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From: [REDACTED]

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To: [REDACTED]

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Subject: Assertion of Ban with Partial Disallowance

You asked Counsel the following, associated with the Earned Income Credit (EIC) under § 32 of the Internal Revenue Code:

For Example: TP claims 3 children, 1 child disallowed. TP continues to claim the 1 child for consecutive years when they know that they are not entitle[d] to claim the child. Can the TP be subject to the 2-year ban, even though they are entitled to the EIC for the other 2 kids?

Our response is “yes.”

A taxpayer may be subject to the 2-year ban for claiming a child that did not qualify for the EIC, when the taxpayer knows that she is not entitled to claim that child, if a final determination is made that the taxpayer’s claim for that child was due to reckless or intentional disregard for the rules and regulations. The 2-year ban applies even though the taxpayer otherwise would have been entitled to the EIC for her other two children, to use your example, assuming a final determination is made that the taxpayer’s claim for the other child was due to reckless or intentional disregard for the rules and regulations.

Section 32(k)(1) states that no credit shall be allowed under § 32 for any taxable year during the disallowance periods, which are 2 years for reckless and intentional disregard and 10 years for fraud. Section 32(k)(1)(B)(ii), regarding the 2-year ban for reckless or intentional disregard of rules and regulations, does not prohibit imposition of the ban for partial disallowances. Accordingly, if any taxpayer’s claim for the EIC is *partially* disallowed because of reckless or intentional disregard of rules and regulations, the IRS may asset the 2-year ban under § 32(k)(1)(B)(ii) on the taxpayer claiming *any* EIC during the 2 years.