ADMINISTRATION OF THE EITC AND REFUNDABLE TAX CREDITS FOR LOW-INCOME POPULATIONS

ABA Tax Section Midyear Meeting
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Leslie Book, Professor of Law at Villanova Charles Widger School of Law
**WHAT WAS THE PROJECT?**

- The Process for Drafting the Taxpayer Advocate Report that became “Earned Income Tax Credit: Making the EITC Work for Taxpayers and the Government”

- Foundational Principles of the Report
  - The IRS Must Explicitly Recognize its Role as Benefits Administrator
  - Congress Must Consider Administrability in Furtherance of Other Policy Goals
  - Congress Must Provide Effective Oversight
WHAT WAS THE PROJECT?

The **Three Categories of Specific Recommendations** in the Report

1. Restructure the EITC as Two Credits
   - **Worker Credit**
   - **Child Benefit**

2. Establish Greater Oversight over Tax Return Preparers and Software Providers

3. Ensuring IRS Compliance Is Consistent With Due Process Norms
Worker Credit

• Similar to current EITC, the worker credit would have a phase-in, plateau and phase-out based on earned income

• Unlike the current credit
  • The benefit would be per worker (i.e., not vary by marital status) and not vary based on the number of qualifying children
  • Taxpayer advocate does NOT prescribe a specific formula
  • Potentially easier to administer than current EITC
Restructure the EITC as Two Credits

Child Benefit

• Fixed dollar amount per qualifying child
• Who claims the child benefit?
  • **Primary carer:** adult who cares for child, takes them to school, the doctor, prepares their meals, reflects complexity of family life.
  • Pay out the benefit to taxpayer who claims the child
• Duplicative claims of the same child?
  • Pre-certify eligibility/jurat?
  • Audit duplicative claims?
  • Split benefit between two caregivers?
EITC RETURNS PREPARED BY A PAID PREPARER

FIGURE A.14, Percent of EITC Filings With a Paid Preparer for Tax Year 2017 by Congressional District

Source: IRS, CDW, IRTF as of Cycle 201913 (May 2019). EITC after math error processing.

Source: IRS Taxpayer Advocate 2020 Objective Report Volume 3
ESTABLISH GREATER OVERSIGHT OF PREPARERS AND SOFTWARE PROVIDERS

IRS and Congress Has Effectively Outsourced Administration of Refundable Credits

Current Regime Is Heavily Reliant on Unenrolled Preparers and Unregulated Software Providers

Solution: A Combination of Oversight and Disclosure of Fees
**EITC Audits as a Percentage of EITC Returns**

*Source: IRS Taxpayer Advocate 2020 Objective Report Volume 3*
ENSURING DUE PROCESS NORMS ARE EMBEDDED IN EITC COMPLIANCE

Study Looked at Audits, Summary Assessment and The EITC Ban For Reckless or Fraudulent Claims

1) Pre-refund Compliance Procedures | Audits
   - 75% of EITC audits are pre-refund
   - IRS examiners investigate the "fact and circumstances" of each case to determine if the taxpayer is eligible for credit
   - Gutting the IRS
     It’s Getting Worse: The IRS Now Audits Poor Americans at About the Same Rate as the Top 1%
     As the agency’s ability to audit the rich crumbles, its scrutiny of the poor has held steady in recent years. Meanwhile, a new study shows that audits of poor taxpayers make them far less likely to claim credits they might be entitled to.

by Paul Kiel, May 30, 10:16 a.m. EDT
EITC DUE PROCESS NORMS

2) Pre-refund Compliance Procedures | Summary Assessment Authority

- Summary Assessment Authority (SAA) allows IRS to "summarily assess" tax without sending the taxpayer a statutory notice of deficiency (SNOD).
- NTA Research: IRS Math Error Notices improving but still fail to provide clear understanding of error, taxpayer’s rights, and how to contest SAA determination.
- Report warns against further expanding SAA authority in refundable credits for situations that are not apparent/obvious.
3) The Ban Under IRC § 32(k) For Reckless or Intentional Disregard of Rules: Square Peg in a Round Hole

Recommendation 1: Develop a Structure for Ban Determination That Protects Taxpayer Rights

Recommendation 2: Clarify and Improve Court Review of Ban Determination