

that calendar year, the credit shall be allowed against the tax for the last taxable year so beginning.

§ 1.31-2 Credit for “special refunds” of employee social security tax.

(a) *In general.* (1) In the case of an employee receiving wages from more than one employer during the calendar year, amounts may be deducted and withheld as employee social security tax with respect to more than \$3,600 of wages received during the calendar year 1954, and with respect to more than \$4,200 of wages received during a calendar year after 1954. For example, employee social security tax may be deducted and withheld on \$5,000 of wages received by an employee during a particular calendar year if the employee is paid wages in such year in the amount of \$3,000 by one employer and in the amount of \$2,000 by another employer. Section 6413(c) (as amended by section 202 of the Social Security Amendments of 1954 (68 Stat. 1089)), permits, under certain conditions, a so-called “special refund” of the amount of employee social security tax deducted and withheld with respect to wages paid to an employee in a calendar year after 1954 in excess of \$4,200 (\$3,600 for the calendar year 1954) by reason of the employee receiving wages from more than one employer during the calendar year. For provisions relating to the imposition of the employee tax and the limitation on wages, see with respect to the calendar year 1954, sections 1400 and 1426(a)(1) of the Internal Revenue Code of 1939 and, with respect to calendar years after 1954, sections 3101 and 3121(a)(1) of the Internal Revenue Code of 1954, as amended by sections 208(b) and 204(a), respectively, of the Social Security Amendments of 1954 (68 Stat. 1094, 1091).

(2) An employee who is entitled to a special refund of employee tax with respect to wages received during a calendar year and who is also required to file an income tax return for such calendar year (or for his last taxable year beginning in such calendar year) may obtain the benefits of such special refund only by claiming credit for such special refund in the same manner as if such special refund were an amount deducted and withheld as income tax at

the source. For provisions for claiming special refunds for 1955 and subsequent years in the case of employees not required to file income tax returns, see section 6413(c) and the regulations thereunder. For provisions relating to such refunds for 1954, see 26 CFR (1939) 408.802 (regulations 128).

(3) The amount of the special refund allowed as a credit shall be considered as an amount deducted and withheld as income tax at the source under chapter 24 of the Internal Revenue Code of 1954 (or, in the case of a special refund for 1954, subchapter D, chapter 9 of the Internal Revenue Code of 1939). If the amount of such special refund when added to amounts deducted and withheld as income tax exceeds the taxes imposed by subtitle A of the Internal Revenue Code of 1954, the amount of the excess constitutes an overpayment of income tax under Subtitle A, and interest on such overpayment is allowed to the extent provided under section 6611 upon an overpayment of income tax resulting from a credit for income tax withheld at source. See section 6401(b).

(b) *Federal and State employees and employees of certain foreign corporations.* The provisions of this section shall apply to the amount of a special refund allowable to an employee of a Federal agency or a wholly owned instrumentality of the United States, to the amount of a special refund allowable to an employee of any State or political subdivision thereof (or any instrumentality of any one or more of the foregoing), and to the amount of a special refund allowable to employees of certain foreign corporations. See, with respect to such special refunds for 1954, section 1401(d)(4) of the Internal Revenue Code of 1939, and with respect to such special refunds for 1955 and subsequent years, section 6413(c)(2) of the Internal Revenue Code of 1954, as amended by section 202 of the Social Security amendments of 1954.

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

(a) *Allowance of credit.* For taxable years beginning after December 31,

1978, subject to the limitations of paragraph (b) of this section, an eligible individual (as defined in paragraph (c)(1) of this section) is allowed as a credit against the tax imposed by subtitle A of the Code for the taxable year, an amount equal to 10 percent of the first \$5,000 of earned income (as defined in paragraph (c)(2) of this section) for the taxable year. For earlier taxable years beginning before January 1, 1979, see § 1.43-1.

(b) *Limitations*—(1) *Amount of credit.* The amount of the credit allowed by section 43 and paragraph (a) of this section for the taxable year must not exceed the excess, if any, of \$500 over 12.5 percent of that amount of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year which exceeds \$6,000. For the meaning of the term “earned income,” see paragraph (c)(2) of this section. Adjusted gross income is determined under section 62 and the regulations thereunder. If an individual has adjusted gross income or earned income of \$10,000 or more, the individual is not entitled to the credit.

(2) *Married individuals.* No credit is allowed by section 43 and paragraph (a) of this section in the case of an eligible individual who is married (within the meaning of section 143 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 143(b) and the regulations thereunder (relating to certain married individuals living apart).

(3) *Length of taxable year.* No credit is allowed by section 43 and paragraph (a) of this section 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) *Definitions*—(1) *Eligible individual.* For purposes of this section, an eligible individual is an individual who meets the following requirements of this paragraph (c)(1).

(i) For the taxable year the individual must meet any one of the following three requirements set forth, respectively, in (A), (B), and (C) of this subdivision (i).

(A) The individual must be married (within the meaning of section 143 and the regulations thereunder) and be entitled to a deduction under section 151 for a child (within the meaning of section 151(e)(3) and the regulations thereunder). The child must have the same principal place of abode (as defined in § 1.2-2(c)) as the individual and that principal place of abode must be in the United States for the entire taxable year.

(B) The individual must qualify as a surviving spouse (as determined under section 2(a) and the regulations thereunder). Thus, the spouse of the individual must have died within the period of the 2 taxable years immediately preceding the individual's taxable year. Also, the individual must have furnished over half the cost of maintaining as the individual's home a household in the United States for the entire taxable year which is the principal place of abode of a child of the individual who qualifies as a dependent for whom the individual is entitled to a deduction under section 151.

(C) The individual must qualify as a head of household (as determined under section 2(b) and the regulations thereunder but without regard to section 2(b)(1)(A)(ii) and (B) and the regulations, thereunder). Thus, the individual cannot be married as of the close of the taxable year and also cannot qualify as a surviving spouse under section 2(a). Also, the individual must have furnished over half the cost of maintaining as the individual's home a household in the United States for the entire taxable year which is the principal place of abode of a child or descendant of the individual who is unmarried or who qualifies as a dependent for whom the individual is entitled to a deduction under section 151.

(ii) For the entire taxable year, the individual must not be entitled to exclude any amount from gross income under section 911 (relating to earned income by individuals in certain camps outside the United States) or section

931 and the regulations thereunder (relating to income from sources within the possessions of the United States).

(iii) The rules of this paragraph (c)(1) are illustrated by the following examples:

Example 1. A, who is married and a member of the United States Armed Forces, maintains his household outside the United States for part of the taxable year. A is not an eligible individual. However, if A maintains his household inside the United States for the entire taxable year and is only temporarily absent therefrom by reason of military service and if the household is his principal place of abode and the principal place of abode of his child who receives over half of his support from the taxpayer for the calendar year in which the taxable year of the taxpayer begins and who either has less than \$1,000 of gross income for the calendar year in which the individual's taxable year begins or who has not attained the age of 19 at the close of the calendar year in which the individual's taxable year begins or is a student, then the individual is an eligible individual if he meets the requirements of subdivision (ii) of this paragraph.

Example 2. B's wife died in 1975 and B has not remarried. For his entire taxable year beginning January 1, 1979, B maintains his household inside the United States. The household is, for the entire taxable year, B's principal place of abode and the principal place of abode of B's unmarried grandchild whose natural parents are deceased. Thus B qualifies as a head of household (as determined under section 2(b) without regard to subparagraphs (A)(ii) and (B) of section 2(b)(1)). In these circumstances, regardless of whether B provides sufficient support to claim the grandchild as a dependent, B is an eligible individual if he meets the requirements of subdivision (ii) of this paragraph.

Example 3. C is married and maintains his household inside the United States for the entire taxable year. The household is his principal place of abode and, for the entire year, is also the principal place of abode of a 12 year old child whose natural parents are deceased and who is placed with C by a State agency to provide the child with foster care. C receives compensation from the State agency to cover all of the cost of maintaining the child in his home. The child is in C's care and is cared for as C's own child. In these circumstances, the child is C's foster child, but C is not able to claim the child as a dependent since C did not provide half the child's support for the year. C is not eligible for the earned income credit.

Example 4. Assume the same facts as in example (3) except that C receives no compensation from the State agency, and C provides over half the child's support and is able

to claim the child as a dependent. C is an eligible individual if he meets the requirements of subdivision (ii) of this paragraph.

Example 5. D's husband died in 1974 and D has not remarried. For the entire taxable year beginning January 1, 1979, D maintains her household inside the United States. The household is D's principal place of abode and, for the entire taxable year, is also the principal place of abode of D's unmarried son. D cares for her son in all respects except that her parents provide over half of the son's support. D qualifies as a head of household (as determined under section 2(b) without regard to subparagraph (A)(ii) and (B) of section 2(b)(1)). D is an eligible individual if D meets the requirements of subdivision (ii) of this paragraph.

Example 6. Assume the same facts as in example 5 except that D is married. Since D cannot qualify as a head of household, and D's son cannot be claimed as D's dependent, D is not an eligible individual.

(2) *Earned income.* For purposes of this section, earned income means—

(i) Wages, salaries, tips, other employee compensation, and

(iii) Net earnings from self-employment (within the meaning of section 1402(a) and the regulations thereunder).

Earned income includes compensation excluded from gross income, such as disability income excluded under section 105(d), the rental value of a parsonage excluded under section 107, and the value of meals and lodging furnished for the convenience of the employer excluded under section 119. 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) *Examples.* The application of this section is illustrated by the following examples. For purposes of these examples, assume that the eligible individual does not receive a pension, an annuity, or an amount to which section 871(a), 911, or 931 applies.

Example 1. A and B (married individuals) maintain a household inside the United

§ 1.32-3T

States which is their principal place of abode and the principal place of abode of their two children who are 12 and 14 years old. A and B are calendar year taxpayers and, for 1979, they file a joint return. A and B have a total earned income of \$7,600 (computed without regard to any community property laws) and have adjusted gross income of less than \$7,600. The earned income credit of \$300 is determined as follows:

Basic credit (10 percent of \$5,000 under paragraph (a) of this section)			\$500
Initial limitation amount		\$500	
Less: Reduction under paragraph (b)(1) of this section:			
Earned income for taxable year	\$7,600		
Less	\$6,000		
Excess over \$6,000	1,600		
12½ percent of excess (\$1,600)		\$200	
Maximum credit (if less than basic credit)			\$300

Example 2. Assume the same facts as in example 1 except that A and B have earned income of \$4,000 and adjusted gross income of \$7,000. The earned income credit of \$375 is determined as follows:

Basic credit (10 percent of \$4,000 under paragraph (a) of this section)			\$400
Initial limitation amount		\$500	
Less: Reduction under paragraph (b)(1) of this section:			
Adjusted gross income for taxable year	\$7,000		
Less	6,000		
Excess over \$6,000	1,000		
12½ percent of excess (\$1,000)		125	
Maximum credit (if less than basic credit)			375

(e) *Coordination of credit with advance payments*—(1) *Recapture of excess advance payments.* If any advance payment of earned income credit under section 3507 is made to an individual by an employer during any calendar year, then the total amount of these advance payments to the individual in that calendar year is treated as an additional amount of tax imposed (by chapter 1 of the Code) upon the individual on the tax return for the individual's last taxable year beginning in that calendar year.

(2) *Reconciliation of payments advanced and credit allowed.* Any addi-

tional amount of tax under paragraph (e)(1) of this section is not treated as a tax imposed by chapter 1 of the Code for purposes of determining the amount of any credit (other than the earned income credit) allowable under subpart A, part IV, subchapter A, chapter 1 of the Code.

[T.D. 7683, 45 FR 16175, Mar. 13, 1980. Redesignated by T.D. 8448, 57 FR 54923, Nov. 23, 1992]

§ 1.32-3T Eligibility requirements (Temporary).

(a) *In general.* A taxpayer who has been denied the earned income credit (EIC), in whole or in part, as a result of the deficiency procedures under subchapter B of chapter 63 (deficiency procedures) is ineligible to file a return claiming the EIC subsequent to the denial until the taxpayer demonstrates eligibility for the EIC in accordance with paragraph (c) of this section. If a taxpayer demonstrates eligibility for a taxable year in accordance with paragraph (c) of this section, the taxpayer need not comply with those requirements for any subsequent taxable year unless the Service again denies the EIC as a result of the deficiency procedures.

(b) *Denial of the EIC as a result of the deficiency procedures.* For purposes of this section, denial of the EIC as a result of the deficiency procedures occurs when a tax on account of the EIC is assessed as a deficiency (other than as a mathematical or clerical error under section 6213(b)(1)).

(c) *Demonstration of eligibility.* In the case of a taxpayer to whom paragraph (a) of this section applies, and except as otherwise provided by the Commissioner, no claim for the EIC filed subsequent to the denial is allowed unless the taxpayer properly completes Form 8862, *Information To Claim Earned Income Credit After Disallowance*, demonstrating eligibility for the EIC, and otherwise is eligible for the EIC. If any item of information on Form 8862 is incorrect or inconsistent with any item on the return, the taxpayer will be treated as not demonstrating eligibility for the EIC. The taxpayer must attach Form 8862 to the taxpayer's first income tax return on which the taxpayer claims the EIC after the EIC has been denied as a result of the deficiency procedures.