



Department of the Treasury  
**Internal Revenue Service**

## **Notice 797**

(Rev. December 2004)

### **Possible Federal Tax Refund Due to the Earned Income Credit (EIC)**

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#### **What Is the EIC?**

The EIC is a refundable tax credit for certain workers.

#### **What's New**

You **cannot** claim the EIC if your 2004 investment income (such as interest and dividends) is over \$2,650. See your 2004 income tax return instructions for more details.

#### **Who May Claim the EIC**

You may be able to claim the EIC for 2004 if you worked and all three of the following conditions apply. But you **cannot** claim the EIC if you file either Form 2555 or Form 2555-EZ (relating to foreign earned income). You also **cannot** claim the EIC if you are a nonresident alien for any part of 2004 unless you are married to a U.S. citizen or resident and elect to be taxed as a resident alien for the entire year.

1. Your 2004 earned income and adjusted gross income are both under \$30,338 (\$31,338 if married filing jointly) if you have one qualifying child; under \$34,458 (\$35,458 if married filing jointly) if you have more than one qualifying child; under \$11,490 (\$12,490 if married filing jointly) if you do not have a qualifying child. To find out who is a qualifying child, see the back of this notice.

Earned income for this purpose does not include amounts received for work performed while an inmate in a penal institution and amounts received as a pension or annuity from a nonqualified deferred compensation plan, a nongovernmental section 457 (b) plan, or nontaxable earned income received by an employee. However, certain members of the military may elect to include nontaxable combat pay for purposes of EIC. See *More information?* on the back of this notice.

2. Your filing status is any status except married filing a separate return.

3. You, and your spouse if filing a joint return, were not a qualifying child of another person.

If you **do not** have a qualifying child, you must also meet these conditions.

a. You, or your spouse if filing a joint return, were at least age 25 but under age 65 at the end of 2004.

b. You, and your spouse if filing a joint return, cannot be claimed as a dependent on someone else's 2004 tax return.

c. Your home, and your spouse's if filing a joint return, was in the United States for over half of 2004.

**Note.** If you are in the military on extended active duty outside the United States, your home is considered to be in the United States during that duty period and you may be able to claim the EIC.

**More information?** See the 2004 instructions for Forms 1040, 1040A, or 1040EZ, and Pub. 596. You can get these items from IRS offices, by calling 1-800-TAX-FORM (1-800-829-3676), or from the IRS website at [www.irs.gov](http://www.irs.gov).

### Who Is a Qualifying Child

Any child who meets all three of the following conditions is a qualifying child.

**1.** The child is:

- a. Your son, daughter, adopted child, stepchild, or a descendant of any of them (for example, your grandchild);
- b. Your brother, sister, stepbrother, stepsister, or a descendant of any of them (for example, your niece or nephew), whom you cared for as you would your own child;
- c. A foster child (any child placed with you by an authorized placement agency whom you cared for as you would your own child).

**2.** At the end of 2004, the child was under age 19; or under age 24 and a student; or any age and permanently and totally disabled.

**3.** The child lived with you in the United States for over half of 2004. However, there are exceptions if the child was born or died during the year or the child is presumed to have been kidnapped by a non-family member.

**Married child.** Generally, a child who is married at the end of 2004 must be claimed as your dependent to be a qualifying child.

**Qualifying child of more than one person.** Special rules apply if the child meets the conditions to be a qualifying child of more than one person. For details, see the 2004 instructions for Forms 1040, 1040A, or 1040EZ.

### How To Claim the EIC

If you are eligible, claim the EIC on your 2004 income tax return. If you have a qualifying child, you must also fill in Schedule EIC and attach it to your Form 1040 or Form 1040A.

If eligible, you can claim the EIC to get a refund even if you have no tax withheld from your pay or owe no tax. For example, if you had no tax withheld in 2004 and owe no tax but are eligible for a credit of \$791, you must file a 2004 income tax return to get the \$791 refund.

**EIC with your pay.** If you expect to have a qualifying child and be eligible to claim the EIC for 2005, you may be able to get part of it in advance with your pay. For details, get Form W-5, Earned Income Credit Advance Payment Certificate, from your employer, by calling the IRS at 1-800-829-3676, or from the IRS website at [www.irs.gov](http://www.irs.gov). If you get the EIC with your pay, you **must** file a 2005 Form 1040 or Form 1040A.

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