

tax withheld at source. See section 6401(b).

(b) *Federal and State employees and employees of certain foreign corporations.* The provisions of this section shall apply to the amount of a special refund allowable to an employee of a Federal agency or a wholly owned instrumentality of the United States, to the amount of a special refund allowable to an employee of any State or political subdivision thereof (or any instrumentality of any one or more of the foregoing), and to the amount of a special refund allowable to employees of certain foreign corporations. See, with respect to such special refunds for 1954, section 1401(d)(4) of the Internal Revenue Code of 1939, and with respect to such special refunds for 1955 and subsequent years, section 6413(c)(2) of the Internal Revenue Code of 1954, as amended by section 202 of the Social Security amendments of 1954.

§ 1.32-2 Earned income credit for taxable years beginning after December 31, 1978.

(a) [Reserved]

(b) *Limitations.* (1) [Reserved]

(2) *Married individuals.* No credit is allowed by section 32 in the case of an eligible individual who is married (within the meaning of section 7703 and the regulations thereunder) unless the individual and spouse file a single return jointly (a joint return) for the taxable year (see section 6013 and the regulations thereunder relating to joint returns of income tax by husband and wife). The requirements of the preceding sentence do not apply to an eligible individual who is not considered as married under section 7703(b) and the regulations thereunder (relating to certain married individuals living apart).

(3) *Length of taxable year.* No credit is allowed by section 32 in the case of a taxable year covering a period of less than 12 months. However, the rule of the preceding sentence does not apply to a taxable year closed by reason of the death of the eligible individual.

(c) *Definitions.* (1) [Reserved]

(2) *Earned income.* For purposes of this section, earned income is computed without regard to any community property laws which may other-

wise be applicable. Earned income is reduced by any net loss in earnings from self-employment. Earned income does not include amounts received as a pension, an annuity, unemployment compensation, or workmen's compensation, or an amount to which section 871(a) and the regulations thereunder apply (relating to income of non-resident alien individuals not connected with United States business).

(d) [Reserved]

(e) *Coordination of credit with advance payments—*(1) *Recapture of excess advance payments.* If any advance payment of earned income credit under section 3507 is made to an individual by an employer during any calendar year, then the total amount of these advance payments to the individual in that calendar year is treated as an additional amount of tax imposed (by chapter 1 of the Code) upon the individual on the tax return for the individual's last taxable year beginning in that calendar year.

(2) *Reconciliation of payments advanced and credit allowed.* Any additional amount of tax under paragraph (e)(1) of this section is not treated as a tax imposed by chapter 1 of the Internal Revenue Code for purposes of determining the amount of any credit (other than the earned income credit) allowable under part IV, subchapter A, chapter 1 of the Internal Revenue Code.

[T.D. 7683, 45 FR 16175, Mar. 13, 1980. Redesignated by T.D. 8448, 57 FR 54923, Nov. 23, 1992; T.D. 9045, 68 FR 10656, Mar. 6, 2003]

§ 1.32-3 Eligibility requirements after denial of the earned income credit.

(a) *In general.* A taxpayer who has been denied the earned income credit (EIC), in whole or in part, as a result of the deficiency procedures under subchapter B of chapter 63 (deficiency procedures) is ineligible to file a return claiming the EIC subsequent to the denial until the taxpayer demonstrates eligibility for the EIC in accordance with paragraph (c) of this section. If a taxpayer demonstrates eligibility for a taxable year in accordance with paragraph (c) of this section, the taxpayer need not comply with those requirements for any subsequent taxable year unless the Service again denies the EIC as a result of the deficiency procedures.