



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR Candice V. Cromling
Earned Income Tax Credit Program Manager

FROM: Acting Assistant Chief Counsel (Employee Benefits)

SUBJECT: Claiming Previously Denied Earned Income Credit due to
Invalid Social Security Numbers

This Chief Counsel Advice responds to your memorandum dated March 14, 2000, requesting advice regarding amending Form 1040, U.S. Individual Income Tax Return, in cases where the Earned Income Credit (EIC) has been denied due to the use of a social security number (SSN) that does not meet the requirements of section 32(m) of the Internal Revenue Code. Because this advice will be distributed to the field offices, it constitutes conduit Chief Counsel Advice subject to disclosure under section 6110 of the Code. Chief Counsel Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

ISSUE

May a taxpayer who otherwise met the requirements of section 32 of the Code for a taxable year, but whose claim for the EIC was denied for that year for failure to have an SSN that met the requirements of section 32(m), claim the EIC for the taxable year on an amended federal income tax return, if the taxpayer is issued an SSN that meets the requirements of section 32(m) after the close of the taxable year?

CONCLUSION

A taxpayer who otherwise met the requirements of section 32 for a taxable year, but whose claim for the EIC was denied for that year for failure to have an SSN that met the requirements of section 32(m), may claim the EIC for the taxable year on an amended return if the taxpayer is issued an SSN that meets the

requirements of section 32(m) after the close of the year. The taxpayer may claim the EIC for the taxable year at any time within the statute of limitations on claims for credit or refund of an overpayment under section 6511. The same result occurs if it is the taxpayer's spouse or qualifying child who is issued an SSN that meets the requirements of section 32(m) after the close of the taxable year.

FACTS

Situation 1

X and Y file a Form 1040 for Year 1 with a filing status of married filing jointly and claim the EIC. The EIC is denied solely because Y does not have an SSN that meets the requirements of section 32(m). After the Year 1 return is filed, Y receives an SSN that meets the requirements of section 32(m).

Situation 2

X, a single parent, has a child who is a qualifying child under section 32(c)(3). X files a Form 1040 for Year 1 and claims the EIC on the basis of her qualifying child. The EIC is denied solely because the qualifying child does not have an SSN that meets the requirements of section 32(m). After the Year 1 return is filed, the qualifying child receives an SSN that meets the requirements of section 32(m).

LAW AND ANALYSIS

Section 32(a) of the Code allows the EIC in the case of an eligible individual. An eligible individual is defined in section 32(c)(1)(A). Under section 32(c)(1)(A)(i) an eligible individual means any individual who has a qualifying child for the taxable year. Section 32(c)(3)(A) of the Code sets forth the requirements of a qualifying child. Under section 32(c)(1)(A)(ii), an eligible individual need not have a qualifying child if the individual meets other requirements.

Section 32(c)(1)(F) provides that no credit shall be allowed under section 32 to an eligible individual who does not include on his or her income tax return for the taxable year the individual's taxpayer identification number (TIN) and, if the individual is married (within the meaning of section 7703), the spouse's TIN.

Section 32(c)(3)(D) provides, in pertinent part, that a qualifying child is not taken into account unless the taxpayer includes the name, age, and TIN of the qualifying child on the taxpayer's return for the taxable year.

Section 32(m) provides that, solely for purposes of sections 32(c)(1)(F) and 32(c)(3)(D), a TIN means a social security number issued to an individual by the

Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause of (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act).¹

The Internal Revenue Service Restructuring and Reform Act of 1988 (P.L. 105-206) amended sections 32(c)(1)(F) and 32(c)(3)(D) to clarify that the identification requirement is a requirement for claiming the EIC, rather than an element of the definition of “eligible individual” or “qualifying child.” See S. Rep. No. 174, 105th Cong., 2nd Sess. 200 (1998). Thus, a taxpayer can be an “eligible individual” without having been issued an SSN that meets the requirements of section 32(m).

The plain language of sections 32(c)(1)(F) and 32(c)(3)(D) requires only that the SSN, as defined in section 32(m), of the taxpayer, taxpayer’s spouse, and qualifying child be on the return. There is no requirement that the taxpayer, taxpayer’s spouse, or qualifying child have an SSN, as defined in section 32(m), before the close of the taxable year.

There is also no requirement that the return on which the SSN is reported and the EIC is claimed be an original, timely filed return. Thus, the EIC can be claimed on an amended return. However, a return claiming the EIC is subject to the statute of limitations on claims for credit or refund of an overpayment under section 6511.

Situation 1

When X and Y filed their Year 1 federal income tax return, Y did not have an SSN that met the requirements of section 32(m). Therefore, their claim for the EIC was denied. Once Y receives an SSN that meets the requirements of section 32(m), X and Y may file an amended federal income tax return for Year 1 and claim the EIC for that year, provided that the statute of limitations has not expired.

Situation 2

¹ Section 205(c) concerns wage and self-employment records. Section 205(c)(2)(B)(i) applies to the assigning of SSNs. Clause (I) pertains to aliens lawfully admitted to the United States and entitled to engage in employment in the United States. Clause (II) pertains to individuals who apply for or receive benefits fully or partially funded with federal funds, including children on whose behalf benefits are claimed by another person. Clause (III) pertains to individuals when it appears that the individual could have been but was not assigned a number under clause (I) or (II).

When X filed her Year 1 federal income tax return, X's qualifying child did not have an SSN that met the requirements of section 32(m). Therefore, her claim was denied. When the child receives an SSN that meets the requirements of section 32(m), X can file an amended federal income tax return for Year 1 and claim the EIC on the basis of her qualifying child, provided the statute of limitations has not expired.

If you have any further questions, please call (202) 622-6060.

MARY OPPENHEIMER
Acting Assistant Chief Counsel
(Employee Benefits)

By: _____
MARK SCHWIMMER
Senior Technician Reviewer
CC:TEGE:EB