



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
May 9, 2000

Number: **200032013**
Release Date: 8/11/2000
CC:TEGE:EB:EC
FREV-103194-00
UILC: 32.00-00

INTERNAL REVENUE SERVICE NATIONAL OFFICE FIELD SERVICE ADVICE
MEMORANDUM FOR DISTRICT COUNSEL, NORTH CENTRAL DISTRICT

FROM: Acting Assistant Chief Counsel (Employee Benefits)

SUBJECT: Earned Income Credit and Social Security Numbers

This Chief Counsel Advice responds to your memorandum dated January 31, 2000 requesting advice on the availability of the earned income credit (EIC) for a taxable year in cases where the taxpayer does not receive a social security number (SSN) until after the close of the taxable year. Chief Counsel Advice is not binding on Examination or Appeals and is not a final case determination. This document is not to be cited as precedent.

ISSUE

May a taxpayer who is an "eligible individual," as defined in section 32(c)(1)(A) of the Internal Revenue Code, for a taxable year and who otherwise meets the requirements of section 32 of the Code but who does not have an SSN that meets the requirements of section 32(m) during the taxable year claim the EIC for the taxable year if the taxpayer is issued an SSN that meets the requirements of section 32(m) after the close of the taxable year?

CONCLUSION

A taxpayer who is an eligible individual for a taxable year and who meets the other requirements of section 32 except that the taxpayer does not have an SSN that meets the requirements of section 32(m) may claim the EIC for the taxable year if the taxpayer is issued an SSN that meets the requirements of section 32(m) after the close of the year. The taxpayer may claim the EIC for the taxable year at any time within the statute of limitations on claims for credit or refund of an overpayment under section 6511. The same result occurs if it is the taxpayer's spouse or qualifying child who is issued an SSN that meets the requirements of section 32(m) after the close of the taxable year.

FACTS

FREV-103194-00

Situation 1

X is a single nonresident alien. During Year 1, X is not authorized to work in the United States, does not have an SSN that meets the requirements of section 32(m), and works illegally. X met all the requirements for the EIC for Year 1 when he filed his return for Year 1 except that he did not have an SSN that met the requirements of section 32(m). In Year 3, X becomes a United States citizen and receives an SSN that meets the requirements of section 32(m).

Situation 2

X and Y, a married couple, have a child, who is a qualifying child under section 32(c)(3), at the end of Year 1. They do not apply for or receive an SSN for their child until the middle of Year 2. X and Y met all the requirements for the EIC for Year 1 when they filed their return for Year 1 except that their qualifying child did not have an SSN.

LAW AND ANALYSIS

Section 32(a) of the Code allows the EIC in the case of an eligible individual. An eligible individual is defined in section 32(c)(1)(A). Under section 32(c)(1)(A)(i) an eligible individual means any individual who has a qualifying child for the taxable year. Section 32(c)(3)(A) of the Code sets forth the requirements of a qualifying child. Under section 32(c)(1)(A)(ii), an eligible individual need not have a qualifying child if the individual meets other requirements.

Section 32(c)(1)(F) provides that no credit shall be allowed under section 32 to an eligible individual who does not include on his or her income tax return for the taxable year the individual's taxpayer identification number (TIN) and, if the individual is married (within the meaning of section 7703), the spouse's TIN.

Section 32(c)(3)(D) provides, in pertinent part, that a qualifying child is not taken into account unless the taxpayer includes the name, age, and TIN of the qualifying child on the taxpayer's return for the taxable year.

Section 32(m) provides that, solely for purposes of sections 32(c)(1)(F) and 32(c)(3)(D), a TIN means a social security number issued to an individual by the Social Security Administration (other than a social security number issued pursuant to clause (II) (or that portion of clause (III) that relates to clause (II)) of section 205(c)(2)(B)(i) of the Social Security Act).¹

¹ Section 205(c) concerns wage and self-employment records. Section 205(c)(2)(B)(i) applies to the assigning of SSNs. Clause (I) pertains to aliens lawfully

FREV-103194-00

The Internal Revenue Service Restructuring and Reform Act of 1988 (P.L. 105-206) amended sections 32(c)(1)(F) and 32(c)(3)(D) to clarify that the identification requirement is a requirement for claiming the EIC, rather than an element of the definition of “eligible individual” or “qualifying child.” See S. Rep. No. 174, 105th Cong., 2nd Sess. 200 (1998). Thus, a taxpayer can be an “eligible individual” without having been issued an SSN that meets the requirements of section 32(m).

The plain language of sections 32(c)(1)(F) and 32(c)(3)(D) requires only that the SSN, as defined in section 32(m), of the taxpayer, taxpayer’s spouse, and qualifying child be on the return. There is no requirement that the taxpayer, taxpayer’s spouse, or qualifying child have an SSN, as defined in section 32(m), before the close of the taxable year.

There is also no requirement that the return on which the SSN is reported and the EIC is claimed be an original, timely filed return. However, a return claiming the EIC is subject to the statute of limitations on claims for credit or refund of an overpayment under section 6511.

Situation 1

In Year 1, X worked even though he did not have an SSN that permitted him to work. When X filed his Year 1 tax return, X was unable to claim the EIC since he did not have an SSN that met the requirements of section 32(m). Once X receives an SSN that meets the requirements of section 32(m), X may claim the EIC for any taxable year for which X met the requirements of section 32, other than having an SSN that meets the requirements of section 32, provided that the statute of limitations has not expired.

Situation 2

When X and Y filed their Year 1 tax return by the due date of the return, their qualifying child did not have an SSN that met the requirements of section 32(m). Therefore, they were unable to claim the EIC on the basis of that child. When the child receives an SSN that meets the requirements of section 32(m), X and Y can file an amended return for Year 1 and claim the EIC on the basis of that child. Alternatively, X and Y could have requested an extension of time to file their Year 1

admitted to the United States and entitled to engage in employment in the United States. Clause (II) pertains to individuals who apply for or receive benefits fully or partially funded with federal funds, including children on whose behalf benefits are claimed by another person. Clause (III) pertains to individuals when it appears that the individual could have been but was not assigned a number under clause (I) or (II).

FREV-103194-00

tax return, if they believed they would receive the SSN by the extended due date of the return.

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

By: MARY OPPENHEIMER
Acting Assistant Chief Counsel
(Employee Benefits)
MARK SCHWIMMER
Senior Technician Reviewer
CC:TEGE:EB