

Office of Chief Counsel  
Internal Revenue Service

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## memorandum

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to: Assistant District Counsel  
Kansas-Missouri District, Kansas City, CC:MSR:KSM:KCY

from: Assistant Chief Counsel  
(Employee Benefits and Exempt Organizations), CC:EBEO

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subject: Significant Service Center Advice Request - Whether a Deceased Person is Eligible for the Earned Income Credit under Section 32(c) of the Internal Revenue Code

This responds to your request for Significant Advice dated January 12, 1998, regarding whether a deceased person is eligible for the earned income credit under section 32 of the Internal Revenue Code.

### Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May Be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in Paragraphs III.D.4. and IV.A.5. of Part (35) of the CCDM. (See Office of Chief Counsel Notice dated February 10, 1997, regarding Service Center Advice Procedures.) This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

### Issues

1. If a single parent dies when the year is more than one half over, is the personal representative of the deceased taxpayer entitled to claim the earned income credit (EIC) on the taxpayer's final income tax return based on a child who lived with the deceased taxpayer until the taxpayer's death?
2. If a single parent dies before the year is one half over, is the personal representative of the deceased taxpayer entitled to claim the EIC on the taxpayer's final income tax return based on a child who lived with the deceased taxpayer until the taxpayer's death?
3. If a single parent dies before the year is one half over, is the grandparent with whom the child lived after the parent's death entitled to claim the EIC based on that child?

## **Conclusions**

1. Based on the facts described below, if a single parent dies when the year is more than one half over, the personal representative of the deceased taxpayer is entitled to claim the EIC on the taxpayer's final income tax return based on a child who lived with the deceased taxpayer until the taxpayer's death.

2. Based on the facts described below, if a single parent dies before the year is one half over, the personal representative of the deceased taxpayer is entitled to the EIC on the taxpayer's final income tax return based on a child who lived with the deceased taxpayer until the taxpayer's death unless the tie-breaker rule of section 32(c)(1)(C) operates to disallow the credit.

3. Based on the facts described below, if a single parent dies before the year is one half over, the grandparent with whom the child lived after the parent's death is entitled to claim the EIC based on the child if the grandparent's modified adjusted gross income is higher than the deceased parent's modified adjusted gross income.

## **Facts**

Situation 1. A, a single parent, files returns on a calendar-year basis and dies when the year is more than one half over. A's son, S, resided with A until A's death. No other person resided in the home. Assume the age and relationship tests are satisfied and that A's personal representative properly identifies S as A's qualifying child on A's final return.

Situation 2. B, a single parent, files returns on a calendar-year basis and dies before the year is one half over. B's daughter, D, lived with B until B's death. No other person lived in the home. Assume the age and relationship tests are satisfied and that B's personal representative properly identifies D as B's qualifying child on B's final return. After B's death, D moves in with D's grandparent, G, and lives with G for the remainder of the year. No other person lived in the home. Assume the age and relationship tests are satisfied and that G properly identifies D as a qualifying child on G's return.

## **Discussion**

Section 32(a) allows an earned income credit (EIC) in the case of an eligible individual. An eligible individual is defined by section 32(c)(1)(A) to include any individual who has a qualifying child for the taxable year. Section 32(c)(3)(A)

defines a qualifying child with respect to any taxpayer for any taxable year, as an individual:

- (i) who bears a relationship to the taxpayer described in subparagraph (B),
- (ii) except as provided in subparagraph (B)(iii), who has the same principal place of abode as the taxpayer for more than one-half of [the] taxable year,
- (iii) who meets the age requirements of subparagraph (C), and
- (iv) with respect to whom the taxpayer meets the identification requirements of subparagraph (D).

Section 32(e) provides that, except for a taxable year closed by reason of the death of the taxpayer, the EIC is not allowable in the case of a taxable year covering a period less than 12 months.

Section 32(c)(1)(C) provides a tie-breaker rule where two or more otherwise eligible individuals have the same qualifying child. Under the tie-breaker rule only the taxpayer with the highest modified adjusted gross income (MAGI) is treated as an eligible individual with respect to that qualifying child.

#### Issue 1.

Under the facts of situation 1, S meets the relationship, age, and identification requirements to be a qualifying child of A. The remaining test is the abode test.

Because S is A's child, the abode test is satisfied if S resided with A for more than one half of the taxable year. Under the facts, S lived with A until A's death, and A was alive for more than one half of the taxable year. Thus, S satisfies the abode test. Whether the taxable year is the calendar year or A's shorter taxable year is not reached in this situation because S resided with A for more than half of the longer calendar year.

The fact that A died prior to the end of the calendar year and the final income tax return is for a period less than 12 months does not preclude eligibility for the EIC. Generally, the EIC is allowed to taxpayers with taxable years of 12 months; however, under section 32(e) there is an exception if the taxable year closed because the taxpayer died during the taxable year. In that case, the EIC is allowed assuming all of the requirements have been satisfied.

#### Issue 2.

Under the facts of situation 2, D meets the relationship, age, and identification requirements to be a qualifying child of B. The remaining test is the abode test.

Because D is B's child, the abode test is satisfied if D resided with B for more than one half of the taxable year. The taxable year refers to the taxable year of the individual claiming the EIC. Under section 7701(a)(23), in the case of a return made for a fractional part of the year, a "taxable year" means the period for which the return is made. Under section 443(a) a return for a period of less than 12 months (a "short period") is made when the taxpayer is in existence for only a part of what would otherwise be his or her taxable year. In this situation, B's taxable year ends on the date of death, and B's taxable year is from January 1st of the year through the date of death. Because D resided with B for B's entire taxable year, the abode test is satisfied, and D is a qualifying child of B. Thus, B's personal representative is entitled to claim the EIC on B's final income tax return unless the tie-breaker rule of section 32(c)(1)(C) operates to disallow the credit in favor of G.

### Issue 3.

Assume the same facts as situation 2 and that G's MAGI is higher than B's MAGI. Under the facts of situation 2, D meets the relationship, age, and identification tests to be a qualifying child of G. The remaining test is the abode test. Under the facts, D moved in with and resided with G for the remainder of the year after B's death. Because this is more than one half of the taxable year, the abode test is satisfied. Thus, D is a qualifying child of G.

B and G are both otherwise eligible individuals with respect to the same child, D. Thus, the tie-breaker rule of section 32(c)(1)(C) is triggered, and only the individual with the higher MAGI is treated as the eligible individual with respect to that child. Because G's MAGI is higher than B's, G is treated as the eligible individual with respect to D. In this situation, B's personal representative is not entitled to claim the EIC on B's final income tax return.

