Billions Lost Yearly To Earned Income Tax Credit: Errors Or Fraud?

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ABSTRACT

The Earned Income Tax Credit is a refundable credit designed to assist working families with children; especially those who are considered to be living at or close to the poverty level. Over the last decade billions of dollars have been lost due to the improper application and fraudulent claims of the Earned Income Tax Credit (EITC). Critics believe that the program no longer serves its intended function because of the cumulative increase in the amounts lost each year; the legislation needs a major overhaul. The IRS have claimed that over 60 percent of the overpayments of EITC is due to manipulation of self-employed income and expenses, unqualified dependents being claimed, and misuse of single and head of household filing status. Even though the penalties for fraud and the lack of exercising due diligence are severe, these crimes continue to occur. While the tax authorities and other legislative bodies explore ways to combat these fraudulent claims, CPAs and other tax-preparers can assist in the fight against these crimes. As the de facto gatekeepers of the tax revenues, they are encouraged to exercise intensive due diligence and professional skepticism when claiming EITC for their clients.

Keywords: Earned Income Tax Credit; EITC Fraud; EITC Compliance; EITC Penalties; EITC Overpayments

INTRODUCTION

ccording to the Internal Revenue Service (IRS), the Earned Income Tax Credit (EITC) is the largest refundable credit for 2014 tax year. A couple filing a joint return with three or more qualifying children could claim a maximum of six thousand, one hundred and forty-three dollars. This payout is an attractive feature and over the last decade, billions of tax dollars were paid out in EITC claims to unqualified taxpayers. These overpayments were a result of factors such as mathematical errors, misinterpretation of EITC rules, and fraud. Approximately sixty percent of EITC filings which resulted in overpayments were due to fraud. Some taxpayers claimed a child who failed the qualified dependency test (especially the relationship and residency criteria). Others manipulated self-employment income and expenses, and some claimed single or head of household filing status while legally married. The burden of these costs is subsequently passed onto other taxpayers.

The purpose for which EITC was created has deteriorated; this breakdown in the application of this statute has become a vehicle for fraud. The Inspector General estimated that in the last decade, improper EITC payments are between 110 billion and 132 billion (York, 2014). Critics of the EITC argue that because of the continuous increase in loss tax revenues the IRS should abandon the program and simply create a more effective incentive program. The consensus is that procedures and policies need to be in place to curb the billions lost each year. While the IRS and other legislative bodies are exploring ways to combat the issue of fraud, paid tax-preparers must play their role as "gate-keepers" of the nation's tax revenues.

Preparers are responsible for a significant amount of the errors and overpayments. CPAs and other individuals are paid to prepare taxes; therefore, they should exercise due diligence and professional skepticism when dealing with taxpayers claiming EITC. Despite the fact that many taxpayers who qualify to claim EITC and do not claim it, this article focuses on the fraudulent aspect of claiming EITC." The penalties for non-compliance and ways taxpreparers can assist the taxing authorities with detecting fraudulent claims of EITC will also be discussed.

History of EITC

EITC was introduced to the Internal Revenue Code (IRC) by the Tax Reduction Act of 1975. The credit was originally enacted as a temporary work incentive for taxpayers with children (Hungerford& Thiess 2013). Government thought that the credit which was a maximum of \$400 at the time would create a great incentive for citizens to work and in many ways act as an antipoverty solution. In 1978, it became a permanent refundable credit under the IRC: U.S. Code, Title 26, (Section 32). Over the years, legislations continued to enhance the refundable amount and the parameters that are necessary to claim the credit. Before 1993, childless families were not entitled to the assistance provided by EITC and therefore were at a disadvantage. The Omnibus Budget Reconciliation Act of 1993 finally addressed this issue and expanded the parameters to included childless families. In the 2015 budget proposal, President Obama proposes to expand the EITC, to benefit an estimated 13.5 million low-income childless American workers.

Earned Income Tax Credit Rules

Taxpayers claiming the EITC credit must have the following to qualify:

- A valid social security number (*Note 1*)
- Not have a filing status of married filing separate (MFS)
- Be a U.S citizen or resident alien all year
- Have earned income (see table 1 for limitations)
- Have a qualifying child (*Note 2*)
- Not have a qualifying child that can be a qualifying child to another taxpayer
- The taxpayer cannot be a qualifying child.
- The taxpayer must be at least age 25 but under 65.
- The taxpayer must not have investment income greater than \$3,350.

Note 1. A valid social security card is required to claim EITC. If the social security card has "Not valid for employment" then the taxpayer cannot claim the credit. However, if the social security card reads "valid for work only with INS authorization" or "valid for work only with DHS authorization," these are valid for claiming the credit, given they are not expired. The taxpayer and the dependents are required to have a valid social security number. Tax identification numbers do not qualify to claim EITC.

Note 2. A qualifying child is a child that must meet all four of the following requirements:

- Relationship Test: generally the taxpayers' children and siblings, and all their descendants. Children includes step, foster, and adopted.
- Age Test: the child must be under the age of 19, or under the age of 24 and a full time student, or totally and permanently disable.
- Residency Test: the child must have lived with the taxpayer more than half the tax year.
- Joint Return Test: the child cannot file a joint return for the tax year except if the child or spouse is filing solely to receive a refund of taxes paid¹.

More information of the requirements to claim EITC can be found on the IRS website, in Publication 596. Retrieve from: https://www.irs.gov/ pub/irs-pdf/p596.pdf

Table 1. EITC Parameters– 2014

	No Children	One Child	Two Children	Three or More Children
Maximum Credit	496	3,305	5,460	6,143
Income Phase-Out				
Single	8,150	17,850	17,850	17,850
MFJ	13,550	23,300	23,300	23,300
Income Limitation				
Single	14,590	38,511	43,756	46,997
MFJ	20,020	43,941	49,186	52,427

Single: Refers also to head of household, or qualifying widow(er) filing status

Source: Publication 596

Example of the EITC Fraud Scheme

Assume for the purpose of this article, Sharon X is a single mother with two qualifying dependents. Because of Y circumstances, she did not earned any income for 2014 tax year. Knowledge of the tax benefits gain from claiming EITC, she decides to file her tax return claiming fictitious Babysitting income of 17,000. She presented to her tax-preparer a summary of her income, and all the relevant documentation to support her dependency claims. She claims that she had no expenses for the tax year. Table 2 provides a summary of her 2014 tax return:

Table 2. Sharon X 2014 Tax Return Summary

AGI	15,799	
Taxable Income	-0-	
Self-Employment Taxes	2,402	
Total EITC	5,460	
Additional Child Tax Credit (ACTC)	1,920	
Federal Refund	4.978	

Based upon the information provided in table 2, not only does Sharon receive the EITC, but also additional child tax credit. She receives "free money" in the amount of \$4, 978 dollars for filing a fraudulent return. Furthermore, because she can also file a state return, she could thereby increases her total fraudulent refund. Imagine if this scheme was perpetuated by 20, 000 taxpayers! The above example only addresses one angle in which some taxpayers are defrauding the IRS. Others include the manipulation of self-employment income and expenses, adding fictitious income so that the taxpayer can receive the maximum EITC, and claiming unqualified dependents solely to collect the EITC funds. This new vehicle of fraud is growing and is responsible for the loss of billions in tax revenue dollars. The IRS does not have the resources to investigate the millions of taxpayers that are involved in fraudulently claiming EITC. Tax-preparers are the best option to safeguard the nation's tax revenues and deter overpayments due to errors and fraud.

Not all fraudulent claims of the EITC are done through the assistance of paid tax-preparers. In some cases, the crime starts and ends with the taxpayers themselves. Taxpayers, who are familiar with taxes can use "self-help" software to prepare their own tax return. This category of taxpayers creates a unique problem for authorities.

Kyle Pomerleau (2014), states that the annual cost of over-payment is approximately 14 billion dollars. He asserts the following:

- Most errors that led to over-payment were income misreporting andQualifying Child Errors.
- 38 percent of over-payments are due to taxpayers claiming a child they shouldn't.
- 35 percent is due to income misrepresentation.
- 15 percent is due to both income misrepresentation and child error.

Paid-Preparers Responsibilities

While in theory the taxpayer is responsible for the information on his/her tax returns, CPAs and other tax-preparers have an ethical and professional responsibility to ensure that they are not deliberately perpetuating fraud. The tax-preparer should always proceed with professional skepticism when addressing "grey areas" in taxes. One specific

grey area that remains problematic is self-employed taxpayers claiming EITC. With this mind, tax-preparers should be very diligent, especially when dealing with self-employed taxpayers claiming EITC. The following should be taken into consideration while exhibiting due diligence:

- The nature of the business: understanding the nature of the taxpayers business is very important in accessing income and expenses that are necessary and reasonable given the business.
- Documentation: the taxpayer should be able to present supporting documentation for income and expenses. Apart from the taxpayer's schedule of income and expenses, receipts, bank statements, cancel checks, flyers, business cards, other documentation should be available upon request to support reported income and expenses.
- *Qualifying Dependents*: the tax-preparer should request supporting proof that the children (or other dependents) are actually qualifying dependents to the taxpayer. For example, educating the client about the criteria that must be met in order to claim a dependent (a must have discussion), collecting documentation such as: school records, social security, birth certificates, health records, etc. for their permanent file.
- Be aware of clients with filing status that is married filing jointly one year and head of household the next. Clients may often suggest their filing status to the tax-preparer and this in itself should act as an indicator to be more diligent.
- Preparers' Safety Net: there is no law that compels a tax-preparer to accept a client and therefore based upon the interview with a client, and or failure to produce certain documentation, the preparer has the RIGHT to refuse employment. Due diligence dictates that the preparer should refuse to prepare any return if he or she is not comfortable with the information provided.
- Reporting Fraud: If the tax preparer suspects that the client is attempting to commit fraud, he or she should notify the IRS by completing Form 3949-A. The preparer has the option to remain anonymous during this process. However, the IRS has provisions that may result in compensation for reporting of fraudulent activities. To be considered for such compensation, the potential preparer must file Form 211.

In light of the above, Tax-preparers should insist that their self-employed clients receive 1099s for services performed and issues 1099s where necessary for contract labor. Though much focus was placed on self-employed clients, preparers should also be aware of married couples splitting qualifying children and claiming head of household filing status. It is undoubtedly true that the tax-preparer is not charged with the responsibility to detect fraud. However, he or she is charged with an ethical and professional responsibility and should not assist in perpetuating criminal or fraudulent activities by ignoring certain red flags. Pomerleau (2014), states that despite the type of preparer used, there was no "statistically significant differences in the likelihood of over reporting between self-preparers and paid preparers." Pomerleau also found, when examining the "likelihood of EITC over-payments," self-preparers account for about 47 percent, paid preparers about 51 percent, Attorneys 35 percent, and CPA about 49 percent.² This data tells us that approximate 7 billion (50%) annually loss in over-payments are from EITC claimed on returns were submitted by paid preparers.

The refundable portion of the child tax credit is called the additional child tax credit. Table 3 below describes data compiled prior to 2014 which estimated tax revenue loss due to fraudulent tax returns claiming the EITC and child tax credit:

During 2014 tax year, 67 billion dollars will be claimed as a result of the EITC, of this amount an estimated nine million will be used to eliminate current tax liabilities and 58 million will be distributed in the form of a refund to fraudulent claims by taxpayers. While it is true that EITC does attract fraudulent returns, the refundable portion of child tax credit is becoming very prevalent. However, the additional child tax credit not only caters to the EITC population, but also the population of taxpayers that would not necessary qualify for EITC. That is because unlike EITC qualifying criteria of a valid social security number; to claim the child tax credit, the taxpayer only needs to have a tax identification number. Therefore, taxpayers otherwise disqualified from EITC, can claim the credit by applying for a tax I.D.

² Pomerleau, K., (September 8, 2014) IRS Release More Detail on EITC Over-Payments.

Table 3. Revenue loss estimates of EITC and CTC (billions of dollars), 2012-2017

Fiscal Year	Earned Income Tax Credit		Child Tax Credit	
	Total	Refundable Portion	Total	Refundable Portion
2012	59	51.4	56.8	29.6
2013	60.9	53.2	57.3	30.8
2014	67	58	57.9	31.2
2015	66.5	57.7	58.4	31.1
2016	66.3	57.6	58.9	30.6
2017	65.3	56.8	59	30.3
Totals	\$325.9	\$283.2	\$291.6	\$154

Source: Hungerford, T., Thiess, R., (2013). The Earned Income Tax Credit and The Child Tax Credit: History, Purpose, Goals, and Effectiveness

Paid Preparers' EITC Compliance

Even though many paid preparers continue to practice due diligence and maintain professional skepticism when claiming EITC for their clients, many mistakes and fraudulent cases slip through the cracks. To combat this problem, the IRS has developed a Preparer Compliance Program which tries to ensure that preparers compete on a level playing field. The program is designed as an outreach and educational program to assist preparers with the necessary resources in understanding the tax law, the consequences for non-compliance, and to avoid EITC errors. Additionally, paid preparers who do not electronically submit Form 8867 (EITC Due Diligence Checklist) will all EITC claims could find themselves facing a penalty imposed by the IRS of \$500 per return. Other return-related preparer penalties can be as much as \$5,000.

Preparers who file questionable EITC claims may receive any of the following tier treatments by the IRS:

- **Reaching Out to preparers** this is done in the form of a letter to help educate the preparer of the tax law and the preparer's due diligence responsibility.
- Knock and Talk Visit A revenue agent and criminal investigator visit those who prepared EITC claims with a high chance of error. This does not result in penalties.
- Auditing for EITC Due Diligence Compliance—The IRS looks at returns with a high chance of errors completed by the same preparer and use that information to select preparers for audits. Before the filing season begins, IRS employees conduct due diligence audits based on the prior year EITC returns.
- Barring Non-Compliant EITC Preparers from Completing Tax Returns.
- Additional Forceful Actions Taken Against Return Preparers Filling False EITC Claims.

Penalties for Non-Compliance

Taxpayers generally expect the tax-preparer to know the tax law and prepare an accurate return. Each paid preparer **MUST** meet the due diligence requirements outlined in the EITC Due Diligence Law and Regulations.

Penalties for the Taxpayer: the IRS may deny all or part of the EITC claimed due to errors, intentional disregard of the rules, and fraud. In either case, the taxpayer must repay the amount in error with interest. They may need to file Form 8862, Information to Claim Earned Income Credit after Disallowance. Taxpayers may even be banned from claiming EITC for two years, if errors were due to reckless or intentional disregards of the EITC rules or ten years, if the error was of a fraudulent nature.

Penalties for the Tax Preparer: If the IRS finds that the erroneous claims were due to failure by the preparer to meet all four of the due diligence requirements, the following penalties may be imposed:

- A \$500 penalty for each failure to comply with EITC due diligence requirements³.
- A minimum penalty of \$1,000 if you prepare a client return and IRS finds any part of the amount of taxes owed is due to an unreasonable position⁴.
- A minimum penalty of \$5,000 if you prepare a client return and IRS finds any part of the amount of taxes owed is due to your reckless or intentional disregard of rules or regulations⁵

The IRS can also penalize the tax firm or employer if the employee fails to comply with EITC due diligence requirements. These penalties include suspension, expulsion, other disciplinary actions, and injunctions barring the firm from preparing tax returns. An injunction barring any firm from practice is usually a last resort, and generally only used in cases where earlier compliance efforts failed. For more information on the specific circumstances that may subject an employer to these penalties, see Treasury Regulations 1.6695.2(c). Preparers with a history of noncompliance of due diligence requirements can also face criminal prosecution and or additions penalties.

Two recent examples of permanent injunction penalties are:

- On January 21, 2015, a federal court permanently barred Nathaniel Kimberly, of Greenville, Mississippi, and his Greenville, Mississippi, business, Kimble Tax Service, from preparing federal tax returns for others. He was found guilty of knowingly preparing federal income tax returns for customers that understated the customers' tax liability and overstated refunds they claimed by inflating or fabricating earned income tax credits that his customers were not eligible to take⁶.
- On March 5, 2014 a federal court permanently barred Kavivah Branson, of Clinton, Mississippi, and her Jackson, Mississippi, business, Branson Tax Service, from preparing federal tax returns for others. Branson was charged with claiming improper EITC and education credits for her customers without performing the required due diligence, despite the absence of any supporting documentation leading to the understatements. On different occasions before the injunction banning her from practice, Branson received penalties from IRS. However, this did not deter her from performing fraudulent activities. In this case, the IRS estimated between 2009 through 2014 they loss over 12 million in tax revenues⁷.

Call for Changes in EITC Tax Code

Based upon the data presented to the Joint Committee on taxation (2013), taxing authorities need to revise the tax codes related to the EITC to stop the hemorrhaging of tax revenue via overpayments in claims. Some have argued that EITC is not functioning effectively; billions are lost each year and therefore, immediate change in the tax code is needed. Others have suggested that eliminating the program and increasing the minimum wage which would ultimately be a better incentive for more Americans to truly "Earn their Income." With regards to changing the structure of the EITC, clearly this concept does have its pros and cons, but it may save the government billions which are paid each year in fraudulent tax returns.

In 2010, President Obama signed into to law the Improper Payments Elimination and Recovery (IPER) Act, demanding that the IRS administration maintain improper payments of EITC below a 10 percent of all EITC payments (York 2014). To date, the IRS has not been able to achieve this goal as mandated in the IPER Act. The IRS in their combat against gross overpayments due to errors and fraud has launched a proactive approach to assist in the combat against loss revenues. They implemented a program called The Preparer Compliance Program. It is geared to educated paid preparers and act as a preventative or intervention tools to deter errors, inaccurate

³See Internal Revenue Code Section 6695(g)

⁴See Internal Revenue Code Section 6694(a) ⁵See Internal Revenue Code Section 6694(b)

⁶More of the case can be found at http://www.justice.gov/file/319606/download

More of the case can be found at: http://www.justice.gov/sites/default/files/tax/legacy/2014/03/05/BransonComplaintFiled.PDF

calculations, misinterpretation of the law, and fraud. Though the program existed before, the IRS have reevaluated and expanded its goals and objectivity. This program also educates preparers of their responsibilities and the consequences for non-compliance.

CONCLUSION

The EITC was designed to assist low income families while creating an incentive for Americans to join the work force. However, over the decades it has evolved into a revenue earning mechanism for some individuals. Many taxpayers have found ways to circumvent the tax codes and walk away with huge refunds. The actions of these taxpayers have created massive losses due to overpayments of EITC. Numerous overpayments are due to fraudulent claims; paid preparers are responsible for about 50 percent of fraudulent claims related to the EITC. This is a surprising statistic especially since tax-preparers are an intrinsic part of, if not supposedly the de facto "gatekeepers" of the nation's tax revenues. Although preparers' revenues are based on their clienteles, they should not sacrifice their reputation for compensation. Instead, emphasis should be placed on educating their clients. One should willingly decline to provide professional services to anyone when they are uncomfortable with the information being supplied.

Clearly, preparers alone cannot eliminate the rise in fraudulent EITC claims and pay-outs, but tougher tax laws should assist in this fight. The IRS simply does not have the resources to combat fraudulent claims surrounding the EITC. Critics have argued that the IRS is fighting a losing battle because of the lack of resources. While this may be true, this article has addressed some ways that CPAs and other tax-preparers can assist in the fight. Pomerleau (2014) found that 58 percent of employees of tax-preparers are responsible for EITC non-compliance.

Many preparers are already doing a fantastic job in insuring that tax fraud is kept to a minimum. However, it is equally important that their staff is also well trained to adopt professional skepticism and perform due diligence. Other preparers who do not screen the information supplied by their clients as thoroughly as possible could suffer the consequences of the Improper Payments Elimination and Recovery (IPER) Act.

Over the last two years, the IRS has adopted a more computerized filing system. This and other programs like Preparers Compliance Program were designed to increase detection in errors and the deterrence of fraud. Despite this, the number in annual overpayments continues to soar. The Improper Payments Elimination and Recovery (IPER) Act implemented in 2010 by President Obama has also failed to meet its objective. According to York (2014) "The inspector general's use of the phrase "little progress" was too generous. In fact, EITC fraud in the latest period was unchanged from earlier years." As a result, revamping the entire EITC program to better achieve its intended purpose is an idea that is gaining support, even in congress. The implementation of the IPER Act and other EITC compliance rules and penalties are simply not achieving the goal of eliminating the billions in tax revenues that are loss annually.

Hungerford& Thiess (2013) explains that in the 1970s when the EITC was implemented, President Regan labeled it "the best anti-poverty, the best pro-family, the best job creation measure to come out of Congress." Over the years, the EITC has under gone a metamorphosis; it is no longer considered in favorable terms by many. The EITC has become a vehicle for fraud. Some aspects of the EITC and the child tax credit will be "phased out during 2017" (Hungerford& Thiess 2013). The most interesting part of this discussion is that it is ongoing and all interested parties have the opportunity to observe how government will reform the credit. With the impending elections in 2016, one can revisit this topic in the future to evaluate any changes. Will the EITC be eliminated altogether? Only time will provide an answer.

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