

Earned Income Credit and Tribal Child Placements

Notice 2003-28

This notice clarifies the application of the earned income credit for a taxpayer caring for a child placed with the taxpayer by an Indian tribal government (ITG) or an organization an ITG has authorized to place Indian children. Section 32(a)(1) provides for an earned income credit in the case of an eligible individual. Section 32(c)(1)(A)(i) defines an eligible individual as an individual who has a qualifying child for the taxable year. Section 32(c)(3) defines a qualifying child as one who satisfies a relationship test, a residency test, and an age test. Under § 32(c)(3)(B)(i)(III), an eligible foster child satisfies the relationship test. Pursuant to § 32(c)(3)(B)(iii), for taxable years beginning after December 31, 1999, an eligible foster child includes a child placed with the taxpayer by an authorized placement agency whom the taxpayer cares for as the taxpayer's own child (and, for taxable years beginning before January 1, 2002, who has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year). For purposes of § 32(c)(3)(B)(iii), an authorized placement agency includes an ITG and also includes an organization an ITG has authorized to place Indian children (Indian tribal organization). Thus, for taxable years beginning after December 31, 1999, a child placed with a taxpayer by an ITG or an Indian tribal organization qualifies as an eligible foster child, provided the taxpayer cares for the child as his or her own, and, for taxable years beginning before January 1, 2002, the child has the same principal place of abode as the taxpayer for the taxpayer's entire taxable year.

The principal author of this notice is Sylvia F. Hunt of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Hunt at (202) 622-6080 (not a toll-free call).