

Meeting Your EITC Due Diligence



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Agenda

- 2013 filing season information
- Importance of due diligence
- Due diligence requirements
- Due diligence tips
- EITC refund error prevention
- Resources

2013 Filing Season Information

- No changes to EITC tax law
- 2009 provisions set to expire at end of 2012
- Complete and submit Form 8867
- Retain pertinent documentation

2013 Filing Season Information (Cont'd.)

- Record retention period change
- Real-time due diligence compliance program
- Due Diligence preparer penalty increased to \$500
- Assess penalties to tax preparer employers

Importance of Due Diligence

- Ensures clients receive correct EITC amount
- Protects your clients from EITC-related penalties
- Helps avoid and reduce EITC errors

EITC Due Diligence Requirements

Internal Revenue Code §6695(g) provides Due Diligence Requirements

1. Complete Form 8867, *Paid Preparer's Earned Income Credit Checklist*
2. Complete Computation of the Credit Worksheet
3. Retain records
4. Knowledge requirement

Record Retention Requirements

- Who provided information and receipt date
- Computation and eligibility worksheets, including Form 8867
- Eligibility determination documents
- Additional questions and responses

Record Retention

- Pertinent records for three years
- Paper or electronic records in secure location
- Back-up in separate, secure location

Knowledge Requirement

- Not know or have reason to know, that information is incorrect
- Ask client additional questions if reasonable and well-informed tax return preparer, knowledgeable in law, would conclude information seems incorrect, inconsistent or incomplete.
- Document questions asked and client's responses

Knowledge Requirement Tips

- Apply common sense standard to client-provided information
- Evaluate if information is complete; gather missing facts
- Determine if information is consistent; recognize contradictory or false statements
- Conduct thorough, in-depth interview with every client, every year

Knowledge Requirement Tips

- Ask enough questions to reasonably know return is correct and complete
- Document all questions asked and client's responses

Knowledge Requirement Non-Compliance

- Claiming a child not meeting age, relationship, residency requirements
- Incorrect filing status
- Over or under-reporting income or expenses, particularly Schedules C

Schedule C and EITC

- Conduct thorough and in-depth interview with clients about their business activity
- Review supporting material
- Educate clients on recordkeeping and consequences of failure to keep records
- Guide clients through a reconstruction of income and expenses, if necessary

Reconstruction of Clients' Records

- Appointment books or calendars
- Online map tools
- Checkbook, cancelled checks, bank statements or credit card statements
- Client list
- Partial receipts or sales tax records

Reconstruction of Clients' Records

- Cell phone records and call history or computer logs
- Prior years tax returns
- Guide client for use of partial records to develop support for Schedule C

Due Diligence and Accurate EITC Claims

Adverse effects:

- Client penalties
- Client banned from future EITC claims
- Preparer penalties
- OPR discipline
- Criminal prosecution

Employer Non-Compliance of EITC Due Diligence

- Penalties
- Due diligence non-compliance
 - Participation
 - Failure of provide correct procedures
 - Disregard

Tips for Employers to Protect Themselves

- Review current office procedures
- Review procedures with employees
- Conduct annual EITC due diligence training or use online module (English and Spanish)
- Test employees' knowledge of due diligence and procedures
- Perform recurring quality review checks on employees' work

EITC Preparer Compliance Strategy

- Targeted
- Tailored
- Tiered



EITC Preparer Compliance Strategy

- First tier - education and outreach
- Letters to new and experienced preparers
- Visits to preparers filing highly questionable returns

EITC Preparer Compliance Strategy

Auditing for due diligence compliance

- Notify preparer and set appointment
 - Preparers contacted beginning early October
 - Appointment set by phone or letter
 - Employee and employer (if applicable) are contacted

Historical Due Diligence Compliance Program

- Review selected EITC returns
- Software review
- Determine penalty

Audit Procedures for Compliance Programs

- Examiner interviews preparer and employer with focus on due diligence training, policies and procedures
- Examiner begins with 25 EITC returns
- Review expanded if non-compliance with due diligence requirements is noted

Software Review

- Data intake questionnaire
- Form 8867, *Paid Preparer's Earned Income Credit Checklist*
- EIC Computation Worksheet
- Presets and overrides

Examiner's Penalty Determination

- Examiner determines if preparer has complied with IRC 6695 (g)
- Examiner determines penalties for employer or employee preparer, if warranted
- Preparer offered managerial conference if in disagreement with proposed penalties
- Letter 1125 issued with report and explanation of appeal rights if preparer disagrees

EITC Preparer Compliance Strategy

Barring Non-Compliant EITC Return Preparers from Filing Tax Returns

- Bars a preparer from filing federal tax returns
- Imposes restrictions on preparers filing federal tax returns with EITC claims

Real-Time EITC Preparer Pilot

- Pre-filing season certified mail letters notify preparer detailing high error rate from previous filing season and letting them know we are watching the returns they file
- Early in the filing season returns are reviewed and improvement measured twice
- Preparers who show no improvement receive immediate treatment

New Real-Time Due Diligence Compliance Program

- Only current year client returns identified for audit
- Number of audited returns varies
- Examiners immediately contact preparers face-to-face
- Audit immediately conducted to promote EITC return accuracy improvement during current filing season

Pre-Refund Error Detection After Return Filed

- EITC filters
 - Automated questionable credits
 - Taxpayer Protection Unit
 - Exam
- Fraud filters, Taxpayer Assurance Program
 - Exam
 - Accounts Management adjustment

Avoid EITC Errors

- Know the law
- Ask the right questions
- Get the facts
- Document as you go

Avoiding EITC Errors

- Know EITC tax law and eligibility rules
- Software not substitute for knowledge of EITC tax law
- Practice EITC due diligence

Additional EITC Due Diligence Information

- Visit IRS.gov, Search keyword “Due Diligence”
- Publication 4926, EITC and Due Diligence Made Easy DVD
- Visit EITC.IRS.gov for all things EITC
- Publication 596, Earned Income Credit
- IRC § 6695(g)
- Treasury Regulations §1.6695-2

Contact Information

Name

Phone Number

E-Mail Address