

## VITA/TCE Tax Alert

### VTA 2023-03, EITC updates

#### Purpose

The purpose of this alert is to provide updated information regarding the Earned Income Tax Credit to volunteers. This information was recently clarified by IRS Counsel and was not included in Publication 4491-X, VITA/TCE Training Supplement. These changes should be made to your training materials, either as pen and ink changes or by printing and inserting the attached pages.

#### Changes to Publication 4012:

Page Number	Change
I-2	In the column labeled Part A Rules for Everyone, change the second box to: You must meet certain requirements if you are separated from your spouse and not filing a joint return. <sup>4</sup>
I-2	Change footnote 4 to: Married taxpayers who don't file a joint return can claim the EIC only if they had a qualifying child living with them for more than 1/2 the year and either lived apart from their spouse for the last 6 months of the year or are legally separated according to state law under a legal separation agreement or a decree of separate maintenance and didn't live in the same household as the spouse at the end of the year. If the separated spouse has a qualifying child but no qualifying child has a valid SSN, the separated spouse can still meet this special rule and claim self-only EITC.
I-3	In Step 3, change the text to: Were you not married at the end of 2022 or are you filing a joint return with your spouse? If <b>YES</b> , go to Step 4. If <b>NO</b> , you can't claim the EIC unless you meet the special rule for separated spouses. See Footnote 4 on page I-2.
I-3	In Step 4, remove the following text: (or your spouse, if married)

1-3	<p>Change the TIP on this page to:</p> <p><i>Separated spouses who are eligible to claim the EIC must check the checkbox on Schedule EIC and list a qualifying child to show they meet the special rule for claiming the credit.</i></p>
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## Changes to Publication 4491:

Page Number	Change
7-6	<p>Under the heading <b>Can a taxpayer with a nonresident alien spouse claim the earned income credit?</b> change the second sentence to:</p> <p>In that case, the taxpayer will need to meet the special rule for separated spouses to claim credit.</p>
29-8	<p>Answer 4, change to:</p> <p>b. Chez. Twila does not meet the relationship test; Dwight does not meet the age test. Since Mira's home was Chez's main home for more than half the time he was adopted, he is considered to have lived with Mira for more than half the year and therefore meets the residency test.</p>

**Thank you for volunteering and for your dedication to top QUALITY service!**

## Summary of EIC Eligibility Requirements

Part A Rules for Everyone	Part B Rules If You Have a Qualifying Child	Part C Rules If You Don't Have a Qualifying Child	Part D Earned Income and AGI Limitations
Taxpayers & qualifying children must all have SSN that is valid for employment by the due date of the return (including extensions). <sup>1</sup>	Child must meet the relationship, age, residency test and joint return tests but not the support test. The child doesn't have to be your dependent. <sup>2</sup>	Must be at least age 25 but under age 65 as of December 31. <sup>3</sup>	You must have earned income to qualify for this credit. Your earned income and AGI must be less than: <ul style="list-style-type: none"> <li>• \$53,057 (\$59,187 for married filing jointly) if you have three or more qualifying children,</li> <li>• \$49,399 (\$55,529 for married filing jointly) if you have two qualifying children,</li> <li>• \$43,492 (\$49,622 for married filing jointly) if you have one qualifying child, or</li> <li>• \$16,480 (\$22,610 for married filing jointly) if you don't have a qualifying child.</li> </ul>
You must meet certain requirements if you are separated from your spouse and not filing a joint return. <sup>4</sup>	Qualifying child can't be used by more than one person to claim the EIC.	Can't be the dependent of another person.	
Must be a U.S. citizen or resident alien all year.	The taxpayer can't be a qualifying child of another person.	Must have lived in the United States more than half the year.	
Can't file Form 2555 (relating to foreign earned income).		Can't be a qualifying child of another person.	
Investment income must be \$10,300 or less.			
Can't be a qualifying child of another person.			



*Taxpayers cannot file an amended return to claim the credit for a year they did not originally have a valid Social Security number.*

<sup>1</sup> If the taxpayer's Social Security card says "VALID FOR WORK ONLY WITH INS OR DHS AUTHORIZATION," the taxpayer can use the Social Security number to claim EIC if they otherwise qualify.

If taxpayer (or spouse, if filing a joint return) or dependent has an individual taxpayer identification number (ITIN), they can't get the EIC. ITINs are issued by the IRS to noncitizens who can't get an SSN. Singles and couples who have Social Security numbers can claim the credit, even if their children don't have SSNs. In this instance, they would get the smaller credit available to childless workers. In the past, these filers didn't qualify for the credit.

If the taxpayer's Social Security card has a "NOT VALID FOR EMPLOYMENT" imprint, and if the card-holder obtained the SSN to get a federally funded benefit, such as Medicaid, they can't get the EIC.

<sup>2</sup> To meet the joint return test, the child cannot file a joint return for the year unless it's only to claim a refund of income tax withheld or estimated tax paid.

<sup>3</sup> Taxpayers turning 25 on January 1st are considered to be 25 as of December 31st. Taxpayers reaching the age 65 on January 1st are still considered to be 64 as of December 31st.

<sup>4</sup> Married taxpayers who don't file a joint return can claim the EIC only if they had a qualifying child living with them for more than 1/2 the year and either lived apart from their spouse for the last 6 months of the year or are legally separated according to state law under legal separation agreement or a decree of separate maintenance and didn't live in the same household as the spouse at the end of the year. If the separated spouse has a qualifying child but no qualifying child has a valid SSN, the separated spouse can still meet this special rule and claim self-only EITC.

## EIC General Eligibility Rules

Step	Probe/Ask the taxpayer	Action
<b>1</b>	<p>Calculate the taxpayer's earned income and adjusted gross income (AGI) for the tax year. Are both less than:</p> <ul style="list-style-type: none"> <li>• \$53,057 (\$59,187 married filing jointly) with three or more qualifying children;</li> <li>• \$49,399 (\$55,529 married filing jointly) with two qualifying children;</li> <li>• \$43,492 (\$49,622 married filing jointly) with one qualifying child; or</li> <li>• \$16,480 (\$22,610 married filing jointly) with no qualifying children?</li> </ul>	<p>If <b>YES</b>, go to Step 2. If <b>NO</b>, STOP. You can't claim the EIC.</p>
<b>2</b>	<p>Do you (and your spouse, if filing jointly) have a Social Security number (SSN) that allows you to work?<sup>1</sup></p> <p>Answer "NO" if the taxpayer's Social Security card has a "NOT VALID FOR EMPLOYMENT" imprint, and if the cardholder obtained the SSN to get a federally funded benefit, such as Medicaid.</p>	<p>If <b>YES</b>, go to Step 3. If <b>NO</b>, STOP. You can't claim the EIC.</p>
<b>3</b>	<p>Were you not married at the end of 2022 or are you filing a joint return with your spouse?</p>	<p>If <b>YES</b>, go to Step 4. If <b>NO</b>, you can't claim the EIC unless you meet the special rule for separated spouses. See Footnote 4 on page I-2.</p>
<b>4</b>	<p>Are you a nonresident alien?</p> <p>Answer "NO" if the taxpayer is married filing jointly, and one spouse is a citizen or resident alien and the other is a nonresident alien.</p>	<p>If <b>YES</b> and you are either unmarried or married but not filing a joint return, STOP. You can't claim the EIC. If <b>NO</b>, go to Step 5.</p>
<b>5</b>	<p>Are you (or your spouse, if filing jointly) filing Form 2555 (Foreign Earned Income) to exclude income earned in a foreign country?</p>	<p>If <b>YES</b>, STOP. You can't claim the EIC. If <b>NO</b>, go to Step 6.</p>
<b>6</b>	<p>Is your investment income (interest, tax exempt interest, dividends, capital gains distributions &amp; capital gains) more than \$10,300?</p>	<p>If <b>YES</b>, STOP. You can't claim the EIC. If <b>NO</b>, go to Step 7.</p>
<b>7</b>	<p>Are you (or your spouse, if filing jointly) the qualifying child of another taxpayer?</p>	<p>If <b>YES</b>, STOP. You can't claim the EIC. If <b>NO</b>, go to the interview tips for EIC—With a Qualifying Child or EIC—Without a Qualifying Child.</p>

<sup>1</sup> If the taxpayer's Social Security card says **VALID FOR WORK ONLY WITH INS OR DHS AUTHORIZATION**, the taxpayer can use the Social Security number to claim EIC if they otherwise qualify.



*Separated spouses who are eligible to claim the EIC must check the checkbox on Schedule EIC and list a qualifying child to show they meet the special rule for claiming the credit.*



*If the taxpayer is filing MFS and meets the requirements to claim EIC, go to **Basic Information**>**Personal Information**>**Filing Married Filing Separate** and meets the requirements to claim the EIC.*



## EXERCISES

Answers are at the end of the lesson summary.

**Question 1:** Gloria's husband, Dante, meets the substantial presence test for the entire tax year. Gloria is a U.S. citizen. They do not have any children and do not support anyone else. Dante is applying for an ITIN. Gloria has an SSN. They live together.

What filing status options do Gloria and Dante have?

**Question 2:** Raul is a U.S. citizen and serving in the U.S. Army in Japan. His wife and his children live with him and he is able to claim the children as dependents. Raul's wife, a citizen of Japan, chooses not to be treated as a resident alien for tax purposes. She does not want to file a joint return with him.

Raul meets all of the other qualifications for Head of Household. Even though he is married and living with his spouse, can he claim Head of Household status?

- a. Yes
- b. No



*In the Volunteer Resource Guide, Tab B, Starting a Return and Filing Status, note that if a spouse is a nonresident alien, the living apart rule does not apply to the taxpayer. This information is found in Publication 519.*

### **Can a taxpayer with a nonresident alien spouse claim the earned income credit?**

Even if a taxpayer is considered unmarried for Head of Household purposes because he or she is married to a nonresident alien, the taxpayer is still considered married for purposes of the earned income credit. In that case, the taxpayer will need to meet the special rule for separated spouses to claim credit. See Publication 596, Earned Income Credit, for more information.

## **Which family members can be claimed as dependents?**

### **Can a taxpayer claim a nonresident alien spouse as a dependent?**

A taxpayer's spouse does not meet the relationship test for either qualifying child or qualifying relative. Thus, taxpayers cannot claim a spouse as their dependent.

### **Can a child born overseas be claimed as a dependent?**

A child born overseas to U.S. citizen parents is considered a U.S. citizen for tax purposes. A child can be claimed as a dependent as long as all the other rules for qualifying child or qualifying relative are met.

The birth of a child abroad should be reported as soon as possible to establish an official record of the child's claim to U.S. citizenship. Form FS-240, Consular Report of Birth Abroad, establishes official evidence that the child is a U.S. citizen.



*Patricia, a U.S. citizen, is married to Gilberto, a nonresident alien from Spain. Their daughter, Eva, was born while they were living in Spain.*

*Eva is entitled to U.S. citizenship. Eva will need a Social Security number to be claimed as a dependent on her mother's tax return.*



## EXERCISE Answers

**Answer 1:** b, No. In order to claim the credit as MFS, the taxpayer must have a qualifying child.

**Answer 2:** a, Yes. His investment income is below the threshold amount.

**Answer 3:** a, Yes. Daughter Angie meets all the eligibility tests to be a qualifying child.

**Answer 4:** b, Chez. Twila does not meet the relationship test; Dwight does not meet the age test. Since Mira's home was Chez's main home for more than half the time he was adopted, he is considered to have lived with Mira for more than half the year and therefore meets the residency test.

**Answer 5:** a, Yes. Margie meets the general eligibility requirements and Aimee meets the Qualifying Child rules.

**Answer 6:** b, No. While Rob can claim his daughter as a dependent, the daughter did not live with him for more than half the year, so she fails the residency test. Dawn is the qualifying child of Laura.

**Answer 7:** a, Yes. Jewel's daughter is not the qualifying child of Emmitt, but he can claim the EIC for a taxpayer without a qualifying child.

**Answer 8:** a, Yes, Jeff is Larry's qualifying child for EIC. Jeff is not Larry's dependent because he provides more than half of his own support; but the support test does not apply for EIC.