

May 20, 2003

## RECOMMENDATIONS TO THE IRS ON ITS EITC PRE-CERTIFICATION INITIATIVE

If the IRS wishes to move forward with the pre-certification initiative, we recommend that four steps be taken. These steps should increase the chances that the initiative will succeed in achieving what everyone agrees to be the goal — reducing EITC payments to ineligible filers without causing harm to, or deterring participation by, eligible working families.

1. *Allow a public comment period on the forms and documentation requirements and consider the comments before the forms are sent to 45,000 filers.* The comments that the IRS would receive would likely result in improvements in the forms and documentation requirements. The IRS has indicated it will have a public comment period, but the timing of the comment period remains unclear. The IRS also should test the forms and instructions before sending them to the 45,000 filers. (The IRS may already be planning to do this.) A recent GAO report finds that testing tax forms and instructions may improve their clarity and reduce errors and that this appears particularly true of forms and instructions related to the EITC and the Child Tax Credit.<sup>1</sup>
2. *Make the documentation requirements reasonable.* The IRS should modify the documentation requirements so that filers are not required to produce documents that they cannot reasonably obtain. As noted, some filers would be required to secure marriage certificates — and in a smaller number of cases, birth certificates — that it is not possible for them to secure. Many filers subject to pre-certification also will have to provide an affidavit, signed under penalty of perjury, that the person completing the affidavit has “personal knowledge” that the tax filer and the child lived together at a specified address during specified months of the year. But the draft March 28 forms call for limiting the types of people allowed to fill out the affidavit to individuals who often *will not have* this personal knowledge, and to bar various types of people (such as neighbors) who would have such knowledge from completing the affidavit.

Many honest filers will not, despite their best efforts, be able to satisfy these requirements. The IRS’ own advisory panel has recommended that tax filers subject to these requirements be allowed, as an alternative to producing marriage and/or birth certificates, to provide an affidavit from a person who can attest to the relationship between the tax filer and the child whom the filer is claiming for the EITC. The IRS should adopt this recommendation. IRS also should allow knowledgeable parties to complete the third-party affidavit, including neighbors and building managers and superintendents. Adult child care providers (other

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<sup>1</sup> General Accounting Office, “IRS Should Reassess the Level of Resources for Testing Forms and Instructions,” April 2003 (GAO-03-486).

than spouses or dependents) also should be permitted to complete the affidavit. The part of the March 28 forms that would reject corroborating information from legal child care providers if they are not licensed providers, as well as from any provider who is a relative, is overly restrictive and should be revisited.

3. *Pilot test the new procedures before instituting them on a large scale.* The IRS and Treasury have made clear that an evaluation of the new procedures is planned. It is important that the evaluation examine the effects of the pre-certification procedures both in reducing overpayments and on eligible filers. The evaluation should determine to what extent those who do not respond to pre-certification notices (or respond but give up part way through what could be a lengthy and burdensome process) and lose the EITC as a result are *eligible* filers, and what aspects of pre-certification deterred the eligible filers from participating. The IRS should not expand pre-certification beyond roughly the 45,000-filer level until the evaluation has been completed, it has been determined that pre-certification is effective in reducing overpayments and can be conducted in a manner that does not result in harm to significant numbers of eligible filers, and appropriate changes in pre-certification rules and procedures have been made, based on the evaluation findings.
4. *Provide resources for a grant program for free tax preparation assistance for low-income taxpayers, as the IRS' National Taxpayer Advocate has recommended, and increase resources for low-income taxpayer clinics.* The need for such assistance is likely to burgeon if the pre-certification procedures are implemented. The IRS, Treasury, OMB, and the Congressional appropriations committees should act to increase the very small level of resources currently provided for these functions so that more of the taxpayers subject to pre-certification may receive assistance. The IRS also should clarify that low-income taxpayer clinics can provide assistance to tax filers with the pre-certification requirements; it is unclear, under current IRS rules, whether clinics would be permitted to provide such assistance. These steps should help to lower the rate of non-response among filers subject to the pre-certification requirements and to reduce the incidence of problems that the IRS experiences with the forms and documentation it receives.