the states to calculate.") (emphasis in original).

140. *See* Philadelphia Citizens in Action v. Schweiker, 669 F.2d 877, 879-80 (3d Cir. 1982); S. Rep. No. 139, *supra* note 23, at 503, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 769. Congress identified lump sum payments and earned income advances as income sources with which applicants could independently support themselves. Congress reasoned that less dependence on AFDC by individuals with other income sources would produce a fairer allocation of scarce resources among those truly in need. Sweeney v. Affleck, 560 F. Supp. 1118, 1125 (D.R.I. 1983) (quoting 47 Fed. Reg. 5648 (1982)); S. Rep. No. 139, *supra* note 23, at 504, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 771; 47 Fed. Reg. 5648 (1982) (Regulatory Impact Analysis).

141. *See* 42 U.S.C. § 602(d) (Supp. V 1981) (earned income advance amount). This credit was established as part of the Tax Reduction Act of 1975, Pub. L. No. 94-12, § 204, 89 Stat. 26, 30 (codified as amended at 26 U.S.C. § 43 (1976 & Supp. V 1981)) for the purpose of increasing a low-income worker's after-tax earnings and thereby helping public aid recipients become self-supporting. S. Rep. No. 36, 94th Cong., 1st Sess. 11 [hereinafter cited as S. Rep. No. 36], *reprinted in* 1975 U.S. Code Cong. & Ad. News 54, 63-64.

142. Revenue Act of 1978, Pub. L. No. 95-600, § 105, 92 Stat. 2763, 2773-76 (codified as amended at 26 U.S.C. § 3507 (Supp. V 1981)). This act modified the earlier version of the tax credit by allowing eligible families to receive the annual sum in monthly installments totalling not more than $500 for the year. *See* 26 U.S.C. § 3507(a), (c)(2)(B) (Supp. V 1981) (one-wage-earner families). Congress reasoned that "the credit can work more effectively if an individual is able to receive [the tax credit] during the year while he or she is working. This provides the tax relief at a time when the individual is more likely to need it." S. Rep. No. 1263, 95th Cong., 2d Sess. 52 [hereinafter cited as S. Rep. No. 1263], *reprinted in* 1978 U.S. Code Cong. & Ad. News 6761, 6815.

guishable from ordinary tax withholding,[143] is intended to relieve low-income families from the burden of paying heavy federal income and Social Security taxes.[144]

The EITC has been treated as earned income for the purpose of determining public assistance eligibility and need since 1980.[145] Since the enactment of OBRA, Congress has required that the amount of the monthly credit be treated as earned income whether or not received[146] in order to force eligible workers to apply for the tax advantage.[147] Congress' meaning is clear: The tax credit is an available resource that must be utilized before applying to AFDC for assistance.[148]

By characterizing the EITC as earned income, Congress implicitly upheld the principle of availability as a standard for determining need.[149] In so doing it also reaffirmed the practice of excluding payroll

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143. *See* S. Rep. No. 1263, *supra* note 142, at 55, *reprinted in* 1978 U.S. Code Cong. & Ad. News at 6818.

144. *Id.* at 51-52, *reprinted in* 1978 U.S. Code Cong. & Ad. News at 6814-15.

145. Technical Corrections Act of 1979, Pub. L. No. 96-222, § 101(a)(2)(A), 94 Stat. 194, 195 (1980) (codified as amended at 42 U.S.C. § 602(d) (Supp. V 1981)).

146. 42 U.S.C. § 602(d) (Supp. V 1981); S. Rep. No. 139, *supra* note 23, at 506, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 772.

147. 42 U.S.C. § 602(d) (Supp. V 1981); *see Hearings on Spending Reduction*, *supra* note 43, at 33 (statement of Richard Schweiker, Secretary of HHS); S. Rep. No. 139, *supra* note 23, at 506, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 772. Application of this seemingly harsh prescription is mitigated by the regulations that count the monthly credits as earned income only if the working recipient actually has access to them. 45 C.F.R. § 233.20(a)(6)(ix) (1983). For instance, the regulations permit a two-week grace period to allow the advanced credit application to be processed. *Id.* § 233.20(a)(6)(ix)(A)(1). In situations in which no application has been filed, the regulations require that state agencies determine whether the worker is in fact eligible for the credits before imputing receipt to him. *Id.* § 233.20(a)(6)(ix)(B)(1); 47 Fed. Reg. 5660 (1982) (Discussion of Major Provisions and Response to Comments). Likewise, if the applicant's employer refuses to issue the credits despite the worker's efforts, the credits may not be counted as though received that month. 45 C.F.R. § 233.20(a)(6)(ix)(A)(2) (1983).

148. *See Hearings on Spending Reduction*, *supra* note 43, at 33 (statement of Richard Schweiker, Secretary of HHS); S. Rep. No. 139, *supra* note 23, at 506, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 772.

149. See *infra* note 150. In proposing the 1981 change in the treatment of advanced tax credits, the Senate Committee observed that the resulting enhancement of earned income more accurately reflected the resources—and hence the need—of an applicant family. *See* S. Rep. No. 139, *supra* note 23, at 506, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 772. The importance of satisfying need, in fact, underlies many of the OBRA reforms: the imposition of a $1,000 limit on the personal resources which may be excluded in determining need, *id.* at 503, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 769; allocation of lump sum payments as imputed income over a period of months, *id.* at 505, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 771; and counting stepparents' income in determining need, *id.* at 506, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 773. Hence, Congress sought to compel AFDC applicants to draw upon their available income and resources before soliciting public assistance. *See id.* at 503-07, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 769-73.

taxes from income consideration. It defies logic to champion the availability principle with respect to income inclusions such as the tax credit but to repudiate it when characterizing a non-income exemption like payroll taxes.[150] Thus, any interpretation of OBRA that mandates the inclusion of payroll taxes as income undermines this theoretical justification of the OBRA reforms.

The characterization of both tax withholdings and the EITC as income also raises the threat of counting the same tax value twice. The characterization of federal payroll taxes as income may be rectified by ignoring the corresponding annual tax refund,[151] but FICA taxes, accounting for as much as 6.7 percent of a worker's income,[152] are not refunded.[153] The EITC was expressly intended to mitigate the impact

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150. *See* Turner v. Prod, 707 F.2d 1109, 1114-15 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); RAM v. Blum, 564 F. Supp. 634, 641-42 (S.D.N.Y. 1983); RAM v. Blum, 533 F. Supp. 933, 949 (S.D.N.Y. 1982). The courts deny that the OBRA Congress had intended to repeal this long-standing principle "sub silentio." *Turner v. Prod*, 707 F.2d at 1121; Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 790 (S.D.N.Y. 1983); *RAM v. Blum*, 564 F. Supp. at 647.

Some courts that favor including mandatory payroll taxes in income contend that the availability principle never applied to payroll taxes. James v. O'Bannon, 715 F.2d 794, 805 (3d Cir. 1983); Dickenson v. Petit, 569 F. Supp. 636, 643-44 (D. Me. 1983), *aff'd*, 728 F.2d 23 (1st Cir. 1984); Dickenson v. Petit, 536 F. Supp. 1100, 1115 n.13 (D. Me.), *aff'd on other grounds*, 692 F.2d 177 (1st Cir. 1982). Alternately, they contend that this principle was implicitly rejected by the administrative regulations, 45 C.F.R. § 233.20(a)(6)(iv) (1983) ("earned income" includes income tax deductions), and the Supreme Court in Shea v. Vialpando, 416 U.S. 251, 254 (1974) (dictum), which characterized pre-OBRA disregards as taken from gross income. *See, e.g.*, James v. O'Bannon, 715 F.2d 794, 804 (3d Cir. 1983); Bell v. Hettleman, 558 F. Supp. 386, 392 (D. Md), *aff'd sub nom.* Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983); Dickenson v. Petit, 536 F. Supp. 1100, 1112 (D. Me.), *aff'd on other grounds*, 692 F.2d 177 (1st Cir. 1982). Because of its ambiguity, however, this dictum in *Shea* is open to a contrary interpretation. See *supra* note 68.

The most significant modification of the AFDC program was in fact premised on the concept of availability. In applying the $30 and one-third work incentive disregard, see *supra* note 98, for only the first four months of a recipient's employment, 42 U.S.C. § 602(a)(8)(B)(ii) (Supp. V 1981), Congress provided that after month five 100% of a recipient's earned income, aside from child care and work expense costs, would be considered in determining need. *See id.* Income that had been disregarded before OBRA was now recognized as available and appropriate for consideration. *See* James v. O'Bannon, 715 F.2d 794, 806 (3d Cir. 1983). Because Congress is operating under the principle that available amounts should be counted as income, the converse should also be true: If a sum, such as payroll taxes, is not available, it cannot be considered. RAM v. Blum, 564 F. Supp. 634, 648 (S.D.N.Y. 1983); Nishimoto v. Sunn, 561 F. Supp. 692, 693 (D. Hawaii 1983); *see* Turner v. Prod, 707 F.2d 1109, 1115 (9th Cir. 1983), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984).

151. See *supra* notes 123-28 and accompanying text.

152. 26 U.S.C. § 3101(a)(5) (Supp. V 1981) (5.4%); *id.* § 3101(b)(4) (1.3%).

153. *See* Helvering v. Davis, 301 U.S. 619, 636, 641 (1937).

of this withholding.[154] By counting as income both the FICA taxes and the credit implicitly restoring it, these amounts are charged against a recipient twice. This duplication, which has the effect of decreasing benefits, undermines the relief aspect of the tax credit in contravention of congressional purpose.

2. Philosophical Purpose of OBRA

Many of the reforms implemented by OBRA were impelled by philosophical considerations broader than the practical administrative interests satisfied by the seventy-five dollar limitation on work expense deductions. The legislative history of OBRA is replete with congressional statements affirming its intent to reduce the number of working families on welfare[155] and to diminish the benefits accruing to those who remain.[156] In setting forth these goals, however, Congress was aiming at a very specialized group of welfare recipients: the working caretakers with "high earnings"[157] who, under an extravagant and generally ineffectual "work incentive" provision,[158] were able to disre-

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154. S. Rep. No. 1263, *supra* note 142, at 51-52, *reprinted in* 1978 U.S. Code Cong. & Ad. News at 6814-15; *see* S. Rep. No. 36, *supra* note 41, at 32, *reprinted in* 1975 U.S. Code Cong. & Ad. News at 83.

155. S. Rep. No. 139, *supra* note 23, at 502-03, 504, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 768-69, 770; *Hearings on Spending Reduction*, *supra* note 43, at 91 (testimony of Richard Schweiker, Secretary of HHS); *Hearings on Proposed Savings*, *supra* note 25, at 26 (testimony of Richard Schweiker, Secretary of HHS); *see* Budget Memorandum, *supra* note 24 (Summary).

156. S. Rep. No. 139, *supra* note 23, at 502, 504, 505-06, *reprinted in* 1981 U.S. Code Cong. & Ad. News at 769, 770-71, 772; *see Hearings on Proposed Savings*, *supra* note 25, at 3 (statement of Rep. Fortney, Chairman of Subcomm. on Pub. Assistance and Unemployment Compensation). The consequences were harsh: Before OBRA, working AFDC families had an average disposable income of 101% of the poverty threshold; in 1982, the national average AFDC income was 81% of the threshold. Disadvantaged Women, *supra* note 6, at 29.

157. *See* 47 Fed. Reg. 5652 (1982) (families received AFDC benefits despite "high earnings") (Discussion of Major Provisions and Response to Comments); *Hearings on Proposed Savings*, *supra* note 25, at 11 (statement of Richard Schweiker, Secretary of HHS) (individuals working at "high income levels" tend to stay on the rolls); S. Rep. No. 139, *supra* note 23, at 502 (individuals remained on welfare although their wages were "well above" state welfare standards), *reprinted in* 1981 U.S. Code Cong. & Ad. News at 768; *see also* M. Anderson, *supra* note 7, at 34-35 (almost a half million families, all earning over $15,000 a year, received an average of more than $1,300 per year from AFDC).

158. *See* S. Rep. No. 139, *supra* note 23, at 502 (since incentive was implemented, percentage of working recipients dropped), *reprinted in* 1981 U.S. Code Cong. & Ad. News at 768-69; *Hearings on Proposed Savings*, *supra* note 25, at 26 (testimony of Richard Schweiker, Secretary of HHS) ("[T]he incentive we built in is such a great incentive that everybody wants to stay in the system."). See *supra* note 98 and accompanying text.

gard hundreds of dollars every month from their earned income and thereby significantly enhance their benefits.[159] As Congress recognized, the provision in effect encouraged dependence by individuals arguably able to support themselves.[160]

In contrast, exempting taxes from income neither encourages dependency nor significantly increases government spending. Unlike the incentive provisions which conferred large sums of money gratuitously, the exclusion of mandatory payroll taxes from income merely makes it possible for a working recipient to possess the fifty or sixty dollars a month she had earned but, because of government withholding, never received. Consequently, it would be an improper expansion of congressional intent to interpret all the OBRA changes in the shadow of the incentive provisions or to infer additional changes from Congress' silence.

III. Reconciling Competing Policy Interests

The OBRA amendments substantially cut back many of the welfare perquisites available to working recipients,[161] but did not render working caretakers ineligible for AFDC per se. In fact, by enumerating specific disregards for work expenses and child care costs incurred in connection with employment, Congress reaffirmed AFDC's longstanding commitment to assist those whose earnings are too small to achieve self-sufficiency.[162] Consequently, an applicant's "need"—the difference between her income and the state-determined minimum subsistence level—is essentially an income supplement provided by the government in recognition of the low-income worker's inability to support her family without it.[163]

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159. Clark v. Helms, 576 F. Supp. 1095, 1102 (D.N.H. 1983); *see, e.g.*, James v. O'Bannon, 715 F.2d 794, 799 (3d Cir. 1983) ($197.90 disregarded from $588.90 gross monthly income); Turner v. Prod, 707 F.2d 1109, 1122 (9th Cir. 1983) ($273 disregarded from $730 gross monthly income), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); Dickenson v. Petit, 536 F. Supp. 1100, 1107-08 (D. Me.) (three plaintiffs were entitled to disregard $222.21, $237.81 and $324.09 per month respectively), *aff'd on other grounds*, 692 F.2d 177 (1st Cir. 1982).

160. *See* S. Rep. No. 139, *supra* note 23, at 502-03, *reprinted in* 1981 U.S. Code Cong. & Ad. News, at 769; *see also Hearings on Proposed Savings*, *supra* note 25, at 26 (testimony of Richard Schweiker, Secretary of HHS) (the work incentive provision as written encouraged people who could "move up" to maintain their dependence on welfare).

161. *See* Dickenson v. Petit, 692 F.2d 177, 179-80 (1st Cir. 1983). The two most significant changes involved the $75 cap on work expense deductions and the virtual elimination of the $30 and one-third work incentive disregard. *See* 42 U.S.C.A. § 602(a)(8)(a)(ii), (iv) (West 1983); Disadvantaged Women, *supra* note 6, at 63.

162. See *supra* note 94 and accompanying text.

163. 1979 President's Message, *supra* note 134, at 939; *see Hearings on Proposed Savings*, *supra* note 25, at 26 (testimony of Rep. Russo); E. Durbin, *supra* note 3, at 21-22; S. Levitan, *supra* note 6, at 16.

If excluded from income, mandatory payroll taxes would properly have the effect of enhancing that supplement already expressly provided by statute. Although the legislative histories of AFDC and OBRA support this interpretation,[164] arguments have been advanced that would produce contrary results:[165] Ultimately, therefore, the proper treatment of payroll taxes will be influenced by policy considerations concerning the use of public funds in aid of the working poor.

A. *Social Considerations*

The propriety of excluding payroll taxes to enhance AFDC benefits is in part contingent on the social desirability of increasing the amount of money at the disposal of the working poor. Proponents of the use of public assistance to supplement earned income emphasize that AFDC's primary purpose is to protect all eligible families from the social, physical and emotional distress of poverty.[166] If withheld taxes are treated as income for the purposes of reducing this supplement even though that "income" is unavailable to the worker, poverty is not alleviated but rather made worse. This result would frustrate AFDC's statutory and historical mandate.

Those who favor reducing welfare payments—and by extension, counting taxes as income—perceive government's obligation to the poor differently. They argue that government must not be the instrument of perpetuating the poverty of low income workers through income guarantees.[167] Public aid should be reserved for those with no prospects of employment;[168] those who can work must do so and

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164. See *supra* notes 78-160 and accompanying text.

165. *See, e.g.*, Dickenson v. Petit, 728 F.2d 23, 24 (1st Cir. 1984); James v. O'Bannon, 715 F.2d 794, 810 (3d Cir. 1983); Bell v. Hettleman, 558 F. Supp. 386, 393-95 (D. Md.), *aff'd sub nom.* Bell v. Massinga, 721 F.2d 131 (4th Cir. 1983).

166. *See* Goldberg v. Kelly, 397 U.S. 254, 261 (1970) (welfare aids recipients in time of "brutal need") (quoting trial court). Supplements not only make labor more profitable than welfare dependence by raising the family's standard of living, but by rewarding involvement in the work force they also ameliorate the alienation—social as well as economic—that characterizes the poor and sets them apart as an isolated and scorned "underclass." *See* Lodge & Glass, *The Desperate Plight of the Underclass*, Harv. Bus. Rev., July-Aug. 1982, at 60, 62.

167. G. Gilder, Wealth and Poverty 122 (1981); *see* M. Anderson, *supra* note 7, at 50. It is argued that the welfare system, in straining to provide subsistence for all, in fact traps the poor in their condition:

> The most serious fraud is committed not by the members of the welfare culture but by the creators of it, who conceal from the poor, both adults and children, the most fundamental realities of their lives: that to live well and escape poverty they will have to keep their families together at all costs and will have to work harder than the classes above them. In order to succeed, the poor need most of all the spur of their poverty.

G. Gilder, *supra*, at 118.

168. *See* M. Anderson, *supra* note 7, at 68-69, 159; G. Gilder, *supra* note 167, at 119; H. Hazlitt, Man vs. The Welfare State 218 (1969).

accept the wage their services will claim on the market.[169] Thus, individuals who have demonstrated the capacity for self-support must not be permitted to rely on their AFDC checks for the income advantages otherwise attainable through hard work.[170] Supplementing income with AFDC, even in the amount of excluded payroll taxes, therefore, merely prolongs dependence and retards upward economic mobility.[171]

This argument, however, ignores the economic realities that inhibit an adult recipient's potential for self-advancement and that probably forced the recipient to apply for public assistance in the first place. A working caretaker caught between the demands of childrearing and the limits of her skills may not realistically be expected to work any harder to improve her condition.[172] The bootstrap policy underlying the inclusion view, therefore, gives poor workers no more than they already have and does little to alleviate welfare dependence.[173]

In view of the public's presumed resentment of the welfare system,[174] another consideration weighing against income supplements is political expedience. An AFDC recipient who qualifies for and receives all available non-cash benefits is likely to have a higher income than an unsubsidized low-income worker.[175] By permitting her the

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169. *See* H. Hazlitt, *supra* note 168, at 68-69 (disapproval of a situation in which an individual would leave a low-paying job to rely on guaranteed income from the government).

170. *See* G. Gilder, *supra* note 167, at 116-17.

171. *See* M. Anderson, *supra* note 7, at 50; G. Gilder, *supra* note 167, at 122; M. Sanger, *supra* note 9, at 40.

172. *See* D. Saks, Public Assistance for Mothers in an Urban Labor Market 74-75 (1975); M. Sanger, *supra* note 9, at 30. The presence of young children in a poor household has a negative effect on the mother's earning capacity, S. Levitan, *supra* note 6, at 12; *see* M. Sanger, *supra* note 9, at 24-25, and her responsiveness to changing market conditions, D. Saks, *supra*, at 74. See *supra* notes 56 & 59 and accompanying text. Consequently, by providing supplemental or total aid whenever a woman's family commitments impair her earning capacity, the government performs a necessary as well as productive service: "[T]his kind of return to welfare should not be seen as a failure to achieve self-support but more as a successful way for government to contribute to family support when most needed, without interfering with the individual's motivation to work whenever possible." E. Durbin, *supra* note 3, at 22.

173. *See* E. Durbin, *supra* note 3, at 94; M. Sanger, *supra* note 9, at 40-41; Sawhill, *supra* note 63, at 206.

174. *Hearings on Proposed Savings*, *supra* note 25, at 6 (statement of Richard Schweiker, Secretary of HHS) ("The American people strongly oppose assistance going to those who can work, those who have other sources of income, and those who get as much or more on welfare as others get from working."); Lynn, *supra* note 9, at 100 ("middle-class resentment of excessive favoritism [that is] shown to the welfare population"). *See generally* M. Anderson, *supra* note 7, at 59-65 (discussion of public attitudes toward welfare); D. Macarov, *supra* note 16, at 136-46 (same).

175. *See Hearings on Proposed Savings*, *supra* note 25, at 30 (testimony of Rep. Rousselot); M. Anderson, *supra* note 7, at 33; Sobel, *Welfare & the Poor*, in Welfare & the Poor 2 (1977) (quoting Sen. Humphrey).

additional boon of enhanced welfare benefits in the amount of excluded taxes, "taxpayers end up paying not only their own taxes, but subsidizing the payment of federal income and social security taxes for employed recipients."[176] The result is a situation which arguably rewards laxity and punishes hard work.

This perception of public outrage over the alleged over-compensation of public aid recipients may be exaggerated. Non-welfare, lower-income families who supposedly benefit from the reduced tax rates made possible by severe welfare cuts are themselves in constant risk of economic hardship.[177] It is more likely that they would object to the substantial tax breaks afforded the wealthy than gainsay meager government assistance disbursed to those even worse off than they.[178]

The policy arguments underlying a decision to count taxes as income may often be based on an unrealistic estimate of an aid recipient's ability to work and thus lift herself out of dependency.[179] To deny her an income equal to that of the non-worker would contravene the very purpose of AFDC, which is to provide "a reasonable subsistence compatible with decency and health."[180] This goal is certainly

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176. Message by Governor Reagan to the California Assembly (Mar. 3, 1971), *reprinted in* I Center of Social Welfare Policy & Law, Materials on Welfare V-95 (1972); *see* H. Hazlitt, *supra* note 168, at 70 (government can give only that which it has taken from someone else).

177. *See* Coe, *supra* note 66, at 45 (25% of the American public received public assistance during 1969-1978). This suggests that no demographic group "is immune from an occasional bad year which temporarily forces him or her to turn to welfare in order to make ends meet." *Id.* at 46; *see* Disadvantaged Women, *supra* note 6, at 3 ("between one-third and one-half of the poor in a given year are not poor the following year"); *see* Williams, *The View from $204 a Week*, Newsweek, Jan. 18, 1982, at 15 (rebutting government contention that non-welfare, low-income workers support public aid cuts). Williams asserts:

> What the people "up there" don't understand is that I identify with the beneficiaries of these programs . . . . "There, but for the grace of God go I." So far, I have never had to rely on welfare, free lunches or Medicaid, but I very well might someday. . . . People like me, who live only a hairbreadth from economic disaster, are glad those programs are out there, though we pray we'll never have to use them. We feel sympathy for the ones who do.

Id.

178. *See Hearings on Proposed Savings*, *supra* note 25, at 46 (statement of Rep. Chisholm) ("Not only are our present benefits inadequate, but the administration's proposals are the equivalent [of] increasing the tax rate on the earnings of the working poor at a time when tax cuts are advanced for more well-off workers."); *cf. Justice Dangles in Limbo*, Time, Apr. 9, 1984, at 27 ("[The Reagan Administration] points to $100 cases of welfare abuse. Then they claim to see nothing wrong about misusing Government perks worth thousands of dollars.") (quoting Larry Patton, aide to Sen. Proxmire).

179. *See* M. Sanger, *supra* note 9, at 39-40; Sawhill, *supra* note 63, at 206; *see also* E. Durbin, *supra* note 3, at 94 (New York City survey indicated that welfare recipients would not earn amounts equal to their public assistance income).

180. H.R. 4120, 74th Cong., 1st Sess. § 204(c) (1935), *reprinted in* Statutory History, *supra* note 2, at 100; *see* 42 U.S.C. § 601 (1976).

better achieved by allowing the working poor the fifty or sixty extra dollars a month made possible by the tax exclusion than by the theoretical comfort of political expediency or hard work.

B. *Economic Considerations*

In addition to its short-term role as the source of supplemental monthly income for millions of households, AFDC also attempts to assist the poor in attaining economic self-reliance.[181] The economic considerations suggested by the payroll tax debate, like those accompanying social analysis, focus on the proper role of government in freeing the needy from poverty. These considerations address the importance of instilling the work ethic in employable AFDC recipients, the impact of disincentives fostered by smaller grants to working recipients, and the capacity of private industry to accommodate the working poor while paying a subsistence wage.

One rationale for including payroll taxes as income arises from the oft-repeated notion that the poor need "the spur of their poverty" to escape their condition.[182] By inflating income with tax withholdings, an administrative agency can reduce cash supplements or terminate welfare eligibility altogether for many working recipients.[183] In theory, as their government-provided income source dries up, the near-poor will rely more on their own devices to make up the lost income.[184]

This rationale is unsatisfactory, however, because associating deprivation with the work ethic oversimplifies the motivation factor without addressing the poor's basic needs. Although only approximately fourteen percent of all AFDC recipients are employed,[185] nearly three-

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181. 42 U.S.C. § 601 (1976); *see* Jefferson v. Hackney, 406 U.S. 535, 544 (1972). See *supra* note 94.

182. G. Gilder, *supra* note 167, at 118; *see* H. Hazlitt, *supra* note 168, at 80-81.

183. *See, e.g.*, Turner v. Prod, 707 F.2d 1109, 1111-13 (9th Cir. 1983) (45,000 AFDC families in California affected), *cert. granted sub nom.* Heckler v. Turner, 104 S. Ct. 1412 (1984); Kelly *ex rel.* Lofstock v. Perales, 566 F. Supp. 785, 788 (S.D.N.Y. 1983) (4,420 stepparent households in New York State affected); RAM v. Blum, 533 F. Supp. 933, 937-38 (S.D.N.Y. 1982) (10,000 families in New York City affected).

184. Moffitt, *The Negative Income Tax: Would It Discourage Work?*, Monthly Labor Rev., Apr. 1981, at 23, 26. Following an eight-year, government-sponsored study of the economic effects of alternately raising income guarantees or reducing benefits, Moffitt concluded that benefit reduction promoted work effort in female householders by inducing them to make up in earnings the benefit income they had lost. *Id.*; *see* M. Anderson, *supra* note 7, at 43 (disincentives are created by higher welfare payments).

185. Disadvantaged Women, *supra* note 6, at 28 (nearly 9% employed full-time and over 5% part-time); *see* Kasper, *supra* note 121, at 90 (up to 10% of public assistance recipients may use the benefits to supplement inadequate earnings from full-time employment).

quarters of all caretaker adults have prior work experience.[186] Moreover, most employable adults[187] are employed, in training or actively seeking work.[188] Arguably, the presence of many previously employed adults on welfare suggests not their lack of motivation, to be cured by deprivation,[189] but rather their own lack of skills and the inadequacy of the market that government expects to absorb them.[190]

Moreover, the same reductions that heighten work effort simultaneously represent massive work disincentives as long as the government maintains generous public assistance programs for the non-working poor.[191] Because a worker faces a reduction in total income available to meet family needs as the cost of employment rises,[192] the recipient who attaches no particular utility or disutility to welfare dependency will invariably choose the economically sensible path: abandon work altogether in favor of a more profitable dependence on welfare.[193] Not

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186. See *supra* note 64.

187. Generally, any adult who is not disabled or needed in the home is considered employable. *See* L. Dixon & M. Storfer, *supra* note 43, table 12, at 20; S. Levitan, *supra* note 6, at 11; R. Williams, *supra* note 8, at 15.

188. *See* L. Dixon & M. Storfer, *supra* note 43, table 12, at 20; D. Macarov, *supra* note 16, at 65; Shapiro, *supra* note 65, at 2, 2-3; *see also* S. Levitan, *supra* note 6, at 34 (one-third of all AFDC recipients are working or seeking work); M. Sanger, *supra* note 9, at 31-36 (recipients uphold work ethic and importance of self-support).

189. *See* D. Macarov, *supra* note 16, at 127-28; M. Sanger, *supra* note 9, at 35; R. Williams, *supra* note 8, at 15; Sawhill, *supra* note 63, at 206.

190. *See* Disadvantaged Women, *supra* note 6, at 63; E. Durbin, *supra* note 3, at 20; Lodge & Glass, *supra* note 166, at 71. Ultimately, the employable poor's dependence on welfare reflects the mutual incompatibility of the worker and the market for her services: Government intervention in the form of individual economic assistance is therefore appropriate when normal market mechanisms fail to distribute the society's resources adequately throughout the population. A. Dobelstein, *supra* note 7, at 17-18; *see* N. Gilbert, Capitalism and the Welfare State 4-5 (1983).

191. *See* M. Anderson, *supra* note 7, at 47 ("People on welfare may be poor, but they are not fools."); M. Sanger, *supra* note 9, at 40-43 (welfare system may reduce incentives to work). Since 1963, AFDC income has increased at a much faster pace than earned income. *See* S. Levitan, *supra* note 6, at 33. This factor, in conjunction with the fact that a recipient's benefits are contingent on the amount of her earnings, may ultimately render labor participation unprofitable. *See* M. Sanger, *supra* note 9, at 43-46; R. Williams, *supra* note 8, at 21; Orr & Skidmore, *The Evolution of the Work Issue in Welfare Reform*, in Welfare Reform in America 174 (P. Sommers ed. 1982). Consequently, total or partial dependency on public aid looms as a permanent economic reality, even in situations where the poor are on the brink of self-sufficiency by their own labor.

192. *Rhetoric and Reality*, *supra* note 7, at 93. The $75 limit on work expense disregards, coupled with a policy of counting taxes as income, depletes a worker's resources without a corresponding increase in benefits. *See* Shea v. Vialpando, 416 U.S. 251, 254-57 (1974).

193. R. Williams, *supra* note 8, at 34; *see* M. Anderson, *supra* note 7, at 47; E. Durbin, *supra* note 3, at 10; M. Sanger, *supra* note 9, at 40. Ordinarily, the decision whether to forego earned income in favor of public dependency is based on a comparison of values assigned respectively to work, leisure, and the ability to enjoy

only would such a result contravene Congress' intent to reduce total and perpetual reliance on AFDC, but it would also obstruct the inherent, non-monetary advantages of employment: enhanced dignity and self-esteem,[194] expanded opportunities for self-advancement[195] and the creation of a positive role-model for children.[196]

The role of private industry in providing job opportunities at reasonable compensation also affects economic policy considerations. Substantial reliance on AFDC by the working poor, particularly women, suggests that the market economy alone is incapable of guaranteeing subsistence level income.[197] Industry's low valuation of poor women's marketable services,[198] coupled with the political and economic inexpediency of continually raising the minimum wage,[199]

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increased consumption of market goods and services without cost. *See* R. Williams, *supra* note 8, at 21. A female head of the family must consider an additional factor: the financial as well as personal cost involved in delegating her domestic and child care duties to another while she works. *See* D. Saks, *supra* note 172, at 17. Thus, the inherent disincentives contained in AFDC payments are aggravated when applied to women. The practice of imposing yet another cost—the cost of taxes withheld from earned wages—tips the balance even farther toward complete dependency.

194. *See* E. Durbin, *supra* note 3, at 10; D. Macarov, *supra* note 16, at 127; M. Sanger, *supra* note 9, at 33; Orr & Skidmore, *supra* note 191, at 168.

195. Note, *AFDC Work Incentive Anomaly*, 65 Cornell L. Rev. 934, 940 (1980); *see* S. Levitan, *supra* note 6, at 35 (welfare alone rarely adequate to lift a family out of poverty); *see also* D. Macarov, *supra* note 16, at 106 (employment is the only socially sanctioned method of sharing society's resources). Moreover, regular participation in the work force fosters the confidence necessary to weather occasional employment setbacks. *See* M. Sanger, *supra* note 9, at 33.

196. *See* M. Anderson, *supra* note 7, at 89 (parent's rational decision to accept public aid rather than work may have an adverse effect on the morals and attitudes of their children).

197. *See* E. Durbin, *supra* note 3, at 20; S. Levitan, *supra* note 6, at 34, 128; D. Saks, *supra* note 172, at 1; *see also* M. Sanger, *supra* note 9, at 37 (correlation between having a low-paying or "bad" job and the extent of a working recipient's welfare dependency).

198. *See* Disadvantaged Women, *supra* note 6, at 20; Vladeck, *Comparable Worth*, 52 Fordham L. Rev. 1110, 1112-13 (1984). The lowest wages are invariably associated with typically female occupations, such as service or clerical jobs. Disadvantaged Women, *supra* note 6, at 21. Moreover, training programs have not been particularly helpful in augmenting the earnings of low-skill workers. *See* Haveman, *Introduction: Poverty and Social Policy in the 1960s and 1970s—An Overview and Some Speculations*, in A Decade of Federal Antipoverty Programs 17 (R. Haveman ed. 1977); Lynn, *supra* note 9, at 116.

199. *See* S. Levitan, *supra* note 6, at 130-32; Rottenberg, *Introduction*, in The Economics of Legal Minimum Wage 3-5 (S. Rottenberg ed. 1981). Although the minimum wage guarantees a higher standard of living for its recipients, its rapid adjustment can exert downward pressure on non-regulated wages, F. Piven & R. Cloward, The New Class War 19-20 (1982), discourage greater employment, E. Durbin, *supra* note 3, at 17; S. Levitan, *supra* note 6, at 130, and even contribute to inflation by increasing service and manufacture costs. *Id.* at 131; D. Macarov, *supra* note 16, at 76; Leffler, *Minimum Wages, Welfare, and Wealth Transfers to the Poor*, 21 J. of Econ. & Law 345, 346 (1978); *see* Rottenberg, *supra*, at 4-6.

forces government to maintain its active role in helping to reintegrate the underclass into the private sector.[200]

Government involvement in safeguarding the economic well-being of AFDC recipients also helps reestablish them within the social[201] and political[202] mainstream. By supplementing low wages with public aid, the government creates a system under which the poor acquire an interest in both the market that employs them and the government that compensates them for the market's deficiencies.[203] For this reason, it has been recognized that "[a] structure of public entitlements can do what private property alone cannot do: it can give everyone a stake in the stability and success of the social system."[204]

In a small but significant way, the exclusion of payroll taxes from income functions as an income supplement of low-wage labor. Enhanced benefits serve as a buffer against the vagaries of market compensation and demand and at the same time allow industry to purchase inexpensive labor without being morally or legally compelled to pay a higher wage. The government, meanwhile, reaps the advan-

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200. *See* A. Dobelstein, *supra* note 7, at 228-30; L. Greene, *supra* note 46, at 122; *see also* Lynn, *supra* note 9, at 116 (income supplements may be necessary to reduce the gap between earnings and poverty); *cf.* Haveman, *Direct Job Creation: Potentials and Realities*, in Welfare Reform in America 194, 195 (P. Sommers ed. 1982) (direct job creation in the form of employment subsidies will reduce industry's cost of employing low-wage labor while assuring the worker of an adequate income). It was recently suggested that industry can help assimilate the low-income or erratically employed worker into the work environment, but not without federal funds. Lodge & Glass, *supra* note 166, at 70-71. Business has neither the resources nor the ability to take on the task of reintegrating the underclass alone or to replace the billions of dollars cut from federal social programs. *Id.* at 71. Although business is willing to increase its voluntary action, "the federal govenment cannot abandon the task of either defining the goals or marshalling the resources." *Id.*; *see Welfare Rolls*, *supra* note 122, at 166 (role of business in helping the working poor).

201. *See* D. Macarov *supra* note 16, at 127; M. Sanger, *supra* note 9, at 33; Lodge & Glass, *supra* note 156, at 62.

202. *See* Walzer, *Politics in the Welfare State Concerning the Role of American Radicals*, in Beyond the Welfare State 150-51 (I. Howe ed. 1982); *see also* Howe, *Introduction*, in Beyond the Welfare State 11 (1982) (affords recipient greater awareness of rights and needs).

203. This interrelationship may actually benefit industry more than the poor by reinforcing the low-wage market, *see* F. Piven & R. Cloward, Regulating the Poor 124-26 (1971), by pacifying a potential source of economic and political militancy, *see* N. Gilbert, *supra* note 190, at 3; F. Piven & R. Cloward, *supra*, at 198; Achenbaum, *The Formative Years of Social Security: A Test Case of the Piven and Cloward Thesis*, in Social Welfare or Social Control? 68 (W. Trattner ed. 1983), and by providing a market for its products; *see* D. Watson, *Demand*, in Encyclopedia of Economics 232 (D. Greenwald ed. 1982) (increase in consumer's income may produce rise in product demand).

204. Will, *In Defense of the Welfare State*, New Republic, May 9, 1983, at 21, 24; *see* Goldberg v. Kelly, 397 U.S. 254, 265 (1970).

tages of increased employment and decreased welfare dependency. Such cooperation between the private and the public sector on behalf of the low-income worker, therefore, inures to the benefit of all.

Conclusion

Already handicapped by inadequate job skills, low wages and erratic employment, America's working poor sustained an additional blow in 1981 when the social spending cuts authorized by OBRA took effect. Most severely affected were women with young children who, in their struggle to escape poverty, frequently accepted AFDC benefits to supplement their low and undependable earnings. For these women, the decision to accept public assistance signifies not indolence but rather the realization that they cannot provide for the subsistence needs of their families on the strength of their own hard work. Treating payroll taxes as income, therefore, deprives working recipients of a necessary earnings supplement and reduces the benefits available to their children. As a result, a woman striving for economic independence may be forced to surrender totally to the welfare system.

Any interpretation of the AFDC program which permits these results undermines the long-standing goals of AFDC: to provide for the proper care of children and to encourage self-sufficiency of their parents. Consequently, mandatory payroll deductions should not be treated as income because to do so would not only threaten the welfare of America's impoverished children but would virtually assure the continued poverty of America's working poor.

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