



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

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INTERNAL REVENUE SERVICE NATIONAL OFFICE TECHNICAL ASSISTANCE
MEMORANDUM

MEMORANDUM FOR ACTING DIRECTOR, INTERNATIONAL DISTRICT
ATTN::

FROM: Chief, International District Counsel CC:INTL:IDC
Associate Chief Counsel (International)

SUBJECT: Application of Earned Income Credit to Puerto Rican
Individuals Serving in the U.S. Armed Forces

This Technical Assistance responds to your memorandum dated January 21, 2000. Technical Assistance is not binding on Examination or Appeals and is not a final case determination. This document is not to be used or cited as precedent.

ISSUE:

Whether a Puerto Rican individual who is a citizen or permanent resident of the United States and who is a member of the Armed Forces ("taxpayer") is considered to have a principal place of abode within the United States under section 32(c)(1)(A)(ii)(I) of the Internal Revenue Code of 1986 ("I.R.C."), and thus possibly be eligible to claim the Earned Income Credit ("EIC")¹ in the following two situations:

¹ This memorandum focuses solely on the principal place of abode requirement in section 32(c)(1)(A)(ii)(I). In order to claim the EIC, a taxpayer without a qualifying child must satisfy other requirements including age limitations and earned income limitations.

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- (1) The taxpayer resides in the Commonwealth of Puerto Rico while serving on extended active duty.
- (2) The taxpayer indicates a “home of record” in Puerto Rico for military personnel purposes while residing in a state of the United States or in the District of Columbia while serving on extended active duty.

FACTS:

You requested our office’s advice regarding the eligibility of individuals who are members of the U.S. Armed Forces residing in Puerto Rico, to claim the EIC. You have also asked us to consider the situation where the individuals concerned join the U.S. Armed Forces within Puerto Rico, have a “home of record” in Puerto Rico for military personnel purposes, and are stationed in military bases in one of the states of the United States or the District of Columbia. Your question and our response are limited to individuals who do not have a qualifying child as defined in I.R.C. § 32(c)(3).

CONCLUSION:

Situation 1

A taxpayer who is a member of the U.S. Armed Forces and who resides in Puerto Rico when on extended active duty is treated as having a principal place of abode within the United States under I.R.C. § 32(c)(1)(A)(ii)(I) by reason of §32(c)(4).

Situation 2

A taxpayer who is a member of the U.S. Armed Forces and who indicates a “home of record” in Puerto Rico for military personnel purposes when residing within one of the states of the United States or the District of Columbia is considered to have a principal place of abode in the United States under I.R.C. § 32(c)(1)(A)(ii)(I).

LAW AND ANALYSIS:

I.R.C. § 32(a)(1), provides in general that in the case of an eligible individual, there shall be allowed as a credit against the tax imposed by subtitle A for the taxable year an amount equal to the credit percentage of so much of the taxpayer’s earned income for the taxable year as does not exceed the earned income amount.

I.R.C. § 32(c)(1)(A) provides that, the term “eligible individual” means-

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- (i) any individual who has a qualifying child for the taxable year, or
- (ii) any other individual who does not have a qualifying child for the taxable year if-
 - (I) such individual's principal place of abode is in the United States for more than one-half of such taxable year,
 - (II) such individual (or, if the individual is married, either the individual or the individual's spouse) has attained age 25 but not attained age 65 before the close of the taxable year, and
 - (III) such individual is not a dependent for whom a deduction is allowable under section 151 to another taxpayer for any taxable year beginning in the same calendar year as such taxable year.

I.R.C. § 32(c)(4) provides that:

For purposes of paragraph[] (1)(A)(ii)(I) concerning "eligible individual" ..., the principal place of abode of a member of the Armed Forces of the United States shall be treated as in the United States during any period during which such member is stationed outside the United States while serving on extended active duty with the Armed Forces of the United States. For purposes of the preceding sentence, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

In Rev. Rul. 78-400, 1978-2 C.B. 7, the IRS held that an individual who maintains a household in Puerto Rico that is the principal place of abode for that individual and a "qualifying child", cannot qualify for the earned income credit under I.R.C. § 43(a).² The holding in Rev. Rul. 78-400 was based on I.R.C. § 7701(a)(9) which provides that the term "United States" when used in the geographical sense includes only the States and the District of Columbia. Since Puerto Rico is not included in the term "United States", the individual could not qualify for the earned income credit under I.R.C. § 43(a). We note that Rev. Rul. 78-400 did not address the tax treatment of U.S. military personnel who are stationed or have a home of record in Puerto Rico. Our focus in this technical assistance is limited to such individuals because of I.R.C. § 32(c)(4), which applies to members of the Armed Forces.

² Section 43 was redesignated as section 32 by the Deficit Reduction Act of 1984 (P.L. 98-369).

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I.R.C. § 32(c) was amended by the addition of I.R.C. § 32(c)(4), for tax years commencing after December 31, 1994, to provide a special rule applicable for members of the Armed Forces of the United States stationed outside the United States while serving on extended active duty.³ I.R.C. § 32(c)(4) was added to prevent the situation where a member of the Armed Forces who would be eligible to claim the EIC if stationed in the United States would lose eligibility for the EIC when stationed outside of the United States because of the requirement that such taxpayers maintain their principal place of abode in the United States for at least half of the taxable year.

Accordingly, based on the foregoing, we conclude that members of the Armed Forces of the United States on extended active duty stationed in Puerto Rico are treated as having a principal place of abode within the United States. If the other requirements of I.R.C. § 32 are met, such individuals will be eligible for the EIC. The discussion herein is limited to the federal income taxation of members of the Armed Forces, and such discussion does not affect the income taxing jurisdiction of the Commonwealth of Puerto Rico⁴ with respect to individuals who have a “home of record” in Puerto Rico. Puerto Rican individuals who are members of the Armed Forces and are outside of Puerto Rico (e.g., within a state of the United States or the District of Columbia) may still have a tax liability to Puerto Rico, even if such individuals qualify for the EIC or otherwise have no federal income tax liability. This is because of the application of the Soldiers’ and Sailors’ Civil Relief Act of 1940 (“SSCRA”) 50 U.S.C. App. § 574 which in pertinent part provides as follows:

“(1) For the purposes of taxation of any person, or his personal property, or gross income by any State, Territory, possession, *** such person shall not be deemed to have lost a residence or domicile in any State, Territory possession, *** solely by reason of being absent therefrom, or to have acquired a residence in another State, Territory or possession solely by reason of being so absent.” [Emphasis added.]

We believe that Puerto Rican members of the Armed Forces who are stationed within a state of the United States or the District of Columbia are “within the United States” for purposes of the general provisions of I.R.C. § 32(c), and such individuals may be eligible to claim the EIC if they maintain a principal place of abode in the United States for more than one half of the taxable year under I.R.C. §

³ I.R.C. § 32(c)(4) was added by the Uruguay Round Agreements Act 1994 (P.L. 103-465).

⁴ See, Puerto Rico Federal Relations Act, 48 U.S.C. § 731 et. seq.

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32(c)(1)(A)(ii)(I) and meet the other requirements of I.R.C. § 32. The SSCRA confers both powers and limitations on states, possessions and territorial tax administrations' ability to tax members of the Armed Forces. However, the SSCRA does not limit the application of the provisions of the Internal Revenue Code in this context. Therefore, our determination is not inconsistent with the SSCRA provision cited above or with the Armed Forces member's designation of "Puerto Rico" as his or her "home of record" for military personnel or SSCRA purposes which could otherwise lead one to the conclusion that someone who is physically present in the United States should be treated as not within the United States. Therefore, individuals who are stationed within the United States may meet the principal place of abode requirements based upon their physical presence in a state or the District of Columbia. Moreover, such individuals are not required to meet the "extended active duty" test of I.R.C. § 32(c)(4) which is applicable only to members of the Armed Forces stationed outside of the United States.

Please call if you have any further questions, please call me or

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