Due diligence promotes accurate EITC claims. Incorrect tax returns and failure to comply with the due diligence requirements can adversely affect you and your client:

- The IRS can examine your client's return, and if it is found incorrect, can assess your client accuracy or fraud penalties. IRS can also ban your client from claiming EITC for 2 or 10 years.
- If you fail to comply with EITC due diligence requirements, the IRS can assess a $500 penalty against you and your employer for each failure (IRC § 6695(g)).
- If you prepare a client's return and any part of an understatement of tax liability is due to an unreasonable position, the IRS can assess a minimum penalty of $1,000 (IRC § 6694(a)) against you. If the understatement is due to reckless or intentional disregard of rules or regulations, the minimum penalty is $5,000 (IRC § 6694(b)).
- You can be subject to disciplinary action by the IRS Office of Professional Responsibility.
- You and your firm can face suspension or expulsion from participation in IRS e-file.
- You can be barred from preparing tax returns.
- You can be subject to criminal prosecution.

Pay particular attention to the following three issues that account for more than 60 percent of all EITC errors:

1. Claiming a child who does not meet the age, relationship, or residency requirement.
2. Filing as single or head of household when married.
3. Incorrectly reporting income or expenses.

Take these simple steps to avoid EITC errors:

- Know the EITC tax law and eligibility rules.
- Remember, software is not a substitute for knowledge of EITC tax law.
- Practice EITC due diligence.

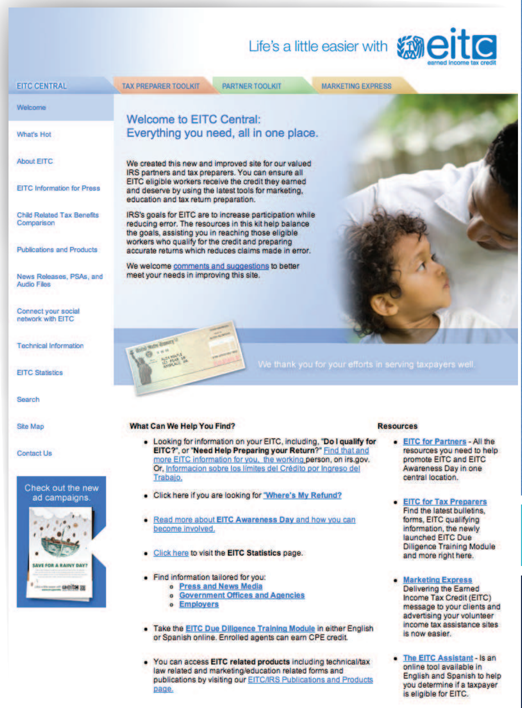
For more information about EITC, including the Due Diligence video clips and educational opportunities, such as the Due Diligence and Schedule C and Record Reconstruction modules, see:

www.eitc.irs.gov, your home for all things EITC

Publication 596, *Earned Income Credit*

IRC § 6695(g)

Treasury Regulations §1.6695-2



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EITC

Due Diligence is more than a check mark on a form or clicking through tax preparation software…

The Due Diligence Must Do's

Know the law
Ask all the right questions
Get all the facts
Document as you go

Life's a little easier with eitc
earned income tax credit

AS a paid preparer who prepares tax returns claiming Earned Income Tax Credit (EITC), you must meet four due diligence requirements. These requirements focus on accurately determining a taxpayer's eligibility for EITC and computing the credit.

The first three requirements have to do with completing forms and keeping records. **The fourth, and most challenging, requires you to:**

Know the EITC tax laws thoroughly
Evaluate your client's information
Ask the right questions
Document the questions you ask and your client's answers

To meet the due diligence requirements, you must:

1. Complete Form 8867, *Paid Preparer's Earned Income Credit Checklist,* and submit this completed form to IRS with every electronic EITC claim you prepare and attach to every paper return.
    - You must ask and explain each of the questions in Part I to every EITC client and all of the questions in Parts II or III that apply
    - You must also personally answer the due diligence questions in Part IV
2. Complete the EITC worksheet in the Form 1040 instructions, Publication 596, *Earned Income Credit,* or complete a document with the same information.
    - The EITC worksheet shows how the credit was computed and the amount of self-employment income, total earned income, investment income, and adjusted gross income included in the computation
    - Most tax preparation software includes an EITC worksheet
3. Keep the following:
    - Form 8867,
    - the EIC worksheet,
    - a copy of any document that was provided by the taxpayer and on which you relied to complete Form 8867 or the EIC Worksheet, and
    - a record of when and how (including from whom) you got the information used to prepare the return.

    Keep these documents for three years from the latest of:
    - The due date of the tax return
    - The date the tax return was electronically filed
    - For a paper return, the date the return was presented to the taxpayer for signature.
    - If you are a nonsigning tax return preparer, the date you give the part for which you are responsible to the signing tax return preparer.

    You can keep these records in either paper or electronic format. And, you should keep a back-up of these records in a separate, secure location.
4. Not know, or have reason to know, that any information used to determine if the taxpayer is eligible or to compute the amount of the credit is not correct.
    - You must ask your client additional questions if a reasonable and well-informed tax return preparer, knowledgeable in the law, would conclude the information furnished seems incorrect, inconsistent or incomplete.
    - At the time of the interview, you must document in your files the questions you asked and your client's responses.

IRS assesses most due diligence penalties for failure to comply with the knowledge requirement. To meet the knowledge requirement, you should:

- Apply a common sense standard to the information provided by your client
- Evaluate whether the information is complete and gather any missing facts
- Determine if the information is consistent; recognize contradictory statements and statements you know not to be true
- Conduct a thorough, in-depth interview with every client, every year
- Ask enough questions to reasonably know the return is correct and complete
- Document in the file any questions you asked and your client's responses, as it happens

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An employer may be penalized for an employee's failure to exercise due diligence, if any of the following apply:

- An employer or a principal member of management participated in, or prior to the time the return was filed, knew of the failure to comply with the due diligence requirements; or
- The firm failed to establish reasonable and appropriate procedures to ensure compliance with EITC due diligence requirements; or
- The firm disregarded its reasonable and appropriate compliance procedures through willfulness, recklessness, or gross indifference in the preparation of the tax return or claim for refund. This includes ignoring facts that would lead a person of reasonable prudence and competence to investigate.

Following are examples of situations when you should ask additional questions to meet your due diligence knowledge requirement:

- A client wants to use his niece and nephew to claim EITC.
  You should ask enough questions to determine whether the children meet EITC qualifying child requirements for your client. You should also ask enough questions to ensure the children's parents or other relatives will not, or cannot, claim the children.

- An 18 year-old client with an infant has $3,000 in earned income and states she lives with her parents. She wants to claim the infant as a qualifying child for EITC.
  This information seems incomplete and inconsistent because the 18 year old lives with her parents and earns very little income. You must ask additional questions to determine if the 18 year old is the qualifying child of her parents. If she is the qualifying child of her parents, she is not eligible to claim EITC.

- A 22 year-old client wants to claim two sons, ages 10 and 11, as qualifying children for EITC.
  You must make additional reasonable inquiries regarding the relationship between your client and the children since the age of the client seems inconsistent with the ages of the children claimed as sons.

- A client has two qualifying children and wants to claim EITC. She tells you she had a Schedule C business and earned $10,000 in income and had no expenses.
  This information appears incomplete because it is unusual that someone who is self-employed has no business expenses. You must ask additional reasonable questions to determine if the business exists and if the information about her income and expenses is correct.