

§ 1.32-3

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]

§ 1.32-3 Eligibility requirements after denial of the earned income credit.

(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 in the instructions for Form 8862, "Information To Claim Earned Income Credit After Disallowance," no claim for the EIC filed subsequent to the denial is allowed unless the taxpayer properly completes Form 8862, 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 follow the instructions for Form 8862 to determine the income tax return to which Form 8862 must be attached. If the taxpayer attaches Form 8862 to an

incorrect tax return, the taxpayer will not be relieved of the requirement that the taxpayer attach Form 8862 to the correct tax return and will, therefore, not be treated as meeting the taxpayer's obligation under paragraph (a) of this section.

(d) *Failure to demonstrate eligibility.* If a taxpayer to whom paragraph (a) of this section applies fails to satisfy the requirements of paragraph (c) of this section with respect to a particular taxable year, the IRS can deny the EIC as a mathematical or clerical error under section 6213(g)(2)(K).

(e) *Special rule where one spouse denied EIC.* The eligibility requirements set forth in this section apply to taxpayers filing a joint return where one spouse was denied the EIC for a taxable year prior to marriage and has not established eligibility as either an unmarried or married taxpayer for a subsequent taxable year.

(f) *Effective date.* This section applies to returns claiming the EIC for taxable years beginning after December 31, 1997, where the EIC was denied for a taxable year beginning after December 31, 1996.

[T.D. 8953, 66 FR 33637, June 25, 2001]

**§ 1.34-1 Credit against tax and exclusion from gross income in case of dividends received by individuals.**

(a) *In general.* (1) Section 34 provides a credit against the income tax of an individual for certain dividends received after July 31, 1954, and on or before December 31, 1964. The credit, subject to the limitations provided in section 34(b), is equal to 4 percent of the dividends received before January 1, 1964, and 2 percent of the dividends received during the calendar year 1964. The credit is allowable with respect to dividends received in any taxable year ending after July 31, 1954, but applies only to dividends received on or before December 31, 1964. The credit applies only to dividends which are received from domestic corporations and which are included in the gross income of the taxpayer. Section 116 provides for the exclusion from gross income of the first \$100 (\$50 for dividends received in taxable years beginning before January 1, 1964) of certain dividends received by an individual. See § 1.116-1. In deter-

mining which dividends are entitled to the credit against income tax provided by section 34, the exclusion from gross income provided in section 116 is applied to the first dividends received in the taxable year. Since the exclusion applies to dividends received at any time during a taxable year ending after July 31, 1954, dividends received before August 1, 1954, may be taken into account in determining the exclusion from gross income under section 116 but do not constitute dividends for which a credit is allowed.

(2) The application of section 34 (without regard to the limitations provided in section 34(b)) may be illustrated by the following example:

*Example.* A, an individual who makes his return on the basis of the calendar year, receives in the year 1954 the following dividends: \$100 on March 1, \$100 on June 1, \$100 on September 1, and \$100 on December 1. \$50 of the dividends received by A on March 1, 1954, is excluded from gross income under section 116. The balance of the dividends received in 1954, amounting to \$350, is includible in the gross income of A. Subject to the limitation in section 34(b) a credit of \$8 is allowed under section 34 (4 percent of \$200, the amount of the dividends received after July 31, 1954, that is, \$100 received on September 1, 1954, and \$100 received on December 1, 1954).

(b) *Tax credit.* The credit is used to reduce the tax imposed by Subtitle A of the Code, including the alternative tax under section 1201 in the case of capital gains and the self-employment tax under chapter 2 of the Code; however, it may not be used by the taxpayer as a credit against penalties, additions to the tax, or interest on delinquent taxes.

(c) *Joint return of husband and wife.*

(1) In the case of a joint return the credit is determined on the basis of the dividends received by both the husband and wife after taking into account the exclusion allowed by section 116. See § 1.116-1. The credit is allowable in the case of a joint return on account of the dividends received by each spouse without regard to whether the spouse would be liable for the tax imposed by Subtitle A if the joint return had not been filed. However, the limitations on amount of credit in section 34(b) are determined by reference to the tax and the credit under section 33 required to be shown on the joint return and to the