TAX BULLETIN 07-4

Virginia Department of Taxation

April 5, 2007

IMPORTANT INFORMATION REGARDING THE VIRGINIA EARNED INCOME TAX CREDIT

ALLOCATION OF THE CREDIT FOR THOSE TAXPAYERS USING THE MARRIED FILING SEPARATELY STATUS

Taxpayers may qualify for the Credit for Low Income Individuals ("CLI") if their total family Virginia adjusted gross income is below federal poverty guidelines. Family Virginia adjusted gross income includes the total Virginia adjusted gross income for the taxpayer, his spouse and his dependents, even if they do not file their own Virginia returns. The maximum credit is $300 for each personal and dependent exemption claimed on the Virginia return.

Legislation enacted during the 2004 General Assembly session created an additional credit for low-income taxpayers. Beginning with taxable year 2006, individuals may claim the conventional CLI or claim a credit for 20% of the earned income tax credit ("EITC") that was reported on the federal return. Taxpayers may claim the larger of the two credits, but may not claim both.

In order to qualify for the federal EITC, a taxpayer must have earned income that falls below a specified amount. The amount of the credit depends on the amount of the taxpayer's earned income. In addition, the amount of the credit may be increased if the taxpayer has qualifying children. To be a qualifying child, the child must meet certain tests regarding the relationship to the taxpayer, age, and residency. Taxpayers may not claim this credit if they file their federal returns using the married filing separately status.

TAXPAYERS USING THE VIRGINIA MARRIED FILING SEPARATELY STATUS

If a Virginia taxpayer wishes to claim the CLI and he and his spouse file separate Virginia returns, Virginia law requires that the family Virginia adjusted gross income used to determine whether the taxpayer is eligible for the credit must include income from the taxpayer's return, his spouse's return and any income for any dependents claimed on either return. Only the personal exemptions actually reported on the taxpayer's return, however, may be used to calculate the amount of the credit itself. In addition, only one of the spouses may claim the CLI.

Virginia law also allows taxpayers to claim the new Virginia EITC when the Virginia married filing separately status is used. Unlike the CLI, however, Virginia law does not specify how the Virginia EITC must be allocated between taxpayers who use the married filing separately status. Under 23 VAC 10-110-190, when items cannot be accounted for separately they must be proportionally allocated between each spouse. The proportion used is based upon the amount of income that is attributable to each taxpayer.

Therefore, when a taxpayer using the married filing separately status computes his Virginia EITC, he must first determine his proportion of the earned income that was used to qualify for the federal EITC. That proportion must then be multiplied by the total Virginia EITC, which is 20% of the federal EITC. Because spouses may only claim their proportionate share of the Virginia EITC on their separate returns, the credit may be claimed on each spouse's separate return.

If you have additional questions, please visit our website at http://www.tax.virginia.gov, or contact us at (804) 367-8031.