

EXCISE TAX CREDIT—HOW DOES INCARCERATION AFFECT ELIGIBILITY

How Does Incarceration Affect Eligibility for the Refundable \$25 Excise Tax Credit

This publication is designed to provide general information with respect to how incarceration affects eligibility for the refundable \$25 excise tax credit. For complete details, refer to the Arizona Revised Statutes. In case of inconsistency or omission in this publication, the Arizona Revised Statutes will prevail.

In 2000, the Arizona voters approved an increase in the state sales and use tax to provide increased funding for public schools. To help ease the tax increase for low income taxpayers, the voters also approved a refundable tax credit.

To qualify for the credit, all of the following must apply:

- You must be an Arizona resident during the year for which you are claiming the credit.
- You cannot be claimed as a dependent by any other taxpayer.
- You meet the income threshold for your filing status. If you are married filing joint or if you are a single person who is a head of household your federal adjusted income is \$25,000 or less. If you are single or married filing separately your federal adjusted income is \$12,500 or less.
- You were not sentenced for at least 60 days of the year to the custody of a federal or state prison or a county jail.
- You must have a social security number (SSN) that is valid for work.

If you qualify to claim the credit, the credit is \$25 for each person included in your claim. You may include yourself, your spouse and your dependents if you are allowed to claim a personal or dependent exemption for that person on your Arizona income tax return for the taxable year. The maximum credit that can be claimed for all of the people in your household is \$100.

If you are claiming a credit for your spouse and/or dependent(s) the following criteria must also be met:

- Your spouse and dependents must be Arizona residents during the year for which you are claiming the credit.
- Your spouse and children must have either a valid SSN or an individual taxpayer identification number (ITIN) issued by the Internal Revenue Service.

The following questions concerning how incarceration affects eligibility for this credit have arisen. This brochure is meant to provide guidance with respect to those questions.

- Q1. For the purpose of the credit, what does the term “sentenced to the custody of” mean?**
- A1. For the purpose of the credit the term “sentenced to the custody of” means that the person was sentenced by a court to serve time in the physical custody of a federal or state prison or county jail.
- Q2. For the purpose of the credit, what does the term “sentenced for at least 60 days of the taxable year” mean?**
- A2. The term “sentenced for at least 60 days of the taxable year” means that the convicted person must be in physical custody serving his or her sentence, in a federal or state prison or county jail, for a period totaling at least 60 days during the taxable year.
- Q3. In 2012, the judge sentenced me to 10 years in an Arizona state prison. Because the sentence was imposed during 2012, do I qualify to claim the credit in the years after 2012, while I am in prison, since the sentence was imposed by the judge during 2012?**
- A3. No, you do not qualify for the credit. Even though the judge imposed your sentence during 2012, you are still sentenced to the custody of the state prison while you are in prison.
- Q4. I have been sentenced to serve time in the county jail more than once during the year, for crimes committed at different times during the year. Each sentence was for less than 60 days, but the total days sentenced and served during the year was more than 60 days. Does this disqualify me from claiming the credit for that year?**
- A4. Yes. In this case, you do not qualify for the credit. Even though each sentence was less than 60 days, the total amount of time sentenced and served during the taxable year was 60 days or more.
- Q5. I have been arrested and am in custody (as an unsentenced prisoner) at the county jail awaiting trial. Does the time I am in custody awaiting trial disqualify me from claiming the credit?**
- A5. No. If you are in custody at the county jail, as an unsentenced prisoner awaiting trial, you have not been convicted or sentenced. Therefore, this time does not count as time sentenced by a court and served as a result of that sentence. In this case, the involuntary custody by itself would not disqualify you from claiming the credit.
- Q6. I was arrested in 2014 and was in custody at the county jail for 90 days of 2014 and 20 days during 2015 while I was waiting to be tried. I was tried and convicted in 2015 and was**

EXCISE TAX CREDIT—INDIVIDUAL INCOME

- sentenced to the time served (90 days during 2014 and 20 days during 2015). Does this disqualify me from claiming the credit in 2014?
- A6. Yes. If the judge retroactively sentenced you to time served (the 90 days) during 2014 while awaiting sentencing, you do not qualify to take the credit in 2014. In this case, you would have been sentenced to the custody of the county jail for 60 days or more during 2014 even though that sentence was imposed retroactively. If you claimed the credit before you were sentenced, you will have to amend your claim and pay that credit back to the state.
- Q7. I was sentenced to 90 days to the custody of the county jail during the taxable year, but I only served 45 days because I was eligible for early release. Does the 90 sentence disqualify me from claiming the credit even though I actually only served 45 days?**
- A7. No. In this case, the 90 day sentence would not by itself disqualify you from claiming the credit. Even though you were sentenced to 90 days, you were not in physical custody serving that sentence for a period totaling at least 60 days during the taxable year.
- Q8. I was sentenced to the custody of the county jail for 90 days at the end of the year. I served 45 days in the year I was sentenced and the other 45 days in the following year. Does that disqualify me from claiming the credit?**
- A8. No. In this case, the 90 day sentence was served over a period of two different taxable years. You would have served less than 60 days of the sentence in each of those taxable years.
- Q9. In 2014, the judge sentenced me to 90 days in the county jail, but I never actually served any time in jail during 2014. Does being sentenced in 2014 disqualify me from claiming the credit for 2014?**
- A9. No. In this case, the sentence would not by itself disqualify you from claiming the credit. Even though you were sentenced to more than 60 days during 2014, you were not in physical custody serving that sentence for a period totaling at least 60 days during the taxable year.
- Q10. During 2014, I was sentenced for 90 days to the custody of a rehab center. The rehab center was not in a federal or state prison or county jail. Does that disqualify me from claiming the credit?**
- A10. No. In this case, the sentence would not by itself disqualify you from claiming the credit. The 90 day sentence would not have been served in a federal or state prison or a county jail.
- Q11. During 2014, I was sentenced for 90 days to the custody of a mental health facility. The mental health facility was not in a federal or state prison or county jail. Does that disqualify me from claiming the credit?**
- A11. No. In this case, the sentence would not by itself disqualify you from claiming the credit. The 90 day sentence would not have been served in a federal or state prison or a county jail.
- Q12. I was sentenced to 65 days of community service during the taxable year. Does that disqualify me from claiming the credit?**
- A12. No. In this case, the sentence would not by itself disqualify you from claiming the credit. Even though you were sentenced to community service, you would not have been in physical custody serving that sentence in a federal or state prison or a county jail.
- Q13. I was sentenced to 65 days of probation during the taxable year. Does that disqualify me from claiming the credit?**
- A13. No. In this case, the sentence would not by itself disqualify you from claiming the credit. Even though you were sentenced to probation, you would not have been in physical custody serving that sentence in a federal or state prison or a county jail.
- Q14. I was sentenced to 65 days of house arrest during the taxable year. Does that disqualify me from claiming the credit?**
- A14. No. In this case, the sentence would not by itself disqualify you from claiming the credit. Even though you were sentenced to house arrest, you would not have been in physical custody serving that sentence in a federal or state prison or a county jail.
- Q15. I am the only member of my family who has a valid SSN. I am serving a sentence of 90 days in the county jail. Even though I cannot claim the credit for myself, can I claim the credit for my spouse and/or my children?**
- A15. No. The claimant must have a valid SSN. Since you were serving more than 60 days in the county jail during the taxable year, you do not qualify as a claimant. Also, since your spouse does not have a valid SSN, your spouse does not qualify to claim the credit either.
- Q16. My spouse and I are not required to file an Arizona income tax return. I have been sentenced to 90 days in the county jail and I have served more than 60 days during the taxable year. Can I file a married filing joint**

EXCISE TAX CREDIT—INDIVIDUAL INCOME

claim with my spouse on Arizona Form 140ET?

A16. No. You would not be eligible to be included in the claim because you were serving a sentence of 60 days or more in a county jail during the taxable year. If your spouse otherwise qualifies for the credit, your spouse would be able to claim the credit for himself or herself and qualifying dependents. However, your spouse may not claim the credit for you.

Q17. My spouse and I are required to file an Arizona income tax return. We are filing a joint return for the taxable year. I have been sentenced to 90 days in the county jail and I have served more than 60 days during the taxable year. Can my spouse claim the excise tax credit on that joint return?

A17. If your spouse otherwise qualifies for the credit, your spouse may claim the credit on the joint income tax return. Your spouse may claim the credit for him or herself and for any qualifying dependents. However, your spouse may not claim the credit for you.

FOR ADDITIONAL INFORMATION:

~ Call ~

Phoenix (602) 255-3381

Toll free from area codes

520 & 928 (800) 352-4090

~ Write ~

Arizona Department of Revenue
Taxpayer Information & Assistance

PO Box 29086

Phoenix AZ 85038-9086

~ Browse ~

www.azdor.gov

This publication is available in an alternative format upon request.