

## Lines 40a and 40b—Earned Income Credit (EIC)

### What is the EIC?

The EIC is a credit for certain people who work. The credit may give you a refund even if you do not owe any tax.

### To Take the EIC:

- Follow the steps below.
- Complete the worksheet on page 42 or let the IRS figure the credit for you.
- If you have a qualifying child, complete and attach Schedule EIC.

For help in determining if you are eligible for the EIC, go to [www.irs.gov/eitc](http://www.irs.gov/eitc) and click on “EITC Assistant.” This service is available in English and Spanish.



*If you take the EIC even though you are not eligible and it is determined that your error is due to reckless or intentional disregard of the EIC rules, you will not be allowed to take the credit for 2 years even if you are otherwise eligible to do so. If you fraudulently take the EIC, you will not be allowed to take the credit for 10 years. See Form 8862, who must file, on page 41. You may also have to pay penalties.*

### Step 1 All Filers

- If, in 2008:
  - 2 children lived with you, is the amount on Form 1040A, line 22, less than \$38,646 (\$41,646 if married filing jointly)?
  - 1 child lived with you, is the amount on Form 1040A, line 22, less than \$33,995 (\$36,995 if married filing jointly)?
  - No children lived with you, is the amount on Form 1040A, line 22, less than \$12,880 (\$15,880 if married filing jointly)?

**Yes.** Continue  **No.** You cannot take the credit.
- Do you, and your spouse if filing a joint return, have a social security number that allows you to work or is valid for EIC purposes (see page 41)?

**Yes.** Continue

**No.** You cannot take the credit. Enter “No” to the left of the entry space for line 40a.

- Is your filing status married filing separately?

**Yes.** You cannot take the credit.  **No.** Continue

- Were you or your spouse a nonresident alien for any part of 2008?

**Yes.** See *Nonresident aliens* on page 41.  **No.** Go to Step 2.

### Step 2 Investment Income

- Add the amounts from Form 1040A:

Line 8a \_\_\_\_\_  
 Line 8b + \_\_\_\_\_  
 Line 9a + \_\_\_\_\_  
 Line 10 + \_\_\_\_\_

**Investment Income** =

- Is your investment income more than \$2,950?

**Yes.** You cannot take the credit.  **No.** Go to Step 3.

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**Step 3 Qualifying Child**

**A qualifying child for the EIC is a child who is your...**

Son, daughter, stepchild, foster child, brother, sister, stepbrother, stepsister, or a descendant of any of them (for example, your grandchild, niece, or nephew)

**AND**

was ...

Under age 19 at the end of 2008

or

Under age 24 at the end of 2008 and a student (see page 41)

or

Any age and permanently and totally disabled (see page 41)

**AND**

who...

Lived with you in the United States for more than half of 2008.

If the child did not live with you for the required time, see *Exception to time lived with you* that begins on page 40.



*If the child meets the conditions to be a qualifying child of any other person (other than your spouse if filing a joint return) for 2008, or the child was married, see page 41.*

- Do you have at least one child who meets the conditions to be your qualifying child?
  - Yes.** The child must have a valid social security number as defined on page 41 unless the child was born and died in 2008. Go to question 2.
  - No.** Skip question 2; go to Step 4.

- Could you, or your spouse if filing a joint return, be a qualifying child of another person in 2008?
  - Yes.** You cannot take the credit. Enter "No" to the left of the entry space for line 40a.
  - No.** Skip Step 4; go to Step 5 on page 40.

**Step 4 Filers Without a Qualifying Child**

- Is the amount on Form 1040A, line 22, less than \$12,880 (\$15,880 if married filing jointly)?
  - Yes.** Continue
  - No.** You cannot take the credit.
- Could you, or your spouse if filing a joint return, be a qualifying child of another person in 2008?
  - Yes.** You cannot take the credit. Enter "No" to the left of the entry space for line 40a.
  - No.** Continue
- Can you, or your spouse if filing a joint return, be claimed as a dependent on someone else's 2008 tax return?
  - Yes.** You cannot take the credit.
  - No.** Continue
- Were you, or your spouse if filing a joint return, at least age 25 but under age 65 at the end of 2008?
  - Yes.** Continue
  - No.** You cannot take the credit.
- Was your home, and your spouse's if filing a joint return, in the United States for more than half of 2008? Members of the military stationed outside the United States, see page 41 before you answer.
  - Yes.** Go to Step 5 on page 40.
  - No.** You cannot take the credit. Enter "No" to the left of the entry space for line 40a.

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**Step 5 Earned Income**

1. Figure earned income:

Form 1040A, line 7 \_\_\_\_\_

Subtract, if included on line 7, any:

- Taxable scholarship or fellowship grant not reported on a Form W-2.
- Amount received for work performed while an inmate in a penal institution (enter "PRI" and the amount subtracted to the left of the entry space for Form 1040A, line 7).
- Amount received as a pension or annuity from a nonqualified deferred compensation plan or a nongovernmental section 457 plan (enter "DFC" and the amount subtracted to the left of the entry space for Form 1040A, line 7). This amount may be shown in Form W-2, box 11. If you received such an amount but box 11 is blank, contact your employer for the amount received as a pension or annuity.

Add all of your nontaxable combat pay if you elect to include it in earned income. Also enter this amount on Form 1040A, line 40b. See *Combat pay, nontaxable* on this page.

+ \_\_\_\_\_



*Electing to include nontaxable combat pay may increase or decrease your EIC. Figure the credit with and without your nontaxable combat pay before making the election.*

Earned Income =

2. If you have:
- 2 or more qualifying children, is your earned income less than \$38,646 (\$41,646 if married filing jointly)?
  - 1 qualifying child, is your earned income less than \$33,995 (\$36,995 if married filing jointly)?
  - No qualifying children, is your earned income less than \$12,880 (\$15,880 if married filing jointly)?
- Yes.** Go to Step 6.       **No.** You cannot take the credit.

**Step 6 How To Figure the Credit**

1. Do you want the IRS to figure the credit for you?
- Yes.** See *Credit figured by the IRS* below.       **No.** Go to the worksheet on page 42.

**Definitions and Special Rules**

(listed in alphabetical order)

**Adopted child.** An adopted child is always treated as your own child. An adopted child includes a child lawfully placed with you for legal adoption.

**Combat pay, nontaxable.** If you were a member of the U.S. Armed Forces who served in a combat zone, certain pay is excluded from your income. See *Combat Zone Exclusion* in Pub. 3. You can elect to include this pay in your earned income when figuring the EIC. The amount of your nontaxable combat pay should be shown in box 12 of Form(s) W-2 with code Q. If you are filing a joint return and both you and your spouse received nontaxable combat pay, you can each make your own election.

**Credit figured by the IRS.** To have the IRS figure your EIC:

1. Enter "EIC" to the left of the entry space for Form 1040A, line 40a.
2. Be sure you enter the nontaxable combat pay you elect to include in earned income on Form 1040A, line 40b. See *Combat pay, nontaxable* above.
3. If you have a qualifying child, complete and attach Schedule EIC. If your EIC for a year after 1996 was reduced or disallowed, see *Form 8862, who must file* on page 41.

**Exception to time lived with you.** A child is considered to have lived with you for all of 2008 if the child was born or died in 2008 and your home was this child's home for the entire time he or she was alive in 2008. Temporary absences for special circumstances, such as for school, vacation, medical care, military service, or

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detention in a juvenile facility, count as time lived at home. Also see *Kidnapped child* on page 20 or *Members of the military* below.

**Form 8862, who must file.** You must file Form 8862 if your EIC for a year after 1996 was reduced or disallowed for any reason other than a math or clerical error. But do not file Form 8862 if either of the following applies.

- You filed Form 8862 for another year, the EIC was allowed for that year, and your EIC has not been reduced or disallowed again for any reason other than a math or clerical error.
- You are taking the EIC without a qualifying child and the only reason your EIC was reduced or disallowed in the other year was because it was determined that a child listed on Schedule EIC was not your qualifying child.

Also, do not file Form 8862 or take the credit for the:

- 2 years after the most recent tax year for which there was a final determination that your EIC claim was due to reckless or intentional disregard of the EIC rules, or
- 10 years after the most recent tax year for which there was a final determination that your EIC claim was due to fraud.

**Foster child.** A foster child is any child placed with you by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction. For more details on authorized placement agencies, see Pub. 596.

**Married child.** A child who was married at the end of 2008 is a qualifying child only if (a) you can claim him or her as your dependent on Form 1040A, line 6c, or (b) you could have claimed him or her as your dependent except for the special rule under *Children of divorced or separated parents* that begins on page 19.

**Members of the military.** If you were on extended active duty outside the United States, your home is considered to be in the United States during that duty period. Extended active duty is military duty ordered for an indefinite period or for a period of more than 90 days. Once you begin serving extended active duty, you are considered to be on extended active duty even if you do not serve more than 90 days.

**Nonresident aliens.** If your filing status is married filing jointly, go to Step 2 on page 38. Otherwise, stop; you cannot take the EIC. Enter “No” to the left of the entry space for line 40a.

**Permanently and totally disabled.** A person is permanently and totally disabled if, at any time in 2008, the person cannot engage in any substantial gainful activity because of a physical or mental condition and a doctor has determined that this condition (a) has lasted or can be expected to last continuously for at least a year, or (b) can be expected to lead to death.

**Qualifying child of more than one person.** If the child is the qualifying child of more than one person, only one person can claim the child as a qualifying child for all of the following tax benefits, unless the special rule for *Children of divorced or separated parents* that begins on page 19 applies.

1. Dependency exemption (line 6c).
2. Child tax credits (lines 32 and 41).
3. Head of household filing status (line 4).

4. Credit for child and dependent care expenses (line 29).
5. Exclusion for dependent care benefits (Schedule 2, Part III).
6. Earned income credit (lines 40a and 40b).

No other person can take any of the six tax benefits listed above unless he or she has a different qualifying child. If you and any other person claim the child as a qualifying child, the IRS will apply the following rules.

- If only one of the persons is the child’s parent, the child will be treated as the qualifying child of the parent.
- If two of the persons are the child’s parents, the child will be treated as the qualifying child of the parent with whom the child lived for the longer period of time during 2008. If the child lived with each parent for the same amount of time, the child will be treated as the qualifying child of the parent who had the higher adjusted gross income (AGI) for 2008.
- If none of the persons is the child’s parent, the child will be treated as the qualifying child of the person who had the highest AGI for 2008.

**Example.** Your daughter meets the conditions to be a qualifying child for both you and your mother. If you and your mother both claim tax benefits based on the child, the rules above apply. Under these rules, you are entitled to treat your daughter as a qualifying child for all of the six tax benefits listed above for which you otherwise qualify. Your mother would not be entitled to take any of the six tax benefits listed above unless she has a different qualifying child.

If you will not be taking the EIC with a qualifying child, enter “No” to the left of the entry space for line 40a. Otherwise, go to Step 3, question 1, on page 39.

**Social security number (SSN).** For the EIC, a valid SSN is a number issued by the Social Security Administration unless “Not Valid for Employment” is printed on the social security card and the number was issued solely to apply for or receive a federally funded benefit.

To find out how to get an SSN, see page 15. If you will not have an SSN by the date your return is due, see *What If You Cannot File on Time?* on page 6.

**Student.** A student is a child who during any part of 5 calendar months of 2008 was enrolled as a full-time student at a school, or took a full-time, on-farm training course given by a school or a state, county, or local government agency. A school includes a technical, trade, or mechanical school. It does not include an on-the-job training course, correspondence school, or school offering courses only through the Internet.

**Welfare benefits, effect of credit on.** Any refund you receive as a result of taking the EIC will not be used to determine if you are eligible for the following programs or how much you can receive from them. But if the refund you receive because of the EIC is not spent within a certain period of time, it can count as an asset (or resource) and affect your eligibility.

- Temporary Assistance for Needy Families (TANF).
- Medicaid and supplemental security income (SSI).
- Food stamps and low-income housing.

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