2008 Form W-5

Department of the Treasury
Internal Revenue Service

Instructions

Purpose of Form

Use Form W-5 if you are eligible to get part of the earned income credit (EIC) in advance with your pay and choose to do so. See *Who Is Eligible To Get Advance EIC Payments?* below. The amount you can get in advance generally depends on your wages. If you are married, the amount of your advance EIC payments also depends on whether your spouse has filed a Form W-5 with his or her employer. However, your employer cannot give you more than $x,xxx throughout 2008 with your pay. You will get the rest of any EIC you are entitled to when you file your tax return and claim the EIC.

If you do not choose to get advance payments, you can still claim the EIC on your 2008 tax return.

What Is the EIC?

The EIC is a credit for certain workers. It reduces the tax you owe. It may give you a refund even if you do not owe any tax.

Who Is Eligible To Get Advance EIC Payments?

You are eligible to get advance EIC payments if **all four** of the following apply.

1. You (and your spouse, if filing a joint return) have a valid social security number (SSN) issued by the Social Security Administration. For more information on valid SSNs, see Pub. 596, Earned Income Credit (EIC).

2. You expect to have at least one qualifying child and to be able to claim the credit using that child. If you do not expect to have a qualifying child, you may still be eligible for the EIC, but you cannot receive advance EIC payments. See *Who Is a Qualifying Child?* below.

3. You expect that your 2008 earned income and adjusted gross income (AGI) will each be less than $xx,xxx ($xx,xxx if you expect to file a joint return for 2008). Include your spouse's income if you plan to file a joint return. As used on this form, earned income does not include amounts inmates in penal institutions are paid for their work, amounts received as a pension or annuity from a nonqualified deferred compensation plan or a nongovernmental section 457 plan, or nontaxable earned income.

4. You expect to be able to claim the EIC for 2008. To find out if you may be able to claim the EIC, answer the questions on page 2.

How To Get Advance EIC Payments

If you are eligible to get advance EIC payments, fill in the 2008 Form W-5 at the bottom of this page. Then, detach it and give it to your employer. If you get advance payments, you must file a 2008 Form 1040 or 1040A income tax return.

You may have only one Form W-5 in effect at one time. If you and your spouse are both employed, you should file separate Forms W-5.

This Form W-5 expires on December 31, 2008. If you are eligible to get advance EIC payments for 2009, you must file a new Form W-5 next year.

TIP *You may be able to get a larger credit when you file your 2008 return. For details, see* Additional Credit *on page 3.*

Who Is a Qualifying Child?

A qualifying child is any child who meets all three of the following conditions.

1. The child is your:

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

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

(continued on page 3)

Give the bottom part to your employer; keep the top part for your records.

Detach here

Form **W-5**

Department of the Treasury
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Earned Income Credit Advance Payment Certificate

► **Use the current year's certificate only.**
► **Give this certificate to your employer.**
► **This certificate expires on December 31, 2008.**

OMB No. 1545-0074

2008

Print or type your full name

Your social security number

Note. *If you get advance payments of the earned income credit for 2008, you **must** file a 2008 federal income tax return. To get advance payments, you **must** have a qualifying child and your filing status must be any status **except** married filing a separate return.*

1 I expect to have a qualifying child and be able to claim the earned income credit for 2008 using that child. I do not have another Form W-5 in effect with any other current employer, and I choose to get advance EIC payments . . . . ☐ **Yes** ☐ **No**

2 Check the box that shows your expected filing status for 2008:
☐ Single, head of household, or qualifying widow(er) ☐ Married filing jointly

3 If you are married, does your spouse have a Form W-5 in effect for 2008 with any employer?. . . . . ☐ **Yes** ☐ **No**

Under penalties of perjury, I declare that the information I have furnished above is, to the best of my knowledge, true, correct, and complete.

Signature ► **Date ►**

Questions To See if You May Be Able To Claim the EIC for 2008

CAUTION You **cannot** claim the EIC if you file either Form 2555 or Form 2555-EZ (relating to foreign earned income) for 2008. You also **cannot** claim the EIC if you are a nonresident alien for any part of 2008 unless you are married to a U.S. citizen or resident, file a joint return, and elect to be taxed as a resident alien for all of 2008.

1 Do you expect to have a qualifying child? Read *Who Is a Qualifying Child?* that starts on page 1 before you answer this question. If the child is married, be sure you also read *Married child* on page 3.

☐ **No.** STOP You may be able to claim the EIC but you **cannot** get advance EIC payments.
☐ **Yes.** *Continue.*

CAUTION If the child meets the conditions to be a qualifying child for both you and another person, see *Qualifying child of more than one person* on page 3.

2 Do you expect your 2008 filing status to be married filing a separate return?

☐ **Yes.** STOP You **cannot** claim the EIC.
☐ **No.** *Continue.*

TIP If you expect to file a joint return for 2008, include your spouse's income when answering questions 3 and 4.

3 Do you expect that your 2008 earned income and AGI will each be less than: $xx,xxx ($xx,xxx if married filing jointly) if you expect to have 1 qualifying child; $xx,xxx ($xx,xxx if married filing jointly) if you expect to have 2 or more qualifying children?

☐ **No.** STOP You **cannot** claim the EIC.
☐ **Yes.** *Continue.* But remember, you **cannot** get advance EIC payments if you expect your 2008 earned income or AGI will be $xx,xxx or more ($xx,xxx or more if married filing jointly).

4 Do you expect that your 2008 investment income will be more than $x,xxx? For most people, investment income is the total of their taxable interest, ordinary dividends, capital gain distributions, and tax-exempt interest. However, if you plan to file a 2008 Form 1040, see the 2007 Form 1040 instructions to figure your investment income.

☐ **Yes.** STOP You **cannot** claim the EIC.
☐ **No.** *Continue.*

5 Do you expect that you, or your spouse if filing a joint return, will be a qualifying child of another person for 2008?

☐ **Yes.** You **cannot** claim the EIC.
☐ **No.** You may be able to claim the EIC.

2. At the end of 2008, the child is under age 19, or under age 24 and a student, or any age and permanently and totally disabled. A student is a child who during any 5 months of 2008 (a) was enrolled as a full-time student at a school or (b) 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 Internet school.

3. The child lives with you in the United States for over half of 2008. But you do not have to meet this condition if (a) the child was born or died during the year and your home was this child's home for the entire time he or she was alive in 2008, or (b) the child is presumed by law enforcement authorities to have been kidnapped by someone who is not a family member and the child lived with you for over half of the part of the year before he or she was kidnapped.

Note. Temporary absences, such as for school, vacation, medical care, or detention in a juvenile facility, count as time lived at home. Members of the military on extended active duty outside the United States are considered to be living in the United States.

Married child. A child who is married at the end of 2008 is a qualifying child only if:

1. You may claim him or her as your dependent, or

2. You are the custodial parent and would be able to claim the child as your dependent, but the noncustodial parent claims the child as a dependent because:

a. You signed Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, or a similar statement, agreeing not to claim the child for 2008, or

b. You have a pre-1985 divorce decree or separation agreement that allows the noncustodial parent to claim the child and he or she gives at least $600 for the child's support in 2008.

Other rules may apply. See Pub. 501, Exemptions, Standard Deduction, and Filing Information, for more information on children of divorced or separated parents.

Qualifying child of more than one person. If the child meets the conditions to be a qualifying child of more than one person, only one person may treat that child as a qualifying child for 2008. If you and someone else have the same qualifying child, you and the other person(s) can decide which of you, if otherwise eligible, will take all of the following tax benefits based on the qualifying child: the child's dependency exemption, the child tax credit, head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, and the EIC. The other person cannot take any of the six tax benefits unless he or she has a different qualifying child.

If you and the other person cannot agree and more than one person claims the EIC or other benefits listed above using the same child, the tie-breaker rule applies. See Pub. 596, Earned Income Credit, Table 2. When More Than One Person Files a Return Claiming the Same Qualifying Child (Tie-Breaker Rule) and the Instructions for Form 1040 or 1040A.

CAUTION

Caution. *A qualifying child whom you use to claim the EIC must have a valid social security number unless he or she is born and dies in 2008.*

What if My Situation Changes?

If your situation changes after you give Form W-5 to your employer, you will probably need to file a new Form W-5. For example, you must file a new Form W-5 if any of the following applies for 2008.

- You no longer expect to have a qualifying child. Check "No" on line 1 of your new Form W-5.
- You no longer expect to be able to claim the EIC for 2008. Check "No" on line 1 of your new Form W-5.
- You no longer want advance payments. Check "No" on line 1 of your new Form W-5.
- Your spouse files Form W-5 with his or her employer. Check "Yes" on line 3 of your new Form W-5.

Note. If you get advance EIC payments and find you are not eligible for the EIC, you must pay back these payments when you file your 2008 federal income tax return.

Additional Information

How To Claim the EIC

If you are eligible, claim the EIC on your 2008 tax return. See your 2008 tax return instruction booklet.

Additional Credit

You may be able to claim a larger credit when you file your 2008 Form 1040 or Form 1040A because your employer cannot give you more than $x,xxx throughout the year with your pay. You may also be able to claim a larger credit if you have more than one qualifying child. But you must file your 2008 tax return to claim any additional credit.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Internal Revenue Code sections 3507 and 6109 and their regulations require you to provide the information requested on Form W-5 and to give it to your employer if you want advance payment of the EIC. As provided by law, we may give the information to the Department of Justice and other federal agencies. In addition, we may give it to cities, states, and the District of Columbia so they may carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. Failure to provide the requested information may prevent your employer from processing this form; providing false information may subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The average time and expenses required to complete and file this form will vary depending on individual circumstances. For the estimated averages, see the instructions for your income tax return.

If you have suggestions for making this form simpler, we would be happy to hear from you. See the instructions for your income tax return.