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Social Welfare Considerations of EITC Qualifying Child Noncompliance

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Abstract

We use data from the IRS's random audits of federal individual income tax returns for tax years 2006-2011 and other administrative data to examine Earned Income Tax Credit (EITC) qualifying child errors and explore the welfare implications of such noncompliance. We study the intensity of the relationship between the child claimed in error and the "wrong" taxpayer whose EITC claim was denied by the audit, and investigate why the "right" taxpayer did not claim the child. Our results show that the vast majority of children claimed with qualifying child errors had an eligible familial relationship with their claimants and a small portion had lived with the claimants during part of the year. Furthermore, about 60 percent of the children did not appear to have a parent who could be the "right" taxpayer, as stipulated by law, who could file a claim. We conclude that a substantial portion of erroneous EITC claims likely helped support children in low-income families despite those children being claimed in error. Parents of another 4 percent of children were found to have filed a duplicate claim with the taxpayer under audit. For the remaining 36 percent of children, who had a tax-filing parent not already claiming the child, the family members' filing patterns were consistent with the credit-maximizing motive in 85 percent of cases. We offer a few explanations, including taxpayer confusion about EITC rules or law changes, to account for the claiming pattern of the remaining 15 percent of cases. Finally, we estimate that the forgone credit that could have been received by non-claiming parents amounted to about 10 percent of the total overclaims attributable to qualifying child errors, or 4 percent of all EITC overclaims. Taken together, these results suggest that the official improper payment rate overstates the social welfare loss and monetary loss to the government.

The findings and views in this paper are those of the authors and do not necessarily reflect the positions of the Internal Revenue Service or the Department of the Treasury.

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1. Introduction

Earned Income Tax Credit (EITC) noncompliance has been the subject of intense scrutiny and research since the mid-1990s. Yet despite simplification of the credit, enhanced penalties, and additional audit resources devoted to the EITC over the past 25 years, a substantial number and dollar amount of EITC errors remain. In 2018, the estimated improper payment rate was 25 percent, and an estimated $18.4 billion in EITC claims were paid in error (Department of Treasury, 2018). But these figures do not tell us whether EITC overpayments are important in terms of social welfare consequences.[1] For example, from the social welfare perspective, policymakers might view a case where a child lived with her low-income grandmother for 6 months of the year differently from a case where an unrelated person claimed a child she did not live with at all; but, both cases would be counted equally in computing the EITC error rate.[2] Furthermore, the improper payment estimates arguably overstate social welfare loss and monetary loss to the government if some incorrect claims for EITC involving children were offset by forgone claims of other eligible taxpayers.

To shed light on these social welfare considerations, one needs to have a better understanding of the circumstances surrounding the cases where a taxpayer incorrectly claimed a child for the EITC. When a taxpayer fails to meet the qualifying child tests for an EITC claim, it is generally unknown how closely this taxpayer is related to the child and whether another taxpayer could have correctly claimed the child. This knowledge, however, is relevant to the

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[1] A formal evaluation of social welfare loss associated with particular errors would require constructing a social welfare function, which we do not attempt to do in this paper.

[2] To claim a child for the EITC, the child must reside together with the taxpayer for more than half the year. Technically, residing together for 6 months falls just shy of this requirement.

welfare implications associated with EITC errors. It is possible for more than one taxpayer to have provided some care for the child during the year, but no single taxpayer to be eligible to claim the EITC for that child under the law (e.g., the child does not live with any taxpayer for more than half the year). In other cases, the erroneous claim may have precluded the actual caregiver from claiming the child.

This paper provides more detail about the nature of EITC noncompliance in order to allow a more nuanced consideration of EITC qualifying child errors and the associated social welfare implications. Specifically, we analyzed the intensity of the familial relationship between the child and the actual claimant as well as the length of the shared residency, providing information about whether the claim, despite being erroneous, might nonetheless have supported a low-income worker caring for a child. In addition, we studied possible reasons why the "wrong" taxpayer may have claimed the child—whether this occurred due to complicated family circumstances, intentional credit-maximizing behavior, or other reasons—to better understand the causes of EITC noncompliance. Finally, we estimated the credit that could have been received by the parent who did not already claim the child and was potentially the actual caregiver. This result offers an insight into the extent to which the EITC improper payment estimates may overstate not only the social welfare loss but also the monetary loss to the government.

In this paper, we use audit data for a stratified random sample of tax returns from the IRS' National Research Program (NRP) for tax years 2006-2011 and other administrative data to re-examine the nature of EITC errors, with a focus on errors related to qualifying children. Qualifying child errors account for a significant portion of EITC overclaims, and they

present a tax administration challenge to the IRS because not all of the qualifying child rules can be readily verifiable by the IRS without auditing the return.

Our sample represents an average of 3.4 million children per year who were, determined by the audit results in our sample, erroneously claimed for the EITC due to the claim's violation of at least one of the three qualifying child rules that we focus on—the relationship test, the residency test, and the tiebreaker test. We analyze the tax return along with detailed information about the EITC claim documented in supplemental data collection by the examiner.

Our analysis suggests an intense relationship between the child and the claiming taxpayer in most cases. About 87 percent of the children, despite being claimed with qualifying child errors, had a valid familial relationship (84 percent) or lived with the taxpayer for more than half of the year (7 percent) or both. However, compared to children who met all of the qualifying child tests, the children in our sample were much less likely to be the son or daughter of the taxpayer, and more likely to have other valid familial relationships (e.g., grandchild or nephew/niece) with the taxpayer.

We then use data provided to the IRS by the Social Security Administration (SSA) to find parents of the children claimed in error and documented the frequency with which the parents we identified did not already claim the credit but were likely eligible. Using the information reported on the non-claiming parents' tax returns, we assessed the reasons why the children were erroneously claimed by taxpayers in our audit data but not by the potentially eligible parents.

We find evidence of complicated family circumstances, intentional credit-maximizing behavior, and other possible explanations for EITC noncompliance. Of the children we studied, 39 percent did not have a parent, other than the one audited, whom we could identify from the

Social Security records. We either could not find the parent's Social Security number (SSN) or the parent we found was the same taxpayer in the audit data. In these cases, it is not obvious if any family members would meet all of the EITC rules with respect to taxpayer eligibility and qualifying child tests in order to correctly receive the credit.

In other cases, parents different from those in our audit data were identified, but the parents were either not in a position to file a claim or had already received the credit. For 19 percent of the children we studied, the parents did not appear on a filed tax return for the tax year although a small share of these parents were found to have earned income. For another 2 percent of the children, the parents were themselves dependents of the taxpayers in the audit data who made the qualifying child errors. For another 4 percent, the parents already received the EITC claiming the same children, resulting in duplicate claims with the audited returns.

As a result, we identified at least one non-claiming parent return for 36 percent of the children in our sample. We simulated the credit that could have been awarded to these taxpayers. In the majority—85 percent—of cases, the taxpayer in our data, whose EITC claim was denied by the audit, claimed a larger EITC than the non-claiming parent would have been able to claim, suggesting evidence of credit maximization. However, other explanations, such as taxpayer confusion, may also account for some of the claiming patterns we documented. Finally, the forgone credit, i.e., credit that could have been received by non-claiming parents, is estimated to amount to a modest share, about 10 percent, of the total overclaims attributable to qualifying child errors, or 4 percent of all EITC overclaims. Our analysis provides the first estimates of the

extent to which EITC overclaims could be offset by correct claims not made, providing better information about the monetary loss to the government.[3]

2. EITC Rules for Qualifying Children

To provide background for our analysis of qualifying child errors, this section highlights EITC rules and eligibility criteria that pertain to qualifying children. A more complete discussion of how the EITC works is provided in Appendix A-1.

To qualify for the EITC in 2018, the child must meet four tests: the residency test, the relationship test, the age test, and the joint return test. To meet the residency test, the child must reside with the taxpayer for over half the year. To meet the relationship test, the child must be the taxpayer's son, daughter, stepchild, foster child, sibling, half-sibling, step-sibling, or a descendant of any of these (such as a grandchild or niece). The age test requires that the child is either under age 19 at the end of the tax year, a full-time student under age 24, or any age and permanently and totally disabled. Beginning in tax year 2009, a non-disabled child must also be younger than the taxpayer to qualify the taxpayer for the EITC. Finally, the joint return test requires that, in general, the child may not be married filing a joint return.

It is worth noting that the age test in general and the joint return test depend only on the child's characteristics, whereas the relationship and residency tests depend on the characteristics of both the child and the taxpayer claiming the child.[4] This means that if the age or joint return

[3] Our analysis focuses only on the claims that could have been made by potentially eligible parents we identified on behalf of their children claimed in error. We do not conduct a full analysis of non-participation, such as non-participation by eligible parents that we could not find in Social Security records or by other eligible relatives.
[4] The introduction of the comparative age criterion in 2009 means that the age test now depends on both the taxpayer and child.

test is not met, the child cannot be claimed by any other taxpayer for the EITC, but if the relationship and residency tests are not met, there may be another taxpayer for whom the tests *would* be met. It is also possible for a child to meet all four tests with respect to more than one taxpayer. When that happens, there are additional considerations—often loosely referred to as the "tiebreaker rules"—that determine which taxpayer is the one legally entitled to claim the child for the EITC.

Under the current tiebreaker rules, parents who both reside with a child for more than half the year but are not filing a joint return may decide between them who will claim the EITC; and, a parent may allow another taxpayer with higher AGI who also lives with the child to claim the EITC. But non-parents cannot decide among themselves who claims the child, and a parent cannot allow another taxpayer with lower AGI to claim her child. If two parents claim the same child on different tax returns, then the EITC is awarded to the parent of the child who resides with the child the longest; or, if the parents reside with the child for the same length of time, to the parent with the higher AGI. Finally, a taxpayer who resides with a qualifying child whom she cannot claim due to the tiebreaker rule may be able to claim the smaller credit for workers without qualifying children.

These current rules reflect the most recent in a series of changes that have sought to ensure that the EITC reaches its intended recipients while preventing abuse of the credit. The repeated efforts to modify the tiebreaker rule[5] and otherwise simplify the definition of a qualifying child demonstrate the difficulty in crafting eligibility criteria that are simple and

[5] See Appendix A-2 for a detailed legislative history of the tiebreaker rules.

verifiable but also address varied living arrangements and family circumstances. One consequence of the changes in the tax law is that the same behavior may be considered compliant in one year but noncompliant in another. If taxpayers are unaware of the changes to the tax law, this can translate into changes in the error rate without any change to taxpayer behavior.

Our analysis focuses on tiebreaker errors and qualifying child errors with respect to the relationship and residency tests, for two reasons. First, the intensity of the actual familial relationship and the length of shared residency has bearing on whether one views the dollar amount of the incorrect claim as an appropriate measure of the social welfare loss. Second, these three errors all reflect cases where the EITC error could potentially be partially or fully offset by the forgone claim of another taxpayer who could have correctly claimed the child.

3. Previous EITC Compliance Research

Relative to other income and work support programs, the administrative costs of the EITC are low and participation rates are high.[6] However, self-certification of eligibility in the tax system based on some criteria that IRS does not observe results in a high EITC noncompliance rate. Estimated EITC overpayments were about $18.4 billion or roughly 25

[6] In a report by Treasury Inspector General for Tax Administration (2011), the IRS noted that the EITC participation rate (defined as the share of eligible taxpayers that receives the credit) was 75 to 80 percent, and the administration costs were less than one percent of benefits delivered, compared to other non-tax benefits programs in which administrative costs related to determining eligibility ranged as high as 20 percent of program expenditures. More recently, the IRS, in cooperation with the Census Bureau, estimated an EITC participation rate of 85 percent of eligible dollars in tax year 2014 (Treasury Inspector General for Tax Administration, 2018). In contrast, in 2016, only 23 families received the Temporary Assistance for Needy Families (TANF) for every 100 families in poverty (https://www.cbpp.org/research/policy-basics-an-introduction-to-tanf). Another income support program for low-income families, the Supplemental Nutrition Assistance Program (SNAP), saw its participation rate increase from 72 percent in 2010 to 85 percent in 2016, (https://www.fns.usda.gov/snap/SNAP-participation-rates-FY-2010-2016). It was estimated that the SNAP's administrative costs represented about 7 percent of the total program expenditures in fiscal year 2017 (https://www.cbpp.org/research/policy-basics-the-supplemental-nutrition-assistance-program-snap).

percent of total EITC dollars claimed in fiscal year 2018. Reducing overpayments and evaluating the tradeoff between administrative simplicity and accuracy both require an understanding of the types and causes of EITC errors.

IRS (2014) last published a comprehensive study of the nature of EITC compliance problems for tax years 2006-2008. Consistent with earlier research,[7] the 2006-2008 study revealed that qualifying child errors accounted for a substantial share of the dollar amount claimed in error. The study estimated that qualifying child errors represented between 52 and 54 percent of total EITC overclaims between 2006 and 2008.[8] In most of these cases, the child did not live with the taxpayer for the required length of time, or was not related to the taxpayer, or both. Failure of the qualifying child residency and relationship tests accounted for 75 and 20 percent, respectively, of all qualifying children claimed in error. In addition, about 7 percent of the qualifying children claimed in error were claimed by taxpayers who failed the tiebreaker test.[9]

The recent IRS study focuses on errors made by taxpayers who claimed the EITC; it does not provide detail about the circumstances when those errors were made, nor does it attempt to estimate non-participation among eligible taxpayers. More specifically, IRS (2014) does not address circumstances such as the length of time the child lived with the taxpayer when the

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[7] See e.g., McCubbin (2000) and IRS (2002).
[8] Some returns contain both qualifying child and non-qualifying-child errors and thus have an "overlapped" overclaim amount attributable to either error. IRS (2014) attributed the overlap to qualifying child errors and arrived at the estimate of 52 to 54 percent. Another IRS study (Leibel, 2014) also considered attributing the overlap to non-qualifying-child errors. Taking into account both approaches, Leibel (2014) estimated that, for tax years 2006-2008, between 42 and 54 percent of EITC overclaims were attributable to qualifying child errors.
[9] The type of EITC errors cannot be determined for 15 percent of EITC claimants selected for the study because they failed to appear for the audit. The error frequencies were computed based on EITC errors among audit participants.

residency test was failed, the relationship between the taxpayer and child when the relationship or residency test was failed, or whether other non-participating taxpayers might have been eligible to correctly claim the child, such as those in the same household as sampled taxpayers. To our knowledge, only two other studies have explored potential explanations for non-participation in EITC with qualifying child. One is the study by Hotz and Scholz (2008). Using Wisconsin's child support data, the authors identify cases where someone other than the child support payee claims the EITC for a child of a court-ordered child support recipient. They estimate the potential EITC that could have been claimed by the child support payee, assuming that the payee is the right taxpayer who meets the qualifying child tests. Upon comparing this forgone EITC to the actual claim filed by the potentially wrong taxpayer, the authors find their results consistent with the hypothesis that family members are engaged in credit-maximizing behavior.

In addition, Jones and O'Hara (2016) find evidence of tax-minimizing (or credit-maximizing) claiming of children residing in multi-family households, using Census data matched to tax returns for tax years 2005 to 2010. They further find that this behavior is driven by the EITC. Note however, that their paper does not address EITC compliance, as the families that they study reside together and, during most of the period that they study, eligible taxpayers could decide who among them would claim a child for the EITC.

4. Data: National Research Program

In order to measure tax reporting compliance, the IRS annually conducts audits on a statistical sample of individual income tax returns, including over 2,000 returns claiming the

EITC. These audits are part of IRS's National Research Program (NRP). The annual EITC sample is designed in part to provide estimates of the improper payment rate with a 95-percent confidence interval of at most +/- 3 percentage points. Combining several years of data permits reliable estimation of various aspects of EITC compliance with greater precision than would be possible with single-year analyses. Our analysis is based on data for tax years from 2006 to 2011. In some cases, we produce separate estimates for tax years 2006-2008 and 2009-2011 in consideration of the expansion of the EITC to a third child in 2009.

The NRP individual income tax study includes supplemental data collection beyond what is typical in a standard IRS audit.[10] For the EITC returns, examiners are asked to document whether taxpayers meet each of the EITC eligibility criteria described above. For taxpayers who claim qualifying children, information about children and their eligibility is documented for each return. We analyzed the supplemental data for returns that claimed an EITC qualifying child. Based on the audit results in our sample, we estimated that, of the annual average of 31.3 million children claimed between 2006 and 2011, about 15 percent, or 4.8 million children each year, were claimed with at least one qualifying child or tiebreaker error.

Table 1 shows common types of qualifying child errors made by taxpayers. Of the 4.8 million children claimed in error per year, the vast majority (79 percent) did not meet the residency test, and 14 percent did not meet the relationship test, with respect to the taxpayer. About 8 percent of the children were claimed by a taxpayer violating the tiebreaker rule.

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[10] Although standard IRS audit procedures require examiners to record information in their workpapers regarding the issues addressed and errors made by taxpayers, the NRP studies record the information in a standardized format that facilitates analysis of the data.

Because some claims had multiple errors, altogether the three qualifying child errors—residency, relationship and tiebreaker—accounted for 85 percent of the children claimed in error.

Some of the children with residency, relationship, or tiebreaker errors also violated qualifying child rules pertaining to the child only, rather than to the child in relation to the taxpayer. Violation of these rules, including the age test, the SSN test and the joint return test, makes these children ineligible to be claimed by any taxpayer. Removing these disqualified children from our initial sample yields a population estimate of 3.4 million children per year, who, while being claimed with a residency, relationship or tiebreaker error, did not break any other qualifying child rules. These are the children who potentially could be correctly claimed by another taxpayer provided that all tests were met.

Table 1 Types of Qualifying Child (QC) Errors

	Average Number of Children per Year, 2006-2011 (Million)	Percent of Children with Qualifying Child (QC) Errors (%)
Residency error	3.8	79
Relationship error	0.6	14
Tiebreaker error	0.4	8
Any of the above three errors	4.0	85
Any of the above three errors, and no other QC error	3.4	71
Total (any QC error)	4.8	100

4.1 Residency and Relationship Errors in 2006 - 2011

To evaluate the residency test, examiners documented the number of months that each child resided with the taxpayer, as reported by the taxpayer to the examiner. Examiners then

relied on written documentation, oral testimony, or both to substantiate the taxpayer's report. The claim was deemed to have failed the residency test if the time substantiated was 6 months or less in the year.[11] Table 2 provides information about the audit results for children who failed the residency requirement in relation to the taxpayer but could potentially be claimed by another taxpayer because the eligibility rules pertaining to the child were met.

As shown in Table 2, all taxpayers, despite being determined to have violated the residency rule, reported that they had lived with the child for more than 6 months. The vast majority (90 percent) of these children lacked any substantiated residency with the taxpayers. Only 10 percent of the children who failed the residency test were substantiated as living with the taxpayers in the U.S. for some months during the year. It is likely that the number of months substantiated during audit may have understated the actual months of shared residency. For example, once a taxpayer understood that she failed the residency test, she may have no incentive to document a few months of residency. Also, some taxpayers may find it difficult to substantiate residency especially if the taxpayer or the child moved during the year.[12]

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[11] The data record the number of months, from 0 to 12, for which a child lives with the taxpayer in the U.S. Examiners use this information to determine whether the shared residency is more than half of the year for the residency test. In this section, we report the number of months recorded in the file, and use 6 months as the cutoff for exposition purposes.
[12] Auditors can accept credible oral testimony, per NRP instructions, but without further study we do not know how often this rule is applied during audit in determining shared residency.

Table 2 Children Claimed with Residency Error

Number of months reported on the return	Percent of Children with Residency Error (%)		
	Substantiated residency = 0 month	Substantiated residency = 1- 6 months	Total
0 – 6	0	0	0
7-11	2	1	3
12	88	9	97
Total	90	10	100

Table 3 provides information about a child's relationship with the taxpayer. We compare the results for children failing at least one of the three qualifying child tests—the residency, the relationship, and the tiebreaker tests—with children meeting the tests. In addition to the results shown in column (3) concerning the children in our study, i.e., those who failed at least one of the three qualifying child tests but were eligible to be claimed by other taxpayers, we also present results for disqualified children in column (4) for comparison. About 84 percent of the children in our study were related to the taxpayer. However, they tended to have less intense familial relationships with the taxpayers than children meeting the tests. Only 47 percent of the children in our study were the son or daughter of the taxpayer, compared to 93 percent of the children meeting the three qualifying child tests. About 37 percent of the children in our study, compared to 7 percent who passed the tests, were the grandchild, sibling, niece, nephew or foster child of the taxpayer. Finally, as indicated in columns (3) and (4), the relationship patterns were similar regardless of whether a child broke other qualifying child rules.

Table 3 Qualifying Children's Relationships with Taxpayers

	Percent of Total (%)			
Relationship as determined by examiner	All Children (1)	Children meeting the three QC tests (2)	Children not meeting the three QC tests and no other rule QC broken (3)	Children not meeting the three QC tests and at least one other QC rule broken (4)
Son/daughter	86	93	47	55
Grandson/granddaughter	5	4	12	6
Brother/sister	1	1	4	9
Nephew/niece	4	2	20	14
Other eligible relative or foster child	1	0	1	1
Taxpayer doesn't know child	0	0	0	1
Invalid relationship*	2	0	13	7
No information**	1	0	3	7
Total	100	100	100	100

* The most common relationships in this category are child of a girlfriend or boyfriend, child of a friend, and cousin (or child of a cousin).
**"No information" means that the examiner did not record a relationship or definitively indicated that the taxpayers and child were unrelated, and disallowed the qualifying child claim. We infer that the taxpayer was not related to the child in these cases, but it could be that the relationship is simply missing.

Table 4 summarizes the residency and relationship variables documented by the examiner, where available, about the 3.4 million children with any of the three qualifying child errors who could potentially be claimed by another taxpayer. We found that about 87 percent of these children had a valid relationship or lived with the taxpayers for more than half of the year or both. About 44 percent of the children were the son or daughter of the taxpayers with whom they did not live for more than half of the year. Another 36 percent were related to the taxpayers in another way and did not meet the residency test. About 3 percent of the children had more intense relationships with the taxpayers—they were related to the taxpayers and lived with the

taxpayers for more than half of the year—but the claims failed the tiebreaker test because another taxpayer(s) claimed or could claim the children for child-related tax benefits. About 4 percent of the children did not have an eligible relationship with the taxpayers but lived with them for more than half of the year.

Put another way, 11 percent of the children who failed one of the three key tests were related to the taxpayer and lived with the taxpayer all or part of the year, while 12 percent were not related and did not live with the taxpayer at all (or, residency and relationship could not be documented). Both of these types of cases are counted exactly the same in calculating the EITC error rate, but policymakers might feel quite differently about them.

Table 4 Residency and Relationship of Children Claimed with Residency, Relationship or Tiebreaker Error

	Percent of Children (%)			
Relationship as determined by examiner	Substantiated residency = 0 month	Substantiated residency = 1-6 months	Substantiated residency = more than 6 months	Total
Son/Daughter	39	5	2	47
Related to taxpayer but not son/daughter	33	3	1	37
Invalid or no relationship information	12	1	4	16
Total	83	9	7	100

5. Matching Children Claimed in Error to Non-Claiming Parents

It is puzzling why so many children are claimed by taxpayers with whom they do not meet the relationship or residency test, rather than being claimed by the caregivers with whom

they do reside. To shed light on this issue, we identified as many parents as possible of the children in our sample, using Social Security records. We then searched for tax records of these parents and determined whether it appears that they were eligible to claim, or did claim, the EITC with children.

Table 5 shows the matching outcomes. For 21 percent of the children claimed with relationship, residency or tiebreaker errors and no other qualifying child error, we could not find the SSNs for any parent of the child in the Social Security data.[13] Several reasons explain why this situation may occur. For example, the child's parent might have been deceased at the time the application for the child's SSN was filed, or there may be other circumstances when an individual other than the parent, such as the State foster care agency, might have filed the SSN application on behalf of the child. It is also possible that some parents are not eligible for an SSN, either because they are not authorized to work or they do not have a valid non-employment reason for having an SSN. For these reasons, a parent's SSN would not be included in the database we used to match a child with the parent.

These scenarios tend to suggest that the child has circumstances such that no single taxpayer is eligible to claim the child for EITC. In the cases where the child does not have a parent alive or around, the child may have been placed in a living arrangement or multiple arrangements throughout the year, and none of the arrangements meet the relationship or residency rule, or both, for the EITC. In other cases where the child lives with parents who are

[13] The data, provided by the Social Security Administration (SSA) to the IRS for tax administration purposes, link a child to his or her parents. The file contains the parents' name controls (the first four letters of the surname) and Social Security numbers where available. The Social Security Administration assigns the majority of U.S. born children's SSNs through the Enumeration of Birth (EAB) process. As part of the EAB process, SSA receives birth registration information, including the parents' names and SSNs, directly from the State's Bureau of Vital Statistics.

not legally able to work in the U.S., the family is not eligible to benefit from the EITC. The fact that the children in these various circumstances may not be entitled to benefit from the EITC has varying implications for how the errors associated with these children are evaluated in terms of social welfare costs.

For another 18 percent of the children, the only parent found in the Social Security data was the parent who was in the NRP sample and claimed the EITC in error. Most of these parents failed the residency test, and it is unclear if the child had lived with any taxpayer for more than half the year. Even if another taxpayer did reside with the child, it is unknown if she would have met all the tests, e.g., relationship, income, etc., to claim the child for the EITC. For this group, the welfare implication again depends on the specific circumstance of the child.

Combining these first two categories, for a total of 39 percent of the children in our study, we did not identify a non-NRP parent in the Social Security data. It is not obvious that an eligible taxpayer was available to claim these children for the EITC.

In 19 percent of cases, non-claiming parents were identified, and the parent(s) did not appear on an individual income tax return for the tax year, either by filing a tax return or by being claimed as a dependent. On average there were an estimated 0.6 million children in this group each year, for whom we identified about 0.7 million parents per year. We used information returns such as Forms W-2 to examine the income of these parent non-filers.[14] Only 27 percent of these parents had any earned income found through third-party information reports,

[14] The third-party income information reports that were checked include Forms W-2, 1099-MISC, 1099-DIV, 1099-INT, 1099-R, and 1099-B.

suggesting that the majority of these parents could not claim the EITC anyway.[15] It is likely that, due to lack of earned income, these parents allowed another taxpayer, such as an unmarried partner or a family member, to claim the child for the EITC. In these cases, the erroneous EITC was claimed by a low-income taxpayer with whom the child was somewhat connected but did not meet the relationship or residency requirement.

Table 5 Social Security Data Matching Results

All Children with Residency, Relationship, or Tiebreaker Error but No Other Qualifying Child Error	Average Number of Children per Year (Million)	Percent (%)
Parent's Social Security number not found	0.7	21
Social Security parent(s) same as NRP taxpayer	0.6	18
At least one parent different from NRP taxpayer was found, but was not in the tax filing system	0.6	19
At least one parent different from NRP taxpayer was found and was in the tax filing system	1.4	42
Total	3.4	100

Next, for 42 percent of children claimed in error, or an average of 1.4 million children per year, a parent who was not the same taxpayer in the NRP sample either filed a tax return or appeared as a dependent on a tax return. We identified an annual average of 1.36 million tax

[15] Of the parents with any income, over three quarters had an earned income below $10,000, but a very small number had an earned income above $40,000 (2 percent) or an unearned income above $3,000 (1 percent).

returns associated with these parents, and present the analysis of the returns' EITC claims in Table 6.[16]

We examined these parent returns to understand why their children were claimed by an ineligible taxpayer. Table 6 shows that a total of 15 percent of these returns already claimed the children for the EITC in two scenarios. First, about 6 percent of the returns—claiming 0.08 million or 2 percent of the children in our study—were the NRP tax returns that erroneously claimed the child, and the parent identified was a dependent on the same tax return. Like the non-NRP parents who were not shown on any tax return, these dependent parents may have allowed an unmarried partner or an ineligible family member to claim the child. Cases where a parent is herself a dependent also suggest that there are complicated familial situations and living arrangements where EITC eligibility may be difficult for taxpayers to self-assess. Second, for about 8 percent of the parent returns, the parent was the filer, and already claimed the child for the EITC, duplicating the NRP claim. These duplicate cases were found for 0.14 million children each year, or about 4 percent of the children in our study, and the associated erroneous claims presumably result in social welfare loss as well as monetary loss to the government.

Looking further at the rest of the parent returns, we found that 4 percent claimed the child for the dependent exemption but not for the EITC, and 81 percent did not claim the child for either the dependent exemption or the EITC. As indicated in Table 6, these two groups together account for an estimated average of 1.15 million parent returns per year that could be identified

[16] The number of returns is close to the number of children in this group, but the parent-child relationship is not one to one. A parent return can be linked to more than one child. Furthermore, a child may have more than one return identified because two parents were found on different tax returns or a parent appeared on more than one return.

and linked to an estimated average of 1.21 million unique children per year, representing about 36 percent of the 3.4 million children in our study.

Table 6 Parent Tax Returns

Tax Return on Which Parent Appears	Average Number of Tax Returns per Year (Million)	Percent of Tax Returns (%)	Average Number of Children per Year* (Million)
Parent appeared on the NRP return as a dependent	0.08	6	0.08
Parent return claimed the child for dependent exemption and for EITC	0.11	8	0.14
Parent return claimed the child for dependent exemption but not for EITC	0.05	4	0.07
Parent return did not claim the child	1.10	81	1.14
Total	1.36	100	1.43**

*Some children have more than one parent return identified due to more than one parent found or one parent on multiple tax returns. In this case, children were assigned only to one category in a way that maximizes the number of eligible parent returns without causing duplicates. For example, if one return already claimed the child and the other did not, we classified the child in the non-claiming parent category. For a child with multiple non-claiming parent returns, the child was assigned to the category of the tiebreaker winner.
**Shown as 1.4 in Table 5.

6. Evaluating Parent Eligibility and Simulating Forgone EITC

To understand why the parents we identified did not claim their children in the NRP sample, we used the information reported on the returns to analyze their EITC eligibility and simulate the potential credit. A key piece of unknown information is whether the parents in fact resided with these children for more than half the year. However, given that the child was claimed incorrectly by the taxpayer in the NRP sample, typically for reasons of residency, it

appears reasonable to assume that, if anyone did reside with the child for more than half the year, the parent was the most likely person. To the extent that this is wrong, our analysis may overstate the eligibility of "correct" taxpayers who could claim the child. To the extent that the child may have resided with another individual who is not the parent, our analysis may understate eligibility of other "correct" taxpayers.

The sample represents an estimated 1.15 million parent returns per year. Aside from the question of residency, which, as mentioned above, is unknown, some of these parents appeared to be unable to claim their children for other reasons. Table 7 shows that 23 percent of the taxpayers already claimed the EITC for the maximum number of qualifying children,[17] and 17 percent had an income above the maximum level for EITC. About 11 percent of the taxpayers indicated on their returns that they were ineligible, or would decline, to claim the EITC. About 12 percent were ineligible for other reasons.[18]

Thus, in total, 53 percent of the parent returns—71 percent for 2006-2008 and 38 percent for 2009-2011—were not eligible to claim, or would not have benefited from claiming, the EITC for the taxpayers' child(ren) in our NRP data. Due perhaps to ineligibility or lack of financial gain, these taxpayers might have allowed another family member to claim their child(ren). It is plausible that, under the credit-maximization motive, family members cooperate to intentionally overclaim the EITC and possibly share the benefits, anticipating that the chances the error would

[17] Prior to 2009, the maximum EITC was available to taxpayers with two qualifying children. The American Recovery and Relief Act of 2009 provided a higher credit for taxpayers with three children, which increased the maximum number of qualifying children for the EITC to three for 2009 and afterward.

[18] A taxpayer cannot claim EITC if filing the married-filing-separately status. In addition, following a previous EITC disallowance, taxpayers may be required to recertify when they claim the EITC again; we have assumed that, if the taxpayer had a recertification indicator, she was ineligible to receive the EITC. See the Appendix for detail about how the EITC works.

be detected were low.[19] For example, unlike the eligibility rules that can be verified by information provided on the Social Security record, the tax return, or third-party information reports, the residency requirement, the most common EITC qualifying child error, cannot be easily verified by the IRS without an audit.

The large decrease in the percent of parents who would not have benefited from claiming another child, from 71 percent to 38 percent between the two time periods, is driven by the expansion of the EITC to a third child in 2009. Prior to the expansion, for 2006-2008, an estimated 40 percent of the parent tax returns were already claiming the maximum number of children for the EITC (two) and therefore would not have benefited from claiming another child. After the 2009 expansion, only 9 percent of the parent tax returns were already claiming the maximum number of children (three), and thus more parents would have had a financial gain by claiming the NRP children. Given that the marginal increase in the credit for a third child is comparatively small relative to the amount for claiming a first or second child, the rising share of non-claiming parents seen after the EITC expansion does not necessarily undermine the credit-maximizing hypothesis.[20] In other words, families still might have benefited by allowing a parent's children to be split up and claimed on more than one return, which we test for below.

As a result, about 47 percent of the taxpayers we identified—29 percent from 2006-2008 and 62 percent from 2009-2011—appeared to have met the eligibility rules and could have received tax benefits had they claimed their child(ren) in our NRP data. As estimated, these

[19] The number of EITC returns audited in Fiscal Year 2018 was 1.4 percent, computed as a ratio of the EITC returns filed in 2017. See the IRS Data Book (2018, Table 9a).
[20] In 2009, the maximum credit amounts were $3,043, $5,028 and $5,657 for one, two, and three children, respectively.

parents could have claimed an annual average of 0.6 million children, representing 18 percent of the 3.4 million children claimed with the residency, relationship or tiebreaker error but meeting other qualifying child tests. We estimated the total potential forgone EITC for these parents to provide a measure of the extent to which EITC overclaims may be offset by correct claims not made. In addition, to examine the credit-maximizing hypothesis, we simulated the potential forgone EITC for each parent, and then compared the amount to the erroneous claim made by the NRP taxpayer on behalf of the same child.

Table 7 Eligibility of Parent Returns

	Percent of Parent Returns (%)		
	2006-2008	2009-2011	2006-2011
Already claimed max. number of EITC children	40	9	23
Income over maximum threshold	17	18	17
No earned income	4	3	3
Married filing separately	2	3	3
Self-identified as ineligible	14	9	11
Other indication of ineligibility (investment income too high, EITC set to zero due to math error, or recertification indicator on account)	5	5	5
Any of the above issues	71	38	53
None of the above issues	29	62	47
Average number of returns per year (million)	1.06	1.25	1.15

To simulate the credit, we first calculated the amount of EITC that would have been awarded if the taxpayers claimed their child(ren) in the NRP sample, given the number of

child(ren) the taxpayers already claimed on the returns. We then subtracted from this simulated amount the actual EITC claim made by the taxpayer, if any. The resulting amount is the additional EITC the taxpayer could have received from claiming the child(ren) in the NRP data. In cases where more than one parent is linked to a child, we applied the tiebreaker rules – specifically who had the higher AGI – to determine which taxpayer should claim the credit.

Table 8 shows the simulation results. It is estimated that an average of $561 million in EITC was forgone each year from 2006 to 2011. The amount was greater in 2009-2011 than in 2006-2008 because of the availability of the credit for the third qualifying child after 2008. The third child benefit resulted in a larger EITC for taxpayers with more than two qualifying children after claiming the NRP children. It also increased the number of taxpayers who would benefit from claiming the NRP children because, prior to 2009, those who already claimed two qualifying children on their returns would not receive an additional benefit.

Table 8 Simulation Results

	Dollar Amount per Year ($ Million)		
	2006-2008	2009-2011	2006-2011
Total forgone EITC, (1)	332	790	561
EITC overclaims for the 0.6 million children, (2)	668	2,231	1,449
Ratio of forgone EITC to overclaims, (1)/(2)	50%	35%	39%
EITC overclaims attributed to all returns with the relationship, residency, or tiebreaker error but without making other QC errors, (3)	4,986	6,665	5,825
Ratio of forgone EITC to overclaims, (1)/(3)	7%	12%	10%
EITC overclaims attributed to all returns (4)	13,123	17,341	15,232
Ratio of forgone EITC to all overclaims, (1)/(4)	3%	5%	4%

To put these estimates in perspective, we calculated the amount of EITC erroneously claimed by the NRP taxpayers for the children in the sample representing the 0.6 million children, and then compared the parents' simulated EITC to the NRP overclaims after weighting these estimates to the population. Table 8 shows that the erroneous claims for these children were an estimated annual average of $1,449 million in EITC. The forgone EITC, therefore, represents about 39 percent of the overclaims. That is, 39 percent of the EITC claimed in error for these 0.6 million children per year could have been awarded to potentially "correct" taxpayers.

Furthermore, we compared the amount of forgone EITC to the total overclaims that were attributable to the three qualifying child errors—residency, relationship, and tiebreaker—for all children in our sample.[21] This comparison provides another perspective that relates forgone EITC to the total erroneous claims associated with the three qualifying child errors, thereby offering insight into the extent to which the estimated EITC improper payments are arguably overstated as a measure of monetary loss to the government or of social welfare loss. The result shows that about 10 percent of the EITC overclaims attributed to the three qualifying child errors during the period from 2006 to 2011 could have been claimed by the "correct" taxpayers we identified through the Social Security data.[22] These represent 4 percent of all EITC overclaims in the period from 2006 to 2011. Note that this is neither an upper bound nor a lower bound estimate of the share of erroneous claims that are offset by forgone correct claims. This is because we do not know for certain that the forgone claims included in our calculation would have been correct entirely, and we cannot identify all forgone claims.

Next, we studied the credit-maximizing behavior. Recall that based on our NRP sample, we estimated that there was an average of 1.15 million non-claiming parent returns per year who could have claimed 1.21 million children otherwise claimed incorrectly. It is possible that some families were engaged in credit-maximizing behavior by allowing the family member with the

[21] This overclaim was calculated as the difference between the taxpayer's actual EITC claim and the EITC that would be awarded to the taxpayer when we removed from the actual claim the child(ren) with any of the three qualifying child errors. We restricted the calculation to children for whom no other qualifying child rules were broken, and took all other return information as reported.
[22] We first dropped ineligible parents and then, if applicable, used tiebreaker rules for cases with multiple parents. We also estimated the forgone credit in a different way in which we applied the tiebreaker rules before determining parent eligibility. The simulated credit is slightly lower, representing 9 percent of the overclaims attributed to the three qualifying child errors.

largest EITC to claim the child(ren). After applying tiebreaker rules to the cases where more than one return was linked to a child, we estimated there was a total of 1.04 million non-claiming parent returns per year, each uniquely linked to at least one child represented in our data. We used the results of the eligibility analysis and credit simulation on these returns to evaluate the presence of credit-maximizing strategies.

We found the claiming patterns consistent with the credit-maximizing hypothesis for the vast majority of cases. In 85 percent of the cases, claiming the child(ren) resulted in a larger EITC for the NRP taxpayer than would have been claimed by the non-claiming parent we identified. Since inadvertent errors could occur in some cases when taxpayers misunderstood eligibility rules, the mere presence of credit maximization did not necessarily indicate that the family knowingly broke rules to overclaim the credit. However, with the wide prevalence of this claiming pattern seen among families, for which inadvertent errors were unlikely the dominating factor, we consider the result evidence of intentional noncompliance.

In 5 percent of the cases, the two taxpayers would have received a similar amount of EITC by claiming the child(ren). And for the remaining 10 percent, the non-claiming parent was predicted to have a larger EITC. For these 15 percent of cases, the claiming patterns are inconsistent with the credit-maximizing hypothesis. Several explanations exist for this result. While we applied a large number of rules in determining taxpayer eligibility, we did not observe living arrangements and thus might have included some ineligible parents in simulation. In addition, some eligible parents may have let another taxpayer, e.g., a family member who cared for the child, receive the credit for reasons unrelated to credit maximization. In this case, cooperation among taxpayers was present, but not for credit maximization. Finally, taxpayers

may be confused about law change or about how to apply EITC rules, e.g., tiebreakers or credit calculation, to their circumstances, thereby failing to maximize the credit unintentionally or making errors unrelated to motives of credit maximization.

The observed change between 2006-2008 and 2009-2011 supports the idea that at least some errors are not attributable to credit maximizing. In particular, the later period saw a higher share of non-claiming parents who forwent a larger credit than the amount claimed by the NRP taxpayer in audit. As indicated in Table 9, upon claiming the children, 14 percent of the non-claiming parents would have received a larger EITC than the NRP taxpayer in tax years 2009-2011, compared to only 6 percent in tax years 2006-2008. If credit maximization were the motive and the taxpayers did not misunderstand the EITC rules, then it seems reasonable to expect that taxpayers would have adjusted their claiming behavior after the expansion to the third child and more EITC claims would have been made by non-claiming parents in this later period to take advantage of the greater EITC.

Table 9 Analysis of Credit Maximization

	Number of Taxpayers per Year (Million)		
	2006-2008	2009-2011	2006-2011
NRP taxpayer had a larger EITC	.85	.91	.88
No difference (within $100)	.05	.05	.05
Non-claiming parent would have had a larger EITC	.06	.16	.11
Total	0.96	1.12	1.04
	Percent (%)		
	2006-2008	2009-2011	2006-2011
NRP taxpayer had a larger EITC	89	81	85
No difference (within $100)	5	5	5
Non-claiming parent would have had a larger EITC	6	14	10
Total	100	100	100

Note: The number of returns per year, 1.04 million, is the estimated number of returns after applying tiebreaker rules when a child is linked to more than one return.

7. Conclusions

This paper illustrates how an in-depth examination of the nature of EITC qualifying child errors can inform questions about the social welfare loss associated with EITC noncompliance. We found that the vast majority of children claimed with qualifying child errors had some relationship with the taxpayer; they either had a valid familial relationship or met the residency test, or both. Only 12 percent of the children in our sample (representing 1 percent of all children claimed for EITC) were not related and did not live with the taxpayers at all. Hence, a

substantial portion of the erroneous EITC claims may have supported low-income workers and improved the children's well-being.

Our results illustrate the difficulty in establishing a set of broadly applicable rules to deliver tax benefits to low-income caregivers while balancing other, sometimes conflicting, policy objectives, including promoting employment, meeting budget constraints, and preventing noncompliance. When investigating why the children were not claimed by the "correct" taxpayers who were entitled to the credit, we concluded that, for a variety of reasons, about 60 percent of the children in our sample did not appear to have a parent who could be the "correct" claimant, as stipulated by law. Some parents were not found in our Social Security data, some did not file a tax return, some already claimed the children in error, and some were dependents themselves. For another 4 percent of the children, their parents already claimed them for the EITC, resulting in duplicate claims with the audited returns.

In cases where the actual caregiver is not eligible for the credit or where multiple family members appear eligible, EITC claims are susceptible to manipulation under current rules because the IRS cannot readily determine eligibility across several seemingly qualified family members. For the 36 percent of the children who were claimed in error and who had a tax-filing parent not already claiming the benefit, the family members' filing patterns were consistent with the credit-maximizing motive in 85 percent of the cases. We estimated that 10 percent of the EITC overclaims attributable to the relationship, residency and tiebreaker errors, or 4 percent of the total EITC overclaims, could have been awarded to potentially eligible parents.

References

Department of the Treasury, 2018. *Agency Financial Report: Fiscal Year 2018*. Available at https://home.treasury.gov/about/budget-financial-reporting-planning-and-performance/agency-financial-report.

Hotz, V. Joseph and John Karl Scholz, 2008. "Can Administrative Data on Child Support Be Used to Improve the EITC? Evidence from Wisconsin," *National Tax Journal* Vol. 61 No.2, 189-204.

IRS, 2002. *Compliance Estimates for Earned Income Tax Credit Claimed on 1999 Returns*. Available at https://www.irs.gov/pub/irs-soi/compeitc.pdf

IRS, 2014. *Compliance Estimates for the Earned Income Tax Credit Claimed on 2006-2008 Returns.* Research, Analysis & Statistics Report, Publication 5162 (8-2014). Available at https://www.irs.gov/pub/irs-soi/EITCComplianceStudyTY2006-2008.pdf

IRS, 2018. *Internal Revenue Service Data Book, 2017*. Available at https://www.irs.gov/pub/irs-soi/17databk.pdf

Jones, Maggie R. and Amy B. O'Hara, 2016. "Do Doubled-up Families Minimize Household-Level Tax Burden?" *National Tax Journal*, Vol. 69 No. 3, 613-640.

Leibel, Kara, 2014. *Taxpayer Compliance and Sources of Errors for the Earned Income Tax Credit Claimed on 2006-2008 Returns.* Research, Analysis & Statistics Technical Paper Publication 5161 (8-2014). Washington, DC: Internal Revenue Service. Available at https://www.irs.gov/pub/irs-soi/15rpeitctaxpayercompliancetechpaper.pdf

McCubbin, Janet, 2000. "EITC Noncompliance: The Determinants of the Misreporting of Children." *National Tax Journal* Vol. 53 No.4 Part 2, 1135-1164.

Treasury Inspector General for Tax Administration, 2011. *Reduction Targets and Strategies Have Not Been Established to Reduce the Billions of Dollars in Improper Earned Income Tax Credit Payments Each Year*. 2011-40-023. Available at https://www.treasury.gov/tigta/auditreports/2011reports/201140023fr.pdf

Treasury Inspector General for Tax Administration, 2018. *The Internal Revenue Service Should Consider Modifying the Form 1040 to Increase Earned Income Tax Credit Participation by Eligible Tax Filers.* 2018-IE_R004. Available at https://www.treasury.gov/tigta/iereports/2018reports/2018IER004fr.pdf

Appendix

A-1. How the EITC Works

Income criteria. To claim the EITC, all taxpayers must have positive earned income (generally wage and salary or self-employment income) and must have adjusted gross income below certain thresholds. The credit is initially phased in as earned income increases up to a threshold, then remains fixed as income continues to rise, and finally is phased out as income (the greater of earnings or AGI) grows further.

Appendix Table 1 Features of the Earned Income Tax Credit for 2018

	Childless Taxpayers	Taxpayers with Qualifying Children		
		One Child	Two Children	Three or More
Phase-in rate	7.65%	34.00%	40.00%	45.00%
Minimum earnings for maximum credit	$6,780	$10,180	$14,290	$14,290
Maximum credit	$519	$3,461	$5,716	$6,431
Phase-out rate	7.65%	15.98%	21.06%	21.06%
Phase-out begins	$8,490 ($14,170 joint)	$18,660 ($24,350 joint)	$18,660 ($24,350 joint)	$18,660 ($24,350 joint)
Phase-out ends	$15,270 ($20,950 joint)	$40,320 ($46,010 joint)	$45,802 ($51,492 joint)	$49,194 ($54,884 joint)

Taxpayers with investment income (taxable and tax exempt interest, dividends, capital gains, rents, royalties and certain other passive income) exceeding $3,500 in 2018 are not eligible for the credit.

Filing status. Taxpayers who are married as of the end of the tax year must file a joint return to receive the credit. Married taxpayers who live apart from their spouses for the last half of the tax year and maintain a home for a qualifying child or relative may be treated as unmarried and use the head of household filing status, thus enabling them to claim the EITC. Taxpayers who use the married filing separately status are not eligible for the credit. Taxpayers who may be claimed as a qualifying child for EITC by another taxpayer may not claim the EITC.

Qualifying child tests. The maximum credit and income limits are much higher for taxpayers with qualifying children than those without. To qualify for the EITC, the child must reside with the taxpayer for over half the year; must be related to the taxpayer; and, must be under age 19 at the end of the tax year, a full-time student under age 24, or any age and permanently and totally disabled. Beginning in tax year 2009, a non-disabled child must also be younger than the taxpayer to qualify the taxpayer for the EITC.

A qualifying child may be the taxpayer's son, daughter, stepchild, foster child, sibling, half-sibling, step-sibling, or a descendant of any of these (such as a grandchild or niece). A foster child is a child placed with the taxpayer by an authorized placement agency or by court order. In general, the child may not be married filing a joint return.

The home can be any location where the taxpayer and child regularly live, and need not be a home owned or rented by the taxpayer.

A taxpayer who does not reside with a qualifying child must be at least age 25 and under age 65 to claim the credit, and must not be the dependent of another taxpayer (regardless of whether he or she is actually claimed as a dependent on another return).

SSN and related tests. Taxpayers must be a citizen or resident of the U.S. all year to receive the EITC, and both the taxpayer and the qualifying child must have a Social Security number (SSN). Taxpayers claiming the foreign earned income exclusion may not claim the EITC.

Penalties and other efforts to improve compliance. There are several penalties that may be assessed for EITC noncompliance, in addition to general taxpayer penalties. A taxpayer whose EITC is disallowed or reduced due to any reason other than a math or clerical error is generally required to recertify eligibility, including confirming the qualifying child tests, when she makes an EITC claim again. However, if the error is determined to be the result of negligence or intentional disregard of the EITC rules, the taxpayer will not be allowed to claim the EITC again for two subsequent years. In addition, a taxpayer who is found to have fraudulently claimed the EITC may not claim the credit again for ten years.

A paid preparer who cannot show that he or she was diligent in filing a taxpayer's EITC claim may be assessed a penalty of $500 (indexed) for each tax return with which the preparer fails to exercise due diligence in determining taxpayer eligibility for, and the amount of, the EITC.

Following studies of EITC compliance conducted in the 1990's, Congress, Treasury and IRS took a number of steps to reduce errors, in addition to enacting these special EITC penalties. For example, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 authorized IRS to deny the EITC during returns processing and without conducting an audit, in cases where a taxpayer did not provide an SSN for herself or a child. (This is referred to as "math error" authority, because IRS corrects computation errors during the same process.)

The Taxpayer Relief Act of 1997 required the Social Security Administration to obtain the SSNs for parents when they apply for an SSN for a minor child, which allows IRS to evaluate compliance with the relationship test. The Act also allowed IRS access to the Federal Case Registry of Child Support Orders. This dataset allows IRS to identify some non-custodial parents who are unlikely to be eligible for the EITC. To date, there are no comprehensive national data that allow IRS to routinely confirm living arrangements, relationships and marital status of taxpayers and children.

In addition, the Act provided for a $100 penalty for each return for which a paid preparer fails to exercise due diligence in preparing a claim for EITC. The United States-Korea Free Trade Agreement Implementation Act of 2011 increased the penalty to $500 and indexed it for inflation.

Most recently, the Protecting Americans from Tax Hikes (PATH) Act of 2015 includes several provisions aimed at improving EITC compliance. Beginning in the 2017 filing season, the IRS

was required to hold refunds to taxpayers who claimed the EITC and the Additional Child Tax Credit until February 15. This change, in conjunction with an earlier filing due date for certain third-party information reports on wages and compensation, required under the same Act, allows the IRS to have more time and information to verify claim accuracy before releasing a tax refund. The PATH Act also intensified civil penalties on erroneous EITC claims filed after 2015; it eliminated the EITC exemption from the penalty for erroneous refunds and credits, and clarified that the accuracy-related penalty applies to the refundable portion of an erroneously claimed refundable credit.

A-2. Tiebreaker Legislation

The tiebreaker rules have been subject to particular scrutiny and modification over time, because in some circumstances they are difficult for taxpayers to understand and for the IRS to administer.

Through tax year 2001, the law provided that if a child was the EITC qualifying child of more than one taxpayer, only the taxpayer with the highest modified AGI could claim the credit. One rationale for using AGI as the basis of the tiebreaker is that the taxpayer with the highest income is likely contributing more to the support of the child than other family members, and, unlike expenditures in support of a child, AGI is largely observable by IRS. An AGI-based tiebreaker test also prevents higher-income households with low-earning members (for example, an unmarried couple with one high-earner and one low-earner, or a child residing with her low-earning teenage parent and high-earning grandparents, or a low-earning person claiming her sibling even though both live with their higher-income parents) from receiving the credit. However, basing the tiebreaker only on income without regard to other factors such as the intensity of relationships and length of residency may be undesirable and counterintuitive to taxpayers. For example, under the AGI tiebreaker as it existed through 2001, if a child lived with her mother and her aunt and the aunt had higher AGI, then only the aunt could claim the EITC, even if the mother maintained the home.

Due to these concerns, the tiebreaker test was modified in the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), for tax years 2002 and beyond.[23] The 2001 Act

[23] Among other changes, EGTRRA also replaced the more expansive modified AGI concept with AGI for purposes of the EITC phase-out.

allowed taxpayers to decide among themselves who would claim the qualifying child, and imposed a tiebreaker rule only if two or more eligible taxpayers *actually claimed* the same child. The new tiebreaker rule provided that if two or more taxpayers claimed a child, the child would be treated as the qualifying child of the parent, or, if neither taxpayer was the parent, the taxpayer with the highest AGI. If two parents claimed the same child on separate returns, then the child would be treated as the qualifying child of the parent with whom she resided the longest; if the child resided with both parents for the same length of time, then the child would be treated as the qualifying child of the parent with the highest AGI.

The tiebreaker rule was changed again in 2008, effective for tax years 2009 and later, to restrict the circumstances under which taxpayers could decide among themselves who would claim the EITC and other child-related tax benefits.[24] Under current law, if a child is a qualifying child of more than one taxpayer, then only the taxpayer who is the parent may claim the EITC and other tax benefits. However, an exception provides that if a parent may claim the credit but does not, then another eligible taxpayer may claim the credit if that taxpayer has higher AGI than the parent. If neither taxpayer is the parent, then only the taxpayer with the highest AGI may claim the credit. Unmarried parents who both reside with a child for more than half the year may decide between them who will claim the EITC and other child tax benefits. As

[24] See the "Fostering Connections to Success and Increasing Adoptions Act of 2008," Public Law 110-351. In addition, the "Working Families Tax Relief Act of 2004," Public Law 108-311, created a uniform definition of qualifying child applicable to the EITC, dependent exemption, and related provisions. The uniform definition generally conformed to the EITC age, relationship, residency and tiebreaker tests. Prior to tax year 2005, it was possible for one taxpayer to claim the EITC and another taxpayer to claim the dependent exemption and related benefits. The uniform definition now allows only one taxpayer to claim a child for the EITC and related provisions. However, an exception for divorced or separated parents allows a noncustodial parent to claim the dependent exemption and child tax credit, if a decree of divorce or separate maintenance allows it or if the custodial parent signs a written declaration that she will not claim a dependent exemption for the child.

under EGTRRA, if two parents claim the same child on different tax returns, then the EITC is awarded to the parent of the child who resides with the child the longest; or, if the parents reside with the child for the same length of time, to the parent with the higher AGI.

Until tax year 2017, a taxpayer who resided with a qualifying child whom she could not claim due to the tiebreaker rule might be able to take the credit using a different qualifying child, but she could not claim the smaller EITC for workers without qualifying children. This rule was changed by regulation in 2017. Under the proposed regulations, if the taxpayer is otherwise eligible, she may claim the EITC for childless workers.