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Unit Name	U.S. Persons Residing Abroad Claiming Additional Child Tax Credit
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Table of Contents

(View this PowerPoint in "Presentation View" to click on the links below)

General Overview

- [Issue and Transaction Overview](#)
- [Transaction and Fact Pattern](#)

[Summary of Potential Issues](#)

[Audit Steps](#)

[Training and Additional Resources](#)

[Glossary of Terms and Acronyms](#)

Issue and Transaction Overview

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Taxpayers residing abroad are filing returns claiming refundable credits, such as the Additional Child Tax Credit. These taxpayers have often never resided or resided only for a short period of time in the U.S. and some have no plans to return to the U.S.

Some of these taxpayers are only filing a U.S. return to get the refundable credits. In a significant number of instances, the taxpayers are not entitled to the credits because the "qualifying" children were not U.S. persons during the years at issue and/or income was misstated. Therefore, the examiner needs to be aware of the issues and ascertain whether the taxpayers are or are not entitled to the claimed credits.

Issues addressed in this unit include determining whether the taxpayers are U.S. persons, proper filing status, whether children listed as dependents are qualifying for purposes of the Child Tax and Additional Child Tax Credits, whether income has been properly reported, and that the claimed credits do not exceed the limitations.

Transaction and Fact Pattern

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Facts

- Taxpayer is residing outside the United States.
- Taxpayer filed a Form 1040, claiming the Child Tax Credit and/or Additional Child Tax Credit.
- Taxpayer (and/or spouse) may not be a United States person.
- Child(ren) claimed on the tax return may not be qualifying per Internal Revenue Code (IRC) § 24(c).
- Income on the tax return may have been misclassified.
- Modified adjusted gross income for purposes of the credit may have been improperly computed.
- Earned income for purposes of the Additional Child Tax Credit may have been improperly computed.

Summary of Potential Issues

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 1	Determine if the taxpayer(s) is/are a United States person.
Issue 2	Determine if the filing status on Form 1040 is correct.
Issue 3	Determine if each child listed as dependent is a qualifying child per IRC § 24(c).
Issue 4	<p>The credits are limited based on modified adjusted gross income, per IRC § 24. There are further limits on the refundable portion of the credit (also known as the Additional Child Tax Credit) based on taxable earned income as defined in IRC § 32.</p> <p>Determine that modified adjusted gross income is of the proper amount, and that the refundable portion of the credit does not exceed the limitations of IRC § 24.</p>

All Issues, Step 1: Initial Factual Development

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Taxpayer(s) may be claiming Child Tax and/or Additional Child Tax Credits that are not allowable. It is necessary to determine the status for United States tax purposes of the taxpayer(s), whether the child(ren) is/are qualifying child(ren), and whether the taxpayer(s) had earned income subject to the limitations of IRC § 32.

Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> Foreign residents are claiming credits under IRC § 24. 	<ul style="list-style-type: none"> Form 1040 Form 8812 (tax years through 2011) Schedule 8812 (tax years 2012 and following) Erroneous Refundable Credit Project (ERCP) Toolkit 	
<ul style="list-style-type: none"> Proof of citizenship of taxpayer Request <u>ORIGINAL</u> documents (or official government-issued duplicates thereof). 		
<ul style="list-style-type: none"> Proof of marriage, if married filing joint (MFJ) Request marriage certificate. 		
<ul style="list-style-type: none"> Proof of citizenship of dependents Request <u>ORIGINAL</u> documents (or official government-issued duplicates thereof). 		
<ul style="list-style-type: none"> Proof of nature, source and amount of income Request documentation evidencing the nature, source and amount of income. 		

Issue 1, Step 2: Review Potential Issues

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 1

Legal status of the taxpayer(s) for United States tax purposes

Explanation of Issue	Resources
<p>Is the taxpayer a United States person?</p> <p>If filing status is MFJ, is the spouse a United States person?</p> <p>If either taxpayer is a U.S. citizen or resident, they are eligible to file a Form 1040. If neither taxpayer is a United States citizen or resident, they cannot file a Form 1040.</p> <p>A Social Security Card <u>does not</u> establish United States citizenship or residency. The taxpayer(s) must provide a U.S. Birth Certificate, Consular Report of Birth Abroad, Certificate of Citizenship (which is effective from the date of issuance), valid green card or U.S. Passport. Note that a U.S. Passport issued <u>after</u> the year under audit does not necessarily indicate that the individual was a U.S. citizen or lawful permanent resident during the tax year under audit.</p>	<ul style="list-style-type: none">▪ IRC 7701(a)(30)

Issue 1, Step 3: Additional Factual Development

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 1

Legal status of the taxpayer(s) for United States tax purposes.


Fact Element	Resources	6103 Protected Resources
<p>An individual is a United States person if he or she is a United States citizen or resident alien. A resident alien is defined as one who:</p> <p>1) has lawful permanent resident status (Green Card Holder),</p> <p>2) met the Substantial Presence Test, or</p> <p>3) made a first-year election.</p>	<ul style="list-style-type: none"> ▪ IRC 7701(a)(30)(A) ▪ ERCP Toolkit ▪ IRC 7701(b)(1)(A)(i) ▪ Treas. Reg. 301.7701(b)-1(b) ▪ IRC 7701(b)(1)(A)(ii) ▪ IRC 7701(b)(3) ▪ Treas. Reg. 301.7701(b)-1(c) ▪ IRC 7701(b)(1)(A)(iii) ▪ IRC 7701(b)(4) 	

Issue 1, Step 4: Develop Arguments

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 1

Legal status of the taxpayer(s) for United States tax purposes

Explanation of Adjustment	Resources	6103 Protected Resources
 DECISION POINT: Determine the legal status of the taxpayer(s) for United States tax purposes.		
<p>If filing status is married filing joint (MFJ) on Form 1040, and neither taxpayer is a United States person:</p> <ul style="list-style-type: none"> - If there is United States source income, move to <u>Form 1040NR</u>. - If no United States source income, zero out the return. Contact RGS and AIMS/ERCS coordinators. <p>If filing status is married filing separate (MFS) or single on Form 1040 and the taxpayer is not a United States person,</p> <ul style="list-style-type: none"> - If there is United States source income, move to <u>Form 1040NR</u>. - If no United States source income, zero out the return. Contact RGS and AIMS/ERCS coordinators. 	<ul style="list-style-type: none"> ▪ IRC 861 ▪ IRC 862 ▪ IRC 863 ▪ IRC 864 ▪ IRC 865 ▪ ERCP Toolkit 	

Issue 2, Step 2: Review Potential Issues

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 2

Filing status of the taxpayer(s)

Explanation of Issue	Resources
<p>Individuals who are married as of the last day of the year are entitled to use one of two filing statuses – MFJ or MFS.</p> <p>If the taxpayers filed MFJ, ask for a copy of the marriage certificate. If the certificate is in a foreign language, ask that a certified translation also be provided. You will need to clearly see and reference the taxpayer names and the date of the marriage certificate.</p>	<ul style="list-style-type: none">▪ IRC 7703(a)

Issue 2, Step 3: Additional Factual Development

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 2

Filing status of the taxpayer(s)

Fact Element	Resources	6103 Protected Resources
<p>If one spouse is not a U.S. citizen, in order to file a joint return he or she must provide proof that he or she filed a section 6013(g) election with his or her spouse.</p> <p>Request a copy of the tax return for the year in which the election was made, including the election and the first two pages reflecting the taxpayers' signatures.</p> <p>If the section 6013(g) election was not filed, the taxpayers cannot retain the MFJ status unless they file an amended return making the election provided it is "made before the expiration of the period prescribed by section 6511(a) (or section 6511(c) if the period is extended by agreement) for making a claim for credit or refund."</p>	<ul style="list-style-type: none"> ▪ IRC 6013(g) ▪ Treas. Reg. 1.6013-6(a)(4)(i) ▪ ERCP Toolkit ▪ <i>Millsap v. Commissioner</i>, 91 T.C. 926 (1988) ▪ <i>Phillips v. Commissioner</i>, 851 F.2d 1492 (D.C. Cir. 1988) 	

Issue 2, Step 3: Additional Factual Development (cont'd)

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 2

Filing status of the taxpayer(s)

Fact Element	Resources	6103 Protected Resources
NOTE: Per IRC § 6013(b)(2)(B), an election cannot be made if the Service has issued a Statutory Notice of Deficiency and the taxpayer(s) timely petitioned the Tax Court. That prohibition does not apply, however,		

Issue 2, Step 3: Additional Factual Development (cont'd)

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 2

Filing status of the taxpayer(s)



Fact Element	Resources	6103 Protected Resources
<p>if the taxpayer has not previously filed a separate return (e.g., in cases where the statutory notice of deficiency is based on a substitute for return under section 6020(b)).</p> <p>If one spouse is a nonresident alien at the beginning of the year, but is a U.S. resident at the end of the year and is married to a U.S. citizen or resident at the end of the year, the spouses may make a joint election under section 6013(h) to treat the first-mentioned spouse as a U.S. resident for the entire year.</p>	<ul style="list-style-type: none"> ▪ ERCP Toolkit ▪ IRC 6013(h) 	

Issue 2, Step 4: Develop Arguments

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 2

Filing status of the taxpayer(s)


Explanation of Adjustment	Resources	6103 Protected Resources
 <p>DECISION POINT: If the filing status was MFJ and the taxpayers are U.S. persons filing Form 1040 but cannot prove that they are married, adjust the filing status to single on the return received. A return will need to be prepared for the secondary taxpayer. Ensure that each child is only claimed once.</p>		
<ul style="list-style-type: none"> ▪ If the taxpayers filed Form 1040 MFJ and prove their marriage and both are a U.S. person, the filing status of Form 1040 will remain MFJ. 	<ul style="list-style-type: none"> ▪ ERCP Toolkit 	
 <p>DECISION POINT: If the taxpayers filed Form 1040 MFJ and prove their marriage, but one taxpayer is not a U. S. person and they made a section 6013(g) or 6013(h) election to treat the non-resident alien spouse as a resident alien, the filing status of Form 1040 will remain MFJ.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6013-6(a)(4)(i) ▪ IRC 6013(b)(2)(B) 	

Issue 2, Step 4: Develop Arguments (cont'd)

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 2

Filing status of the taxpayer(s)

Explanation of Adjustment	Resources	6103 Protected Resources
 <p>DECISION POINT: If no such election was made, the taxpayers cannot file MFJ unless they make the election on an amended return. Otherwise, adjust the filing status of the U.S. person to MFS and make the appropriate adjustments to all affected items, including credits.</p>	<ul style="list-style-type: none"> ▪ Treas. Reg. 1.6013-6(a)(4)(i) ▪ IRC 6013(b)(2)(B) ▪ ERCP Toolkit 	

Issue 3, Step 2: Review Potential Issues

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 3

Criteria of qualifying child(ren), particularly as to citizenship

Explanation of Issue	Resources
<p>A qualifying child:</p> <ol style="list-style-type: none"> 1) Must be eligible to be claimed as a dependent by the taxpayer under IRC § 151(c) as defined by IRC § 152. 2) Must be under age 17 at the close of the tax year. 3) Must be a U.S. citizen, national or resident (IRC § 24(c)(2)). <p>Treas. Reg. § 1.152-2(a)(1) specifies that the dependent must be a U.S. citizen or resident at some time during the tax year) as defined in IRC § 152(c).</p>	<ul style="list-style-type: none"> ▪ IRC 24(c) ▪ IRC 152 ▪ Treas. Reg. 1.152-2(a)(1)

Issue 3, Step 3: Additional Factual Development

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 3

Criteria of qualifying child(ren), particularly as to citizenship.


Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> ▪ Each qualifying child must have a valid SSN or ITIN. <p>NOTE: A social security card does not establish U.S. citizenship or residency.</p>	<ul style="list-style-type: none"> ▪ IRC 24(e) 	
<p>The following <u>ORIGINAL</u> documents can be used to substantiate citizenship:</p> <ul style="list-style-type: none"> ▪ Consular Report of Birth Abroad (FS-240) ▪ Certification of Report of Birth (DS 1350) ▪ Certificate of Citizenship (N-560) ▪ United States Passport (if issued during or prior to the years under examination) <p>NOTE: The effective date of a Certificate of Citizenship is the date the certificate was issued, not the date of birth.</p>	<ul style="list-style-type: none"> ▪ <i>Carlebach v. Commissioner</i>, 139 T.C. No. 1 (2012) ▪ <i>Stern v. Commissioner</i>, T.C. Memo. 2012-204 ▪ ERCP Toolkit 	

Issue 3, Step 4: Develop Arguments

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 3

Criteria of qualifying child(ren), particularly as to citizenship

Explanation of Adjustment	Resources	6103 Protected Resources
 <p>DECISION POINT: If the taxpayer is unable to demonstrate that the claimed dependent is a United States person, the return must be adjusted accordingly and the related dependent-based credit(s) disallowed.</p>	<ul style="list-style-type: none"> ▪ IRC 24(c) ▪ IRC 152 ▪ Treas. Reg. 1.152-2(a)(1) ▪ ERCP Toolkit 	

Issue 4, Step 2: Review Potential Issues

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 4

Credit claimed subject to the limitations of IRC § 24

Explanation of Issue	Resources
There are limitations on the credits based on modified adjusted gross income and further limits on the refundable portion of the credit (also known as the Additional Child Tax Credit) based on taxable earned income.	<ul style="list-style-type: none">▪ IRC 24▪ IRC 32

Issue 4, Step 3: Additional Factual Development

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 4

Credit claimed subject to the limitations of IRC § 24


Fact Element	Resources	6103 Protected Resources
<ul style="list-style-type: none"> There are limitations on the credit based on modified adjusted gross income. The term “modified adjusted gross income” means adjusted gross income increased by any amount excluded from gross income under IRC § 911, 931, or 933. 	<ul style="list-style-type: none"> IRC 24(b) IRC 24(d) Form 2555 ERCP Toolkit 	
<ul style="list-style-type: none"> There are further limits on the refundable portion of the credit (also known as the Additional Child Tax Credit) based on taxable earned income. The term “earned income” is as defined in IRC § 32(c)(2) and does not include any amount excluded under IRC § 911, 931, or 933. 	<ul style="list-style-type: none"> IRC 24(d) IRC 32(c)(2) Form 2555 ERCP Toolkit 	
<ul style="list-style-type: none"> It is EXTREMELY IMPORTANT that the taxpayers provide documentation evidencing the nature, source and amount of all income reported on the tax return. 	<ul style="list-style-type: none"> ERCP Toolkit 	

Issue 4, Step 4: Develop Arguments

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 4

Credit claimed subject to the limitations of IRC § 24


Explanation of Adjustment	Resources	6103 Protected Resources
<p> DECISION POINTS: If the taxpayer(s) excluded an amount under IRC § 911, 931 or 933, the excluded amount <u>must be included</u> (added back in) <u>when determining modified adjusted gross income</u> under IRC § 24(b) but <u>cannot be included when determining taxable earned income</u> under IRC § 24(d).</p> <p>If income was misclassified on the tax return – e.g., unearned income (such as a stipend, scholarship, or income received pursuant to a communal living arrangement) was reported as earned, properly reclassify the income and make the proper adjustments to all affected items, including credits.</p>	<ul style="list-style-type: none"> ▪ IRC 24(b) ▪ IRC 24(d) ▪ IRC 32(c)(2) • ERCP Toolkit 	

Issue 4, Step 4: Develop Arguments

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 4

Credit claimed subject to the limitations of IRC § 24

Explanation of Adjustment	Resources	6103 Protected Resources
 DECISION POINTS: If the taxpayer(s) failed to provide documentation evidencing the nature, source and amount of income, disallow the claimed credits.		

Training and Additional Resources

Chapter 9.6.2 Additional Child Tax Credit

Type of Resource	Description(s) and/or Instructions for Accessing	References
Issue Toolkits	ERCP Toolkit	Restricted
Other Training Materials	Pub. 972, <i>Child Tax Credit</i> . Access is available through IRS.gov Pub. 501, <i>Exemptions, Standard Deduction, and Filing Information</i> : Access is available through IRS.gov	

Glossary of Terms and Acronyms

Term/Acronym	Definition
AIMS	Audit Information Management System
ERCP	Erroneous Refundable Credit Project
ERCS	Examination Returns Control System
IRC	Internal Revenue Code
ITIN	Individual Tax Identification Number
MFJ	Married Filing Joint
MFS	Married Filing Separate
RGS	Report Generation Software
SSN	Social Security Number