Legislative Recommendation #54

Provide Earned Income Tax Credit (EITC) Relief During National Disasters

PRESENT LAW

The Earned Income Tax Credit (EITC) is a refundable credit for low- and moderate-income working families. Eligibility for the EITC and the amount of EITC to which a taxpayer is entitled are based on a variety of factors, including the taxpayer's earned income, the number of qualifying children, and the taxpayer's filing status.[1] Taxpayers without children can qualify for the "childless EITC." For tax year (TY) 2020, a single taxpayer with no children earning up to $15,820 and married taxpayers filing jointly with no children earning up to $21,710 could qualify for a maximum EITC benefit of $538, provided certain other requirements are met.[2] To claim the EITC, a taxpayer must file a tax return, even if the taxpayer otherwise does not have a filing obligation. Unemployment compensation (UC),[3] while based on a taxpayer's earned income, is not included in earned income and thus does not count in computing the amount of EITC benefits for which a taxpayer is eligible.[4]

The federal government can step in to assist state and local governments during times of emergency or major disaster.[5] During previous disasters, Congress allowed eligible taxpayers to elect to use their prior year earned income to calculate the current year's EITC.[6] Most recently, Congress allowed this relief in 2020.[7]

REASONS FOR CHANGE

To calculate and substantiate the correct amount of EITC, a taxpayer needs to have records that show how much income he or she earned in that year. During times of declared disasters, taxpayers may struggle to piece together sufficient financial records to substantiate EITC claims. At the same time, they may be dealing with disaster-related financial turmoil and need the EITC quickly. Congress has allowed taxpayers to elect to use their prior year earned income to calculate the current year's EITC in times of disaster. However, this relief is not permanent, so Congress must authorize it on a disaster-by-disaster basis.

The IRS could alleviate the wait for EITC benefits by allowing the childless portion to be issued to taxpayers automatically based on information a Legislative Recommendation in the IRS's possession.[8] This portion, a maximum of $538 in TY 2020, would assist in alleviating some financial stress during a disaster.

1 IRC § 32.
2 IRS, Earned Income Tax Credit Income Limits and Maximum Credit Amounts, https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit/earned-income-tax-credit-income-limits-and-maximum-credit-amounts (last visited Dec. 17, 2020).
3 UC generally includes any amount received under an unemployment compensation law of the United States or a state. IRC § 85; Treas. Reg. § 1.85-1(b)(1).
4 IRC § 32(c)(2); Treas. Reg. § 1.32-2(c)(2).
5 The Stafford Act, Pub. L. No. 93-288, § 102, 88 Stat. 143, 144 (1988).
6 The Katrina Emergency Tax Relief Act of 2005, Pub. L. No. 109-73, Title IV, § 406, 119 Stat. 2016, 2028 (2005); the Heartland Disaster Tax Relief of 2008, Pub. L. No. 110-343, Div. C, Title VII, Subtitle A, § 701, 122 Stat. 3765, 3912 (2008), the Disaster Tax Relief and Airport and Airway Extension Act of 2017, Pub. L. No. 115-63, § 504, 131 Stat. 1168, 1183 (2017).
7 Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94, Div. Q, Title II, § 204(c), 133 Stat. 2534. *See also* Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 211, Div. EE, Title II (2020).
8 *See Restructure the Earned Income Tax Credit (EITC) to Make It Simpler for Taxpayers and Reduce Improper Payments*, *supra*.

During major disasters like COVID-19 or hurricanes, many taxpayers experience a disruption in work, a furlough, or a job termination. If a taxpayer receives UC based on previous employment, the taxpayer cannot use his or her UC income to qualify for the EITC, likely compounding the income disruption. The apparent rationale for not counting UC is that the EITC historically provided a benefit only for individuals who work. But UC is paid exclusively to individuals who were working and were separated from their jobs due to no fault of their own. Moreover, UC benefits are limited in duration. Because UC is effectively a replacement for some of the wages the individual would have earned, treating UC as EITC-qualifying income would maintain the nexus between working and receiving EITC benefits if there are mass layoffs due to the effects of a natural or similar disaster beyond the worker's control.

RECOMMENDATION

- Amend IRC § 32 to allow taxpayers to elect the use all of their prior year's income to claim the EITC in the year of a disaster,[9] to make childless EITC payments automatic during times of national disaster, and to allow taxpayers to include unemployment compensation as qualifying earned income in computing the EITC.

9 For legislative language generally consistent with this recommendation, see COVID-19 Earned Income Act, S. 3542 & H.R. 6762, 116th Cong. (2020). Congress passed one-time relief as part of the Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, § 211, Div. EE, Title II (2020).