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Advocating for Your Clients During the EITC Process by Using Alternative Documentation

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EITC Overview

- General eligibility rules
 - Without qualifying child(ren)
 - With qualifying children
- It's a refundable credit



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EITC Numbers

- Income limit for MFJ with 3+ QC in TY 13
– \$51,567
- The most EITC available in TY 13
– \$6,044 (MFJ with 3+ QC)
- Average EITC in FY2012: \$2,335
- EITC and CTC lifted 10.1M out of poverty in 2012



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Unique Attributes

The EITC population has some *general* attributes:

- Limited education/English skills
- High mobility
- Difficulty obtaining documentation
- Competing priorities



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Beltran v. Comm'r

- Petitioner lived with his second cousin and her two children
- He claimed EITC with the two children
- The two children were not QC for EITC purposes
- NOTE: dependency exemption not at issue



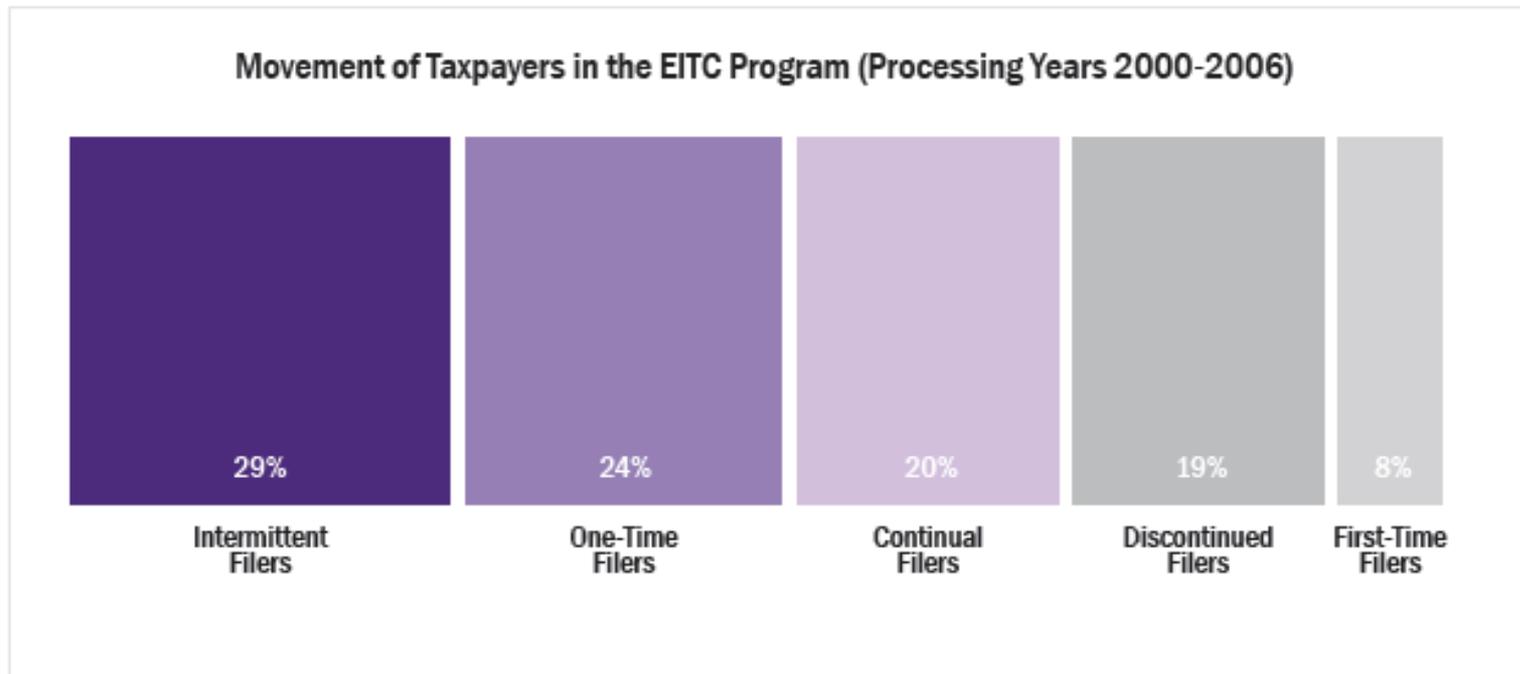
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Taxpayers Claiming EITC

FIGURE 1.9.4, Movement of Taxpayers in the EITC Program (Processing Years 2000–2006)





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TAS Studies

- 2004: 43% of TPs received 94% of the EITC they claimed after participating in the audit reconsideration process
- 2007: TPs with representation were twice as likely as unrepresented TPs to be found eligible for the EITC



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IRM 4.19.14.5

- **Judgment** must be used based on the **facts and circumstances** in each case to make a substantially correct determination
- IRM 4.19.14.5.6
 - Example: three birth certificates to connect aunt to niece



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Key Problems

- Inconsistency as to what documents the IRS will accept
- Inflexibility in accepting proof



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Residency Requirement

- QC: child must live with the TP for more than half of the tax year
- Major obstacle for low-income taxpayers
 - Why?
 - What documentation can you get?
- Example: shared custody cases



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Lozoya v. Comm'r

- Question: Is the husband allowed to claim EITC if he doesn't file with his wife?
- Answer: Yes, he qualified for HoH status
- Court relied on testimony from the husband and son.
- Could litigation have been avoided?



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Relationship Documentation

- Custody order
- Childcare records
- Citizenship papers
- Medical records
- A letter on official letterhead from a school, social service agency, landlord, etc.



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Self-Employment Income

- IRC § 32(c)(2)(A)(i)
- Obstacles:
 - Lack of bank accounts
 - Computer software



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Self-employment example

TP provides childcare for her neighbors' children. She doesn't have a bank account. Her fees are based on an informal agreement. One neighbor pays in cash and one pays by check. She cashes the checks at her neighborhood bank and uses cash or money orders to pay for her expenses. She sometimes buys snacks for the children.



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How to Use Alternative Documentation

- Talk/listen to the taxpayer
- Determine what new documentation is needed
 - Be familiar with the case facts
- Think outside the box
- Build your case around the facts of your case, not what the IRS is requesting



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Two-year Ban

- IRC § 32(k)(1)(B)(ii) imposes a two-year ban on TPs who have a “reckless or intentional disregard” for the rules
- IRM 4.19.14.6.1
 - Must explain why in the file
 - Must be approved by management



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Inappropriate Use of the Ban

- There's no legal definition of “reckless or intentional disregard” in the IRC § 32(k)
- IRM 4.19.14.6.1(7)
- 39% of the bans imposed in 2011 occurred without any contact from the IRS



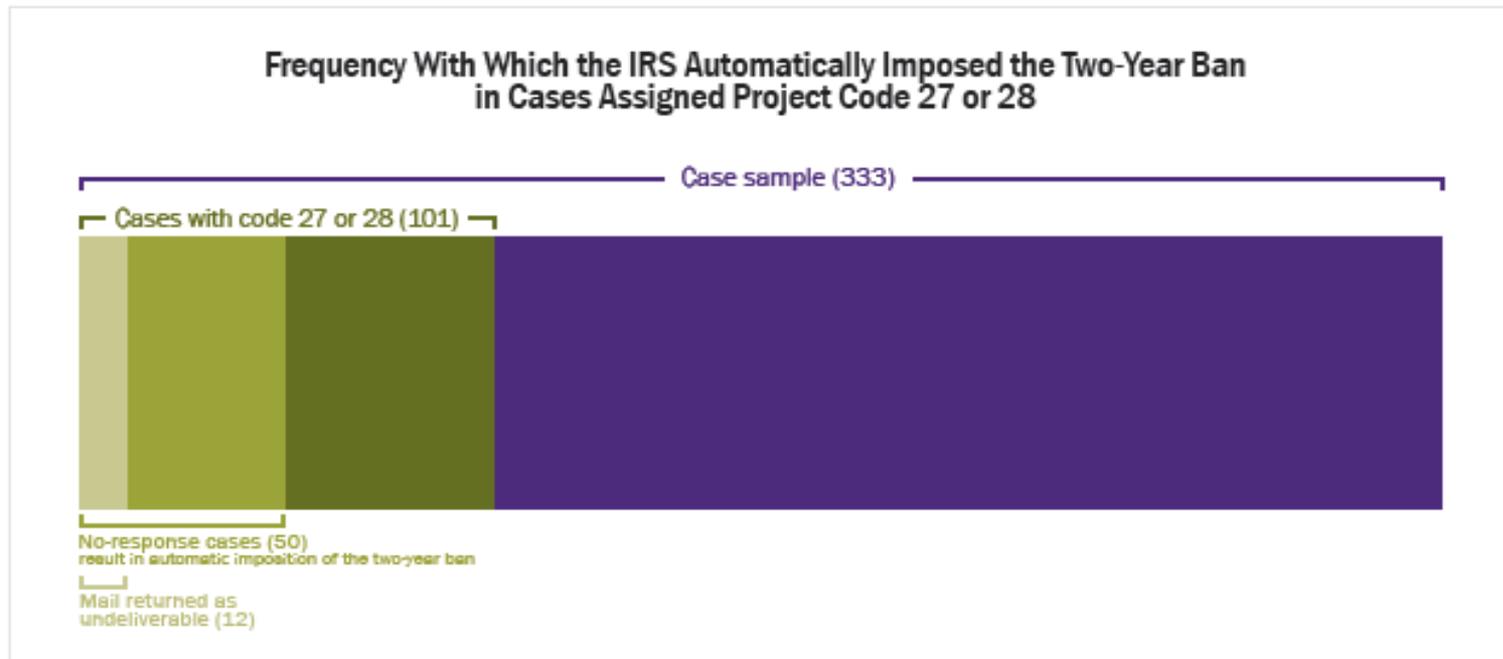
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Two-Year Ban Cases

FIGURE 1.9.2, Frequency with Which the IRS Imposed the Two-Year Ban in Cases Assigned Project Code 27 or 28²⁸





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Due Diligence

- Form 8867
- EIC Worksheet
- Knowledge Requirement
 - Must not know or have reason to know that something is incorrect
 - Must ask follow up questions and/or request additional documentation
 - Document your files
- Retention of records



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Contact TAS

- Call 877.777.4778
- File Form 911, *Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance order)*
- Kate Leifeld, Attorney Advisor, National Taxpayer Advocate –Katrina.leifeld@irs.gov



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