

INFORMATION PAPER

DAJA-LA
31 July 2003

SUBJECT: Earned Income Tax Credit (EITC) Pre-certification Program

1. PURPOSE: To explain the Internal Revenue Service's (IRS) new pilot program requiring pre-certification of eligibility by some EITC recipients.

2. FACTS:

a. What is the pre-certification program? This program requires certain recipients of EITC to pre-certify their eligibility for EITC prior to filing their tax return for the tax year. The pilot program will begin in August 2003. The high rate of error and fraud in the EITC program precipitated Congress requiring this program. Affected taxpayers will receive a notice from the IRS along with the necessary forms to be completed and returned to the IRS.

b. Who will this program affect? During this first pilot year, only 45,000 EITC recipients will receive a notice requiring them to pre-certify. The 45,000 will come from the tax returns of taxpayers who received EITC prior to the 2002 tax year. The number of military EITC recipients who will receive this notice in 2003 is expected to be few. However, beginning in summer 2004, over 2 million EITC recipients will need to pre-certify.

c. What do recipient's have to pre-certify? The pre-certification will address Qualifying Children Residency. The IRS may require a taxpayer to pre-certify that each qualifying child they claim for EITC purposes resided in the taxpayer's home for over one-half of the tax year. Residency pre-certification may be required in any tax year regardless of how many other years the taxpayer has certified residency. A new form, Form 8836, is used to accomplish this pre-certification. Form 8836 requires the taxpayer to:

a). submit school records, medical records, day-care records, or social service agency records that show each child's address and dates of residency ;

b). send a letter on official letterhead from the school, health care provider, or clergy that shows each child's address and dates of residency; **or**

c). have an authorized person sign the Affidavit (under penalty of perjury) provided in part IV of Form 8836 attesting to their personal knowledge of each child's address and dates of residency.

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d. What is the consequence of NOT pre-certifying? If the IRS notifies a taxpayer that they must pre-certify residency of a child and the taxpayer fails to comply the EITC portion of their refund will be held until the required form(s) are received and processed.

3. Legal Assistance Role: Form 8836 has not yet been approved as final. It be mailed to the effected taxpayers and will not be available on the IRS web site. Legal Assistance Attorneys should be able to answer questions and put out preventive law articles explaining this new program so that military taxpayers who receive a pre-certification notice know where to seek help.

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