

The Earned Income Credit Audit Reconsideration Process

Prepared by
The Community Tax Law Project

The IRS examined the client's federal income tax return for filing status, dependency exemptions and the Earned Income Credit (EIC). The taxpayer failed to respond to the 30-day examination letter. The IRS issued a Notice of Deficiency and the taxpayer defaulted on this notice and forfeited his/her opportunity to challenge the proposed changes to his/her return in the U.S. Tax Court. The IRS adjusted his return and is currently attempting to collect the refund it believes was issued in error. However, the taxpayer can contest the changes to this return by requesting an audit reconsideration.

The audit reconsideration process involves contacting the Service Center that adjusted the taxpayer's tax return and asking it to take a second look, or "reconsider," the changes it made to the original return. The client will need to provide documentation that establishes his or her eligibility for the filing status used and the dependency exemptions claimed on the original return, as well as his eligibility to claim the EIC.

There are several items that you will find useful for the audit reconsideration process, specifically:

- IRS Publication 3598, What You Should Know About the Audit Reconsideration Process
- IRS Forms 2038 (Questionnaire—Exemption Claimed for a Dependent)
- IRS Form 4752 (Questionnaire—Head of Household)
- IRS Form 8862 (Information to Claim EITC After Disallowance)
- Form 886-H (List of the items the IRS requires the taxpayer to submit)
- A redacted sample of a request for an audit reconsideration (attached)

Many of the IRS Forms and Publications are available on the IRS web site at <http://www.irs.gov>. IRS Publication 17 also provides charts and a worksheet for determining support for dependency exemptions. You should also review I.R.C. §§ 2(b), 32, 151 and 152, as well as Treasury Regulations §§1.2-2(b), 1.32, and 1.152 for the definitions and criteria the taxpayer must satisfy to be eligible for the head of household filing status, dependency exemptions and the EIC.

You should gather all of the items listed on Form 886-H before submitting your request for audit reconsideration. Failure to submit all of the required items may delay a decision for the taxpayer. Many taxpayers may not have saved the records necessary for their case and you or

the taxpayer may need to request information directly from the source. If several years have passed since the initial examination, some items may no longer be available; for example, Dominion Virginia Power purges customer accounts after five years. If you find that you need to request information directly from a source, our office has several sample letters that pro bono volunteers may use to request information directly from service providers, such as a utility company, school authority, or day care facility.

The audit reconsideration process requires a great deal of patience. The IRS may not contact you for several months after its receipt of your request. It is currently taking the IRS as long as five months to assign the case to an examining agent and an additional seven months for the agent to review the information and render a determination and adjust the taxpayer's account.

If you have any questions, please do not hesitate to contact The Community Tax Law Project at (804) 358-5855. Our staff attorneys are available to provide technical assistance and answer any questions you might have during your representation of the client.

July 5, 2002

Philadelphia Service Center
Internal Revenue Service
P.O. Box 331
Attention: DP 8210A
Philadelphia, PA 19020

Re: Taxpayer's Name
SSN: XXX-XX-XXXX

Dear Sir or Madam:

On behalf of my client, _____, I am requesting an audit reconsideration for tax year 2000. Mr. _____ was denied a dependency exemption and Earned Income Credit for his son, _____, Jr. I am enclosing IRS Form 2848, Power of Attorney, authorizing me to represent Mr. _____ in this matter. Mr. _____'s case is summarized below.

During tax year 2000, Mr. _____ resided in a rented apartment at _____, in _____, Virginia with his child, _____, Jr., SS # _____, his girlfriend, _____, SS # _____, and Ms. _____'s five other children. Ms. _____ is also the mother of Mr. _____'s child. Mr. _____ and Ms. _____ leased the apartment for a one-year term from _____ beginning April 30, 1999. The lease agreement automatically renewed for another year on April 30, 2000, thus extending the lease through April 30, 2001. Please see the enclosed lease agreement. I am also enclosing a letter from Mr. _____'s landlord, _____, verifying the term of the lease, its automatic renewal, the rental payments, and the residents of the apartment. I am also enclosing money order receipts for rental payments covering January 2000 through January 2001. Power Company provided the electricity and water and sewer utilities for the apartment, respectively. Ms. _____ opened these utility accounts in her name. Please see the attached statement of accounts from these utility providers for tax year 2000. However, Mr. _____ paid these utilities during tax year 2000.

Mr. _____ filed his 2000 Federal Income Tax return using his mother's address. He used the single filing status and claimed his son, _____, as a dependent. However, at no time during tax year 2000 did Mr. _____ live with his mother, _____. Please see the attached notarized affidavit from Mr. _____'s mother confirming that he did not live with her at her address. Mr. _____ filed his return from his mother's address to prevent problems since his girlfriend was filing a return from their address and claiming her own children as dependents.

Section 151(c) of the Internal Revenue Code permits a dependency exemption for an individual who is the taxpayer's child and who is under the age of 19 at the close of the calendar year. I.R.C. §152(a) defines a dependent as an individual that received over half of his support from the taxpayer during the calendar year in question. Mr. [redacted] meets the criteria for claiming a dependency exemption for his son, [redacted]. Mr. [redacted]'s dependent is his son, as required by I.R.C. § 151(a)(1), who lived with Mr. [redacted] during the entire tax year 2000. Mr. [redacted]'s son was under the age of 19 at the close of the taxable year as required by I.R.C. §151(c)(1)(B). Please see the enclosed birth certificate verifying the age of Mr. [redacted]'s dependent and their parent-child relationship. Mr. [redacted] provided over one-half of his son's support during tax year 2000 as required by I.R.C. § 152(a). No other individual contributed to [redacted]'s support. Ms. [redacted], the child's mother, was financially incapable of contributing to his support, as she was supporting 5 other children on an earned income of only \$3,440.86. Ms. [redacted] received food stamps totaling \$4,060 to support these other children. Ms. [redacted] did not receive food stamps on behalf of Mr. [redacted] or their mutual child, [redacted]. Please see her enclosed food stamp history for tax year 2000 verifying the payments she received. Mr. [redacted] is enclosing several items of documentation verifying his support of his son, [redacted]. Specifically, he is enclosing:

- A copy of Mr. [redacted]'s lease, as well as a statement from his landlord verifying his rental agreement and rental payments;
- Money order receipts verifying rental payments;
- A statement of account from Power Company showing payments made for the electricity utility; and
- A statement of account from the Utility Authority showing payments made for the gas and water utilities

Although the utility accounts were in Ms. [redacted]'s name, Mr. [redacted] made these payments. Ms. [redacted]'s income of \$3,441 during tax year 2000 was inadequate to cover these expenses and support her other children.

According to I.R.C. § 32(c), a taxpayer is eligible to claim the Earned Income Credit if the taxpayer has a qualifying child and earned income. Mr. [redacted]'s son, [redacted], fits the definition of a qualifying child as defined in I.R.C. §32(c)(3)(A). [redacted] is the son of the taxpayer as required by I.R.C. § 32(c)(3)(B)(i)(I). He shared the same principal place of abode with the taxpayer, Mr. [redacted], for more than half of the year as required by I.R.C. §32(c)(3)(A)(ii). Mr. [redacted]'s son was also under the age of 19 at the close of the calendar year as required by I.R.C. §32(c)(3)(C), and Mr. [redacted] and his son's principal place of abode was in the United States as required by I.R.C. §32(c)(3)(E). Finally, no other eligible individual with a higher adjusted gross income lived in the home with Mr. [redacted] and his son as required by I.R.C. §32(c)(1)(C). [redacted], [redacted]'s mother, earned substantially less than Mr. [redacted] during tax year 2000. Ms. [redacted]'s Forms W-2 reflect earned income of \$3440.86. Mr. [redacted] had earned income totaling \$16,188. Please see Ms. [redacted]'s enclosed W-2 information for tax year 2000 verifying this information.

In light of the enclosed documentation, Mr. _____ respectfully requests that the Internal Revenue Service reconsider its determination that Mr. _____ is not entitled to a dependency exemption for his son, _____, and the Earned Income Credit.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me at (804) 222-2222.

Sincerely yours,

Name of Attorney

Enclosures: as stated
cc: