

LB&I Transaction Unit

Unit Name	U.S. Persons Residing Abroad Claiming Additional Child Tax Credit	
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Chapter	Credits

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Table of Contents

(View this PowerPoint in “Presentation View” to click on the links below)

[General Overview](#)

- [Issue and Transaction Overview](#)
- [Transaction and Fact Pattern](#)

[Summary of Potential Issues](#)

[Audit Steps](#)

[Index of Referenced Resources](#)

[Training and Additional Resources](#)

[Glossary of Terms and Acronyms](#)

[Index of Related Practice Units](#)

Issue and Transaction Overview

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Note: This practice unit was updated to remove references to resources that are no longer current, relevant, or available, and supersedes the practice unit dated 11/09/17.

Taxpayers working and residing abroad are filing returns claiming refundable credits, such as the Additional Child Tax Credit. Often, these taxpayers have never resided or resided only for a short period of time in the United States, and some have no plans to return to the United States.

Some of these taxpayers are only filing a U.S. return to get the refundable credits. In a significant number of instances, the taxpayers are not entitled to the credits because their "qualifying" children were not U.S. persons during the years at issue and/or income was misstated. Therefore, the examiner needs to be aware of the issues and ascertain whether the taxpayers are entitled to the claimed credits.

Issues addressed in this Practice Unit include determining whether the taxpayers are U.S. persons; their proper filing status; whether their children listed as dependents are qualifying children for purposes of the Child Tax and Additional Child Tax Credits; whether the income has been properly reported; and whether the claimed credits exceed the limitations.

In order to claim the Additional Child Tax Credit, the taxpayers and their qualifying children must have a valid Social Security number (SSN) or individual taxpayer identification number (ITIN) that was issued on or before the due date for filing the return. For original or amended returns filed after December 18, 2015 (except for tax year 2015 returns), the taxpayers may not retroactively claim the credit after issuance of a SSN or ITIN.

For taxable years beginning after December 31, 2015, the taxpayers who improperly claim the credit are restricted from claiming the credit in future years in a manner similar to that for improperly claiming the Earned Income Credit.

Transaction and Fact Pattern

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Facts

- Taxpayer is residing outside the United States.
- Taxpayer filed a Form 1040, claiming the Child Tax Credit and/or Additional Child Tax Credit.
- Taxpayer (and/or spouse) may not be a U.S. person.
- Child(ren) claimed on the tax return may not be qualifying per Internal Revenue Code (IRC) 24(c).
- Income on the tax return may have been misclassified.
- Modified adjusted gross income for purposes of the credit may have been improperly computed.
- Earned income for purposes of the Additional Child Tax Credit may have been improperly computed.

Summary of Potential Issues

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

<u>Issue 1</u>	Determine if the taxpayer(s) is/are a U.S. person and, for any original or amended return filed after December 18, 2015 (except for tax year 2015 returns), and that the taxpayer has a valid SSN or TIN that was issued on or before the due date of the return.
<u>Issue 2</u>	Determine if the filing status on Form 1040 is correct.
<u>Issue 3</u>	Determine if each child listed as dependent is a qualifying child per IRC 24(c), and for any original or amended return filed after December 18, 2015 (except for tax year 2015 returns), and that each dependent has a valid SSN or TIN that was issued on or before the due date of the return.
<u>Issue 4</u>	Credits are limited based on the modified adjusted gross income, per IRC 24. There are further limits on the refundable portion of the credit (also known as the Additional Child Tax Credit) based on the taxable earned income as defined in IRC 32. Determine the proper amount of modified adjusted gross income, and that the refundable portion of the credit does not exceed the limitations of IRC 24.

All Issues, Step 1: Initial Factual Development

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Taxpayers may be claiming Child Tax and/or Additional Child Tax Credits that are not allowable. For U.S. tax purposes, it is necessary to determine the status of the taxpayers, whether the taxpayers have a valid SSN or ITIN issued on or before the due date of the return, whether the children are qualifying children with a valid SSN or ITIN issued on or before the due date of the return, and whether the taxpayers had earned income subject to the limitations of IRC 32.

Fact Element	Resources
Foreign residents are claiming credits under IRC 24.	- Form 1040, U.S. Individual Income Tax Return - Form 8812, Additional Child Tax Credit (tax years through 2011) - Schedule 8812, Child Tax Credit (tax years 2012 through 2017) - Schedule 8812, Additional Child Tax Credit (tax years 2018 through 2020) - Schedule 8812, Credits for Qualifying Children and Other Dependents (tax year 2021 and following)
- Proof of citizenship of taxpayer. - Request original documents (or official government-issued duplicates thereof).	
For all original or amended tax returns filed after December 18, 2015 (except for tax year 2015 returns), the taxpayers must have a valid SSN or ITIN that was issued on or before the due date of the return.	IRC 24(e)

All Issues, Step 1: Initial Factual Development (cont'd)

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Fact Element	Resources
▪ Proof of marriage, if married filing joint (MFJ). ▪ Request marriage certificate.	
▪ Proof of citizenship of dependents. ▪ Request original documents (or official government-issued duplicates thereof). ▪ Proof of when the SSN or ITIN was issued for both the taxpayers and the dependent(s) listed.	
▪ Proof of nature, source and amount of income. ▪ Request documentation evidencing the nature, source, and amount of income.	

Issue 1, Step 2: Review Potential Issues

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 1

Determine if the taxpayers are U.S. persons and, for any original or amended return filed after December 18, 2015 (except for tax year 2015 returns), the taxpayers have a valid SSN or TIN that was issued on or before the due date of the return.

Explanation of Issue	Resources
▪ Is the taxpayer a U.S. person? ▪ If filing status is MFJ, is the spouse a U.S. person? ▪ If either taxpayer is a U.S. citizen or resident, they are eligible to file a Form 1040. ▪ If neither taxpayer is a U.S. citizen or resident, they cannot file a Form 1040. A Social Security card does not establish U.S. citizenship or residency. The taxpayers must provide a U.S. birth certificate; Form FS-240, Consular Report of Birth Abroad; Certificate of Citizenship (which is effective from the date of issuance); valid green card; or U.S. passport. Note that a U.S. passport issued after the year under audit does not necessarily indicate that the individual was a U.S. citizen or lawful permanent resident during the tax year under audit.	▪ IRC 7701(a)(30) ▪ Form FS-240, Consular Report of Birth Abroad (CRBA) ▪ Form N-560, Certificate of Citizenship

Issue 1, Step 3: Additional Factual Development

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

[Issue 1](#)

Fact Element	Resources
An individual is a U.S. person if he or she is a U.S. citizen or resident alien. A resident alien is defined as one who: ▪ Has lawful permanent resident status (Green Card holder), ▪ Met the substantial presence test or ▪ Made a first-year election.	▪ IRC 7701(a)(30)(A) ▪ IRC 7701(b)(1)(A)(i) ▪ Treas. Reg. 301.7701(b)-1(b) ▪ IRC 7701(b)(1)(A)(ii) ▪ IRC 7701(b)(3) ▪ Treas. Reg. 301.7701(b)-1(c) ▪ IRC 7701(b)(1)(A)(iii) ▪ IRC 7701(b)(4)

Issue 1, Step 4: Develop Arguments

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 1

Explanation of Adjustment	Resources
 DECISION POINT: Determine the legal status of the taxpayers for U.S. tax purposes.	
If filing status is married filing joint (MFJ) on Form 1040, and neither taxpayer is a U.S. person: ▪ If there is U.S. source income, move to Form 1040NR. ▪ If no U.S. source income, zero out the return. Contact RGS and AIMS/ERCS coordinators. If filing status is married filing separate (MFS) or single on Form 1040 and the taxpayer is not a U.S. person: ▪ If there is U.S. source income, move to Form 1040NR. ▪ If no U.S. source income, zero out the return. Contact RGS and AIMS/ERCS coordinators.	▪ IRC 861 ▪ IRC 862 ▪ IRC 863 ▪ IRC 864 ▪ IRC 865 ▪ Form 1040NR, U.S. Nonresident Alien Income Tax Return

Issue 2, Step 2: Review Potential Issues

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 2

Determine if the filing status on Form 1040 is correct.

Explanation of Issue	Resources
Individuals who are married as of the last day of the year are entitled to use one of two filing statuses – MFJ or MFS. If the taxpayers filed MFJ, ask for a copy of the marriage certificate. If the certificate is in a foreign language, ask that a certified translation also be provided. You will need to clearly see and reference the taxpayer names and the date of the marriage certificate.	▪ IRC 7703(a)

Issue 2, Step 3: Additional Factual Development

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 2

Fact Element	Resources
If one spouse is not a U.S. citizen, and in order to file a joint return, he or she must provide proof that he or she filed a IRC 6013(g) election with his or her spouse. Request a copy of the tax return for the year in which the election was made, including the election and the first two pages reflecting the taxpayers' signatures. If the IRC 6013(g) election was not filed, the taxpayers cannot retain the MFJ status unless they file an amended return making the election provided it is "made before the expiration of the period prescribed by IRC 6511(a) (or IRC 6511(c) if the period is extended by agreement) for making a claim for credit or refund)." NOTE: Per IRC 6013(b)(2)(B), an election cannot be made if the Service has issued a Statutory Notice of Deficiency and the taxpayers timely petitioned the Tax Court. That prohibition does not apply, however, if the taxpayers have not previously filed a separate return, such as in cases where the statutory notice of deficiency is based on a substitute for return under IRC 6020(b). If one spouse is a nonresident alien at the beginning of the year, but is a U.S. resident by the end of the year and is married to a U.S. citizen or resident at the end of the year, the spouses may make a joint election under IRC 6013(h) to treat the first-mentioned spouse as a U.S. resident for the entire year.	▪ IRC 6013(g) ▪ Treas. Reg. 1.6013-6(a)(4)(i) ▪ Millsap v. Commissioner, 91 T.C. 926 (1988) ▪ Phillips v. Commissioner, 851 F.2d 1492 (D.C. Cir. 1988) ▪ IRC 6013(h) ▪ Letter 3219-C, Statutory Notice of Deficiency

Issue 2, Step 4: Develop Arguments

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 2

Explanation of Adjustment	Resources
 DECISION POINT: If the filing status was MFJ and the taxpayers are U.S. persons filing Form 1040 but cannot prove that they are married, adjust the filing status to single on the return received. A return will need to be prepared for the secondary taxpayer. Ensure that each child is only claimed once.	
▪ If the taxpayers filed Form 1040 MFJ, prove their marriage and both are a U.S. person, the filing status of Form 1040 will remain MFJ.	
 DECISION POINT: If the taxpayers filed Form 1040 MFJ and prove their marriage, but one taxpayer is not a U.S. person and they made a IRC 6013(g) or 6013(h) election to treat the nonresident alien spouse as a resident alien, the filing status of Form 1040 will remain MFJ.	▪ Treas. Reg. 1.6013-6(a)(4)(i) ▪ IRC 6013(b)(2)(B)
 DECISION POINT: If no such election was made, the taxpayers cannot file MFJ unless they make the election on an amended return. Otherwise, adjust the filing status of the U.S. person to MFS and make the appropriate adjustments to all affected items, including credits.	

Issue 3, Step 2: Review Potential Issues

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 3

Determine if each child listed as dependent is a qualifying child per IRC 24(c), and for any original or amended return filed after December 18, 2015 (except for tax year 2015 returns), that each dependent has a valid SSN or TIN that was issued on or before the due date of the return.

Explanation of Issue	Resources
A qualifying child must meet all of the following requirements: ▪ Must be eligible to be claimed as a dependent by the taxpayer under IRC 151(c) as defined by IRC 152. ▪ Must be under age 17 at the close of the tax year. ▪ Must be a U.S. citizen, national or resident (IRC 24(c)(2)). ▪ Must have an SSN or ITIN issued on or before the due date of the return. Treas. Reg. 1.152-2(a)(1) specifies that the dependent must be a U.S. citizen or resident at some time during the tax year) as defined in IRC 152(c).	▪ IRC 24(c) ▪ IRC 152 ▪ IRC 24(e) ▪ Treas. Reg. 1.152-2(a)(1)

Issue 3, Step 3: Additional Factual Development

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 3

Fact Element	Resources
▪ Each qualifying child must have a valid SSN or ITIN. ▪ For all original or amended returns filed after December 18, 2015 (except for tax year 2015 returns), the SSN or ITIN must have been issued on or before the due date of the return. NOTE: A Social Security card does not establish U.S. citizenship or residency.	▪ IRC 24(e)
The following original documents can be used to substantiate citizenship: ▪ Form FS-240, Consular Report of Birth Abroad ▪ Form DS-1350, Certification of Report of Birth (discontinued on December 31, 2010, but is still valid as evidence of U.S. citizenship) ▪ Form N-560, Certificate of Citizenship ▪ United States passport (if issued during or prior to the years under examination)	▪ Carlebach v. Commissioner, 139 T.C. No. 1 (2012) ▪ Stern v. Commissioner, T.C. Memo. 2012-204

Issue 3, Step 4: Develop Arguments

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 3

Explanation of Adjustment	Resources
NOTE: The effective date of Form N-560, Certificate of Citizenship is the date the certificate was issued, not the date of birth.	▪ Form N-560, Certificate of Citizenship
 DECISION POINT: If the taxpayer is unable to demonstrate that the claimed dependent is a United States person, the return must be adjusted accordingly and the related dependent-based credit(s) disallowed.	▪ IRC 24(c) ▪ IRC 152 ▪ Treas. Reg. 1.152-2(a)(1)

Issue 4, Step 2: Review Potential Issues

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 4

Credits are limited based on modified adjusted gross income, per IRC 24. There are further limits on the refundable portion of the credit (also known as the Additional Child Tax Credit) based on taxable earned income as defined in IRC 32. Determine that modified adjusted gross income is the proper amount, and that the refundable portion of the credit does not exceed the limitations of IRC 24.

Explanation of Issue	Resources
There are limitations on the credits based on modified adjusted gross income and further limits on the refundable portion of the credit (also known as the Additional Child Tax Credit) based on taxable earned income.	▪ IRC 24 ▪ IRC 32

Issue 4, Step 3: Additional Factual Development

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 4

Fact Element	Resources
There are limitations on the credit based on the taxpayer's modified adjusted gross income. The term "modified adjusted gross income" means adjusted gross income increased by any amount excluded from gross income under IRC 911, 931, or 933.	- IRC 24(b) - IRC 24(d) - Form 2555, Foreign Earned Income
There are further limits on the refundable portion of the credit (also known as the Additional Child Tax Credit) based on taxable earned income. The term "earned income" is as defined in IRC 32(c)(2) and does not include any amount excluded under IRC 911, 931, or 933.	- IRC 32(c)(2) - IRC 911 - IRC 931 - IRC 933
It is extremely important that the taxpayers provide documentation evidencing the nature, source and amount of all income reported on the tax return.	

Issue 4, Step 4: Develop Arguments

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit

Issue 4

Explanation of Adjustment	Resources
 DECISION POINT: If the taxpayers excluded an amount under IRC 911, 931 or 933, the excluded amount must be included (added back in) when determining their modified adjusted gross income under IRC 24(b) but cannot be included when determining taxable earned income under IRC 24(d).	▪ IRC 24(b) ▪ IRC 24(d) ▪ IRC 32(c)(2)
 DECISION POINT: If income was misclassified on the tax return – for example, unearned income (such as a stipend, scholarship or income received pursuant to a communal living arrangement) was reported as earned, properly reclassify the income and make the proper adjustments to all affected items, including credits.	
 DECISION POINT: If the taxpayers failed to provide documentation evidencing the nature, source, and amount of income, disallow the claimed credits.	
▪ For taxable years ending after December 31, 2014, taxpayers excluding any foreign earned income under IRC 911 are ineligible for the refundable Additional Child Tax Credit.	▪ IRC 24(d)(5)
▪ After December 31, 2015, taxpayers who improperly claim the credit are restricted from claiming the credit in future years in a manner similar to that for improperly claiming the Earned Income Credit.	▪ IRC 24(g)

Index of Referenced Resources

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit
IRC 24, Child Tax Credit
IRC 32, Earned Income
IRC 151, Allowance of Deductions for Personal Exemptions
IRC 152, Dependent Defined
IRC 861, Income from Sources Within the United States
IRC 862, Income from Sources Without the United States
IRC 863, Special Rules for Determining Source
IRC 864, Definitions and Special Rules
IRC 865, Source Rules for Personal Property Sales
IRC 911, Citizens or Residents of the United States Living Abroad
IRC 931, Income From Sources Within Guam, American Samoa, or the Northern Mariana Islands
IRC 933, Income From Sources Within Puerto Rico
IRC 6013, Joint Returns of Income Tax by Husband and Wife
IRC 7701, Definitions
IRC 7703, Determination of Marital Status
Treas. Reg. 1.152-2(a)(1)
Treas. Reg. 1.6013-6(a)(4)(i)

Index of Referenced Resources (cont'd)

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit
Treas. Reg. 301.7701(b)-1(c)
Carlebach v. Commissioner, 139 T.C. No. 1 (2012)
Millsap v. Commissioner, 91 T.C. 926 (1988)
Phillips v. Commissioner, 851 F.2d 1492 (D.C. Cir. 1988)
Stern v. Commissioner, T.C. Memo. 2012-204
Form 1040, U.S. Individual Income Tax Return
Form 1040NR, U.S. Nonresident Alien Income Tax Return
Form 2555, Foreign Earned Income
Schedule 8812, Credits for Qualifying Children and Other Dependents
Form DS-1350, Certification of Report of Birth
Form FS-240, Consular Report of Birth Abroad
Form N-560, Certificate of Citizenship
Schedule 8812, Additional Child Tax Credit
Form 8812, Additional Child Tax Credit
Letter 3219-C, Statutory Notice of Deficiency

Training and Additional Resources

U.S. Persons Residing Abroad Claiming Additional Child Tax Credit	
Type of Resource	Descriptions
Other Training Materials	▪ Pub. 972, Child Tax Credit: Access is available through IRS.gov ▪ Pub. 501, Exemptions, Standard Deduction, and Filing Information: Access is available through IRS.gov

Glossary of Terms and Acronyms

Term/Acronym	Definition
AIMS	Audit Information Management System
ERCS	Examination Returns Control System
IRC	Internal Revenue Code
ITIN	Individual Tax Identification Number
MFJ	Married Filing Joint
MFS	Married Filing Separate
RGS	Report Generation Software
SSN	Social Security Number

Index of Related Practice Units

Associated UILs	Related Practice Unit
	None at this time