



OFFICE OF  
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224  
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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR:

FROM: Assistant Chief Counsel  
(Employee Benefits and Exempt Organizations)

SUBJECT: Earned Income Credit and Modified Adjusted Gross  
Income

This Chief Counsel Advice responds to your memorandum dated March 24, 1999, regarding the application of the tie-breaker rule of section 32(c)(1)(C) of the Internal Revenue Code under three scenarios.

ISSUE:

In applying the tie-breaker rule in cases where an eligible individual with a qualifying child resides with the eligible individual's parents, how is the modified adjusted gross income (modified AGI) for those parents computed when they file a joint return? What if they file separate returns? What if they fail to file a return?

CONCLUSION:

If the eligible individual's parents file a joint return their modified AGI is computed on a combined basis. If they file separate returns or fail to file returns, their modified AGIs are computed on a separate basis.

FACTS:

TP = Taxpayer, an unmarried individual  
TPF = TP's father and spouse of TPM  
TPM = TP's mother and spouse of TPF

WTA-N-106465-99

QC = Qualifying child of TP under section 32(c)(3) of the Code and grandchild of TPF and TPM

We have assumed for purposes of our response that TP is not the qualifying child of TPF or TPM; therefore the rule under 32(c)(1)(B) (see below) does not apply. Because nothing in the facts indicates that TPF in Situations 2 and 3 is eligible to file a tax return as head of household, we assume that TPF's filing choices are to file as either married filing jointly or married filing separately.

Situation 1. TP and QC live with TPF and TPM for more than six months during the year. TP's earned income and modified AGI are \$8,000. TPF and TPM's combined modified AGI is \$10,000 (\$6,000 for TPF and \$4,000 for TPM, if computed separately).

Situation 2. TP and QC live with TPF for more than six months during the year. TPF and TPM do not reside together at all during the year. TP's earned income and modified AGI are \$8,000. TPF and TPM's combined modified AGI is \$10,000 (\$6,000 for TPF and \$4,000 for TPM, if computed separately).

Situation 3. The facts are the same as Situation 2 except that TPF and TPM's combined modified AGI is \$16,000 (\$6,000 for TPF and \$10,000 for TPM, if computed separately).

## LAW AND ANALYSIS

Section 32(a) of the Code allows the EIC in the case of an eligible individual. An eligible individual is defined by section 32(c)(1)(A) of the Code to include any individual who has a qualifying child for the taxable year<sup>1</sup>.

Section 32(c)(3)(A) of the Code sets forth the requirements of a qualifying child. Sections 32(a)(3)(A)(ii) and 32(a)(3)(B)(iii) describe the residency requirement. Section 32(c)(3)(B) of the Code describes the relationship requirement. Section 32(c)(3)(C) of the Code describes the age requirement.

The tie-breaker rule of section 32(c)(1)(C) of the Code applies if there would otherwise be two or more eligible individuals with respect to the same qualifying child. Under the tie-breaker rule, only the individual with the highest modified AGI is treated as an eligible individual with respect to that qualifying child.

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<sup>1</sup> While under section 32(c)(1)(A)(ii), an eligible individual need not have a qualifying child if the individual meets other requirements, your facts are limited to taxpayers with a qualifying child.

WTA-N-106465-99

Under section 32(c)(1)(B) of the Code, if an individual is a qualifying child of another taxpayer, that individual is not treated as an eligible individual. This rule is applied before the tie-breaker rule.

Section 32(d) provides that in the case of an individual who is married (within the meaning of section 7703), section 32 applies only if a joint return is filed for the taxable year under section 6013 of the Code.

Section 6013(a) provides that a husband and wife may, with certain exceptions not relevant here, make a single return jointly of income taxes under subtitle A, even though one of the spouses has neither gross income nor deductions.

Section 6013(d)(3) provides that, for purposes of section 6013, if a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several. Section 1.6013-4(b) of the Income Tax Regulations provides, in part:

If a joint return is made, the gross income and adjusted gross income of husband and wife on the joint return are computed in an aggregate amount and the deductions allowed and the taxable income are likewise computed on an aggregate basis.

### Situation 1

In Situation 1, TP, TPF, and TPM are otherwise eligible individuals with respect to QC. If TPF and TPM choose to file a joint return, the combined modified AGI of TPF and TPM would be compared to the modified AGI of TP. In this case, TPF and TPM would be treated as the eligible individual with respect to QC because their modified AGI (\$10,000) is higher than that of TP (\$8,000).

If TPF and TPM choose to file separate returns or if they fail to file returns, the separate modified AGIs of TP, TPF, and TPM would be compared to determine which of the three eligible individuals had the highest modified AGI. In this case, TP would have the highest modified AGI (\$8,000) and would be treated as the eligible individual for QC. If, instead, the facts were modified so that either TPF or TPM had the highest modified AGI, that individual would be treated as the eligible individual. However, that individual would not be able to claim the EIC because that individual was married but did not file a joint return.

### Situation 2

WTA-N-106465-99

Under situation 2, only TP and TPF are eligible individuals with respect to QC. TPM is not an eligible individual with respect to QC because QC did not have the same principal place of abode as TPM for more than one-half of the taxable year.

If TPF and TPM choose to file a joint return, the combined modified AGI of TPF and TPM would be compared to the modified AGI of TP. As in Situation 1, TPF and TPM would be treated as the eligible individual with respect to QC because their modified AGI (\$10,000) is higher than that of TP (\$8,000).

If TPF and TPM choose to file separate returns or if they fail to file returns, the modified AGIs of TP and TPF would be compared to determine which of the two eligible individuals had the highest modified AGI. Because TPM is not otherwise an eligible individual, unless she files jointly with her spouse, her modified AGI is not considered. In this case, TP would have the highest modified AGI (\$8,000) and would be treated as the eligible individual for QC.

### Situation 3

As in situation 2, only TP and TPF are eligible individuals with respect to QC. If TPF and TPM choose to file a joint return, the combined modified AGI of TPF and TPM would be compared to the modified AGI of TP. TPF and TPM would be treated as the eligible individual with respect to QC because their modified AGI (\$16,000) is higher than that of TP (\$8,000).

If TPF and TPM choose to file separate returns or if they fail to file returns, the modified AGIs of TP and TPF would be compared to determine which of the two eligible individuals had the highest modified AGI. In this case, TP would have the highest modified AGI (\$8,000) and would be treated as the eligible individual for QC.

If you have any further questions, please call (202) 622-6060.

Assistant Chief Counsel  
(Employee Benefits and Exempt  
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By: \_\_\_\_\_  
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