



**Maryland Chamber of Commerce**

## **Legislative Position**

**SB 638  
OPPOSE**

**Budget &  
Taxation  
Committee  
3/10/10**

### **SB 638**

#### **Earned Income Credit Information Act**

**Bill Summary:** This bill would require the Comptroller to annually publish before January 1<sup>st</sup> the maximum income eligibility for the state's earned income credit and a notice for employees regarding the federal and state credits. Maryland employers would be required to annually identify employees by December 31<sup>st</sup> who may be eligible for the credit and provide them with an electronic or written copy of the Comptroller's notice.

**Chamber Position:** The Maryland Chamber opposes this bill. We believe that it is the responsibility of the state, not employers, to identify individuals potentially eligible for the earned income credit. Furthermore, as the Comptroller's office does not plan to notify employers of this new responsibility, it is unlikely that most employers would ever become aware of this new obligation or find the required notice on the Comptroller's website.

**Duplicative Notice** - The fiscal note observes on page 2 that federal law *already* requires employers to notify employees of their possible eligibility for the federal earned income credit if they have no taxes withheld. This bill results in a duplicative notice requirement for employers.

**Who gets the Notice?** - In order for employers to distribute the Comptroller's notice to "an employee who may be eligible", an employer would need to know the following qualifying factors for each individual: (1) Adjusted gross income for the family; (2) The employee's income tax filing status; and (3) The number of the employee's "qualifying" children. *Employers have none of this information.*

For example, the Comptroller's website advises that for tax year 2009, the earned income credit is allowed if you meet the following conditions:

- You have three or more qualifying children and you earn less than \$43,279 (\$48,279 if married filing jointly).
- You have two qualifying children and you earn less than \$40,295 (\$45,295 if married filing jointly).
- You have one qualifying child and you earn less than \$35,463 (\$40,463 if married filing jointly).
- You do not have a qualifying child and you earn less than \$13,440 (\$18,440 if married filing jointly).

Therefore, an employer attempting to comply with this bill would have to make a choice. Do they provide copies of the notice to every employee in the company, or do they identify and notify only those employees below certain wage levels who may qualify for the credit? Either option is a bad choice for the employer due to the time, costs and privacy issues involved.

(over)

**No Notice to Employers** - We understand that the Comptroller's office plans to post the required income eligibility information and employer notice to their website. If employers do not receive a mailing or other direct notification from the Comptroller, how are employers to learn of this new legal mandate? The likely answer is that most employers will never learn of this legislation or follow its requirements.

Employers should not be put into the position of being their employees' tax advisors for this credit, or the many other credits that could follow in future years. The responsibility for publicizing state income tax credits is with the state. The House sponsor requires state notification for state health benefits in similar legislation, HB 1375, the Kids First Express Lane Eligibility Act.

For these reasons, the Maryland Chamber urges that this bill be given an unfavorable report.

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Department of the Treasury  
Internal Revenue Service

## Notice 1015

(Rev. December 2009)

### Have You Told Your Employees About the Earned Income Credit (EIC)?

#### What Is the EIC?

The EIC is a refundable tax credit for certain workers.

#### Which Employees Must I Notify About the EIC?

You must notify each employee who worked for you at any time during the year and from whom you did not withhold income tax. However, you do not have to notify any employee who claimed exemption from withholding on Form W-4, Employee's Withholding Allowance Certificate.

**Note.** You are encouraged to notify each employee whose wages for 2009 are less than \$48,279 that he or she may be eligible for the EIC.

#### How and When Must I Notify My Employees?

You must give the employee one of the following:

- The IRS Form W-2, Wage and Tax Statement, which has the required information about the EIC on the back of Copy B.
- A substitute Form W-2 with the same EIC information on the back of the employee's copy that is on Copy B of the IRS Form W-2.
- Notice 797, Possible Federal Tax Refund Due to the Earned Income Credit (EIC).
- Your written statement with the same wording as Notice 797.

If you are required to give Form W-2 and do so on time, no further notice is necessary if the Form W-2 has the required information about the EIC on the back of the employee's copy. If a substitute Form W-2 is given on time but does not have the required information, you must notify the employee within 1 week of the date the substitute Form W-2 is given. If Form W-2 is required but is not given on time, you must give the employee Notice 797 or your written statement by the date Form W-2 is required to be given. If Form W-2 is not required, you must notify the employee by February 8, 2010.

You must hand the notice directly to the employee or send it by First-Class Mail to the employee's last known address. You will not meet the notification requirements by posting Notice 797 on an employee bulletin board or sending it through office mail. However, you may want to post the notice to help inform all employees of the EIC. You can get copies of the notice from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-829-3676.

#### How Will My Employees Know If They Can Claim the EIC?

The basic requirements are covered in Notice 797. For more detailed information, the employee needs to see Pub. 596, Earned Income Credit (EIC), or the instructions for Form 1040, 1040A, or 1040EZ.

#### How Do My Employees Claim the EIC?

Eligible employees claim the EIC on their 2009 tax return. Even employees who have no tax withheld from their pay or owe no tax can claim the EIC and get a refund, but they must file a tax return to do so. For example, if an employee has no tax withheld in 2009 and owes no tax but is eligible for a credit of \$829, he or she must file a 2009 tax return to get the \$829 refund.

#### How Do My Employees Get Advance EIC Payments?

Eligible employees who expect to have a qualifying child for 2010 can get part of the credit with their pay during the year by giving you a completed Form W-5, Earned Income Credit Advance Payment Certificate. You must include advance EIC payments with wages paid to these employees, but the payments are not wages and are not subject to payroll taxes. Generally, the payments are made from withheld income, social security, and Medicare taxes. For details, see Pub. 15 (Circular E), Employer's Tax Guide.