



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

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INTERNAL REVENUE SERVICE NATIONAL OFFICE CHIEF COUNSEL ADVICE

MEMORANDUM FOR AREA COUNSEL - CHICAGO  
(SMALL BUSINESS/SELF-EMPLOYED) CC:SB:4:CHI

FROM: Acting Assistant Chief Counsel (Employee Benefits)  
CC:TEGE:EB

SUBJECT: Earned Income Credit and Social Security Numbers

This Chief Counsel Advice pertains to CCA issued to the former District Counsel (North Central District) on May 9, 2000.<sup>1</sup> Some of the facts in Situation 1 of that CCA are inaccurate. This CCA replaces Situation 1 with a new set of facts. This CCA does not affect Situation 2. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not 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, but who does not have a social security number (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

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<sup>1</sup>Document number 200032013, released on August 11, 2000.

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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**

In Year 1, the taxpayer was a single alien and lived in the United States for the entire year. The taxpayer was not lawfully admitted to the United States and was not authorized to work in the United States, but did so anyway. The taxpayer was unable to obtain a social security number (SSN) from the Social Security Administration. The taxpayer met all the requirements for the EIC for Year 1, but the taxpayer did not have an SSN that met the requirements of section 32(m).

In Year 3, the taxpayer became a permanent resident of the United States. The taxpayer obtained an SSN that meets the requirements of section 32(m).

## **DISCUSSION**

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)(F), no credit is 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(m) defines TIN, solely for purposes of sections 32(c)(1)(F) and 32(c)(3)(D) (pertaining to the TIN of a taxpayer's qualifying child), as 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, 42 USC 405(c)(2)(B)(i)).<sup>2</sup>

The Internal Revenue Service Restructuring and Reform Act of 1988 (Pub. 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

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<sup>2</sup>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 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).

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definition of “eligible individual” or “qualifying child.” See S. Rep. No. 174, 105<sup>th</sup> Cong., 2<sup>nd</sup> 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.

In Year 1, the taxpayer worked in the United States, even though the taxpayer was not authorized to do so. The taxpayer did not have an SSN that met the requirements of section 32(m). Therefore, when the taxpayer filed a return for Year 1, the taxpayer was unable to claim the EIC, because the taxpayer’s SSN did not meet the requirements of section 32(m).

After the taxpayer became a permanent resident in Year 3, the taxpayer obtained an SSN that meets the requirements of section 32(m). Because the taxpayer’s SSN meets the requirements of section 32(m), the taxpayer may claim the EIC for any taxable year for which the taxpayer met the requirements of section 32, other than having an SSN that meets the requirements of section 32(m), provided that the statute of limitations has not expired. If you have any questions, please call (202) 622-6080.

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