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MEMORANDUM FOR TAXPAYER ADVOCATE SERVICE EMPLOYEES

FROM: /s/ Nina E. Olson
National Taxpayer Advocate

SUBJECT: Interim Guidance on Advocating for Taxpayers Claiming
Earned Income Tax Credit (EITC) with Respect to a
Qualifying Child

The purpose of this memorandum is to provide guidance on how to better advocate for taxpayers claiming the Earned Income Tax Credit (EITC).

Background

The EITC is a refundable credit administered by the IRS and designed to assist working taxpayers in lower income brackets.¹ For 2012 income tax returns, the income threshold for eligibility was over \$49,000 for a family with three or more children. The maximum credit for taxpayers with two or more children was over \$5,750. For taxpayers struggling to make ends meet, a sizeable refundable credit like EITC is an important source of financial support.

A recent U.S. Census Bureau Report noted that real median household income declined, and the poverty rate increased between 2009 and 2010.² The average poverty threshold in 2010 for a family of four was \$22,314, placing 46.2 million people (15.1 percent of the population) in poverty.³ These are indications that more taxpayers will be eligible for EITC, and it is crucial for those taxpayers to receive the full amount of EITC for which they are eligible.

¹ See IRC § 32.

² U.S. Census Bureau, *Income Poverty, and Health Insurance Coverage in the United States: 2010*, Sep. 2011, 1 and 14.

³ *Id.*

EITC cases can present unique challenges due to the complexity of the Internal Revenue Code (IRC) provisions for the credit and the varying circumstances of qualifying taxpayers. EITC taxpayers must frequently overcome numerous obstacles to obtain the credit, including limited education, communication and language barriers, difficulty documenting non-traditional family relationships or housing arrangements, and understanding the complexity of the EITC tax law. While the IRS has added interactive calculators and online tools to assist taxpayers in determining eligibility for EITC, many low income taxpayers do not have access to computers and may not know about or be able to take advantage of those tools.

TAS studies have shown that enhanced communication with taxpayers who qualify for EITC benefits can improve their chances of receiving the full amount to which they are entitled, but might not otherwise receive.⁴ In 2010, TAS reviewed a sample of EITC cases closed in TAS where relief was not obtained because no response was received from the taxpayer.⁵ The 2010 TAS EITC Case Review identified opportunities for TAS to help these taxpayers.⁶ Specifically, the EITC Case Review found that advocacy on EITC issues can be improved through:

- Better understanding of the legal requirements to qualify for the EITC;
- Greater consideration for the challenges eligible taxpayers may face trying to understand and navigate IRS requirements and correspondence;
- Research of information available through IRS systems;
- Awareness and pursuit of alternative documents to substantiate income or prove relationship and residency;

⁴ In the 2004 EITC Audit Reconsideration study, TAS Research found that enhanced communication helped taxpayers obtain more of the EITC dollars to which they were entitled. The study determined that 45 percent of EITC claimants in audit considerations working with TAS recovered EITC payments, while only 40 percent working with Exam did so. Further, the taxpayers working with TAS received 46 percent of the EITC they originally claimed, while those working with Exam retained only 38 percent. *Significantly, when taxpayers received more EITC as a result of an audit reconsideration, taxpayers working with TAS received 96% of the EITC claimed on their original returns, and taxpayers working with Exam solely received 92% of the EITC claimed on their original returns.* In over 40 percent of cases, difficulties with IRS documentation requirements were the reason taxpayers had to seek EITC audit reconsideration, and 70 percent of the EITC audit reconsideration cases came to TAS because they had not heard from Exam about the original audit. National Taxpayer Advocate 2004 Annual Report to Congress, vol. II 1-10 (*EITC Audit Reconsideration Study*).

⁵ On average, TAS obtains full or partial relief in approximately 73 percent of its cases but averages only 46 percent relief in EITC cases. The 2010 TAS EITC Case Review found that 79 percent of FY 2009 EITC "No Relief" cases were closed because of no response from the taxpayer. To determine whether TAS can advocate more effectively for taxpayers in these cases, a statistically valid sample of FY 2009 "No Relief" cases was reviewed and analyzed. The findings of the 2010 TAS EITC Case Review are contained throughout this memorandum.

⁶ The 2010 TAS EITC Case Review found in 73 percent of the No Relief/No Response cases reviewed, the IRS challenged the taxpayers' relationship to the child. However, in 94 percent of those cases where the relationship was challenged by the IRS, the relationship would qualify for the EITC if the taxpayer could substantiate the relationship.

- Increased effort to contact taxpayers by phone to establish dialogue and rapport with the taxpayer;

TAS employees can also enhance EITC advocacy by:

- Advocating through the Operations Assistance Request (OAR) and Taxpayer Assistance Order (TAO) process, or
- Advocating for the taxpayer in the IRS Office of Appeals (Appeals).

Basic EITC Requirements Under the Law

The EITC is a refundable credit available to individual taxpayers who have one or more qualifying children and meet the following conditions set forth in IRC §§ 32 and 152:

1. The child for whom the credit is claimed must meet basic eligibility tests (including the Relationship Test, Residency Test, and Age Test) for a qualifying child as described in IRC § 152(c);⁷
2. The taxpayer must have earned income with an adjusted gross income (AGI) below a certain dollar amount, based on inflation adjustments for the taxable year in which the credit is claimed;
3. The taxpayer cannot have investment income that exceeds a certain dollar amount, based on inflation adjustments for the taxable year in which the credit is claimed;
4. The taxpayer cannot have foreign income;
5. The taxpayer must be a U.S. citizen or resident alien with a valid Social Security number;
6. The taxpayer cannot claim married filing separate filing status; and
7. The taxable year does not fall under a disallowance period (2/10 year ban) as described in IRC § 32(k)(1).⁸

⁷ The Relationship Test requires that the child be the taxpayer's child (including an adopted child, stepchild or eligible foster child, brother, sister, stepbrother, stepsister, or descendant of one of these relatives. The Residency Test requires that the qualifying child must live with the taxpayer for more than half of the tax year (exceptions apply for temporary absences for special circumstances, e.g., children who were born or died during the year, children of divorced or separated parents, and kidnapped children). The Age Test requires the child fall under one of these age categories: under age 19, under 24 and a full-time student, or a child of any age who is permanently and totally disabled. [IRM 4.19.14.5.4](#), *EITC Qualifying Child (EC)*, provides an overall list of the various eligibility requirements to determine the uniform definition of a qualifying child.

⁸ The disallowance period is (1) the period of ten taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to fraud, and (2) the period of two taxable years after the most recent taxable year for which there was a final determination that the taxpayer's claim of credit under this section was due to reckless or intentional disregard of rules and regulations (but not fraud).

Challenges Faced by Low income Taxpayers in Claiming EITC

Eligible taxpayers may not possess the literacy or language skills to interpret IRS forms and publications explaining rules for claiming EITC. Likewise, taxpayers may not understand IRS correspondence sent to advise them of the audit process or to request supporting documentation. For example, in a 2007 TAS-W&I survey of audited EITC taxpayers, about 25 percent did not understand that the Audit Initiation letter was telling them they were under audit. These concerns are magnified if correspondence arrives in a language other than the taxpayer's primary language. Many bi-lingual taxpayers can converse in more than one language, but may only be able to read and write in their primary language. Low income taxpayers may also face challenges trying to prove residency and relationship of a qualified child.⁹ These taxpayers may move frequently, or have housing arrangements that are informal and not documented; e.g., living in properties owned by a friend or family member without a formal rental contract.

Low income taxpayers may not have bank accounts and conduct all financial transactions using cash, limiting their ability to document expenditures. For this reason, low income self-employed taxpayers may have difficulty substantiating both income and support. Receiving IRS correspondence listing "acceptable" forms of traditional documentation can be daunting to taxpayers who know they cannot obtain the kinds of documents appearing on the IRS list. As a result, these taxpayers may give up and not receive the benefits for which they are eligible.

The 2010 TAS EITC Case Review found the Relationship Test and the Residency Test were at issue in over 70 percent of the TAS closed no-relief cases. Additionally, in most cases when the Relationship Test was at issue, the qualifying child was not the taxpayer's biological child but had another qualifying relationship, e.g., a niece, nephew, brother, sister, stepchild, or foster child. Because non-traditional relationships may be difficult to establish with the standard documentation requested by the IRS, we should work with the taxpayer to find other ways to document the relationship.

⁹ In a 2005 study conducted by TAS, in collaboration with the EITC Program Office and Wage and Investment Research Division (W&I Research), interviewers identified audit barriers and various challenges for eligible low income taxpayers to obtain the full amount of their EITC. [Challenges for Taxpayers Claiming the Earned Income Tax Credit \(EITC\), September 2005.](#)

Advocacy through Case Research on Internal Systems

TAS employees have tools that can secure information to justify allowing the EITC to certain taxpayers with qualifying children. Excessive documentation requests to taxpayers can be unnecessarily burdensome and cause taxpayers to not respond to our communications. Therefore, it is important to understand what aspects of the taxpayer's EITC claim are at issue as well as what documents the IRS might already possess.

Some of the initial actions TAS should take on EITC cases are to obtain internal information about the taxpayer's qualifying child(ren), the IRS history explaining the reason for denying the EITC, and the additional records requested for EITC eligibility. Initial actions should also include:

1. Research the taxpayer's account using IDRS command codes (cc) (*i.e.*, cc RTVUE, cc INOLE, and cc DDBKD) to identify certain information about the qualifying child (*e.g.*, name, date of birth, citizenship code, birth parent's name, custodial data, etc.) See [IRM 4.19.13.3](#) for a list of other IDRS command codes and research tools;
2. Research the taxpayer's account using IDRS cc TXMOD and request the following to obtain the examination history and explanation for denying the EITC:
 - a. In Field Examination cases (TC 420 with EGC 1XXX or 2XXX), request the administrative file using cc ESTAB or request the Report Generated Software (RGS) from the RGS Coordinator if the administrative file is not available; or
 - b. In campus correspondence audits (TC 420 with EGC 5XXX), request the RGS Campus Examination Automated System (CEAS) file or the administrative file using cc ESTAB if the RGS/CEAS file is not available.
3. Review the available documentation to ascertain what the taxpayer previously submitted;
4. Determine if the IRS properly considered the taxpayer's documents; and
5. If warranted, determine the type of additional documents (traditional vs. alternative) required to establish EITC eligibility.

Advocacy through Securing Documentation from the Taxpayer

Since Exam generally does not accept oral testimony from the taxpayer to prove that the child meets Relationship or Residency Tests, TAS employees must assist taxpayers in securing records not previously submitted to support EITC eligibility. Obtaining vital records, such as birth certificates to satisfy the Relationship Test, may be difficult for taxpayers in non-traditional relationships.¹⁰

¹⁰ While a foster child is a qualifying child under IRC § 32, a foster care appointment is an insufficient basis to request a child's birth certificate. For example, in the State of Maryland, proof of guardianship is required to obtain a birth certificate, and a foster care appointment is not accepted. See Maryland, Department of Statistics Administration website: [Vital Statistics Administration - birth](#).

However, these taxpayers can use alternative documentation to prove both the Relationship Test and the Residency Test. [IRM 4.19.14.5.6](#), *Personal Exemptions and Dependents*, lists the traditional documentation to substantiate a qualifying child, but it is not all-inclusive. Help the taxpayer identify acceptable documentation and consider the following:

- a. Obtain information from the taxpayer about the qualifying child, such as relationship, age, and residency. If the child is not the taxpayer's biological child, obtain a history of how the child became his or her qualifying child;
- b. Clearly explain the reason why the documents are needed (e.g., "We need to demonstrate to the IRS that your child lived with you for more than half the year.");
- c. Confirm the type of records the taxpayer possesses that could corroborate the information about the child;
- d. Offer suggestions on alternative documentation when traditional records are not available (See Attachment 1, *List of Traditional and Alternative Documents for Qualifying Child.*); and
- e. Confirm with the taxpayer that the documents cover the tax year(s) in question.

Sometimes taxpayers may be uncomfortable sharing information about their personal living arrangements, including their relationships. For example, this can occur when the taxpayer has used a relative's address to enroll the child in a better school district. If the taxpayer is concerned that the documents that prove EITC eligibility may indicate the taxpayer is in violation of a state or local law or other rules,, explain that the circumstances under which information can be shared with other agencies is severely limited by IRC § 6103. Remind the taxpayer that under IRC § 7803(c)(4)(A)(iv), TAS has the discretion to not disclose certain information to the IRS, and will generally only disclose personal information to the extent that it is relevant and necessary to taxpayer's case.

Taxpayers may also be hesitant to share personal information with TAS or the IRS when they have been or are victims of domestic violence and abuse. Many such taxpayers have had to flee their homes without any records and seek housing in temporary shelter. Thus, it may be virtually impossible for them to prove EITC eligibility requirements through traditional documentation. Moreover, the taxpayer may be very concerned or even afraid that the abuser will find out where the taxpayer is currently living.

In any case, listen to the taxpayer and attempt to identify any barriers to he or she obtaining documentation. Explain in plain, non-IRS-speak language what specific eligibility requirement the IRS is looking at and suggest some ways the taxpayer could prove it. Listen for hesitation, and try to determine if the hesitation means the taxpayer doesn't understand the requirement, is concerned about the difficulty of getting that particular document, or really isn't eligible. To

ensure that the taxpayer understands the requirements, ask the taxpayer to repeat back to you what he or she has agreed to provide.

[Attachment 1](#) lists alternative documentation that can satisfy the Relationship and Residency Tests, and [Attachment 2](#) provides examples of when to use this type of documentation.

If the taxpayer is self-employed and proof of earnings is an issue, ask relevant questions about how the taxpayer receives payment for work performed and how the taxpayer keeps track of those payments. Low income taxpayers may not have bank accounts, and they may not use computer software programs or prepare invoices or contracts for services performed. However, these earnings are still taxable and count towards earned income which should be included for the taxpayer to prove eligibility for maintaining a household and supporting a qualifying dependent. The taxpayer may be able to secure third party affidavits from regular customers and use them to establish an income pattern. If the taxpayer has not been keeping receipts of expenditures, he or she may be able to obtain printouts of purchases from a particular supplier to substantiate business expenses.

Example: The taxpayer earns a living and provides support by providing in-home childcare for her cousin's children and the children of her cousin's neighbor. She is not licensed and does not have a bank account, and the fees she charges for childcare services are based only on informal, verbal agreements. Her cousin pays her in cash, and the neighbor pays her by check. The taxpayer takes the checks to the neighbor's bank and cashes them. She purchases groceries and pays her utility bills using cash or money orders. The taxpayer occasionally purchases snacks and groceries for the children in her care, but has not kept receipts for those purchases. The taxpayer lives in a home that belonged to her deceased grandmother, and pays only utilities, as her father pays the property taxes. The IRS is questioning her self-employment income, and if the taxpayer provided more than half the support of her three dependents. TAS, by asking relevant questions, could guide the taxpayer in obtaining the following non-traditional documentation:

- Printout from utility companies of payments made for the tax year in question. Even if the utilities are in the taxpayer's father's name, if the taxpayer can provide a collection of money order receipts that match the payment amounts on the printout, those receipts can establish the payments were made by the taxpayer;
- Signed statement from the neighbor confirming verbal agreement on weekly rates, and the date taxpayer began providing care;

- Copies of school registration records for the cousin's children, showing that the taxpayer is named as an Emergency Contact and as the after-school caregiver for purposes of registering children (who are not the taxpayer's dependents) for bus transportation to a bus stop near the taxpayer's home; and
- Copies of calendar taxpayer uses to record dates and amounts of payments, so she can total the amounts paid by both her cousin and the neighbor over the course of a year.

These items would help establish the legitimacy of the taxpayer's income reported on Schedule C, even though the taxpayer does not have cancelled checks, bank statements, or deposit slips. In addition, a discussion of these items has the additional benefit of educating the taxpayer about how to improve recordkeeping for tax and business purposes.

When necessary, consult a Revenue Agent Technical Advisor (RATA) to assist with determining acceptable alternative documents. If the IRS refuses to accept credible alternative documentation, Local Taxpayer Advocates (LTA) should consider issuing TAOs under IRC § 7811 and order the IRS to reconsider its determination, or suggesting the taxpayer go to Appeals (see below).

Advocacy through Person-to-Person Contact

In 75 percent of cases reviewed in the 2010 TAS EITC Case Review, TAS was either unable to reach the taxpayer by phone or only spoke with the taxpayer once before closing the case. Initial and subsequent contacts by phone allow for more opportunities to understand the taxpayer's situation, explain the importance of providing documentation, develop a rapport, and gain a commitment from the taxpayer to provide documents to advocate on his or her behalf. Phone contact will eliminate barriers in written communication (*e.g.*, it allows the Case Advocate to ask follow-up questions, gather facts about the taxpayer's situation, or identify sources of taxpayer confusion).

To increase the likelihood of reaching a taxpayer by telephone, consider taking the following actions:

- a. On the first contact, explain the importance of phone interaction and obtain any alternate numbers, such as cell phones, and ideal times of the day to call;
- b. Make more than one attempt to contact the taxpayer by phone;
- c. Call at various times of the day;
- d. When leaving a message, indicate the best time to return the call and commit to being available at that time;

- e. If the taxpayer gives you permission to leave a voice message, be specific in any requests for information;¹¹ and
- f. If the taxpayer leaves a voicemail message, attempt to call back before sending a letter.

If you need to send correspondence, be clear about the purpose of the communication. Take the time to clearly explain, in plain, “non IRS-speak” language, the issues raised by the IRS and the traditional or alternative documents that will satisfy those issues.

Advocacy through Enhanced Communication and Rapport with the Taxpayer

Once you reach the taxpayer, take advantage of the opportunity to display exceptional service through consistent and clear communications. In most cases, TAS can only discern the specific details of the taxpayer’s situation by *listening* to the taxpayer and asking thoughtful and appropriate questions. Try to engage the taxpayer in a conversation. Explain in plain language specifically why the IRS did not allow the EITC. Focus only on the EITC test(s) requiring additional proof and educate the taxpayer on those particular requirement(s). Discuss the documents previously provided and the type of additional records that will help substantiate EITC eligibility based on the taxpayer’s particular circumstances. Maintain an *open dialogue* and communicate TAS’s commitment to help substantiate the EITC claim. Be compassionate, and if the taxpayer grows frustrated with the discussion, gently remind the taxpayer that you understand his or her frustration, but you are trying to obtain the information necessary to address the tax issue and help the taxpayer.

Example: Ms. DePaul is experiencing a significant hardship. She needs the IRS to complete the audit reconsideration, allow her stepdaughter as a dependent, and provide her with the EITC. When you talk with her, you give her a specific apology and express TAS’s commitment to work with her to persuade the IRS to allow the dependent and the credit. You notice the taxpayer claimed head of household status and politely inquire how she came to care for the child. You discover in your dialogue with the taxpayer that the stepdaughter’s mother died five years ago and the father (the taxpayer’s estranged husband) moved out of state, leaving his daughter with the taxpayer. You explain that to qualify

¹¹ IRM 11.3.2.6.1, *Leaving Information on Answering Machines/Voice Mail*, states: “While tax information protected by IRC § 6103 generally may not be left on an answering machine or voice mail, there are exceptions. If the employee “reasonably believes” he or she has reached the taxpayer’s correct answering machine or voice mail, it is acceptable to leave the employee’s name, telephone number, any appropriate reference number for the inquiry, the fact that he or she works for the IRS (identifying the function of the calling employee is permissible), and the name of the person who should return the call. Additional information can be left on the recording if the taxpayer has given prior approval to leave such information on voice mail or the answering machine.”

for the EITC, Ms. DePaul needs to prove to the IRS that the child is her stepdaughter, and now that you understand the circumstances surrounding the relationship, you will help her to do so. Since the birth certificate provided to the IRS does not list her as one of the parents, you suggest other documents that can establish the relationship of the child (e.g., a marriage license, mother's death certificate, or records seeking child support from the father).

NOTE: Form letters and contacts made only through correspondence would not generate this much information.

The following are some suggested actions that may help taxpayers provide the appropriate information you need to effectively advocate on their behalf:

- a. Agree on a due date by discussing the amount of time the taxpayer reasonably needs to obtain the information and why it is important to provide the documents by that date;
- b. Commit to a time and place that the taxpayer will deliver the documents;
- c. Emphasize the need for the taxpayer to contact you timely in case of any trouble in obtaining the documents;¹²
- d. Agree on a reasonable date and time to make subsequent contacts;
- e. Ask the taxpayer to explain in his or her own words what you have agreed upon and gently correct or restate any misunderstandings or confusion;
- f. Consider following up with a letter confirming the request for *specific* documents including the due date and time of the next contact; and
- g. If you send a follow-up letter, provide a return envelope big enough to fit the volume of records mailed by the taxpayer.

Advocacy through OARs and TAOs

Once you receive all the taxpayer's information, begin to prepare an OAR to support TAS's position to allow the EITC. Make your request specific and direct, include the supporting documentation as an attachment, and explain the purpose of any alternative documents.

Advocating for the taxpayer includes presenting the taxpayer's position, supported by facts, to the operating division (OD) so the division can arrive at the correct determination based on the law and procedures. **Presenting nothing more than a request for the OD to make a determination does not advocate the taxpayer's position or communicate the facts of the case.** Refer to TAS Interim Guidance Memorandum 13-0212-009, *Advocating for Taxpayers through*

¹² This point is very important because low income taxpayers may have difficulty getting off work to obtain documents, must rely on public transportation, have multiple jobs, or other circumstances that limit their flexibility. Some document sources may require the taxpayer to pay photocopy costs or other fees. We do not want these circumstances to be barriers to taxpayers receiving the tax credit for which they are eligible.

the Operations Assistance Request (OAR) Process, for more information on creating well-developed OARs. Document the OAR using the following points:

- a. State the action TAS is requesting (e.g., to allow the dependent and the EITC for the qualifying child);
- b. Provide the name and relationship of the qualifying child;
- c. List the documents in bullet or numerical format (avoid listing documents in narrative form); and
- d. State how the taxpayer's records prove EITC eligibility (e.g., "The letter from the school verifies Johnny resided with the taxpayer during the 2009 and 2010 school years.") Taxpayers often need school records from two school years to establish residency for one tax year, since school years overlap tax years.

Although TAS employees do not make the actual EITC determination, they must submit well-developed OARs that include a request supported by traditional or alternative documentation.¹³ Attachment 3, *Examples of OAR Recommendations for EITC Cases*, provides examples of OAR recommendations that advocate for taxpayers.

If the OD denies the EITC for lack of adequate documentation substantiating a qualifying child, and you believe the documentation established the taxpayer's eligibility, elevate the case to your manager or the LTA to consider issuing a Taxpayer Assistance Order (TAO). Refer to [IRM 13.1.20](#), *TAS Taxpayer Assistance Order Process*, for additional guidance on elevating a TAO.

Other Ways to Help Taxpayers Overcome EITC Challenges: Face-to-Face Exams and Appeals

TAS should help taxpayers seek other alternatives to the examination process if the regular process for EITC audit does not meet the taxpayer's needs. Normally, the IRS conducts EITC audits by correspondence. IRS will consider a written request for Examination Area Office interview. [IRM 4.13.3.5.1\(2\)](#), *Transfers to an Area Office* (9-30-2010), provides guidance when taxpayers request a face-to-face interview. After you discuss with the taxpayer the type of alternative documents that will prove EITC eligibility, consider whether it might be helpful if the taxpayer could meet face-to-face with the IRS instead of having the audit conducted through correspondence. Advocating to get the taxpayer a face-to-face interview is an alternative to the examination process and may help the taxpayer overcome the challenges in proving EITC eligibility. Educating taxpayers on their appeal rights and helping them get their case to Appeals is another vehicle for low income taxpayers to receiving the full amount

¹³ [IRM 13.1.4.2.3.4](#), *Recommendations vs. Determinations*, states: "A recommendation is not a determination, but a request for an action supported by the facts presented by the taxpayer, law and procedures. TAS should clearly explain the account adjustments, including decisions which need to be made so that the Operating Division/Function can make a determination based on TAS's analysis of the facts, law and taxpayer's position."

of their EITC. In some instances it may be more advantageous for the taxpayer to request an Appeals hearing, rather than continuing to dispute the EITC disallowance with the OD/Function through a TAO, particularly if the taxpayer was unable to gather much supporting documentation. Remember that Exam is required to look at a taxpayer's "books and records." Appeals, on the other hand, can consider hazards of litigation, including the persuasiveness of the taxpayer as a witness if the case were to go to court. Thus, Appeals can reach settlements based on the credibility of the taxpayer's oral testimony, which the OD/function cannot.¹⁴

Once the taxpayer's case is open in Appeals, prepare your OAR to Appeals providing a thorough explanation of the taxpayer's circumstances. Assure taxpayers you will continue to advocate on their behalf during the appeal process. See [IRM 13.1.21.1.3.2](#) (1)(b), *Appeals* (02-01-2011) for more information.

Other Ways to Help Taxpayers Overcome EITC Challenges: Referrals to Low Income Taxpayer Clinics

Sometimes a taxpayer may be unable to effectively comprehend or complete the steps necessary to resolve the tax issues, especially when the issues are complex, non-standard, or novel. In these cases, the taxpayer may need to obtain a Circular 230 representative (e.g., attorney, CPA, or enrolled agent) to help the taxpayer work effectively with TAS on the case. Discuss with the taxpayer the availability of free or nominal fee representation from Low Income Taxpayer Clinics (LITCs) and suggest that he or she may be greatly helped by contacting a local LITC and seeking assistance. Reassure the taxpayer that TAS will continue to work with the taxpayer and the LITC representative on the case. Provide the taxpayer with the contact information for all of the controversy LITCs listed for the taxpayer's geographic area in [Publication 4134](#), *Low Income Taxpayer Clinic List*, by mailing the taxpayer a copy of that publication or directing the taxpayer to the LITC webpage at www.irs.gov/advocate if he or she has internet access. If the taxpayer is interested in obtaining representation, agree on a reasonable date and time for the taxpayer to follow up with TAS about whether the taxpayer has obtained representation from an LITC.

If, during your conversations with the taxpayer, the taxpayer indicates he or she is interested in seeking LITC representation, but is reluctant to make the contact, you may set up a conference call for you and the taxpayer to contact the clinic together. However, it is important that you take the following precautions. First keep in mind that you are prohibited from referring a taxpayer to any one

¹⁴ IRM 1.2.17.1.6(4), *Policy Statement 8-47*, states: "[A]ppeals is the only administrative function of the [IRS] with authority to consider settlements of tax controversies, and as such has the primary responsibility to resolve these disputes without litigation to the maximum extent possible." IRM 1.2.17.1.6(2) states: "Appeals will ordinarily give serious consideration to an offer to settle a tax controversy on a basis which fairly reflects the relative merits of the opposing views in the light of the hazards which would exist if the case were litigated."

particular clinic.¹⁵ Thus, while you can inform the taxpayer of the availability of LITCs in his or her geographic area, you cannot select an LITC to handle the taxpayer's matter or offer the taxpayer your opinion about which LITC may be best-suited for the matter. If the taxpayer names a particular clinic for you to contact, then discuss with your manager to be sure you may proceed with contacting the clinic. The purpose of your call is simply to assist the taxpayer in scheduling an appointment to meet with the clinic. Lastly, if you are contacting a clinic, you must document that contact in TAMIS.

Conclusion

TAS has the opportunity to provide an invaluable service to EITC taxpayers by applying the skills that come with our unique advocacy role to these cases. When TAS makes the extra effort to reach out to taxpayers, gather facts, conduct research, establish rapport, and think creatively (instead of just following a "checklist"), TAS can improve the likelihood that taxpayers will receive the full amount of EITC for which they are eligible. For many of these taxpayers, receiving EITC can make a tremendous difference in their ability to provide necessities and care for their families.

Effect on Other Documents: This guidance will be incorporated into IRM 13.1.

Contact: Please contact Mara Christian, Chief, Policy Group, Technical Analysis and Guidance, at (505) 837-5707, if you have any questions.

Attachments

¹⁵ The Supplemental Standards of Ethical Conduct for Employees of the Department of the Treasury prohibit TAS employees from recommending or referring taxpayers to specific attorneys or accountants. See 5 C.F.R. § 3101.106(a). In addition, the Office of Government Ethics Standards of Ethical Conduct for Employees of the Executive Branch prohibit TAS employees from endorsing any product, service, or enterprise. See 5 C.F.R. §§ 2635.702(c)(1) and 2635.101(b)(8).

LIST OF TRADITIONAL AND ALTERNATIVE DOCUMENTS FOR QUALIFYING CHILD

Below are examples of various types of documents that can substantiate entitlement to EITC for a qualifying child. A certain document alone may not support Relationship, Residency or Support, but in combination with other records may assist in advocating for the taxpayer.

	Documents / Records	Relationship	Residency	Support
1	Birth certificate	x		
2	Marriage certificate	x		
3	Divorce decree, separation agreement, or decree of separate maintenance	x		
4	A letter from an authorized adoption agency	x		
5	Letter from the authorized placement agency or applicable court document	x		
6	Custody order	x		
7	School records (may require 2 years since school years over-lap tax years)	x	x	
8	Medical records	x	x	
9	Social service records	x	x	
10	Section 8 housing applications		x	
11	Immigration paperwork	x		
12	Green card		x	
13	Citizenship papers	x		
14	Child care provider records	x	x	
15	Baptismal certificate	x		
16	Court document	x		
17	A letter on an official letterhead from a school, medical provider, social service agency, placement agency official, Indian tribal official, landlord or property manager, or place of worship that shows names, common address and dates	x	x	
18	A statement from any government agency verifying the amount and type of benefits you and/or your dependent received for the year	x		
19	Rental agreements or a statement showing the fair rental value of your residence		x	x

Attachment 1

	Documents / Records	Relationship	Residency	Support
20	Property tax bills		x	
21	Mortgage receipts		x	x
22	Official mail (<i>i.e.</i> , envelope or package addressed to the dependent)		x	
23	Earnings statement		x	
24	Social Security card		x	
25	Library card		x	
26	Utility and repair bills (proof of household expenses) with canceled checks or receipts		x	x
27	Clothing bills (proof of child's support) with canceled checks or receipts		x	x
28	A driver's license		x	
29	Automobile registration		x	
30	Automobile insurance bill		x	
31	Club memberships		x	
32	Copies of cancelled checks for mortgage payments, rent, utilities, insurance		x	x
33	Credit card statements		x	
34	Bank statements		x	
35	Military records	x		
36	Statement or records from homeless shelter		x	
37	Eviction notices		x	
38	Paperwork to obtain a Post Office box		x	
39	Parole office files	x	x	
40	Accurint	x	x	
41	Magazine Subscriptions		x	
42	DDBKD transcript	x		
43	Obituary	x		
44	Census records	x		
45	Voter registration card		x	
46	Home owners/Renters Insurance Policy		x	
47	Passport	x		
48	Ancestry.com (document of an old birth, marriage, military record, etc)	x		
49	DNA test	x		
50	Alumni yearbooks	x		

Case Scenarios Identifying Alternative Documentation

Taxpayer's Situation	Alternative Documents
<p>The Case Advocate obtained the following facts from the taxpayer through dialogue and thoughtful questioning:</p>	<p>The Case Advocate requested the following documents to support EITC eligibility:</p>
<p>Scenario 1: The taxpayer's qualifying dependent is enrolled in school, but the taxpayer used the grandmother's address on the school registration forms. The grandmother provides before and after-school care while the taxpayer works. The taxpayer uses this address so the child can ride the bus to and from the grandmother's house. The grandmother is also the adult who attends most doctor's appointments with the child.</p> <p>The taxpayer cannot provide school records or a statement from the doctor to substantiate that the dependent lived with her for more than six months of the tax year. The taxpayer moved in the middle of the tax year and spent six weeks in between leases living with her mother, so neither lease agreement covers more than six months.</p>	<ul style="list-style-type: none"> • Benefit statement from taxpayer's employer showing that she pays for a health insurance plan covering herself and her dependent for the entire tax year. The statement identifies the taxpayer and the dependent by name and date of birth, which will match Social Security records. • Medical invoices for the dependent made out to the taxpayer's home address. • A printout from a pharmacy of the dependent's prescriptions that include the child's address. • Copies of both lease agreements. When combined, the agreements verify that the leasing companies recognized the child as an authorized resident for both apartments and demonstrate residency of the child for more than six months of the year.
<p>Scenario 2: The taxpayers are caring for their niece and nephew, who the state social services department removed from their mother's home due to neglect. The taxpayers do not have certified copies of birth certificates for the dependents and will need six to eight weeks to obtain them, but the taxpayers are experiencing an economic burden and cannot wait that long for their refund. The dependents are ages 2 and 4 and do not attend pre-school. A counselor from Social Services makes quarterly visits to check in on the children.</p>	<ul style="list-style-type: none"> • A copy of the court documents granting the taxpayers temporary custody of the two children. The court documents should name the mother and confirm her relationship to the taxpayers. • A letter from Social Services acknowledging quarterly visits and confirming the children resided with the taxpayers for more than six months of the tax year.
<p>Scenario 3: After the taxpayer filed a 2009 return claiming her son as a</p>	<ul style="list-style-type: none"> • A copy of the notification of expulsion from the school to show the son's

<p style="text-align: center;">Taxpayer’s Situation</p> <p>The Case Advocate obtained the following facts from the taxpayer through dialogue and thoughtful questioning:</p>	<p style="text-align: center;">Alternative Documents</p> <p>The Case Advocate requested the following documents to support EITC eligibility:</p>
<p>dependent, she received a notice that someone else had already claimed the same dependent. The taxpayer divorced in 2003 under a decree that provides joint custody, but allows the taxpayer to claim the son as a dependent for all tax years. The Parenting Plan provides equal time (50/50) with the child. However, the taxpayer tells TAS that her former spouse moved to another town in 2007 and only spends alternate weekends with his son. She never requested a modification to the Parenting Plan because she did not want to incur more attorney fees and court costs. The taxpayer owns a three-bedroom home and has no other family living at that address.</p> <p>The son, age 17, was expelled from school in May 2008, obtained his driver’s license in July 2008, and enrolled in a GED program at the local community college in January 2010.</p>	<p>address until May 2008.</p> <ul style="list-style-type: none"> • Copies of e-mails from the former spouse acknowledging his move out of town and coordinating alternate weekend visitations. • A copy of the son’s drivers license. The license will show the date issued and the son’s address for 2008. • A copy of the GED registration. Although the son enrolled in classes after the tax year in question, the driver’s license registration before the tax year in question, combined with the GED registration after the tax year in question, demonstrates a continuance of residency.

Examples of OAR Recommendations for EITC Cases

Examples of OAR Recommendations that Do Not Advocate for Taxpayer	Example of OAR Recommendation that Advocates for Taxpayer
<ol style="list-style-type: none"> 1. The taxpayer has a hardship; please reconsider the EITC. 2. TAS / I recommend that the IRS review the taxpayer records, and contact the Case Advocate / me if you need additional information. 3. The taxpayer requests the IRS allow EITC. 4. I believe the taxpayer has proven EITC and should be allowed to claim the credit. Adjust the account. Admin file; additional information is attached. 5. Please allow EITC for the taxpayer's niece. The niece resided with the taxpayer. See attached documents to verify residency. 	<p>The taxpayer is experiencing an economic hardship and needs immediate relief. Please adjust the taxpayer's account and allow his niece, Amy, as a qualifying child for EITC purposes. It is TAS's position that the taxpayer is entitled to claim Amy as a qualifying child for EITC in tax year 2009. Amy was age 16 and resided with the taxpayer for 12 months during the year. The taxpayer provided all support for Amy. Thank you in advance for reviewing the documents and adjusting the account. Per the SLA, if you disagree with the recommendation, please contact me with an explanation and allow me at least three workdays to review your response and provide additional information.</p> <p>The attached documents support TAS's position:</p> <ul style="list-style-type: none"> • Birth certificate verifies Amy's age. • Lease agreements covering 2009 verifies at least six months of residency. • School report cards, mailed to taxpayer's residence, for school years 2008/2009 and 2009/2010 verify residency throughout the 2009 tax year. • Medical records and insurance statements verify residency and relationship. • Court documents verify legal guardianship and/or the child's relationship to the taxpayer. • Itemized statement from utility companies and cancelled checks verify support provided by the taxpayer. • Amy's drivers license / government issued ID, issued in March 2009, verifies her address.