

Return Preparers Face Stricter Due Diligence On Earned Income Credit Returns

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The earned income credit (EIC) can provide tax refunds to qualified low income taxpayers. Due to faulty submissions (intentional or unintentional), efforts have escalated over the years to pressure preparers to limit filings to eligible cases only – that is, to get preparers to police this area. For example, in 1997 a penalty of \$100 was added for preparers who fail to comply with due diligence requirements in determining eligibility for the EIC.

More recent changes to the law and regulations have ramped up the compliance burden. For example, earlier this year, the preparer penalty was increased to \$500 (Code §6695(g)). Now, the IRS has issued proposed and final Regulations that affect this area.

Previously to avoid the penalty, a preparer had to prepare an Eligibility Checklist (Form 8867) and a Computation Worksheet, and retain them for three years. Under proposed Regulations that were issued on December 19, the Form 8867 would now be required to be submitted with the filed tax return. The three year retention period may also be extended in some circumstances under the proposed Regulations, and other changes have been made under both the proposed and final regulations.

Preparers that prepare EIC claims should review the new Regulations to minimize their exposure to the increased preparer penalty.

T.D. 9570, 12/19/2011, Reg. § 1.6695-2

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