Earned Income Credit Outline (2005 & Later Years)

1. Qualifying Child – I.R.C. § 32(c)(3) and § 152(c) without regard to 152(c)(1)(D)

A. Relationship
- (1) Son or daughter or descendant of either. I.R.C. §§ 32(c)(1)(A), 32(c)(3)(A), 152(c)(2)(A) and 152(f)(1)(A)(i),
- (2) Stepson or stepdaughter or descendant of either. I.R.C. §§ 32(c)(1)(A), 32(c)(3)(A), 152(c)(2)(A) and 152(f)(1)(A)(i),
- (3) Brother, sister, stepbrother or stepsister or a descendant of such person I.R.C. §§ 32(c)(1)(A), 32(c)(3)(A), 152(c)(2)(B) and 152(f)(4),
- (4) an eligible foster child—a child placed with the taxpayer by an authorized agency. I.R.C. §§32(c)(1)(A), 32(c)(3)(A), 152(c)(2)(A) and 152(f)(1)(A)(ii) and 152(f)(1)(C).

B. Residency
- (1) Child has same principal place of abode as the taxpayer for more than one-half of the taxable year. I.R.C. §§ 32 (c)(3)(A), 152(c)(1)(B).
- (2) For 2001 and earlier years a foster child must have the same place of abode as the taxpayer for the entire year. Former I.R.C. §32(c)(3)(B)(iii)(III).
- (3) If the taxpayer claims EIC without qualifying children, the taxpayer's principal place of abode must be in the United States for more than one-half of the taxable year, I.R.C. §§ 32 (c)(1)(A)(ii)(I).
- (4) If the taxpayer claims the credit with qualifying children, the principal place of abode of both the taxpayer and child must be in the United States for more than one-half of the year. §§ 32(c)(1)(A), 32(c)(3)(C) and 152(c)(1)(B).
- (5) Military personnel stationed outside the United States serving on extended active duty (more than 90 days is an extended tour) are treated as living in the United States. I.R.C. §32(c)(4).

C. Age
- (1) Child is under 19 at the close of the calendar year. I.R.C. §§ 32(c)(3)(A), 152(c)(3)(A)(i)
- (2) A student who has not attained the age of 24 at the end of the calendar year. I.R.C. §§32 (c)(3)(A) and 152(c)(3)(A)(ii) or
- (3) The child regardless of age, who is totally and permanently disabled. I.R.C. §§ 32 (c)(3)(A) and 152 (c)(3)(B).

2. Filing Status
   - A. Married taxpayers must file a joint return. I.R.C. § 32(d).
   - B. Taxpayer legally married, but separated from spouse, may be able to qualify as head of household, and thus qualify for EIC if the taxpayer can show that they are treated as unmarried under I.R.C. § 7703(b).

(Rules for 2005 & later con't)

3. Earned Income/Adjusted Gross Income limits
   A. Adjusted annually for inflation. I.R.C. § 32(j)
   B Amount of credit determined by tables based upon income and number of qualifying children, if any. I.R.C. § 32(f).

   D. No credit allowed if taxpayer has excessive investment income. I.R.C. § 32(i). Investment includes interest, including tax exempt interest, dividends and capital gains. For 2006 investment income cannot exceed $2,800. This amount is also adjusted for inflation and for prior years the amount of investment income that disqualifies the taxpayer for EIC is lower.

4. Taxpayer Identification Numbers (TIN)
   A. Taxpayer must include his identification number and that of his spouse if married. I.R.C. § 32(c)(1)(E).
   B. Taxpayer must include name, age and TIN of each qualifying child. I.R.C. § 32(c)(3)(D).
   D. Required TIN is a social security number that is valid for work for each Person involved with claiming the credit. I.R.C. § 32(m).

5. Tie Breaker Rule
   A. If two or more individuals are eligible to claim the credit with respect to the same qualifying child for the same taxable year but only one claims the credit, the claimant receives the credit. I.R.C. §§ 32(c)(1)(A), 32(c)(3)(A)and 152(c)(4).
   B. But if there are two eligible claimants with respect to the same child and both claim the credit and only one of the claimants is the parent, then the parent receives the credit. I.R.C. §§ 32(c)(1)(A), 32(c)(3)(A) and 152(c)(4)(A)(i).
   C. On the other hand, if there are two claimants and both claimants are parents, then the parent with whom the child lived for the longer time, receives the credit. I.R.C. §§ 32(c)(1)(A), 32(c)(3)(A) and 152(c)(4)(B)(i).
   D. When both claimants live in the same physical structure, it is sometimes possible to separate the persons living together into two separate households and thereby avoid the tiebreaker rule.

6. Disallowance based on Prior Improper Claims
   A. Taxpayer will be disallowed from claiming the credit
      (1) for 10 years if prior disallowance based upon fraud, I.R.C. § 32(k)(1)(B)(i),
      (2) for 2 years, if prior disallowance based on reckless or intentional disregard of rules and regulations. I.R.C. § 32 (k)(1)(B)(ii),
      (3) taxpayers denied the credit under the deficiency procedures for any year may claim the credit in the future only if they provide the required information by filing with the return a Form 8862.