



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
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INTERNAL REVENUE SERVICE NATIONAL OFFICE SERVICE CENTER ADVICE

MEMORANDUM FOR: RONALD D. PINSKY  
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CC:SB:2:WAS:1

FROM: Peter K. Reilly  
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Administrative Provisions & Judicial Procedure  
CC:PA:APJP:Br3

SUBJECT: Earned Income Tax Credit (EITC) Returns From the  
American Possessions, such as Puerto Rico & American  
Samoa

This Service Center Advice responds to your memorandum dated April 15, 2002, seeking our views concerning the processing of returns claiming Earned Income Tax Credit (EITC) where there are indications that the taxpayer lived in a United States Possession. In accordance with § 6110(k)(3), this Service Center Advice should not be cited as precedent.

ISSUE

How should the Internal Revenue Service (Service) process returns claiming EITC where the returns and/or Forms W-2 indicate that the taxpayer lived in a United States Possession for the tax year at issue?

CONCLUSION

The Service should issue a statutory notice of deficiency to disallow the EITC.

## FACTS

The returns at issue generally report earned income, show no tax liability, contain Forms W-2 and entity addresses which indicate employment and residence in one of the United States Possessions, yet contain Schedules EITC indicating that the taxpayer lived with qualifying EITC dependent(s) for 12 months in the United States.

## LAW AND ANALYSIS

In order to be eligible for the EITC, the taxpayer must have lived with a qualifying dependent in the United States for more than one-half of the tax year (or all of the tax year if the qualifying dependent is a foster child). I.R.C. §§ 32(c)(1)(A)(ii)(I), 32(c)(3)(E). Pursuant to section 7701(a)(9), "United States" includes only the 50 states and the District of Columbia. As a general rule, individuals who lived in one of the possessions for more than one-half of the tax year should be ineligible for the EITC.

The instructions for Schedule EITC, as well as lines 61a and 61b of Form 1040 (nor lines 39a and 39b of Form 1040A) do not provide a definition of United States for purposes of the EITC residency test. Only Publication 596 provides the definition of section 7701(a)(9). This makes it difficult for a taxpayer to determine when it would be appropriate to claim EITC.

As we understand it, there are at least three instances where a taxpayer living in the Possessions could be eligible for the EITC. First, members of the Armed Forces stationed in the Possessions could qualify under section 32(c)(4) if they meet the other EITC requirements. Second, individuals who lived more than six months in one of the fifty states or the District of Columbia, but moved to one of the Possessions prior to the end of the year could be eligible for the EITC if they meet the remaining EITC requirements. Finally, it is possible that a resident of one of the Possessions could have been employed by a Possession-based employer in one of the fifty states which does not impose state income tax for more than six months (such as on a limited duration contract). In this situation, the individual could possibly meet the residency test for EITC, yet show no state tax withholding nor be a member of the Armed Forces.

The office requesting this advice offered two recommendations for processing the returns from residents who live in the Possessions and who claim EITC. The first option was to send the return back to the filer without processing it with a Form 9143, Request for Missing Information or Papers to Complete Return (International Returns), informing the filer that he/she should file with the government of residency. The second option was to process the returns and use the math error procedures to deny the EITC.

Neither method is appropriate under the circumstances given. You have advised that a determination of entitlement to EITC cannot be ascertained from the face of the return or the attached Form W-2 for these types of cases. Thus, the taxpayer may be correctly filing the return with the United States. Without more information, we would think the return should be respected as filed. See I.R.C. § 6201(a)(1). As for math error procedures, there is simply no provision under section 6213(g)(2) which covers this situation and allows the use of math error procedures. Instead, the Service needs to issue notices of deficiency in these instances. Furthermore, we agree with your suggestion that the Service place a freeze on the refund claimed and issue a letter to the taxpayer requesting additional information to prove EITC eligibility. If no response is received from the taxpayer, a statutory notice of deficiency would be issued and the freeze would remain in place.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

Please call if you have any further questions.