

Military personnel stationed outside the United States. U.S. military personnel stationed outside the United States on extended active duty are considered to live in the United States during that duty period for purposes of the EIC.

Extended active duty. Extended active duty means you are called or ordered to duty for an indefinite period or for a period of more than 90 days. Once you begin serving your extended active duty, you are still considered to have been on extended active duty even if you do not serve more than 90 days.

Birth or death of child. A child who was born or died in 2000 meets the residency test if your home was the child's home the entire time he or she was alive in 2000.

Temporary absences. Count time that you or your child is away from home on a temporary absence due to a special circumstance as time lived at home. Examples of a special circumstance include:

- Illness,
- School attendance,
- Detention in a juvenile facility,
- Business,
- Vacation, and
- Military service.



Social security number.

Your qualifying child must have a valid social security number (SSN), unless the child was born and died in 2000. You cannot claim the EIC if:

- 1) Your qualifying child's SSN is missing from your tax return or is incorrect,
- 2) Your qualifying child's SSN was issued only for use in applying for or receiving federally funded benefits,
- 3) Your qualifying child's social security card says "Not valid for employment," or
- 4) Instead of an SSN, your qualifying child has:
 - a) An individual taxpayer identification number (ITIN), which is issued to a noncitizen who cannot get an SSN, or
 - b) An adoption taxpayer identification number (ATIN), which is issued to adopting parents who cannot get an SSN for the child being adopted until the adoption is final.

If you have two qualifying children and only one has a valid SSN, you can claim the EIC only for that child. For more information about SSNs, see *Rule 1*.

Rule 8.
Qualifying Child of More Than One Person

Rule 8 Your Qualifying Child Cannot Be the Qualifying Child of Another Person With a Higher Modified AGI

Sometimes a child meets the rules to be a qualifying child of more than one person. However, only one person can claim the EIC using that child. The paragraphs that follow will help you decide who can claim the EIC when more than one person has the same qualifying child.

Which person can claim the EIC. If you and someone else have the same qualifying child, the person with the higher modified adjusted gross income (AGI) is the only one who may be able to claim the EIC using that child. The person with the lower modified AGI cannot use that child to claim the EIC. This is true even if the person with the higher

modified AGI does not claim the EIC or meet all of the rules to claim the EIC. If the other person is your spouse and you file a joint return, this rule does not apply. If three or more persons have the same qualifying child, the person with the highest modified AGI is the only one who may be able to claim the EIC using that child.

Note. For most people modified AGI is the same as AGI (line 34, Form 1040, line 20, Form 1040A, or line 4, Form 1040EZ). Modified AGI is explained in detail in chapter 4.

If your qualifying child meets the tests to be a qualifying child of any other person for 2000 and you have the higher modified AGI, you meet this rule. If you do not have the higher modified AGI, **STOP**. You cannot claim the EIC either with or without a qualifying child. Put “No” beside line 60a (Form 1040) or line 38a (Form 1040A).

Examples. The following examples may help you in determining whether you can claim the EIC when you and someone else have the same qualifying child.

Examples:

You and your child lived with your parent

Example 1. You and your son lived with your mother all year. You are 25 years old. Your only income was \$9,300 from a part-time job. Your mother's only income was \$15,000 from her job. Your son is a qualifying child of both you and your mother because he meets the relationship, age, and residency tests for both you and your mother. However, because you both have the same qualifying child, only one of you can claim the EIC. Because your mother's modified AGI (\$15,000) is more than your modified AGI (\$9,300), only your mother may be able to claim the EIC. You cannot claim the EIC for persons either with or without a qualifying child.

Example 2. The facts are the same as in *Example 1*, but your mother had investment income of \$3,000. Your mother cannot claim the EIC because her investment income is more than \$2,400. (See *Rule 5*.) Even though your mother cannot claim the EIC, you cannot claim it either because your mother's modified AGI is more than yours.

Examples:

You and your child lived with another relative

Example 3. You and your sister shared a household for the entire year. You have three young children who lived in the household. Your sister does not have any children. However, she cares for your children as if they were her own. You earned \$15,000 and she earned \$20,000. Neither of you had any other income.

The children meet the age and residency tests for both you and your sister. They meet the relationship test for you because they are your children. They also meet the relationship test for your sister because they lived with her the whole year, she cared for them as if they were her own, and they are her sister's children. Therefore, they qualify as her eligible foster children. Your children are qualifying children of both you and your sister. However, because your sister's modified AGI is higher than yours, she is the only one who may be able to claim the EIC.

You and your sister cannot split the three qualifying children between you. You cannot claim the EIC even though your sister enters the names of only two of the children on her Schedule EIC. (Schedule EIC has spaces for the names of only two qualifying children because the EIC is the same amount for two or more qualifying children.)

Example 4. The facts are the same as in *Example 3*, except that your oldest child is 20 years old and a full-time college student. Your sister does not care for this child as if the child were her own. Only the two younger children are qualifying children of both you and your sister. Your sister is the only one who may be able to claim the EIC using these two children because her modified AGI is higher than yours. Your oldest child is a qualifying child of you, but not your sister. Only you may be able to claim the EIC using this child.

Example 5. You, your spouse, and your 10-year-old son lived together until July 15, 2000, when your spouse moved out of the household. In November 2000, you and your spouse were divorced. Your modified AGI was \$13,000. Your former spouse's modified

AGI was \$18,000. Your son is a qualifying child of both you and your former spouse because your son lived with each of you for more than half the year and because he met the relationship and age tests for both of you. However, because your former spouse's modified AGI (\$18,000) was more than your modified AGI (\$13,000), your former spouse is the only one who may be able to claim the EIC for 2000. You cannot claim the EIC for persons either with or without a qualifying child.

Example 6. You and your sister lived together all year. You have a 22-year-old son who lives with you, but is currently away from home attending college full time. Your sister has a 4-year-old daughter who lives with you and your sister. You care for your niece as you would your own child. Your earned income and modified AGI were \$12,000. Your sister's earned income and modified AGI were \$10,000.

Both children meet the age and residency tests for both you and your sister. Your son meets the age test because he is under 24 and a full-time student. He meets the residency test because he is only temporarily away from home while attending college. Your niece meets the relationship test for both you and your sister. She meets the test for you as your eligible foster child because she is your sister's child, she lived with you all year, and you cared for her as your own child. Your son meets the relationship test for you but not for your sister because she does not care for him as her own child.

Your son is the qualifying child only of you. Your niece is the qualifying child of both you and your sister. Because your modified AGI was higher than your sister's, only you can claim the EIC using your niece. You can claim the EIC for two children. Your sister cannot claim any EIC.

If your sister's modified AGI were higher than yours, she could claim the EIC using your niece, and you could claim the credit using your son. This is so even though you and your sister have the same address and share the same household.

Examples:

You and your child lived with someone not related to you

Example 7. You, your 2-year-old son, and your son's father lived together all year. You and your son's father are not married. Your modified AGI was \$18,000. Your son's father's modified AGI was \$20,000.

Your son is a qualifying child of both you and his father because he meets the relationship, age, and residency tests for both you and his father. Because the father's modified AGI was more than yours, only he may be able to claim the EIC. You cannot claim the EIC for persons either with or without a qualifying child.

Example 8. You have two sons, ages 3 and 5. In 1998, you and your sons moved in with your boyfriend. You are still living together. Your boyfriend cares for your children as he would his own. In 1999, you and your boyfriend had a baby girl. Your boyfriend's earned income and modified AGI were higher than yours in both 1999 and 2000.

1999—All three children were qualifying children for both you and your boyfriend. Your sons met the relationship test for your boyfriend as his eligible foster children because they lived with him all year, and he cared for them as his own. The law in 1999 did not impose any other requirements for them to be his eligible foster children.

Because your boyfriend had the higher modified AGI, only he could claim the EIC for 1999. He could claim the EIC using any two of the three qualifying children. You could not claim any EIC.

2000—All three children are your qualifying children. The baby is also your boyfriend's qualifying child. Your sons are not qualifying children of your boyfriend, because they do not qualify as his eligible foster children in 2000. See the definition of "eligible foster child" earlier.

Because your boyfriend has the higher modified AGI, only he can claim the EIC using the baby. You can claim the EIC using your two sons.