

Administration of the Earned Income Credit

Announcement 2003–40

I. Purpose

This announcement describes changes the Internal Revenue Service (IRS) is testing in determining qualifying child eligibility under the earned income credit (EIC) under I.R.C. section 32. This announcement also solicits public comment on those changes.

II. Background

The EIC plays a vital role in rewarding work and lifting working families out of poverty. Historically, the EIC program

has experienced a relatively high participation rate. The IRS received claims totaling over \$32 billion from 19 million claimants for tax year 2002. Studies indicate that between 75 and 86 percent of eligible taxpayers participate in the EIC program. In 2001, the EIC lifted 3.9 million people out of poverty.

Although the EIC program has been successful in reaching and assisting low income working families, the EIC program also suffers from high noncompliance. The most recent compliance study, *Compliance Estimates For Earned Income Tax Credit Claimed on 1999 Returns* (the 1999 study), released in February 2002, estimates that out of the \$31.3 billion of EIC claims made by taxpayers for tax year 1999, between \$8.5 and \$9.9 billion — or between 27.0 and 31.7 percent of total EIC claims — were erroneous unrecovered overclaims. The largest amount of EIC overclaims (for which errors were known) was associated with taxpayers claiming children who were not the taxpayers' qualifying children. The most common qualifying child error was claiming a child who did not live with the taxpayer for over half the taxable year and therefore did not satisfy the residency requirement of the EIC. Another common qualifying child error was claiming a child who did not bear an appropriate relationship to the taxpayer. Most taxpayers who did not meet the relationship requirement also did not meet the residency requirement.

EIC noncompliance is high in part because it is difficult for the IRS to verify whether a child claimed by a taxpayer meets the residency and relationship tests of the EIC prior to paying out a refund. The IRS employs extensive outreach and educational programs to inform taxpayers and tax return preparers of the requirements of the EIC. These programs encourage eligible taxpayers to participate in the EIC program and discourage ineligible taxpayers from making erroneous EIC claims. In addition, the IRS conducts examinations to verify the eligibility of individuals with questionable claims. Despite these and other efforts, the IRS has been unable to significantly reduce the noncompliance rate over the years.

To prevent qualifying child errors, the IRS and Treasury Department plan to implement a certification program under which certain taxpayers will be required to demonstrate that they meet the residency re-

quirement with respect to a child before their EIC claims are accepted. The taxpayers required to demonstrate residency will be those who, based on IRS research, are more likely to claim children who do not satisfy the residency requirement (such as caregivers other than the child's parents and fathers who do not file joint returns).

Under the certification program, a taxpayer will be encouraged to fill out a form and provide certain documentation that establishes that the taxpayer meets the residency requirement with respect to a child in advance of the filing season. If such taxpayers choose not to pre-certify, they will be required to send in the same forms and documentation with their tax returns. Taxpayers who pre-certify will receive their EIC refunds faster than taxpayers who send information with their tax returns. Taxpayers who do not pre-certify or send in the required information with their tax returns will be given an additional opportunity to certify residency, after which time, they will be denied the EIC with respect to a claimed child, subject to normal appeals rights and the ability to contest the denial in Tax Court.

The goal of the certification program is to evaluate high-risk EITC claims before they are paid, using a process that is less burdensome to taxpayers and less costly to the IRS than an audit. In addition, the certification program will enable eligible, but high-risk, taxpayers to receive their refunds faster than if they were subsequently challenged by the IRS. By helping to ensure that certain high-risk taxpayers receive the right amount of the credit before refunds are paid, the program will also reduce the burden that is imposed when taxpayers must repay erroneous refunds.

The IRS and the Treasury Department want to implement this program in a manner that will continue the goals of the EIC program, will not be overly burdensome for taxpayers (and other parties) and will not adversely affect participation. Accordingly, the IRS will test the certification program with a limited number of taxpayers (approximately 45,000) and will carefully study the results from this group to determine the effect of certification on compliance and participation. In addition, the IRS and Treasury Department are continuing to evaluate the proposed form and instructions, the types of documentation that will be required, and the IRS' communication and outreach strategy. As part of this evalua-

tion, the IRS will be conducting focus groups of taxpayers, practitioners and third parties (who are asked to help establish residency) prior to the test of the certification program.

As part of the certification program, the IRS and Treasury Department previously considered requiring certain taxpayers whose relationship with a claimed child could not be systematically checked by the IRS through existing databases (e.g., social security records) to establish a qualifying relationship with the child before their EIC claim is accepted. The certification test will not include a relationship certification requirement and will be limited to residency certification.

III. Request for Comments

Based on preliminary discussions and initial drafts of the residency certification form, stakeholders have expressed concerns about various aspects of the certification program. The IRS and Treasury Department are committed to continuing this dialogue with stakeholders and are issuing this announcement to help facilitate comments. Concerns expressed by stakeholders prior to and in response to this announcement will be carefully considered by the IRS and Treasury Department in developing the certification program.

The IRS has revised Form 8836, which is attached to this announcement and will be posted on the IRS' website at <http://www.irs.gov/taxpros/lists/0,,id=97784,00.html>.

The IRS and Treasury Department welcome all comments and suggestions and are particularly interested in comments on the following matters:

1. Under Form 8836, taxpayers will have the option to provide different types of information or documentation to establish residency. Are there other sources or types of information that should be added to the form (as another option) that would still give the IRS reasonable assurances that the taxpayer satisfies the residency requirement? What information or documentation could the IRS request that taxpayers currently possess or could reasonably obtain to verify that the taxpayer resides with a child? What information or documentation currently requested on the forms is difficult or burdensome for the taxpayer or a third party to provide, and why?

2. How can Form 8836 be simplified or clarified? For example, would it be easier for taxpayers to certify one child per form or two children per form? How could the instructions to Form 8836 be simplified or clarified?

3. What can the IRS do to reach out to taxpayers and encourage them to pre-certify, rather than wait until the filing season? What is the message the IRS needs to convey and what are the best means through which to convey that message? Who should be the primary deliverer of particular messages — the IRS or outside stakeholders? Are there other incentives the IRS can provide to taxpayers to encourage them to pre-certify?

4. How can the certification program be used to reach out to taxpayers who are eligible for the EIC, but not currently claim-

ing the credit? Should the messages associated with the certification program be coupled with messages designed to educate taxpayers about their eligibility to claim the EIC and to increase participation? Alternatively, would combining these messages cause confusion, in which case, what separate measures should the IRS take to reach out to eligible taxpayers who are not claiming the credit?

5. What factors should the IRS take into account in designing the study of the initial group of taxpayers who are asked to certify and in evaluating the results of that study?

Comments about the draft Form 8836 or the certification pilot must be submitted on or before July 14, 2003, in order to be considered for the pilot. Otherwise, comments about the precertification process should be

submitted on or before December 31, 2003. Comments about certification taking place during the filing season should be submitted on or before April 15, 2004.

Taxpayers may submit electronic comments on Form 8836 at <http://www.irs.gov/taxpros/lists/0,,id=97784,00.html> and on the pre-certification and certification processes to notice.comments@irs.counsel.treas.gov. Alternatively, comments may be sent to: CC:PA:RU (Announcement 2003–40), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (Announcement 2003–40), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC.

Department of the Treasury
Internal Revenue Service

▶ See instructions starting on page 2.

Part I Taxpayer Information (to be completed by taxpayer)

Your first name and initial	Last name	Your social security number
If you will be filing a joint return for 2003, spouse's first name and initial	Last name	Spouse's social security number
Home address (number and street). If you have a P.O. box, see instructions		Your daytime phone number ()
City, town or post office, state, and ZIP code		Your evening phone number ()

Part II Qualifying Children Information (to be completed by taxpayer)

Caution. If you have two qualifying children, see instructions before completing this part.

Child 1 ▶	Child's first name	Last name	Child's social security number
Child 2 ▶	Child's first name	Last name	Child's social security number

Part III Proof of Residency (to be completed by taxpayer) (see instructions)

Check **one or more** boxes below and attach any required documentation. The combined documentation must include your name, the child's name, street address, and dates the child lived with you to show that you and the child lived together for **more than half** of 2003. See **Residency Test** on page 2 for details and exceptions.

- I have attached copies of one or more of the following official records: Child-care records, community-based organization records, employment records, Indian tribal enrollment records, leases, medical records, religious records, school records, social service agency records, or utility bills.
- I have attached a letter on official letterhead from one or more of the following third parties: Child-care provider, clergy, community-based organization official, employer, health-care provider, Indian tribal official, landlord or property manager, school official, social service agency official, or utility company.
- A third party has completed Part IV below.

Note. The IRS may contact the third party who signs Part IV and any person or organization that provides the documentation you attach to this form.

Under penalties of perjury, I declare that I have examined this statement, and to the best of my knowledge and belief, it is true, correct, and complete.

Taxpayer Sign Here ▶

Signature of spouse named in Part I ▶

Date ▶

Part IV Third Party Affidavit (to be completed by third party if the last box in Part III is checked)

First, check the box below that best describes your relationship to the taxpayer or one or both children named above.

- Child-care provider Clergy Community-based organization official Employer Health-care provider
- Indian tribal official Landlord or property manager School official Social service agency official

Next, complete the following statement.

Based on my records or personal knowledge, I believe that one (or both) of the above-named taxpayer(s) **and** (check the box that applies)

- Child 1 Child 2 Child 1 and 2 lived together at the following address:

Address (number and street) ▶ _____

City, town or post office, state, and ZIP code ▶ _____

from month ▶ _____ day ▶ _____, 2003, through month ▶ _____ day ▶ _____, 2003.

Under penalties of perjury, I declare that I have examined this affidavit, and to the best of my knowledge and belief, it is true, correct, and complete.

Third Party Sign Here ▶

Date ▶

Your name (print or type) ▶

Title (if any) ▶

Name of organization (if any) ▶

Address (including city, town or post office, state, and ZIP code)

Your daytime phone number
()

Instructions

Purpose of Form

Use Form 8836 if the IRS sent this form to you and you have a qualifying child for the earned income credit (EIC). We need this form to show that you and your child met the **residency test** (defined on this page) for 2003.

Who Must File

File this form **only** if:

- You are claiming or expect to claim the EIC with a qualifying child for 2003 **and**
- The IRS sent this form to you with a letter directing you to file it.

If you do not file Form 8836, the IRS will not allow the EIC with a qualifying child for 2003.

For details on the EIC eligibility rules, including the definition of qualifying child, see **Pub. 596**, Earned Income Credit (EIC). You can order Pub. 596 by calling **1-800-TAX-FORM** (1-800-829-3676) or you can download it from the IRS website at **www.irs.gov**.

Pre-recorded information about the EIC is also available by phone 24 hours a day, 7 days a week. Call **1-800-829-4477** and select TeleTax Topic No. 601. Have paper and a pen or pencil handy to take notes.

When To File

There are two different time periods for filing Form 8836 for 2003. You may file Form 8836 either:

- **Before January 1, 2004.** If you file the form during this period, **you may be able to avoid a delay in receiving the EIC part of your tax refund for 2003.**
- **With your 2003 tax return.** Under this option, the EIC part of your refund **will be delayed** while we review the information you submitted.

Where To File

Send the form to:

**Internal Revenue Service
Stop 4300, Annex R2
Kansas City, MO 64999-0065**

Note. If you file this form after **December 31, 2003**, you may either file it at the above address or attach it to your tax return. If you file it with your return, be sure to send it to the Internal Revenue Service address shown in the instructions for your tax return.



You cannot file **this form** electronically. However, you may still file your tax return electronically. If you do so, send Form 8836 and all required attachments to:

**Internal Revenue Service
Stop 4300, Annex R2
Kansas City, MO 64999-0065**

Residency Test

Your child must have lived with you in the United States for more than half of 2003. Include the time that you or your child are temporarily apart due to a special circumstance, such as military service, school attendance, or juvenile detention. It does not matter where you lived with your child. For example, you may live with your child in a homeless shelter. For more details on the residency test, see Pub. 596.

Special Rule For a Child Who Was Born or Died in 2003. A child is considered to have lived with you for more than half of 2003 if the child was born or died in 2003 **and** your home was the child's home for the entire time he or she was alive in 2003.

What We Will Do After We Receive This Form

We will review the information you send us. We will let you know if you have met the residency test needed to get your EIC. If we need more information, we will contact you.

If you do not meet the residency test for a child, we will let you know. The IRS will not allow the EIC based on that child.

How To Get Help

Call **1-800-294-2723** if you need assistance completing this form or you are having difficulty obtaining the documentation you are required to provide with this form. Assistance is available Monday through Friday from 8:00 a.m. to 8:00 p.m. Eastern time.

You may also visit any IRS Taxpayer Assistance Center. To find out the location and hours of the nearest center, call **1-800-829-1040** or visit the IRS website at **www.irs.gov/localcontacts**. You also can contact the Taxpayer Advocate Service at **1-877-777-4778** or the local Taxpayer Advocate office in your area.

Part I

P.O. Box. Enter your box number **only** if your post office does not deliver mail to your home. Otherwise, enter your home street address.

Daytime and Evening Phone Numbers. Providing your daytime and evening phone numbers may help speed the processing of this form. We may have questions about the information you provided. By answering our questions over the phone, we may be able to continue processing the form without mailing you a letter. If you will be filing a joint return, you may enter either spouse's phone numbers.

Part II

Be sure that any child named is your qualifying child and you expect to claim that child for the EIC on your 2003 tax return.

Your qualifying child must have a valid social security number (SSN), unless the child was born and died in 2003. If the qualifying child was born and died in 2003

and did not have an SSN, attach a copy of that child's birth certificate to Form 8836 and enter "Died" instead of the child's SSN.

For purposes of claiming the EIC, a valid SSN is a number issued by the Social Security Administration unless "Not Valid for Employment" is printed on the social security card and the number was issued solely to apply for or receive a Federally funded benefit.

If you have two qualifying children you may need to complete more than one Form 8836. For example, if in Part IV a doctor is signing for Child 1 and a clergyman is signing for Child 2, you will have to complete two forms. List Child 1 on the form you are giving to the doctor and Child 2 on the form you are giving to the clergyman.

Do not provide information for more than two qualifying children. You need only two qualifying children to claim the maximum EIC.

Part III

You must attach documentation showing that each qualifying child lived with you for more than half of 2003. You may need to send more than one item to show that your child lived with you for more than half of 2003.

If you and your spouse are filing a joint return, you only need to show that one of you lived with your child for more than half of 2003.

Who Can Provide Documents to You. You may submit documentation from any of the following third parties (other than you or your spouse).

- School official (such as a teacher, principal, or administrative assistant).
- Health-care provider (such as your doctor, your nurse practitioner, or a clinic official).
- Member of the clergy (such as your minister, priest, rabbi, or imam).
- Child-care provider who is age 18 or older (and not your neighbor or relative) or licensed or regulated by the state or local government for the area in which the child care was provided.
- Your employer.
- Landlord or property manager.
- Social service agency official (such as a case worker at a public assistance office).
- Community-based organization official (such as an official from the YMCA, YWCA, Boy Scouts, Girl Scouts, Boys and Girls Clubs, 4-H, Little League, Police Athletic League, immigrant advocacy groups, low-income taxpayer clinics, neighborhood associations, homeowners and condominium associations and other non-profit groups).
- Indian tribal official.
- Utility company (such as an electric power or natural gas company).

What Kind of Documents You Must Provide. You may provide either of the following from any third party listed above:

- A copy of an official record (such as child-care records, a lease, medical records, a pay stub, or school records), or
- A letter on official letterhead.

You also may ask any third party that is listed in Part IV of the form to complete the Part IV affidavit to show that you and your child lived together for part or all of 2003. See the instructions for Part IV on page 4.

What the Documents Must Show. If you send an official record or letter, it must clearly show:

- Your name, your child's name, or both names, and
- A street address and the dates that you or your child lived at that address during 2003, and
- The name, address, and phone number of the person or organization that provided the record or letter.

If someone fills out Part IV of this form for you, be sure that it is complete.

How Many Documents Do You Need? You may submit any combination of the documents listed above as long as they show, when taken together, that you lived with your child for more than half of 2003. In some cases, a single document will show that you and your child lived at the same address. In other cases, you may need to provide one document showing your name and address as well as a second document showing your child's name with the same address. Multiple documents may be necessary to show that your address and your child's address were the same for more than half of 2003.

Here are a few acceptable combinations of documents:

- One document that shows that both you and your child lived at the same address for more than half of 2003.
- One document that shows that you lived at an address for more than half of 2003 and a second document that shows that your child lived at the same address during the same period of time.
- One document that shows that you and your child lived at the same address for part of 2003 and a second document that shows that you and your child lived together for the remainder of 2003.
- If you have two children, separate documents for each child to show that each one lived with you for more than half of 2003.
- If you have two children, one document to show that both of your children lived with you for more than half of 2003.

Example 1. You attach a letter on official letterhead from Acme Medical Clinic showing that your child lived with you from January 1, 2003, through March 31, 2003. You also have Reverend Smith, your clergyman, complete Part IV showing that you and your child lived together from April 1, 2003, through July 31, 2003. You check the second and third boxes in Part III. Because the total time shown is more than half of the year, the residency test is met.

Example 2. You attach a transcript of your child's grades from the Washington Elementary School showing that your child lived with you from January 1, 2003, through May 31, 2003. You also attach a letter on official letterhead from the principal of the Lincoln Middle School. The letter shows the dates of school attendance and that the child's address was the same as yours. The letter covers the period from September 1, 2003, through October 31, 2003. You check the first two boxes in Part III. Because the total time shown is more than half of the year, the residency test is met.

Note. If you cannot obtain official records, a letter, or a completed Part IV from one or more third parties to show that your child lived with you for more than half of 2003, call **1-800-294-2723** and we will help you.

Signing the Form. You must sign and date Part III under penalties of perjury before you send it to us with the documents. Criminal penalties may be imposed for making a false statement.

Part IV

You may skip Part IV if you are submitting official records or letters that show that your child lived with you for more than half the year in 2003.



If you need to provide more than one affidavit (Part IV) to show that your child lived with you for more than half of 2003, complete as many additional Forms 8836 as you need. On the additional Forms 8836, you do not have to enter your spouse's name and SSN or your address.

Neither you nor your spouse may complete this part. A third party listed in Part IV who has records that show, or who personally knows, that you and your qualifying child lived together for part or all of 2003 must complete this part. The third party must complete all applicable information and sign Part IV under penalties of perjury. If the third party does not complete all applicable information in Part IV, the affidavit may not be accepted. Criminal penalties may be imposed for making a false statement.

Privacy Act and Paperwork Reduction Act Notice.

The Privacy Act of 1974 and the Paperwork Reduction Act of 1980 require that when we ask you for information we must first tell you our legal right to ask for the information, why we are asking for it, and how it will be used. We must also tell you what could happen if we do not receive it and whether your response is voluntary, required to obtain a benefit, or mandatory under the law.

This notice applies to all papers you file with us. It also applies to any questions we need to ask you so we can complete, correct, or process your return; figure your tax; and collect tax, interest, or penalties.

Our legal right to ask for information is Internal Revenue Code sections 6001, 6011, and 6012(a), and their regulations. They say that you must file a return or statement with us for any tax for which you are liable. Your response is mandatory under these sections. Code section 6109 and its regulations say that you must provide your taxpayer identification number on what you file. This is so we know who you are, and can process your return and other papers.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as stated in Code section 6103.

We ask for tax return information to carry out the tax laws of the United States. We need it to figure and collect the right amount of tax.

We may give the information to the Department of Justice and to other Federal agencies, as provided by law. We may give it to cities, states, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism.

If you do not file a return or give fraudulent information, you may be charged penalties and be subject to criminal prosecution.

Please keep this notice with your records. It may help you if we ask you for other information. If you have any questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping**, 6 min.; **Learning about the law**, 11 min.; **Preparing the form**, 24 min.; **Copying, assembling, and sending the form to the IRS**, 20 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send the form to this address. Instead, see **Where To File** on page 2.