

2021 Instructions for Form FTB 3596

Paid Preparer's Due Diligence Checklist for California Earned Income Tax Credit

References in these instructions are to the Internal Revenue Code (IRC) as of January 1, 2015, and to the California Revenue and Taxation Code (R&TC).

General Information

In general, for taxable years beginning on or after January 1, 2015, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2015. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to ftb.ca.gov and search for **conformity**. Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540), California Adjustments - Residents, or Schedule CA (540NR), California Adjustments - Nonresidents or Part-Year Residents, and the Business Entity tax booklets.

The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the instructions. Taxpayers should not consider the instructions as authoritative law.

Registered Domestic Partners (RDPs) – For purposes of California income tax, references to a spouse/RDP, husband, or wife also refer to a California RDP, unless otherwise specified. When we use the initials RDP they refer to both a California registered domestic “partner” and a California registered domestic “partnership,” as applicable. For more information on RDPs, get FTB Pub. 737, Tax Information for Registered Domestic Partners.

Purpose

Paid preparers of California income tax returns or claims for refund involving the California earned income tax credit (EITC) must meet due diligence requirements in determining the taxpayer's eligibility for, and the amount of, the EITC. Failure to do so could result in a \$500 penalty for each failure. See California R&TC Section 19167(a)(5) and Part III of this form.

Note: Form FTB 3596, Paid Preparer's Due Diligence Checklist for California Earned Income Tax Credit, does not apply to the Young Child Tax Credit.

Only paid preparers have to complete this form. If you were paid to complete a tax return for any taxpayer claiming the EITC, attach the completed form FTB 3596 to the original or amended Form 540 or Form 540 2EZ, California Resident Income Tax Return, or Form 540NR, California Nonresident or Part-Year Resident Income Tax Return.

Specific Line Instructions

Part I – Due Diligence Requirements

Line 1a and 1b

Enter the name and preparer tax identification number (PTIN) of the preparer who determined the taxpayer's eligibility for, or the amount of, the EITC, even if that preparer is not the signing preparer.

Line 1c and 1d

Enter the state where the tax preparer was licensed, registered or enrolled; and provide the tax preparer's license, registration or enrollment number.

Line 2

You should prepare form FTB 3514, California Earned Income Tax Credit, based on current information only, as situations may change from year to year.

Line 3

You must complete the California Earned Income Tax Credit Worksheet found in the form FTB 3514 instructions, or your own worksheet that provides the same information as the form FTB 3514 worksheet.

Lines 4 and 5

As a paid tax return preparer, when determining the taxpayer's eligibility for, or the amount of, the EITC claimed, you must not use information that you know, or have reason to know, is incorrect. You may not ignore the implications of information provided to, or known by you, and you must make reasonable inquiries if the information provided to you appears to be incorrect, inconsistent, or incomplete. You must make reasonable inquiries if a reasonable and well-informed tax return preparer, knowledgeable in the tax law, would conclude that the information provided to you appears to be incorrect, inconsistent, or incomplete. You must also contemporaneously document in your files any reasonable inquiries made and the responses to these inquiries. You must know the tax law for the EITC and use that knowledge to ask your client the right questions to get all the relevant facts to determine your client's eligibility for the credit and the correct amount of the credit.

Line 6

Keep copies of any documents provided by the taxpayer on which you relied to determine the taxpayer's eligibility for the EITC and to figure the amount of the EITC and list the documents in the space provided. See Document Retention on the next page, for more information on the due diligence recordkeeping requirements. The following are examples of documents that you may rely on to determine taxpayers' eligibility for the credits or the amount of the credit. This list is not all-inclusive.

Residency of a Qualifying Child

- School records or statement
- Landlord or a property management statement
- Health care provider statement
- Medical records
- Child care provider records
- Placement agency statement
- Social service records or statement
- Place of worship statement
- Indian tribal official statement

Disability of Qualifying Child

- Doctor statement
- Other health care provider statement
- Social services agency or program statement

Self-Employment Income

- Business license
- Federal Forms 1099
- Records of gross receipts provided by taxpayer
- Taxpayer's summary of income
- Records of expenses provided by taxpayer
- Taxpayer's summary of expenses
- Bank statements reconstruction

Line 7

If your client's return is selected for audit, the FTB may ask your client to provide documents to show eligibility for, and the amount of, the EITC claimed. The credit may not be allowed without this information. You can help your clients be prepared to answer questions about their eligibility for the EITC claimed and the correctness of the amount of the credit claimed if you help them understand that the FTB may ask for underlying documentation regarding eligibility for and the computation of the amount of the credit.

Line 8

The EITC is determined using information that includes the kind and source of income reported on a taxpayer's return. For self-employed individuals, this information is generally reported on federal forms Schedule C (Form 1040), Profit or Loss From Business, Schedule F (Form 1040), Profit or Loss From Farming, Schedule SE (Form 1040), Self-Employment Tax, or Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., box 14, code A as income from self-employment or net farm profit (loss). To exercise due diligence when determining eligibility for, and the amount of the EITC for a self-employed individual, you may also be required to ask additional questions to determine whether the Schedule C, Schedule F, Schedule SE, or Partnership Schedule K-1 (Form 1065) is correct and complete. If the taxpayer is not reporting self-employment income or net farm profit (loss) on the above federal forms, check "N/A."

Part II – Due Diligence Questions

As a paid tax return preparer, you must exercise due diligence to determine whether a taxpayer meets all of the eligibility requirements for the EITC. Although lines 9a, 9b, and 9c only ask three specific questions related to claiming a qualifying child for the EITC, your client must meet **all** of the eligibility requirements for claiming the EITC. Therefore, your client may not claim the EITC if all of the eligibility requirements for the EITC are not satisfied, even if you answer "yes" to questions 9a, 9b and 9c.

Line 9

If your client is eligible to claim the EITC for taxpayers without a qualifying child, skip lines 9b and 9c.

Line 9c

Tiebreaker rules – These rules determine if a taxpayer may claim a child as a qualifying child for the EITC when the child meets the definition of a qualifying child for more than one person. If only one of the persons is the child's parent, the child is treated as the qualifying child of the parent.

- If the parents file a joint return together and can claim the child as a qualifying child, the child is treated as a qualifying child of both of the parents.
- If the parents do not file a joint return together but both parents claim the child as a qualifying child, the child is treated as the qualifying child of the parent with whom the child lived for the longer period of time during the year. If the child lived with each parent for the same amount of time, the child is treated as the qualifying child of the parent who had the higher adjusted gross income (AGI) for the year.
- If no parent can claim the child as a qualifying child, the child is treated as the qualifying child of the person who had the highest AGI for the year.
- If a parent can claim the child as a qualifying child but no parent does so, the child is treated as the qualifying child of the person who had the highest AGI for the year, but only if that person's AGI is higher than the highest AGI of any of the child's parents who can claim the child.

Subject to the rules just described, the taxpayer and the other person(s) may be able to choose which of them treats the child as a qualifying child. If the taxpayer allows another person to treat the child as a qualifying child, the taxpayer is not eligible to claim EITC for the same child. Also, EITC claims must be consistent with claims for other credits and child-related benefits, such as the dependency exemption. For examples and details, see federal Publication 596, Earned Income Credit (EIC). In many cases, the taxpayer should be able to tell you whether his or her AGI is higher than the AGI of the child's parents or other person who might also claim the child.

Part III – Credit Eligibility Certification

Line 10

Failure to meet the due diligence requirements for claiming the EITC could result in a \$500 penalty for each failure.

Document Retention

To meet the due diligence requirements for the EITC, you must keep all of the following records.

1. A copy of form FTB 3596;
2. The EITC worksheet(s) or your own worksheet(s);
3. Copies of any taxpayer documents you relied on to determine eligibility for, and to figure the amount of, the EITC;
4. A record of how, when, and from whom the information used to prepare form FTB 3596 and the worksheet(s) was obtained; and
5. A record of any additional information you relied upon including questions you may have asked to determine eligibility for, and the amount of, the EITC and the taxpayer's answers.

You must keep those records for four years from the latest of the following dates.

- The due date of the tax return (not including extensions).
- The date the return was filed (if you are a signing tax return preparer electronically filing the return).
- The date the return was presented to the taxpayer for signature (if you are a signing tax return preparer not electronically filing the return).
- The date you submitted to the signing tax return preparer the part of the return for which you were responsible (if you are a nonsigning tax return preparer).

Franchise Tax Board Privacy Notice on Collection

Our privacy notice can be found in annual tax booklets or online. Go to ftb.ca.gov/privacy to learn about our privacy policy statement, or go to ftb.ca.gov/forms and search for **1131** to locate FTB 1131 EN-SP, Franchise Tax Board Privacy Notice on Collection. To request this notice by mail, call 800.338.0505 and enter form code **948** when instructed.