

Eligibility Rules for Immigrant Workers

Source: Center on Budget and Policy Priorities

Can immigrant workers get the Earned Income Credit (EIC)?

Many legal immigrants who are employed can get the EIC. Previous changes in federal law that denied public benefits such as food stamps and SSI to many legal immigrants did not apply to the EIC. But there are rules to claim the EIC that are specific to immigrant workers. *In order to claim the EIC, immigrant workers, their spouses, and children listed on Schedule EIC must each have valid Social Security numbers that permit them to work legally in the United States.* Individual Taxpayer Identification Numbers (ITIN) issued by the IRS to non-citizens and nonwork Social Security numbers issued to applicants or recipients of federally funded benefits programs cannot be used to claim the EIC. In addition, an immigrant must be a “resident alien for tax purposes” for the entire tax year to claim the EIC. An immigrant who was a non-resident alien at any time during the year cannot claim the EIC unless he or she:

- was married to a U.S. citizen or a resident alien as of December 31 of the tax year, and
- files a joint tax return with the spouse and chooses to be treated as a resident alien for the entire year. *For more information on how resident alien status is determined, see IRS Publication 519, U.S. Tax Guide for Aliens.*

Immigrants who are “resident aliens for tax purposes” may be legal permanent residents, meaning they have a “green card” (I-551 card). However, many legal immigrants who do not yet have their “green cards” may still be resident aliens for tax purposes. For example, the following immigrants might qualify for the EIC (and the CTC) if they and their family members have legal work authorization and Social Security numbers:

- Amnesty temporary residents and amnesty family members granted “Family Fairness” or “Family Unity” status
- Refugees, asylees and those granted Temporary Protected Status
- Applicants for these and other immigration statuses who have legal work authorization and Social Security numbers.

Can immigrant workers get the Child Tax Credit (CTC)?

The rules for immigrant workers to claim the CTC are not as restrictive as for the EIC. Workers and their qualifying children must be either U.S. citizens or resident aliens living in the U.S. and have either a valid Social Security number (including a non-work SSN) *or* an ITIN.

Remember! Immigrant workers’ children must have lived with them *in the U.S.* for more than six months of the year to be considered qualifying children for the EIC or for the CTC. Also, the worker’s main home must be in the U.S.

Can immigrant workers who obtain legal work status claim the EIC for a previous year?

Workers who otherwise met all the EIC eligibility requirements in previous years, and later obtain legal work status from the U.S. Citizenship and Immigration Services (USCIS), may be able to claim the EIC for up to three previous years. A worker's spouse or qualifying children, if any, must also have legal work status. After receiving legal work status from the USCIS, the worker, spouse and qualifying children must obtain Social Security numbers. Such workers may claim the EIC by amending their tax return for the previous year, even if they had been denied the EIC in that year because they had not yet obtained a valid Social Security number. Or workers can file an original return for the previous year if they had not already done so. *For more information, see IRS National Office Chief Counsel Advice Memorandum, CCA 200028034, "Claiming Previously Denied Earned Income Credit due to Invalid Social Security Numbers," June 9, 2000. Contact the IRS at (202) 622-6060.*

Does getting the EIC or CTC cause "public charge" problems for immigrant workers?

The EIC and CTC do not create "public charge" problems for immigrant workers. Receiving these credits is not considered an indication that the immigrant is unable to support him- or herself financially. In general, information on a tax return is confidential. The IRS cannot share individual tax return information with other government agencies, including the USCIS. There are exceptions in cases involving federal criminal or terrorism investigations or when the IRS thinks someone is breaking a tax law. *For more information about which immigrant workers qualify for the EIC, how to obtain Social Security numbers and other immigrant tax issues, call the National Immigration Law Center at (213) 639-3900.*