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Maryland Volunteer Lawyers Service



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Maryland Volunteer Lawyers Service

Visit www.mvlslaw.org/events for
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Resources for MVLS Volunteers: Looking for Pro Bono Cases?

The screenshot shows the homepage of the Maryland Volunteer Lawyers Service (MVLS). At the top left is the MVLS logo, which consists of the letters 'MVLS' in a bold, sans-serif font, with 'MARYLAND VOLUNTEER LAWYERS SERVICE' written in smaller text below it. To the right of the logo is the full name 'MARYLAND VOLUNTEER LAWYERS SERVICE' in a bold, orange, sans-serif font. Below this name is a navigation menu with the following items: 'About', 'Work', 'Get Help', 'Volunteer', 'News & Events', 'Pro Bono Portal', and 'Donate'. The 'Pro Bono Portal' link is circled in red. Below the navigation menu is a large banner with a dark gray background. The banner features the letters 'MVLS' in a very large, bold, dark blue font. The 'V' is a different color, appearing as a brownish-gold. In the center of the banner, there is a white text box that reads: 'We refreshed our logo, but you'll find the same great staff and volunteers committed to delivering on our mission'. Below this text is a small, light blue button with the text 'Read More'. At the bottom of the banner, the full name 'MARYLAND VOLUNTEER LAWYERS SERVICE' is written in a bold, teal, sans-serif font. Below the banner is a white box containing the organization's mission statement: 'Our mission is to connect Marylanders facing financial hardships with volunteer lawyers, tax professionals, and community partners to deliver free civil legal assistance because there should be justice for all, not just for those who can afford it.'

MVLS
MARYLAND VOLUNTEER LAWYERS SERVICE

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< We refreshed our logo, but you'll find the same great staff and volunteers committed to delivering on our mission >

Read More

MARYLAND VOLUNTEER LAWYERS SERVICE

Our mission is to connect Marylanders facing financial hardships with volunteer lawyers, tax professionals, and community partners to deliver free civil legal assistance because there should be justice for all, not just for those who can afford it.

Race Equity Context

- Impact of History
 - Tax Code appears neutral on its face
- This moment
 - Pandemic recovery
- Institutional systems which have perpetuated inequities
- Additional obstacles or hurdles clients are facing

Building Equitable Relationships

- Active Listening
- Valuing the Client's Experience
- Non-Judgmental Attitude
- Understanding past experience of communities of color with tax system
- Giving additional space for clients to ask questions

MVLS Pro Bono Portal:

<https://mvslaw.org/probonoportals>

WELCOME TO THE MVLS PRO BONO PORTAL!

Select a case today by reviewing available cases shown below in real time. You can click "Learn More" to express your interest in the case, or click "Share Case" to forward the available case to a colleague.

If you are not currently a MVLS volunteer, please [click here](#) to register.
By taking a case today, you are helping MVLS to ensure Justice For All.

All Bankruptcy Debt Collection Deed Transfer Estates Expungement Family Foreclosure/Tax Sale Landlord-Tenant Tax Other Category

Search ... All Counties

Single Mom Can't Afford A Large Payment

Client is being sued by her former landlord for \$4146.59. She admits she owes some but not all of the debt and is hoping to reduce the amount she has to pay. Court date set for 7/20/18 at 1:30pm.

Location: Baltimore County Ref. #: 18-0138741 Case Type: Debt Collection

[Share Case](#) [Learn More](#)

I Admit To The Debt, But Can We Negotiate A Settlement.

Client is being sued for \$933.00 for failing to make payments towards a debt. Client agrees that she owes the debt. There are no judgments entered in the case. Client has paid approximately \$300 toward the debt and would like to work out a settlement for the remaining. Affidavit Judgment Hearing: 7/23/18 at 1:00PM. Trial: 8/3/18 at 9:00AM.

Location: Washington Ref. #: 18-0138685 Case Type: Debt Collection

[Share Case](#) [Learn More](#)

You Have Left Me No Other Choice But To File For Rent Escrow.

Client wishes to initiate a rent escrow case after nothing has been done to make repairs. Client has lived in the property since October 2016 and problems in the unit began in December 2017. To date LL, has not tried to resolve the mold issue, flooding, falling attic stairs, and the hole in the ceiling.

Location: Baltimore County Ref. #: 18-0138671 Case Type: Landlord-Tenant

[Share Case](#) [Learn More](#)

Landlord Requests The Move, Now Refusing My Security Deposit.


Client filed suit against her previous Landlord for the return of her security deposit and three times the amount. Client only lived in the property for 3

Looking Towards A Fresh Start

Client seeks help with expunging her criminal record.

Here's To New Beginnings!

Client seeks to go over her criminal record with a volunteer and to have the eligible cases expunged from her record.



FREE Recorded Trainings:
Go to mvlslaw.org/recorded-trainings

Recordings of past trainings are available in the following categories:

- -Consumer
- -Estate Planning & Estate Administration
- -Expungement
- -Family Law
- -Housing
- -Human Trafficking Prevention
- -Tax
- -Miscellaneous (business and soft skills)

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tax-representative-registration/](https://mvlslaw.org/volunteer-tax-representative-registration/)**





Earned Income Tax Credit (EITC)

NOVEMBER 9, 2021

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Contents



- I. EITC
- II. Income
- III. SSN Issues
- IV. Immigration
- V. Revising Returns
- VI. Common Filing Errors
- VII. EITC Denial and Bans

EITC Background

- ▶ Qualifications^{1,2}
 - ▶ Earned income of at least \$1 within limits³

# of Children	Single	Married Filing Jointly
0	\$ 15,820	\$ 21,710
1	\$ 41,756	\$ 47,646
2	\$ 47,440	\$ 53,330
3+	\$ 50,954	\$ 56,844

- ▶ Investment income below \$10,000 (new in 2021 up from \$3,650)
- ▶ Have a valid Social Security number (by the date of your tax return)
- ▶ Filing status as Single or Married Filing Jointly
- ▶ Be a U.S. citizen or a resident alien all year
- ▶ Have qualifying child(ren) –or- 25-65 years of age (not a dependent)

EITC

▶ Maximum Earned Income Credit²⁴

# of Children	Maximum
0	\$ 1,502
1	\$ 3,618
2	\$ 5,980
3+	\$ 6,728

- ▶ Credit amount varies depending on status as Single or Married, the latter providing a more generous credit.
- ▶ EITC will not be distributed before February 15th subsequent to any tax year. IRS advises to refrain from requesting increased EITC claims until after that distribution date.¹⁹

Qualifying Child(ren)

- ▶ Relationship
 - ▶ Son, daughter, stepchild, foster child, or a descendant
 - ▶ Brother, sister, half brother, half sister, stepbrother, stepsister, or a descendant
- ▶ Age Limits
 - ▶ ≤ 19 years (+ younger than filer/spouse); or,
 - ▶ ≤ 24 years (+ younger than filer/spouse) if the child is a student⁴; or,
 - ▶ No Age Cap if permanently and totally disabled during the tax year
- ▶ Residency Requirement
 - ▶ $\geq \frac{1}{2}$ the year⁵
- ▶ Joint Return
 - ▶ Child can't file a joint return and be claimable⁶
- ▶ One Claim Per Child
 - ▶ Separated parents
 - ▶ Multiple adults

Earned Income⁷

- ▶ Wages
- ▶ Salaries
- ▶ Tips
- ▶ Strike pay
- ▶ Sick pay
- ▶ Union strike benefits
- ▶ Disability benefits
- ▶ Generally, for tax years 2020 and 2021, if earned income is less than the earned income for 2019, individuals may elect to use their 2019 earned income when calculating EITC.
 - ▶ Taxpayers should enter "PYEI" and the dollar amount of the prior year earned income on the dotted line for EITC.

Not Earned Income⁴

- ▶ Interest*
- ▶ Dividends*
- ▶ Welfare payments
- ▶ Pensions
- ▶ Veteran benefits
- ▶ Taxable scholarships or fellowship grants not reported on Form W-2
- ▶ Alimony
- ▶ Child support
- ▶ Social Security and Railroad Retirement benefits
- ▶ Worker's compensation benefits
- ▶ Unemployment compensation (insurance)
- ▶ Earned income for EITC purposes does not include amounts inmates in penal institutions are paid for work while an inmate.

*Subject to a threshold of \$10,000 (2021) which would disallow EITC

Investment Income Limits - \$10,000⁸ (2021 increase)

- ▶ Interest
- ▶ Dividends
- ▶ Capital gain net income
- ▶ Royalty income
- ▶ Net income from rentals of personal property (not used in a business)
- ▶ Income from passive activities included on Schedule E
- ▶ Child's interest and dividends

Self-Employment Income

- ▶ Wages/Salaries⁹
 - ▶ A self-employed individual is required to report all income and deduct all expenses for EITC purposes¹⁰
 - ▶ Self-employed taxpayers must claim all allowable deductions in computing net earnings from self-employment for self-employment tax purposes.^{11, 12}
 - ▶ Net earnings from self-employment may not appear on Schedule SE if under \$400.

EITC – Incarceration²³

- ▶ Income received for services rendered while an inmate does not count towards EITC
 - ▶ Includes work release and while staying in a halfway house
 - ▶ Any income prior to or after release counts
- ▶ EITC Previously allowed
 - ▶ If incarceration income is earned, previous tax years will be reviewed
 - ▶ EITC allowed based on penal institution income IRS will send the previous years to examination

SSN Issues³³

- ▶ Social Security Number must be valid for the taxpayer at the time of filing
- ▶ Potential Issues
 - ▶ EITC claimed and denied (and all other criteria are met)
 - ▶ If SSN and Name of Taxpayer are valid then EITC should be granted
 - ▶ If SSN or Name of Taxpayer are **not** valid then Taxpayer is not eligible for EITC
 - ▶ Birth and Death of Child (same tax year)¹³
 - ▶ If no SSN was issued EITC is allowable
 - ▶ Adoption
 - ▶ If no SSN then EITC is not allowed
 - ▶ ATIN Adoption Taxpayer Identification Number is not allowable
 - ▶ ITIN – Individual Taxpayer Identification Number is not allowable
- ▶ EITC is not allowed for "Amish", "Mennonite", "Exempt Form 4029", or "conscience-based objection" without a valid SSN, although other credits may be allowed.

Immigration

- ▶ If the taxpayer meets all the EITC requirements for the tax year and is currently going through the immigration process to become a legal resident and cannot obtain an SSN until the process is completed
 - ▶ advise the taxpayer they qualify for EITC **if the SSN is obtained prior to the due date** of the return.
- ▶ Approximately 2.6 million “illegal” immigrants have valid SSN¹⁴
 - ▶ Asylum Applicants¹⁵
 - ▶ Deferred Action for Childhood Arrivals (653,000)¹⁵
 - ▶ Temporary Protected Status (411,00)¹⁵
 - ▶ Stolen Identities
 - ▶ Other – 50+ Employment Authorization Document (EAD) Categories

Failure to File EITC

- ▶ If a taxpayer fails to file for EITC, and IRS takes note, IRS will issue a notice (CP 09 taxpayers with qualifying children; CP 27 to taxpayers without qualifying children)¹⁶
 - ▶ Form 15111 [Earned Income Credit Worksheet(CP 09)]
 - ▶ Form 15112 [Earned Income Credit Worksheet (CP 27)]
- ▶ After returning the EIC Worksheet IRS has 8 weeks to review¹⁷. If Taxpayer hasn't received EITC refund
 - ▶ < 8 weeks – advise to allow for 8-week period
 - ▶ > 8 weeks and IRS has no record of taxpayer's response – advise taxpayer to complete Form 1040-X and attach Schedule EIC
 - ▶ > 8 weeks and IRS received taxpayer response – complete Form 4442 (Inquiry Referral) and allow 30 days for response

Amended Return – EITC Adjustment

- ▶ Amending Return – Retroactive Addition of Children¹⁸
 - ▶ SSNs must be obtained before the final due date of any tax year, or the claim will be denied (as of TY2015)
 - ▶ If taxpayer seeks to add a child a Form 1040-X will need to be filed, amending the return
 - ▶ Schedule EIC is required to be attached and must contain the qualifying children's SSN information

EITC Erroneously Allowed²²

- ▶ Reasons for reversing (reducing or eliminating) EITC after grant
 - ▶ If taxpayer's SSN is not a valid SSN
 - ▶ Lack of valid SSN for secondary taxpayer
 - ▶ Lack of valid SSN for qualifying child(ren)
 - ▶ Failure to pay Self Employment tax
 - ▶ Failure to correctly calculate AGI
 - ▶ Failure to consider investment income in EITC computation
 - ▶ Meet the age requirements
- ▶ Letter 3050C,
 - ▶ "Math Error", will be received by taxpayer explaining the error
- ▶ Taxpayers may reply to an EITC math error or submit a claim, amended, or duplicate return to request EITC

Common Errors

- ▶ Claiming a child who is not a qualifying child
 - ▶ This error occurs when taxpayers claim a child who does not meet all four tests for a qualifying child.
 - ▶ Relationship, Age, Residency, Filing Status
- ▶ Married taxpayers who incorrectly file as single or head of household
 - ▶ Married taxpayers sometimes incorrectly claim single or head of household filing status to qualify for EITC or increase the amount of EITC.
- ▶ Income-reporting errors
 - ▶ Taxpayers sometimes over-report or under-report income to qualify for or maximize the amount of EITC.

Common Errors²⁵

▶ Claim Errors

- ▶ Returns may be rejected when IRS receives a tax return claiming a child already claimed on a previously filed return (a duplicate claim).
- ▶ **What to do if a return is rejected:**
 - ▶ File an additional paper or electronic return and claim the child with IRS

▶ Social Security Number Mismatch

- ▶ Missing or mismatched SSN
- ▶ **What to do if a return rejected:**
 - ▶ If SSN was incorrectly entered, submit a corrected return with corrected SSN or respond to IRS "Math Error Notice" with the correct SSN
 - ▶ the SSN is correct, contact Social Security Admin. to correct any SSN and name mismatch then send in a new return or respond to the math error notice

▶ Math Error After Prior Year Disallowance of EITC

- ▶ If IRS denied taxpayer's EITC in a prior year audit taxpayer must show eligibility for EITC by filing Form 8862 ("Information To Claim Certain Credits After Disallowance")
- ▶ **What to do if a return rejected:**
 - ▶ Respond to "Math Error Notice" with Form 8862
 - ▶ If after review it is determined taxpayer is not eligible no action is required.

Math Error²⁸

- ▶ If the taxpayer receives notice of a math error adjustment, they must respond within 60 days requesting abatement*.
- ▶ The issue giving rise to the Math Error notice, as well as the practitioner's response, will determine how it is then worked by the Service.
 - ▶ A simple request for abatement, with nothing more other than signaling disagreement, will be treated as an “unsubstantiated math error.”
 - ▶ If it is a recertification requirement, it will be processed by correspondence exam.
 - ▶ If it is more complicated, and issues are raised in the response, it may be sent to the Area Office.

EITC Denial²⁶

- ▶ Taxpayers who are denied EITC
 - ▶ Will be denied the credit for subsequent tax years filed unless the taxpayer attaches a Form 8862 and demonstrates eligibility for the credit.
- ▶ Bans – If EITC is denied
 - ▶ Due to reckless or intentional disregard of the rules and regulations - EITC will be denied for 2 tax years
 - ▶ Due to Fraud – EITC will be denied for ten tax years

EITC Bans Statistics²⁸

- ▶ Statistics (2011)²⁹
 - ▶ the 2-year ban was improperly imposed roughly 40% of the time,
 - ▶ was imposed without required managerial approval 69% of the time, and
 - ▶ was imposed without explanation almost 90% of the time.
- ▶ The Service updated the applicable I.R.M. and in 2015 the issuance rate of two-year bans began to decline.³⁰

What is “Reckless”²⁸

- ▶ An IRS examiner is directed to consider “a variety of facts” in determining whether the ban should apply.
- ▶ Guidance to IRS employees on determining reckless
 - ▶ vague definition and no I.R.M., statute, or Treasury Regulation defines “reckless” for purposes of section 32(k).
- ▶ Criticism of the 2-10 year ban²⁷
 - ▶ (1) the lack of defined standards to assist the Service in evaluating whether a claimant's conduct is truly reckless
 - ▶ (2) inadequate procedural protections in ensuring that parties subject to the ban understand what the Service is imposing and why they are imposing the ban
 - ▶ (3) a lack of clear and meaningful way for a claimant to challenge Service determinations in court

Post EITC Arguments Against Ban

- ▶ First/Best option is before the ban is implemented²⁸
 - ▶ Argue against the ban while the ban is being considered by the IRS examiner by corresponding with the examiner
 - ▶ A letter must advise the taxpayer of the ban and describe the taxpayer's conduct giving rise to the ban in the determination year³²

Post EITC Ban Arguments: Audit Reconsideration²⁸

- ▶ Audit Reconsideration: If taxpayer has additional information not considered by the examiner
 - ▶ If the taxpayer failed to present any information to substantiate EITC for the year that triggered the ban (and also fails to present any information to address the examiner imposition of the ban) the audit reconsideration will be disallowed
 - ▶ Need to address conduct that was cited in the ban letter from IRS.
 - ▶ Taxpayers must address the filing from the year the ban originated (challenges to ban years won't be considered)
 - ▶ Examiner may allow or disallow the ban
 - ▶ Dependent on the explanation, testimony, and documentation the taxpayer provided and the facts and circumstances documented in the administrative file.
 - ▶ EITC ban is worked by correspondence exam – if an examiner is not following IRM the tax practitioner should reach out for TAS support

Post EITC Ban Arguments: Audit Reconsideration³²

- ▶ Reversing the EITC Ban
 - ▶ Reversal of Ban and Allowance of EITC
 - ▶ Option is available if the taxpayer provided information on the ban to substantiate allowance of EITC,
 - ▶ Reversal of Ban and Disallowance of EITC
 - ▶ If the determination is made that the Ban was imposed in error, or other facts and circumstance dictate that the Ban should not be enforced, and the taxpayer did not provide information to support the reversal of the EITC disallowance

Post EITC Ban Arguments: Tax Court²⁸

- ▶ Tax Court: after ban goes into effect and no cause for audit reconsideration
 - ▶ Not ideal, IRS will continue to deny future EITC claims based on the ban
 - ▶ Math Error notice must request abatement within 60 days of the notice to foreclose the Service from assessing the tax without the need for a Notice of Deficiency (thereby securing the usual 90-day period to petition the Tax Court).
- ▶ Consider a FOIA request to determine the reasoning behind the ban, and whether it was actually sent to management for approval



THE END

Any Questions?