

ID: CCA\_2008090816213943

Number: **200851079**

Office:

Release Date: 12/19/2008

UILC: 6664.00-00

---

**From:**

**Sent:** Monday, September 08, 2008 4:21:40 PM

**To:**

**Cc:**

**Subject:** FW: EITC & Accuracy-Related Penalty

The court seems to have gotten it wrong. The "amount of income tax imposed" is defined by Reg. 1.6664-2(b) as the amount of tax imposed on the taxpayer under subtitle A for the taxable year determined without regard to, among other things, credits under sections 31 (relating to tax withheld on wages) and 33 (relating to tax withheld at source on nonresident aliens and foreign corporations). SCA 2001113028 reasons that because the reg. explicitly excludes only section 31 and 33 credits from the amount of income tax imposed, section 32 credits must be included in the calculation. The credit at issue in Solomon is found in section 34 of the Code. As a result, the amount shown as the tax by the taxpayer on his return should be computed with regard to section 34. This results in an underpayment.

Note that the opinion cites Reg. sec. 1.6664-2(c)(1) for the definition of "amount shown as the tax by the taxpayer on his return" to show that that amount would not be adjusted by the credit. However, it fails to take into account Reg. sec. 1.6664-2(b), which defines "amount of income tax imposed", and which amount would take into account any credit under section 34 under the reasoning set forth in the SCA.

Please let me know if you have any questions. My direct line is .

ATTACHMENTS: SCA 200113028.pdf; Solomon.opinion.pdf