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EARNED INCOME TAX CREDIT

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Question: I have been hearing a lot in the news lately about the Earned Income Tax Credit. How do I know if I qualify? What if I qualified for the credit last year but did not file for it? Can I file for it now?

Answer: The Earned Income Tax Credit (EITC) is a tax benefit for low to moderate income workers. Beginning in 1975, it was developed to provide eligible workers with tax relief, to supplement wages, and to provide an incentive to work. Even for a worker who owes additional taxes, the EITC can provide a helpful offset to other tax liability. The credit can also benefit workers who are not required to pay federal taxes due to the level of their income.

Surprisingly, however, the Internal Revenue Service (IRS) estimates that every year 15% of EITC benefits are unclaimed. That figure translates into $13,228,000 in benefits that were unclaimed by New Hampshire workers in the 2004 tax season. Therefore, it makes sense to consider whether you may qualify for this benefit.

To qualify, the worker must meet the following requirements: (1) a valid social security number; (2) earned income during 2005; and (3) United States citizenship, a resident alien all year, or a non-resident alien married to a United States citizen or resident alien (and filing a joint return); and (4) investment income of $2,700 or less. If you do not have a qualifying child, you must also be between the ages of 25 and 65, live in the United States for more than half the year and not qualify as a dependent of another person. There is no age requirement for workers with qualifying children.

To claim the credit, workers must file as “single,” “head of household,” or “married filing jointly.” The credit is not available to those submitting “married filing separately” returns. A Schedule EIC also needs to be attached to the return. For the purposes of the EITC, earned income includes all the taxable income a worker received during the tax year. This includes wages, salaries and tips, union strike benefits, long-term disability benefits received prior to minimum retirement age, and net earnings from self-employment.

In order to claim a “qualifying child,” the child must have a valid social security number and must meet the requirements of a three-part test established by the IRS for the purposes of the Earned Income Tax Credit. First, the child must be the worker’s son, daughter, stepchild, brother, sister, stepsibling, grandchild or eligible foster child. Second, the child must be under the age of 19, a full-time student under the age of 24, or permanently or totally disabled at any time during 2005, regardless of age. Lastly, the child must have lived with the worker for more than half of the year for which the credit is claimed.

In some instances, the IRS may require a worker to provide additional documents to verify that a claimed qualifying child meets the requirements of the test. If two workers claim the same qualifying child, the IRS will also investigate to determine which party has the right to claim the child. Examples of documentation a worker may be asked to provide in the course of an investigation or audit include a copy of the child’s birth certificate and a letter from the child’s school district verifying the child lived in that district for more than six months.

The amount of credit a worker may receive as a result of the credit will vary. Workers without a qualifying child in their home, with an income below $11,750, can receive a credit of up to $399.

Workers with one qualifying child in their home who earned less than $35,263 can receive a credit of up to $2,662. Lastly, a worker with more than one qualifying child in their home, who earned less than $35,263, can receive up to $4,400.

If a worker determines that she was eligible for the EITC for a prior tax year, it is not too late to file for the credit. An amended tax return, Form 1040X, must be filed with the IRS, along with a copy of the previously filed return and a Schedule EIC for that year. If a return for a prior tax year was not previously filed, a worker may still claim the credit by filing a return and the Schedule EIC for that year. If you file for the credit from a previous year, the IRS may discover that taxes are owned. Often the amount of the credit will cover the amount due. If not, the IRS is usually willing to work out a payment plan or may be willing to enter into an offer in compromise to settle the debt for less than the balance. Credit for prior years can be claimed for the last three years only (i.e. 2002, 2003 and 2004).

The EITC is a valuable tool for those low to moderate income workers who qualify. If, however, you claim the credit when you are not eligible and the IRS determines that the error was due to reckless or intentional disregard, a worker is disallowed from taking the credit for two years, even if eligible to do so. The time is increased to ten years if the IRS finds the worker fraudulently claimed the credit. In those situations, the IRS may also impose significant penalties.

If you are audited by the IRS or denied the EITC, the Low-Income Taxpayer Project (LITP), a special project of the New Hampshire Pro Bono Referral Program, may be able to help you. The LITP assists low-income taxpayers with federal tax controversies under $50,000 per tax year. If you are involved in such a dispute with the IRS, please contact the Low-Income Taxpayer Project at (603) 228-6028. Qualified clients will be referred to a tax attorney who will assist at no charge.

For more information about the Earned Income Tax Credit, see IRS Publications 596 and 501or visit the IRS website at www.irs.gov.

*Answered by **Attorney Joceline D. Champagne**, Low-Income Taxpayer Project Coordinator of the New Hampshire Pro Bono Referral Program.*