

## Section 32.—Earned Income

26 CFR 1.32–2: *Earned income credit for taxable years beginning after December 31, 1978.*

### T.D. 9045

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Earned Income Credit for Taxable Years Beginning After December 31, 1978

AGENCY: Internal Revenue Service (IRS),  
Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the earned income credit. The regulations reflect changes in the law since the existing regulations were published in the **Federal Register** on March 13, 1980. Due to subsequent statutory changes in the applicable tax law, substantial portions of the regulations are no longer in conformity with current law. Accordingly, portions of the existing regulations are removed. These regulations apply to individual taxpayers claiming the earned income credit.

DATES: *Effective Date:* These regulations are effective, March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Shoshanna Tanner at (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

#### Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 32 of the Internal Revenue Code (Code). Section 32 allows a refundable credit to low-income taxpayers who meet certain income and eligibility requirements. Section 43 (the predecessor of section 32) was added to the Code by the Tax Reduction Act of 1975 (Public Law 94–12, 89 Stat. 26) and made permanent by the Revenue Act of 1978 (Public Law 95–

600, 92 Stat. 2763). Final regulations (T.D. 7683, 1980–1, C.B. 3 [45 FR 16174]) under section 43 were published in the **Federal Register** on March 13, 1980. Section 43 was redesignated as section 32 by the Tax Reform Act of 1984 (Public Law 98–369, 98 Stat. 494). Section 1.43–2 was redesignated as §1.32–2 in Treasury Decision 8448 (1992–2 C.B. 21 [57 FR 54919]) on November 23, 1992.

Section 1.32–2(b)(2) of the existing regulations refers to section 143 for an explanation of the term “married individual.” The provisions of section 143 were reenacted as section 7703 by the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 2085).

In addition, portions of the existing regulations are inconsistent with changes made by the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, 104 Stat. 1388), the Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107–16, 115 Stat. 38), and various other legislative enactments.

#### Explanation of Provisions

To comport with the redesignation of section 43 to section 32 and §§1.43–2 to 1.32–2, these final regulations replace references to section 43 with references to section 32. Similarly, these regulations replace the references to section 143 in §1.32–2(b)(2) with references to section 7703. These regulations also remove the inconsistent provisions in the existing regulations.

#### Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f), these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

The principal author of these regulations is Shoshanna Tanner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Department of Treasury participated in their development.

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#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 1 is amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Par. 2. Section 1.32–2 is amended as follows:

1. Paragraphs (a), (b)(1), (c)(1), and (d) are removed and reserved.

2. Paragraphs (b)(2), (b)(3), (c)(2), and (e)(2) are revised.

The revisions read as follows:

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

(a) [Reserved].

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

(2) *Earned income.* For purposes of this section, earned income is computed without regard to any community property laws which may otherwise 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 nonresident alien individuals not connected with United States business).

(d) [Reserved].

(e) \* \* \* (1) \* \* \*.

(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.

David A. Mader,  
Assistant Deputy Commissioner  
of Internal Revenue.

Approved February 11, 2003.

Pamela F. Olson,  
Assistant Secretary of the Treasury.

(Filed by the Office of the Federal Register on March 5, 2003, 8:45 a.m., and published in the issue of the Federal Register for March 6, 2003, 68 F.R. 10655)

## Section 874.—Allowance of Deductions and Credits

26 CFR 1.874-1: Allowance of deductions and credits to nonresident alien individuals.

### T.D. 9043

## DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

### Disallowance of Deductions and Credits for Failure to File Timely Return

AGENCY: Internal Revenue Service (IRS),  
Treasury.

March 24, 2003

**ACTION:** Final regulations and removal of temporary regulations.

**SUMMARY:** This document contains final regulations relating to the disallowance of deductions and credits for nonresident alien individuals and foreign corporations (collectively, foreign taxpayers) that fail to file a timely U.S. income tax return. The regulations affect foreign taxpayers that fail to file a return by the appropriate deadlines.

**DATES:** *Effective Date:* These regulations are effective March 10, 2003.

*Applicability Date:* For dates of applicability, see §§1.874-1(b)(4) and 1.882-4(a)(3)(iv) of these regulations.

**FOR FURTHER INFORMATION CONTACT:** Nina E. Chowdhry, (202) 622-3880 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

This document contains amendments to 26 CFR part 1. On January 29, 2002, final and temporary regulations (T.D. 8981, 2002-7 I.R.B. 496 [67 FR 4173]) relating to the disallowance of deductions and credits for foreign taxpayers that fail to file a timely U.S. income tax return under sections 874 and 882 of the Internal Revenue Code (Code) were published in the **Federal Register**. A notice of proposed rulemaking (REG-107100-00, 2002-7 I.R.B. 529 [67 FR 4217]) cross-referencing the temporary regulations was also published in the **Federal Register**. No public hearing was requested or held. No written or electronic comments responding to the notice of proposed rulemaking were received. The proposed regulations are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of

information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

#### Drafting Information

The principal author of these regulations is Nina Chowdhry of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

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#### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

#### PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for “Section 1.874-1T” and “Section 1.882-4T” and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.874-1 also issued under 26 U.S.C. 874. \* \* \*

Section 1.882-4 also issued under 26 U.S.C. 882(c). \* \* \*

Par. 2. Section 1.874-1, paragraphs (b)(2) through (b)(4) are revised to read as follows:

*§1.874-1 Allowance of deductions and credits to nonresident alien individuals.*

\* \* \* \* \*

(b) \* \* \*

(2) *Waiver.* The filing deadlines set forth in paragraph (b)(1) of this section may be waived if the nonresident alien individual establishes to the satisfaction of the Commissioner or his or her delegate that the individual, based on the facts and circumstances, acted reasonably and in good faith in failing to file a U.S. income tax return (including a protective return (as described in paragraph (b)(6) of this section)). For this purpose, a nonresident alien individual shall not be considered to have acted reasonably and in good faith if the indi-