

# EITC Tax Preparer Toolkit

## Separated Spouse

# Example 1

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A client, wishing to have her taxes prepared, informs you:

- She is separated from her spouse.
- Her 7 year old child lives with her.
- She wants to claim Earned Income Tax Credit.



# What Issues Should You Question?

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## Her Filing Status

- If the client is separated from her spouse, what exactly does that mean?
- Ask questions to determine whether she must use a married status (married filing jointly or married filing separate) or can qualify for head of household or single filing status.
- Ask questions to determine if she is legally separated or did not live with her spouse for last 6 months of year (allowing her to be “considered unmarried” for head of household purposes).

And,

# What Issues Should You Question?

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## The Qualifying Child Residency Requirement

- The father might come into play here.
- Find out whether the child lived with the client for more than half the year.
- Since there is another parent involved, the preparer should ask questions to determine if there is a possibility the father might claim the child as well. The preparer has a responsibility to inform the client what happens in a duplicate claim situation and how the IRS applies the tie breaker rules if she and her spouse both claim the child (separated parents may have qualifying child issues between them).

# Questions and Answers -

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Take 1

# What Questions Should You Ask?

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*You ask* - Are you still married?

*She says* - Yes, I'm still married but separated.

- If she is still married, you know she has to file using a married status – Married Filing Jointly or Married Filing Separate **unless** she qualifies for Head of Household.
- You know if she files Married Filing Separate she can not claim EITC.

# What Questions Should You Ask?

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*You ask* - When did you separate from your husband?

*She says* - January of last year.

Head of Household is possible. Find out what  
“separated” means to her - legal separation?  
Living separate?

# What Questions Should You Ask?

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*You ask -*

Did you move to separate homes, and if so, when?

*She says -*

Yes, in January of last year.

She meets the requirement of not living together for last 6 months of year – so she might be “considered unmarried” and qualify for Head of Household if she meets the other requirements.



## What Questions Should You Ask?

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*You ask -*

How long during the year did your child live with you?

*She says -*

My child lived with me every day except every other weekend and two weeks in the summer.

It is clear – the child lived with her for more than half the year.

# What Questions Should You Ask?

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*You ask -*

Did you live with anyone else?

*She says -*

No, I did not.

She will not have a problem with someone else paying for cost of keeping up the home – a Head of Household requirement.

# You Say

It looks like you may qualify for EITC. I'll go through the rest of the questions and do the computations to make sure.

**Form 8867**  
Department of the Treasury  
Internal Revenue Service

**Paid Preparer's Earned Income Credit Checklist** OMB No. 1545-0049

Do not send to the IRS. Keep for your records.

For the definitions of the following terms, see Pub. 506 for the year for which you are completing this form:  
• Investment income • Qualifying child • Earned income

Taxpayer's name ▶  
If joint return, spouse's name ▶

**Part I All Taxpayers**

1 Year after 2005 for which you are completing this form ▶ Yes No

2 Is the taxpayer's filing status married filing separately? Yes No  
If you checked "Yes" on line 2, stop; the taxpayer cannot take the EIC. Otherwise, continue.

3 Does the taxpayer (and the taxpayer's spouse if filing jointly) have a social security number (SSN) that allows him or her to work or is valid for EIC purposes? See the instructions before answering. Yes No  
If you checked "No" on line 3, stop; the taxpayer cannot take the EIC. Otherwise, continue.

4 Is the taxpayer filing Form 2555 or Form 2555-EZ (relating to the exclusion of foreign earned income)? Yes No  
If you checked "Yes" on line 4, stop; the taxpayer cannot take the EIC. Otherwise, continue.

5a Was the taxpayer a nonresident alien for any part of the year on line 1? Yes No  
If you checked "Yes" on line 5a, go to line 5b. Otherwise, skip line 5b and go to line 6.

b Is the taxpayer's filing status married filing jointly? Yes No  
If you checked "Yes" on line 5a and "No" on line 5b, stop; the taxpayer cannot take the EIC. Otherwise, continue.

6 Is the taxpayer's investment income more than the limit that applies to the year on line 1? See Pub. 506 for the limit. Yes No  
If you checked "Yes" on line 6, stop; the taxpayer cannot take the EIC. Otherwise, continue.

7 Could the taxpayer, or the taxpayer's spouse if filing jointly, be a qualifying child of another person for the year on line 1? Yes No  
If you checked "Yes" on line 7, stop; the taxpayer cannot take the EIC. Otherwise, go to Part II of this checklist, whichever applies.

Form 8867 must be filed. Go to line 20.

Form 8867 (Rev. 12-2005)

**Part II**

	Class 1	Class 2
1	Yes No	Yes No
2	Yes No	Yes No
3	Yes No	Yes No
4	Yes No	Yes No
5	Yes No	Yes No
6	Yes No	Yes No
7	Yes No	Yes No
8	Yes No	Yes No
9	Yes No	Yes No
10	Yes No	Yes No
11	Yes No	Yes No
12	Yes No	Yes No
13	Yes No	Yes No
14	Yes No	Yes No
15	Yes No	Yes No
16	Yes No	Yes No
17	Yes No	Yes No
18	Yes No	Yes No
19	Yes No	Yes No
20	Yes No	Yes No

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use if filing jointly, in the 3 active duty outside the U.S. periods. See Pub. 596.

or EIC. Otherwise,

25 but under age 65 at

or EIC. Otherwise,

need as a dependent on

the EIC. Otherwise,

less than the limit that

If you checked "Yes" above or "Don't know" above, skip line 20.

if or reasonably obtained

See EIC instructions for your 2002 worksheet?

Wedge requirements, you are the taxpayer's eligibility is of information furnished to you furnished appears to

the form and worksheet(s) people described on the diligence requirements.

If you checked "No" on line 20, 21, 22, or 23, you have not complied with all the due diligence requirements and may have to pay a \$100 penalty for each failure to comply.

# Questions and Answers -

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Take 2

## What Questions Should You Ask?

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*You ask* - Are you still married?

*She says* - Yes, I'm still married but we live in separate homes.

- If she is still married, you know she has to file using a married status – Married Filing Jointly or Married Filing Separate unless she qualifies for Head of Household.
- You know if she files Married Filing Separate she can not claim EITC.

## What Questions Should You Ask?

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*You ask -*

When did you separate from your husband?

*She says -*

November of last year.

If they did not stop living together prior to November, she does not meet the last 6 month test.

## What Questions Should You Ask?

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*You ask -*

When did you stop living in the same home?

*She says -*

I moved out when we separated in November.

She does not meet the requirement of living apart from her spouse for the last 6 months of year - so does not qualify for Head of Household.

## What Questions Should You Ask?

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*You ask -*

Are you going to file a tax return with your husband?

*She says -*

No, I want my own refund.

So, what do you tell her?



# Does She Qualify For EITC?

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No,  
Her filing status is:  
Married Filing  
Separate.

