

Internal Revenue Service, Treasury

§ 1.37-2

§ 1.35-2 Taxpayers not entitled to credit.

For taxable years beginning after December 31, 1957, no credit shall be allowed under section 35 to a nonresident alien individual with respect to whom a tax is imposed for such taxable year under section 871(a).

§ 1.37-1 General rules for the credit for the elderly.

(a) *In general.* In the case of an individual, section 37 provides a credit against the tax imposed by chapter 1 of the Internal Revenue Code of 1954. This section and §§ 1.37-2 and 1.37-3 provide guidance in the computation of the credit for the elderly provided under section 37 for taxable years beginning after 1975. For rules relating to the computation of the retirement income credit provided under section 37 for taxable years beginning before 1976, see 26 CFR 1.37-1 through 1.37-5 (Rev. as of April 1, 1980). Note that section 403 of the Tax Reduction and Simplification Act of 1977 provides that a taxpayer may elect to compute the credit under section 37 for the taxpayer's first taxable year beginning in 1976 in accordance with the rules applicable to taxable years beginning before 1976.

(b) *Limitation on the amount of the credit.* The credit allowed by section 37 for a taxable year shall not exceed the tax imposed by chapter 1 of the Code for the taxable year (reduced, in the case of a taxable year beginning before 1979, by the general tax credit allowed by section 42).

(c) *Married couples must file joint returns.* If the taxpayer is married at the close of the taxable year, the credit provided by section 37 shall be allowed only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year. The preceding sentence shall not apply in the case of a husband and wife who are not members of the same household at any time during the taxable year. For the determination of marital status, see §§ 1.43 and 1.143-1.

(d) *Nonresident aliens ineligible.* No credit is allowed under section 37 to any individual for any taxable year during which that individual is at any time a nonresident alien unless the individual is treated, by reason of an election under section 6013 (g) or (h), as

a resident of the United States for that taxable year.

[T.D. 7743, 45 FR 84049, Dec. 22, 1980]

§ 1.37-2 Credit for individuals age 65 or over.

(a) *In general.* This section illustrates the computation of the credit for the elderly in the case of an individual who has attained the age of 65 before the close of the taxable year. This section shall not apply to an individual for any taxable year for which the individual makes the election described in section 37(e)(2) and paragraph (b) of § 1.37-3.

(b) *Computation of credit.* The credit for the elderly for an individual to whom this section applies equals 15 percent of the individual's "section 37 amount" for the taxable year. An individual's "section 37 amount" for a taxable year is the initial amount determined under section 37(b)(2), reduced as provided in section 37(b)(3) and (c)(1).

(c) *Examples.* The computation of the credit for the elderly for individuals to whom this section applies may be illustrated by the following examples:

Example 1. A, a single individual who is 67 years old, has adjusted gross income of \$8,000 for the calendar year 1977. A also receives social security payments of \$1,450 during 1977. A does not itemize deductions. A's credit for the elderly is \$120, computed as follows:

Initial amount under section 37(b)(2)	\$2,500	
Reductions required by section 37		
(b)(3) and (c)(1):		
Social security payments	\$1,450	
One-half the excess of ad-		
justed gross income over		
\$7,500	250	1,700
Section 37 amount		800
15 pct. of \$800		\$120

A's tax from the tax tables, which reflect the allowance of the general tax credit, is \$662. Accordingly, the limitation of section 37(c)(2) and paragraph (b) of § 1.37-1 does not reduce A's credit for the elderly.

Example 2. H and W, who have both attained the age of 65, file a joint return for calendar year 1977. For that year H and W have adjusted gross income of \$8,120; H also receives a railroad retirement pension of \$1,550, and W receives social security payments of \$1,200. H and W do not itemize deductions. The credit for the elderly allowed to H and W for 1977 is \$139, computed as follows:

Initial amount under section 37(b)(2)	\$3,750
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