

Refundable Credits Not Allowed for Non-Qualified Aliens

Cross References

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The IRS has issued proposed regulations that would provide that the refunded portion of certain refundable federal income tax credits available to individuals is a “federal public benefit” under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). As a result, aliens who are not “qualified aliens” under PRWORA would be ineligible to receive the refunded portion of these refundable credits.

The proposed regulations would generally affect taxpayers claiming the following federal income tax credits: the Adoption Tax Credit, the American Opportunity Tax Credit, the Child Tax Credit, and the Earned Income Credit. As required by PRWORA, the proposed regulations also provide notice to the public and notify recipients of proposed changes regarding eligibility for the refunded portion of such federal income tax credits under PRWORA.

The proposed regulations clarify that to receive the credits, taxpayers must be a U.S. citizen, U.S. national, or “qualified alien,” which includes people with green cards, asylum recipients, refugees, and survivors of trafficking, and domestic violence. The proposed regulations will impact some immigrants in the country legally under certain visas as well as Deferred Action for Childhood Arrivals recipients. Qualified alien status is determined as of the date the taxpayer files the federal income tax return first claiming the affected credit. The proposed regulations would apply to tax years ending on or after the date the regulations are published as final regulations.

The proposed regulations would provide that only the refunded portion of an affected refundable tax credit is a federal public benefit. Accordingly, if the taxpayer is eligible for the affected refundable tax credit, the proposed regulations would bar receipt only of the portion of the sum of those affected refundable tax credits that exceed the income tax liability of the taxpayer.