Comments on the Internal Revenue Service Pilot Precertification Program to Determine Compliance with the Residency Test for Claiming the Earned Income Credit with Respect to Qualifying Children

The following comments relate to the pilot precertification program intended by the Internal Revenue Service (the “Service”) to determine compliance with the residency test for claiming the earned income credit with respect to qualifying children. The comments are the individual views of the members of the Section of Taxation who prepared them and do not represent the position of the American Bar Association or the Section of Taxation.

These comments were prepared by individual members of the Committee on Low-Income Taxpayers of the Section of Taxation. Principal responsibility was exercised by Diana Leyden and Michelle O’Connor. Substantive contributions were made by Fred Arriaga, Leslie Book, Charles Borek, and Susan Morgenstern. The Comments were reviewed by Michael Mulroney of the Section’s Committee on Government Submissions and Fred Witt, Council Director for the Committee on Low-Income Taxpayers.

Although some members of the Section of Taxation who participated in preparing these comments may have clients who would be affected by the federal tax principles addressed by these comments or have advised clients on the application of such principles, no such member (or firm or organization to which the member belongs) has been engaged by a client to make a government submission with respect to, or otherwise to influence the development or outcome of, the specific subject matter of these comments.

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I. Executive Summary

The Service will undertake a pilot program that would require a test group of 45,000 targeted taxpayers, who the Service determines are most likely to incorrectly claim a child as a qualifying child for purposes of the earned income credit ("EITC"), to precertify compliance with the residency test under section 32.\(^1\) (Hereinafter this program is referred to as the “pilot precertification program.”) The Service intends to administer the pilot precertification program in August, 2003 using a test group of certain taxpayers that the Service’s research indicates are more likely to incorrectly claim children as qualifying children for purposes of the EITC. More specifically, the test group would include caregivers, other than the child’s parents, and fathers who do not file joint returns.

Our comments at this time focus on specific recommendations with respect to the structure of the pilot precertification program and the content of the draft Form 8836 and the instructions. Certain members of the Low-Income Taxpayer Committee, however, feel that that use of precertification as a compliance vehicle should not be initiated unless the Service obtains express statutory authority for precertification and, in the alternative, not until the potential impact of precertification on voluntary compliance of low-income taxpayers, in particular, and all taxpayers, in general, is further studied. The ABA Tax Section is further studying these two points and, in the future, may submit specific comments addressing them.

With respect to the structure of the pilot precertification program, we have five recommendations. First, the composition of the test group for the pilot precertification program should be changed and not be limited to only high risk taxpayers. We believe that by so limiting the target group, data obtained may be skewed and will not be useful in the Service’s announced goals of EITC reform, improving communications and increasing outreach efforts. Second, the Service should follow up with the test group taxpayers who do not respond or respond inadequately to the request to precertify to determine the reasons for non- or inadequate responses. Third, the Service should carefully and thoroughly track the subsequent actions of the test group through any audit, appeals or litigation to determine if test group taxpayers ultimately prove eligibility. Fourth, the Service should utilize the pilot precertification program to gather data that would assist the Service in determining the effect of precertification generally on EITC compliance and participation, tabulate and publish the results of such data collection and allow public comment on the results before the program is fully implemented. Fifth, the Service should identify and publish the categories of data and information that will be obtained through the pilot precertification program and describe how such data and information will assist the Service in curbing perceived high noncompliance.

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\(^1\) 26 U.S.C. §32(c)(3)(A)(ii)
With respect to the communication of how the pilot precertification program would work, we have identified six areas that may require further study and public clarification by the Service.

Finally, with respect to the draft form and instructions, we propose 19 specific recommendations that we believe will increase the compliance by the test group taxpayers and third parties who assist such taxpayers.

II. Summary of Earned Income Credit Residency Precertification Program

The Service is planning on implementing a pilot precertification program under which certain taxpayers will be required to demonstrate that they meet the residency requirement for claiming the EITC with respect to qualifying children. \(^2\) Specifically, the Service will identify a test group of taxpayers, numbering 45,000. This group will consist of types of taxpayers who the Service, through its research, has identified as more likely to misclaim children as qualifying children for purposes of the EITC. The test group will consist of caregivers, who are not the child’s parents (e.g., grandparents and other relatives), and fathers who do not file joint returns. The Service will notify taxpayers in the test group that, in advance of commencement of the 2004 tax filing season, they will need to: (a) fill out Form 8836, “Qualifying Children Residency Statement,” a new tax form on which the Service currently is seeking public comments; and (b) provide certain supporting documentation that establishes that the taxpayers’ qualifying children lived with them for more than six months in 2003. \(^3\)

The test group taxpayers, who precertify compliance with the residency requirement before filing their 2003 income tax return, will receive their EITC refunds in the normal course of processing of their returns. The test group taxpayers who do not precertify compliance with the residency requirement before filing their 2003 income tax return, will be given an additional opportunity to certify. After a second failure to comply, however, the Service’s will deny the EITC as to the taxpayer’s children. That taxpayer, however, will be permitted to exercise usual appeal rights and contest the denial with the United States Tax Court. \(^4\)

The Service has announced that it will study the results of the test group to determine the effect of precertification on compliance and participation. Further, the Service and the Treasury Department will continue to evaluate the proposed form, the instructions, the types of documentation that will be required, and the Service’s communication and outreach strategy. Before implementing the test program, the Service may conduct focus groups with taxpayers,


\(^3\) Id.

\(^4\) Id.
practitioners, and third parties who will be asked to provide information to certify a taxpayer's compliance with the residency requirement.\(^5\)

The Service has solicited comments on the pilot precertification program and the draft form. In particular, the Service is interested in comments on the following matters\(^6\):

1. Under Form 8836, taxpayers will have the option to provide different types of information or documentation to establish residency. Are there other sources or types of information that should be added to the form (as another option) that would still give the IRS reasonable assurances that the taxpayer satisfies the residency requirement? What information or documentation could the IRS request that taxpayers currently possess or could reasonably obtain to verify that the taxpayer resides with a child? What information or documentation currently requested on the forms is difficult or burdensome for the taxpayer or a third party to provide, and why?

2. How can Form 8836 be simplified or clarified? For example, would it be easier for taxpayers to certify one child per form or two children per form? How could the instructions to Form 8836 be simplified or clarified?

3. What can the IRS do to reach out to taxpayers and encourage them to pre-certify, rather than wait until the filing season? What is the message the IRS needs to convey and what are the best means through which to convey that message? Who should be the primary deliverer of particular messages-- the IRS or outside stakeholders? Are there other incentives the IRS can provide to taxpayers to encourage them to pre-certify?

4. How can the certification program be used to reach out to taxpayers who are eligible for the EITC, but not currently claiming the credit? Should the messages associated with the certification program be coupled with messages designed to educate taxpayers about their eligibility to claim the EITC and to increase participation? Alternatively, would combining these messages cause confusion, in which case, what separate measures should the IRS take to reach out to eligible taxpayers who are not claiming the credit?

\(^5\) Id.
\(^6\) Id.
5. What factors should the IRS take into account in designing the study of the initial group of taxpayers who are asked to certify and in evaluating the results of that study?

III. Recommendations and Comments

A. Procedural Recommendations

Because this is the first time precertification is being used as a tax administration procedure, we have five comments and recommendations with respect to the procedure of the pilot precertification program.

1. Limiting the test group to caregivers other than parents and fathers who do not file joint returns will skew the pilot precertification program attempt to accurately gauge compliance with the EITC.

We recognize that noncompliance with the residency test, a key requirement for eligibility for the EITC, is difficult to verify in what is essentially a benefits program. We also acknowledge the Service’s need to adopt reasonable measures to limit, to the greatest degree possible, abuse of the EITC. However, we are concerned with the Service’s proposal to target through the pilot precertification program those taxpayers who the Service believes pose a high risk of noncompliance. Any such pilot precertification program test group should represent the general composition of EITC taxpayers.

The Service has indicated that the pilot precertification program will ascertain the impact of precertification on (1) taxpayer noncompliance with the EITC residency rules and (2) taxpayer participation in the EITC. Both will be difficult to accurately and objectively measure if the test group is solely comprised of high risk taxpayers, who by definition have a greater rate of noncompliance than the general population. For example, the pilot precertification program may result in a finding that 70% of the test group is noncompliant. Because that rate is much greater than the rate of noncompliance usually associated with the full range of EITC taxpayers, the results of the pilot precertification program cannot be translated into predictions concerning EITC taxpayers in general. In addition, we are concerned that it would be easy for the Service to view any data regarding reduced rates of taxpayer participation in the EITC as having resulted from noncompliance and not from the impact of the precertification program on participation. If one of the purposes of precertification is to gauge general compliance with the residency requirement by taxpayers who claim the EITC, then the test group should contain taxpayers from all the various

7 “The EITC is a social benefits program embedded in the tax code.” FS-2003-14, June 2003
populations who might claim qualifying children, not just certain caregivers and fathers.\textsuperscript{8}

We recognize and applaud the Service’s concern that administrative procedures for verifying EITC compliance should not be overly burdensome for both taxpayers and other parties and not adversely affect participation. We understand that in choosing the test group, the Service tried to avoid burdening taxpayers identified as posing a lower risk of error. However, we believe that the need to obtain results from the pilot precertification program that fairly reflect the population of EITC-claiming taxpayers as a whole outweighs any potential burden on generally compliant taxpayers.

2. \textit{The Service should plan a careful and thorough follow-up of all test group taxpayers who do not respond or respond inadequately and determine why there was either no responses or an inadequate responses.}

We are concerned about the inferences that may be drawn when members of the test group do not respond to the initial mailings and follow up correspondence sent after the initial mailing and before the tax return is filed. Experiences of the Low-Income Taxpayer Clinics (“LITCs”) show that taxpayers who are eligible for the EITC may disproportionately suffer from low literacy and mental health problems, and English may be their second language. This, combined with the day-to-day demands on the working poor may contribute to the low response rate to Service notices and correspondence. We suggest that focus groups with taxpayers, practitioners, and third parties also be conducted after this the pilot precertification program has ended for the purpose of collecting statistically valid and useful information about low-response or non-response rates by the test group of taxpayers.

3. \textit{The Service should carefully and thoroughly track the test group of taxpayers, both those who respond or who do not respond, for at least three years after the test program to determine audit, appeal and litigation profiles of this group.}

The anecdotal experiences of many LITCs also indicate that many taxpayers who claim the EITC who are audited and later receive legal representation-- be it through an appeal of a 30-day letter, filing of a Tax Court petition, the audit reconsideration process or through an offer-in- compromise based on doubt as to liability--ultimately prove their eligibility for the EITC. Thus,\textsuperscript{8}

\begin{quote}
As Professor Leslie Book has written, there is a lot that the Service does not know about noncompliance by EITC taxpayers. The pilot precertification program offers an opportunity for the Service to obtain accurate data that will provide support for conclusions about noncompliance and will be based more on reality than on suspicion or supposition. See Book, EITC Noncompliance: What We Don't Know Can Hurt Them, 99 Tax Notes 1821 (June 23, 2003)
\end{quote}
to more accurately track the compliance of the test group taxpayers, the period for determining compliance data should be extended to capture responses through tax procedures beyond the filing of tax returns.

4. **The Service should utilize the pilot precertification program to gather data about other factors that may affect taxpayer compliance with and participation in the EITC, tabulate and publish the results of such data collection and allow public comment on the results before the pilot precertification program is extended.**

We recommend that the pilot precertification program be used as an opportunity to collect the following types of data: (1) whether the test group uses paid representatives or pro bono low-income taxpayer clinics to assist in completing the form; (2) the response rate of the test group members and whether the length of time to respond and the quality of response differs between low-income taxpayers who receive paid assistance, pro bono assistance, and no assistance; (3) if there is a difference in response rates between taxpayers for whom English is or is not a first language; and (4) geographical variants (such as areas of the United States and urban versus rural areas). This data will be extremely useful in assisting the Service, as well as advisors of low-income taxpayers, in conducting outreach concerning EITC compliance.

5. **The Service should create a data collection model or method to accurately measure the effect that the pilot precertification program has on the EITC participation rate, not only on the test group taxpayers but taxpayers in the geographical areas of the test group taxpayers.**

We are pleased that the Service recognizes the potential negative impact of the pilot precertification program on participation in the EITC. However, as the pilot precertification program is currently planned, we do not see any specific plans or proposed data collection methods to measure this negative impact. We suggest that before the test group is chosen, the Service determine how to collect data to measure the general EITC participation rates in the geographical areas in which the test group taxpayers for both the tax year 2002 and tax year 2003. Further, the Service should be able to compare both years’ participation rates to calibrate the impact of the pilot precertification program on EITC participation rates in the geographical areas of the test group taxpayers. This will

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9 It is not clear from the instructions for Form 8836, whether an LITC can assist a low-income taxpayer in completing the form. Generally, LITCs that provide representation in tax controversies do not engage in tax return preparation. If the completion of the form is considered tax return preparation, then LITCs may not be permitted under the terms of the LITC grant program to assist in the preparation of the Form 8836. However, the Form 8836 and its instructions indicate that a LITC may complete the third-party affidavit on behalf of a low-income taxpayer. We recommend that the Service clarify whether LITCs may assist in completion of the form under the terms of the LITC grant program.
provide reliable information about the impact of the pilot precertification program on EITC participation.


The Announcement does not address in sufficient detail how the pilot precertification program will operate. We have identified six areas that might be impacted by the pilot precertification program and recommend that the Service study and publicly clarify the impact of the pilot precertification program in these areas.

1. Will precertification be an annual requirement for those taxpayers identified as high risk?

If a taxpayer is chosen to precertify residency because the Service has identified him or her as being at high risk of noncompliance with the residency requirement, then must that taxpayer precertify annually? What if the taxpayer does precertify and his or her circumstances change the next year, either to make the taxpayer more or less likely to comply? If this is an annual program, then we are concerned about the substantial impact on generally compliant taxpayers participating in the EITC.

2. What type of notice will the test group taxpayers receive?

In the experience of many of LITCs, EITC taxpayers often have low literacy skills and English is not a first language. Unless the letters that are sent to the test group taxpayers are written in much lower literacy language than what is currently used in Service correspondence and notices, we are concerned that the test group taxpayers will not understand the process for precertifying, the need to respond quickly, or will not understand why they were chosen. We recommend that the Service solicit specific comments on all pilot precertification program correspondence from LITCs before finalizing the pilot precertification program correspondence.

3. How will the pilot precertification program affect test group taxpayers who are receiving the advanced earned income credit?

If a test group taxpayer is currently receiving the advanced earned income credit, then will such advance payments be suspended until the taxpayer precertifies? If the taxpayer does not precertify compliance before he or she files his or her tax return (or the precertification form is incomplete or otherwise unacceptable), will the Service send a demand notice and bill for the amount of the advance earned income credit received during 2003? We are concerned that the Service has not considered how the pilot precertification program will affect taxpayers who elect the advance earned income credit. We recommend that the
Service study and publicly explain the effect of the pilot precertification program on the advanced earned income credit before the pilot precertification program is started.

4. What actions does the Service plan on taking if a test group taxpayer has moved, but has not left a forwarding address with the Service or the United States Post Office?

Many low-income taxpayers are extremely mobile, but often do not notify either the Service or the United States Post Office of changes in address. If the Service selects a taxpayer as part of the test group and that taxpayer has left without a forwarding address, what efforts will the Service make to locate the taxpayer’s new address? If the taxpayer cannot be contacted, will the Service include that taxpayer in the group of taxpayers considered not compliant?

5. If a taxpayer does not precertify compliance with the residency requirement, but does certify with the filing of his or her tax return, will the taxpayer be subject to the restrictions on claiming the EITC under section 32(k)(1)(B)(ii)?

Currently, if a taxpayer is disallowed the EITC for one year, and the Service does not determine that such disallowance was due to fraud, that taxpayer must submit a Form 8862 for the following two taxable years. Submitting such a form then targets that taxpayer for examination for the next two years. If a taxpayer is required to precertify and does not do so before filing a return, then will that taxpayer be disallowed the EITC under section 32(k)(1)(B)(ii) for the following two years and be required to submit a Form 8862 for those two years? If so, then we recommend that taxpayers who are part of this test group be notified of this. While we believe that advance notification of this procedure is wise, we are concerned about the effect of such advance notification on the participation in the EITC by test group taxpayers.

6. What if the test group taxpayer lives in a multigenerational household where someone else might be able to claim the children as qualifying children?

We recommend that the Service determine how to advise test group taxpayers who live with other relatives, who might also qualify for the EITC for one or more of the same children, about the tie breaker rules and how other members of the household might be able to claim the EITC if the test group taxpayer cannot. In such cases, has the Service determined whether the other relative should be the taxpayer who precertifies? We recommend more clarification with respect to this situation.
C. We Recommends Additional Changes to Form 8863 To Further Simplify The Form and To Enable The Service To Better Monitor The Pilot Precertification Program Results and Their Effect On Low-Income Taxpayers

1. One form per child should be required

We recommend that the Service require a taxpayer to fill out one form for each of his or her children. We recognize that in allowing a taxpayer to fill out the form for two children the Service was trying to reduce the burden on a taxpayer. However, we believe that so allowing will create more confusion for most taxpayers. A taxpayer may need to obtain different verification from more than one third party for each of his or her children. If the form applies to both children, the taxpayer may not be able to determine how to fill out the form with the differing verification for each child. In addition, a taxpayer may have more than two children and allowing a taxpayer to precertify each of his or her child’s residencies (not just the residency of two qualifying children) will better ensure that a taxpayer obtains the full EITC. For example, if a taxpayer submits documentation for only two children, but the documentation of residency for one is determined by the Service to be insufficient, the taxpayer may have missed a timely opportunity to submit documentation of residency for a third child and qualify for the EITC for two, instead of one, qualifying children.

2. Additional types of third parties should be allowed to provide an affidavit based on personal knowledge

We applaud the Service’s willingness to allow a third-party affidavit as verification. However, we disagree with the apparent assumption reflected in the form that only certain categories of third parties are reliable enough to verify residence. In the experience of many LITCs, there are many other types of third parties who have more personal knowledge than those in the categories listed on the form. For example, school bus drivers, neighbors, public librarians, attorneys who handle custody or divorce matters for a taxpayer, and co-tenants (roommates) who are unrelated to the taxpayer are examples of reliable third parties who have more knowledge of where a child lives than a medical doctor who may see the child once or twice a year. We recommend that more categories of third parties be allowed to provide the third party affidavit. Further, we recommend that the Service consider whether such categories of third parties could be contacted by the Service instead of a third party affidavit and be interviewed regarding the child or children.
3. **On the face of the form, refer to the definitions in the instructions of the terms “community service organization” and “social services agency”.**

In the “Proof of Residency” section of the Form 8836, the terms “community service organizations” and “social service agencies” are used. Low-income taxpayers may be unlikely to know what types of organizations the Service includes in these terms. Therefore, we recommend that at the end of the sentence there should be a parenthetical that directs the taxpayer to the definitions in the terms contained in the instructions.

4. **Print the Form 8836 in a color other than white.**

More likely than not the form will be put by a taxpayer in a stack of white papers or given to overworked and harried third parties with lots of white papers on their desks. In a stack of papers, a white form will get lost. If the form, however, is on colored paper it will be easier to identify and to catch a person’s attention.

5. **Include a space on the Form 8836 in which a taxpayer can indicate if he or she paid a representative to assist in preparing the form.**

Although we believe that low-income taxpayers should be discouraged from paying preparers and other advisors to comply with the precertification requirements, there is not any realistic way to prevent preparers or other advisors from offering their services for a fee or to prohibit taxpayers from paying for such services. We note that low-income taxpayers claiming the EITC have increasingly become the target for high cost financial and tax return preparation services. Precertification should not be another tax requirement that encourages predatory financial services aimed at low-income taxpayers. However, the Service can attempt to collect information that will help it and representatives of low-income taxpayers determine if the precertification process is having this effect. In particular, we recommend that the Service collect the following information in connection with the precertification pilot precertification program: (1) the number of test group taxpayers that pay for assistance in preparing the form or obtaining documentation. (This can be done by asking the taxpayer to check a box on the Form 8836 if he or she paid for assistance); (2) the quality of assistance provided to taxpayers who paid for assistance; and (3) characteristics of taxpayers who paid for assistance, especially the geographical location of the taxpayers, whether English is a second language (See comment III.C.7, below), and the income level of the taxpayer. Such data would enable the Service, as well as LITCs, to more effectively target outreach efforts and would enable the Service to develop effective enforcement strategies.
6. Allow a third party to list two or more consecutive periods in the third-party affidavit section of Form 8836

Currently, the third-party affidavit section of Form 8836 does not allow a third party to list more than one period during which a taxpayer’s child resided with the taxpayer. It is, however, very likely that some third parties will need to list at least two such consecutive periods. For example, school officials frequently attest that their records show that a child attended and resided with a parent from January through June and then from September through December, the months school is in session. Generally, a child does not attend school during the summer. Therefore, we recommend that the third-party affidavit section of Form 8836 be revised to allow a third party to list two or more consecutive periods of residency.

7. Form 8836 should allow a taxpayer for whom English is a second language to alert the Service of this fact and to notify the Service on a line on the form of his or her native language. Further, Form 8836 should be printed on the reverse side in Spanish and the instructions should also be printed in Spanish

The Form 8836 currently does not contain any information explaining to a person from whom English is a second language how to contact the Service to request assistance, in his or her native language, in completing the precertification form. For low-income taxpayers for whom English is a second language, a tax form, no matter how simple, is incomprehensible. If the taxpayer is able to alert the Service that the form is incomprehensible because of language barriers, then the Service should be able to arrange for communication in the taxpayer’s first language, even if it is by telephone. Although the current draft Form 8836 and the instructions are not available in Spanish, we were under the impression that the Service was considering printing the form so the reverse side is in Spanish and so the instructions were also in Spanish. Persons for whom Spanish is a first language comprise a significant segment of the EITC population, a fact that the Service has recognized. We recommend that Form 8836 be printed so the reverse side is in Spanish and that the instructions be printed in English and Spanish, in one set of instructions. If this is not possible, then we recommend that both the form and the instructions indicate in Spanish how a taxpayer for whom Spanish is a first language can obtain the form and instructions in Spanish and obtain telephone assistance in Spanish.

8. Clarify on the face of Form 8836 that taxpayers who cannot prove residency are not required to prepare and file the form

Within any test group there will be taxpayers whose children have not lived with them for more than six months during the calendar year and, thus, who are not eligible for the EITC. To avoid putting these noneligible taxpayers through an unnecessary process, we recommend that Form 8836 contain in bold
face type a statement alerting taxpayers to the minimum requirement. For example, we recommend the following language:

IF YOUR CHILD DID NOT LIVE WITH YOU FOR AT LEAST SIX MONTHS DURING THE YEAR, DO NOT FILL OUT THIS FORM. YOU DO NOT QUALIFY FOR THE EITC.

However, we also recommend that the instructions indicate that if the test group taxpayer does not qualify for the EITC because he or she cannot certify the residency requirement, that there may be another relative or caregiver who can claim the child or children for purposes of the EITC.

D. Recommended Changes to the Instructions to Draft Form 8836.

We believe the following changes will correct inconsistencies or errors and will be helpful to both the taxpayers and third parties who must complete the form.

1. Changes to the section of the form entitled “Purpose of the Form”.

   a) Include a description of the residency test in the first paragraph of the instructions rather than referring taxpayers to a subsequent part of the instructions.

   b) Include a statement explaining that taxpayers who received notices from the Service requiring them to comply with precertification requirements are part of a pilot precertification program. This will avoid the likely confusion of non-test group taxpayers when taxpayers who are test group members speak with friends and family members who have not been included in the test group.

2. Changes to section of instructions entitled “Who Must File”.

   To clarify that only persons who receive notification from the Service should complete and file Form 8863, we recommend changing the order of the two bullet points under this section, so that the first point a taxpayer reads is “The Service sent this form to you with a letter directing you to file it.” (See comments III. C. 8.)

3. Changes to the section of the form entitled “When to File”.

   The second paragraph in this section is entitled “Before January 1, 2004,” and the third paragraph is entitled “With your 2003 tax return.” These headings are confusing and may result in a taxpayer believing that he or she cannot file Form 8836 after January 1, 2004, unless he or she submits the form with his or
her tax return. If this is accurate, the Service should include language clarifying that point. If not, the Service should include language explaining where to send the Form 8836 if he or she files it after January 1, 2004, but not with his or her tax return.

4. Changes to Part II of the instructions.

The Service’s position with respect to children who are born or who die during a tax year, is that a child is considered as living with a taxpayer for more than one half of the year if the child is either born or dies during the tax year and the amount of time the child is alive is less than one half of the tax year. The second paragraph under the section of the instructions entitled “Part II” is unclear with respect to this rule. It is not clear if the reference to unborn child or a child who dies during the year refers to the lack of a social security card or general eligibility. We recommend clarification on this point.

5. Changes to Part III of the Instructions, entitled “What the Documents Must Show”.

a) The instructions explaining what information must be contained in documents submitted by the taxpayer are confusing as written. It is also likely to result in taxpayers submitting insufficient documentation. Rather than stating that taxpayers can provide documents that include either their name and address or their child’s name and address, the instructions should indicate that “Documents must contain your name, your child’s name, the address at which you both lived, and the dates at which you lived there.” In a second paragraph, the instructions can then indicate that “Alternatively, you may submit more than one document to satisfy this requirement. You can submit one document that shows your name and address and another that shows your child’s name and address, and the dates during which your child lived with you, provided that all documents together contain all of the required information.”

b) Include an example of a letter on official letterhead that will satisfy the Service’s precertification requirements. For instance, the Service could include the following example:

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10 See Publication 596; See also E.P. Mayeux v. Commissioner, T.C. Summary Opinion 2001-121.
To whom it may concern:

According to the records of Eisenhower Junior High-School, John Smith, date of birth 02/03/1990 lived at 12 Sycamore St., Westbury, NY, with his mother, Irma Smith, during the periods January 1, 2000 through June 27, 2000, and September 5, 2000 through December 31, 2000.

Sincerely,

Joe Brown, Principal

6. **Include a separate section in Part IV of the instructions entitled “Instructions for a Third Party”.**

We believe that a separate section in the instructions that explains what a third party needs to do to comply with the precertification request will assist in better compliance by third parties. In addition, we recommend that the Service indicate in such instructions that if the third party does not have an official letterhead, he or she (or its representative) must fill out the affidavit (this is not explicitly stated elsewhere).

7. **Include a definition of “qualifying child” in the instructions to the form, or have taxpayers fill out a Schedule EIC and include that form when they file Form 8863.**

Including a definition of “qualifying child” in the instructions will reduce both taxpayers’ and the Service’s burdens by helping to ensure that taxpayers who do not have eligible children do not attempt to precertify.

8. **Include in the instructions under “What We Will Do After We Receive This Form”, or in the letter acknowledging receipt of a Form 8863, an estimate of the average processing time.**

We recognize the difficulty of calculating precisely the processing time for a new form. But the Service would not need to make a precise determination; a reasonable estimate of the amount the Service expects it will need to process a form would suffice. Such an estimate will enable taxpayers and their representatives to timely follow up with the Service after filing a Form 8863, and it likely will reduce the number of unnecessary taxpayer calls to the Service. We recommend that the Service adequately staff this pilot precertification program to assure a timely processing of all precertification forms so that the test group taxpayers are not financially burdened by withheld refunds due to delays by the Service in processing the forms and documentation.
9. The instructions should include a separate paragraph under “How To Get Help” concerning the availability of Low-Income Taxpayer Clinics to help taxpayers comply with a precertification request.

The names, phone numbers, and addresses of the LITC’s could be included as a separate page at the end of the instructions. Congress, the Service, and the Taxpayer Advocate, have recognized the value of providing access to free legal representation for low-income taxpayers. Because the pilot precertification program is likely to generate substantial taxpayer confusion and questions, it is especially important that taxpayers be informed aware that they do not have to pay for legal assistance in filling out Form 8836 and obtaining the pertinent documentation. (See comment footnote 9, supra.)

10. The Service should establish a separate phone line and/or a more detailed web page for third parties.

In recommendation III. D. 6. above, we noted that the Service should include a separate section in the instructions that contains guidelines for third parties who sign affidavits and/or provide documents in support of a taxpayer’s certification of residency. Consistent with that recommendation, the Service should provide in that section of the instructions, a phone number that third parties can call if they have any questions and/or the address to the Service’s web page explaining the process. In an expanded web page, the Service could include the following: detailed instructions about third-party affidavits and acceptable documents, as well as examples of the acceptable documents and letters. One such example would be the sample text for a letter from a third party that we included in recommendation III.D. 5b above. Further, the Service might consider a telediction process where third parties could call in the information instead of sending in documentation. The Social Security Administration permits such a process whereby medical doctors can call in and dictate their medical reports for claimants applying for Social Security disability.

11. The instructions should state the nondisclosure rules that apply to taxpayer information.

We are concerned that low-income taxpayers may be frightened and would resist responding to the form because they are concerned that information listed on the form or documents submitted might be shared with other government agencies. Further, because one of the categories of documents that can be submitted is medical documents, we believe that taxpayers might be nervous about possible unauthorized disclosure of medical information. To allay such fear and encourage compliance with the form, we recommend a short, simple statement concerning the rules against nonpermitted disclosure by the Service of taxpayer information.

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