



Department of the Treasury
Internal Revenue Service



Earned Income Tax Credit

A Toolkit For Tax Professionals

Tax Year 2003 And Beyond



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[RULES]

Taxpayer must NOT be:

- > Married filing a separate return
- > Filing Form 2555 or 2555-EZ
- > A nonresident alien
- > A qualifying child of another person

Tax professionals must:

- > Follow due diligence requirements
- > Avoid EITC common errors

INTRODUCTION

The Earned Income Tax Credit (EITC)

This toolkit is a resource for tax professionals who prepare tax returns and claim the Earned Income Tax Credit (EITC) on behalf of their clients. It is designed to provide useful information on areas of the credit such as: EITC Rules, Earned Income, Tools for Completing Returns, Qualifying Child(ren), Tie-Breaker Rules, Identification Numbers, Due Diligence and Disallowance. The toolkit was developed for use in preparing tax year 2003 and subsequent tax year returns.

What Is The EITC?

The EITC is a refundable tax credit for people who work, but do not earn high incomes. Those who qualify can reduce their federal tax liability, potentially receiving a refund.

The EITC has no effect on certain welfare benefits. In most cases, EITC payments will not be used to determine eligibility for Medicaid, supplemental security income (SSI), food stamps or low-income housing. Temporary Assistance for Needy Families (TANF) payments may be affected depending on the state in which the taxpayer lives.

To qualify, taxpayers must meet certain requirements and file a tax return, even if they are not otherwise required to file a tax return. For those whose EITC claim is later disallowed, they may have to file Form 8862, *Information To Claim Earned Income Credit After Disallowance*, if they want to claim the credit in a subsequent year.

Some EITC rules apply to everyone. There are, however, special rules for people who have children and for those who do not have children. Please refer to the chart on the next page describes the EITC Rules.

EITC information and forms are available at www.irs.gov/eitc, a part of the IRS Web site dedicated to EITC issues.

The IRS also has brochures, posters and payroll stuffers, some in Spanish, to help publicize the credit to those who are eligible. Free educational products are available by calling **1-800-829-3676** to place an order.

An EITC eligibility checklist can be found in the back of this toolkit. You may consider offering copies of this easy-to-use checklist to your clients. In addition, you can find details about the credit in IRS Publication 596, *Earned Income Credit*.

[EITC Rules]

RULES FOR ALL CLAIMANTS		RULES FOR TAXPAYERS WITH A QUALIFYING CHILD	RULES FOR TAXPAYERS WITHOUT A QUALIFYING CHILD
Must have a valid Social Security number	Investment income is limited to a certain amount	Child must meet the relationship, age and residency tests	Must be at least age 25 but under age 65
Filing status cannot be "married filing separately"	Must have earned income	Qualifying child cannot be used by more than one person to claim the EITC	Cannot qualify as the dependent of another person
Generally must be a U.S. citizen or resident alien all year	Cannot be a qualifying child of another person		Must have lived in the United States more than half of the tax year
Cannot file Form 2555 or Form 2555-EZ (relating to foreign earned income)			

For additional information on EITC rules and examples, see IRS Publication 596, *Earned Income Credit* or visit www.irs.gov/eitc.



Earned Income For The EITC

To qualify for the EITC, taxpayers must work full or part time and have earned income during the tax year. If married and filing jointly, at least one spouse must work and have earned income. Earned income includes all taxable income gained from working as an employee. Nontaxable income generally does not count as earned income.

EARNED INCOME INCLUDES:	EARNED INCOME DOES NOT INCLUDE:	
<ul style="list-style-type: none"> • Taxable wages, salaries and tips • Net earnings from self-employment • Gross income received as a statutory employee 	<ul style="list-style-type: none"> • Interest and dividends • Pensions and annuities • Social Security and railroad retirement benefits • Alimony and child support • Welfare benefits • Workers' compensation benefits • Unemployment compensation (insurance) • Veteran's benefits, including VA rehabilitation payments • Certain workfare payments • Earnings by one spouse treated as belonging to the other under community property laws • Earnings while an inmate in a penal institution 	<ul style="list-style-type: none"> • Salary deferrals, such as contributions to 401(k) plans, Federal Thrift Savings Plan (TSP) • Salary reductions, such as those under a cafeteria plan and not included in taxable income • Mandatory contributions to a state or local retirement plan • For the military, basic housing and subsistence allowances; value of in-kind housing and subsistence, and combat zone compensation • Meals and lodging provided for the convenience of the employer • Excludable employer-provided benefits, such as dependent care, adoption and educational assistance • Any other item of value (money, goods or services) that is received for work and is not taxable

Clarification for clergy: The rental value of a parsonage furnished to a member of the clergy and any housing allowance received by a member of the clergy are generally includible in the member's net earnings from self-employment and are, therefore, earned income. Note that these amounts are not earned income for purposes of the child tax credit.

What You Need To Complete EITC Returns

- 1) In most cases, all that you need to complete EITC tax returns are the appropriate tax forms (1040, 1040A or 1040EZ) and instructions.

The instructions for each form include the worksheet needed to figure the amount of the credit. Paid preparers must also complete Form 8867, *Paid Preparer's Earned Income Credit Checklist*, or otherwise record the same information for each EITC tax return, in order to meet due diligence requirements.

- 2) In some cases, information contained in IRS Publication 596, *Earned Income Credit*, may be needed to complete returns.

IRS Publication 596 includes detailed information and examples to help you when the form's instructions are too general.

- 3) Complete and attach Schedule EIC, *Earned Income Credit, Qualifying Child Information*, to the return if claiming the credit on the basis of a qualifying child.

All the lines that apply to each child must be filled in. The correct Social Security number (SSN) must be included.



Requirements For A Qualifying Child

A child must meet certain requirements to be a qualifying child for the EITC. The following chart outlines the three requirements that must be met: *relationship*, *age* and *residency*.

RELATIONSHIP	AGE	RESIDENCY
Son, daughter, stepson, stepdaughter or a descendant of any of them	Under age 19 at the end of the tax year	Lived with the taxpayer in the United States for more than half of the tax year.
or	or	
Brother, sister, stepbrother, stepsister or a descendant of any of them, whom the taxpayer cares for as his or her own child	Under age 24 and a full-time student, at the end of the tax year	
or	or	
Eligible foster child	Any age and permanently and totally disabled at any time during the year	
and...	and...	

Definitions

- To be an **eligible foster child**, the child must be placed with the taxpayer by an authorized placement agency, and the taxpayer must care for the child as his or her own. An **authorized placement agency** is an agency of a state or political subdivision of a state, a tax-exempt child placement agency licensed by a state, an Indian tribal government or an organization authorized by an Indian tribal government to place Indian children, or a court.
- An **adopted child** includes a child placed with the taxpayer for adoption by an authorized placement agency.
- A permanently and totally **disabled child** has to meet both of the following:
 - 1) He or she cannot engage in any substantial gainful activity because of a physical or mental condition.
 - 2) A doctor determines the condition has lasted or can be expected to last continuously for at least a year, or can lead to death.
- Taxpayers may be able to claim the EITC on the basis of a **child who was kidnapped** by a nonfamily member. Refer to IRS Publication 596, *Earned Income Credit*.
- A taxpayer does not need a traditional home to claim the EITC. For example, if the taxpayer and his or her child(ren) lived together for more than half the year in one or more homeless shelters, the child meets the residency test.

Tie-Breaker Rules

Sometimes a child meets the rules to be a qualifying child of more than one person. However, only one person can treat that child as a qualifying child in order to claim the EITC.

If two or more persons have the same qualifying child, they must decide who will claim the credit using that qualifying child. But if they cannot agree and more than one person actually claims the credit using the same child, the tie-breaker rule (explained in the next paragraph) applies. If the other person is a spouse and they file a joint return, this rule does not apply.

Under the tie-breaker rule, the child is treated as a qualifying child only by:

- 1) The parents, if they file a joint return,
- 2) The parent, if only one of the persons is the child's parent,
- 3) The parent with whom the child lived the longest during the tax year, if two of the persons are the child's parent and they do not file a joint return together,
- 4) The parent with the highest AGI if the child lived with each parent for the same amount of time during the tax year, and they do not file a joint return together, or
- 5) The person with the highest AGI, if none of the persons is the child's parent.

If your client has one or more qualifying children, but does not claim the credit using a qualifying child, your client cannot take the EITC for people who do not have a qualifying child. Enter "NO" beside line 64 (Form 1040) or line 41 (Form 1040A).

[REMINDERS]

A qualifying child for purposes of the EITC is not the same as:

- > **A qualifying individual for the child and dependent care credit,**
- > **A qualifying child for the child tax credit,**
- > **An eligible child for the adoption credit, or**
- > **A dependent for the dependency exemption.**

Please check the rules for each one to determine eligibility.

VALID SSN NEEDED FOR:

- > Your client
- > Your client's spouse
(if they file a joint return)
- > Any qualifying child
listed on Schedule EIC

About Identification Numbers

If the taxpayer (or spouse, if filing a joint return) does not have a valid Social Security number (SSN), he or she cannot claim the EITC. Similarly, the EITC cannot be claimed on the basis of a qualifying child without a valid SSN.

A valid SSN is issued by the Social Security Administration (SSA). Most SSNs are issued to U.S. citizens and to persons who have permission from the Immigration and Naturalization Service (INS) to work in the United States. Persons who are not permitted to work in the United States but are entitled to receive a SSN, receive a Social Security card with the legend **Not Valid for Employment**. If a Social Security card contains this legend and the cardholder obtained the SSN to get a federally funded benefit, such as Medicaid, the SSN is not valid for EITC purposes.

Other types of taxpayer identification numbers can prevent taxpayers from claiming the EITC. For example:

- If, instead of a SSN, the taxpayer or spouse (if filing a joint return) has an individual taxpayer identification number (ITIN), issued by the IRS to noncitizens who cannot get a SSN, they cannot claim the EITC.
- If a qualifying child has an ITIN or an adoption taxpayer identification number (ATIN), issued by the IRS for a child to adopting parents who cannot get a SSN for the child until the adoption is final, the taxpayer cannot get the credit on the basis of that child.

If the taxpayer (or spouse or qualifying child) has a Social Security card with the legend **Not Valid for Employment** and his or her immigration status changes so that he or she is now a U.S. citizen or permanent resident, they can ask the SSA for a new Social Security card without the legend. Taxpayers can then file amended returns for open years for which they are eligible to claim the credit.

What To Do About Due Diligence

Tax Preparers' Due Diligence Requirements

Paid preparers who file EITC returns or claims for refunds for clients must meet four due diligence requirements (see sidebar). Those who fail to do so can be assessed a \$100 penalty for each failure. Section 6695(g) of the Internal Revenue Code governs the application.

Section 6695(g) Penalty And Appeal Rights

The due diligence requirements and the IRC section 6695(g) penalty of \$100 are imposed on paid preparers who prepare the return claiming the EITC. In other words, only the preparer completing the return is assessed the penalty.

If the IRS determines due diligence requirements were not met with respect to a return, it's possible to avoid the \$100 penalty by demonstrating to the IRS that, considering all the facts and circumstances, normal office procedures are reasonably designed and routinely followed to ensure compliance with the requirements, and the particular failure was isolated and inadvertent.

If the IRS determines a preparer is subject to the IRC section 6695(g) penalty, an expedited pre-assessment appeals process is available to those preparers who have allowed an IRS examiner access to their client files. The preparer receives a letter stating the amount of the proposed penalty and advising the preparer to agree or file a protest. The letter contains complete instructions on filing the protest. Once the protest is filed, it receives priority consideration by Appeals and a hearing is scheduled with the practitioner. This means that before the penalty is assessed, the practitioner may be able to protest it under the expedited Appeals process.

Form 8867 and its instructions can be found at www.irs.gov.

REQUIREMENTS OF DUE DILIGENCE:

- 1) Complete Form 8867, *Paid Preparer's Earned Income Credit Checklist*, or your own equivalent form.
- 2) Complete the appropriate EIC worksheet found in the Form 1040, 1040A or 1040EZ instructions or in Publication 596, or your own equivalent form.
- 3) You must have no knowledge that any of the information used to determine the taxpayer's eligibility for the credit and the credit amount is incorrect.
- 4) Keep Form 8867 and the EIC worksheets (or your own equivalents of each), and a record of how, when and from whom the information used to prepare the form and worksheet(s) was obtained. You must keep these documents for three years from June 30th following the date the return or claim for refund was presented to the taxpayer for signature.

DISALLOWANCE PERIODS:

- > **Two-year disallowance period: due to reckless or intentional disregard of the EITC rules**
- > **10-year disallowance period: due to fraud**

When The EITC Is Disallowed

Deficiency Procedures

The deficiency procedures are the rules the IRS must follow when examining an item claimed on a taxpayer's tax return, amended return, or claim for refund using Form 843, *Claim for Refund and Request for Abatement*. The date on which the EITC is denied as a result of the deficiency procedures is the date of the assessment. The deficiency procedures do not apply to mathematical or clerical errors on the return.

Under these deficiency procedures, the IRS contacts the taxpayer in writing and asks for more information or documentation to support one or more items on the taxpayer's return. If the taxpayer does not provide all the necessary information, the IRS sends a report showing how it proposes to adjust the return. If the taxpayer does not provide the remaining necessary information, the IRS sends a statutory notice of deficiency to the taxpayer by certified mail. This notice states that the adjustment will be assessed unless the taxpayer files a petition in the Tax Court within 90 days. If the taxpayer does not file a petition within 90 days and does not otherwise reply to the IRS, the IRS makes the assessment and the EITC is denied.

When completing EITC returns, tax preparers should ask if their client has received any notices from the IRS or has previously been denied the EITC. If a client's EITC for a tax year after 1996 was denied or reduced by the IRS, Form 8862, *Information To Claim Earned Income Credit After Disallowance*, may need to be completed so the client may again claim the credit, if eligible.

Form 8862 must be filled out and attached to the returns of clients whose EITC was disallowed as a result of deficiency procedures. However, **Form 8862 should not be filed if** 1) a client is claiming the EITC without a qualifying child, and 2) the client's EITC for the previous year was reduced or disallowed solely because the IRS determined that one or both of the children listed on the Schedule EIC were not qualifying children for that year. In this situation, attach Form 8862 to the first return filed claiming the EITC with one or more qualifying children.

When The EITC Is Disallowed *(continued)*

About Form 8862

Form 8862 contains questions designed to assist the IRS in determining whether the taxpayer is eligible to claim the EITC for the current tax year. Attach the form to the return indicated in the second paragraph under *Deficiency Procedures* (previous page).

If the EITC was denied or reduced as a result of a mathematical or clerical error, do not attach Form 8862 to the return. For example, if the arithmetic is incorrect, the IRS can correct it and adjust the return. If a SSN is incorrect and the EITC is claimed, the IRS can deny the credit and adjust the return.

If Form 8862 is required to be attached to a tax return, and the EITC is claimed without attaching a completed Form 8862, an electronically filed return will be rejected. In the case of a paper return, the claim will be automatically denied under the mathematical or clerical procedures. The taxpayer will not be permitted to claim the EITC without a completed Form 8862.

The latest version of Form 8862 and the instructions can be found on www.irs.gov. It is important to use only the most recent version.

Prohibitions And Penalties

If the IRS determines that a taxpayer recklessly or intentionally disregarded rules or regulations when claiming the credit, it may assert an accuracy-related penalty, impose a two-year ban, or both when it denies the credit. The accuracy-related penalty is 20 percent of the underpayment of tax. The ban prohibits the taxpayer from claiming the credit for the next two years. If fraud is determined, the IRS may assert a fraud penalty, prohibit your client from claiming the credit for the next 10 years, or both. The date on which the EITC claim was denied and the date on which the return is filed affect the years for which the EITC claims are prohibited.

[COMMON ERRORS]

Some of the more common reasons for disallowance are:

- > Taxpayers claiming a child who was not their qualifying child
- > Married taxpayers who should have filed as married filing separately, but who filed as single or head of household instead
- > Income reporting errors
- > Taxpayers or qualifying children whose SSNs are entered incorrectly

Frequently Asked Questions About The EITC

General

1) *Where can I find the current earned income and adjusted gross income (AGI) amounts?*

The Eligibility Checklist located at the back of this toolkit lists the amounts for the current tax year. You can also visit **www.irs.gov/eitc** for the current amounts.

2) *What is AGI?*

AGI includes items such as wages, interest and unemployment benefits reduced by certain amounts such as IRA contributions and alimony payments.

Common Errors

3) *What are the most common reasons for disallowance of the EITC?*

Some of the more common reasons for disallowance are:

- Taxpayers claiming a child who was not their qualifying child.
- Married taxpayers who should have filed as *married filing separately*, but who filed as *single* or *head of household* instead.
- Income reporting errors.
- Taxpayers or qualifying children whose Social Security numbers (SSNs) are entered incorrectly.

4) *How can I determine whether a child meets the residency test?*

If you have any reason to question whether the child lived with your client for the required period, you might find it useful to ask further questions. Additional questions might be necessary if, for example, the taxpayer states that the child lived with him or her for the entire year, but the taxpayer does not know the name of the child's school or care giver.

5) *Must I review birth certificates to verify the age of the qualifying child?*

No. However, if you have reason to question the child's age, you may want to look at the birth certificate.

6) *What can I do if I experience a significant number of rejects on electronically filed returns?*

If you experience a significant number of rejects, you should refer to IRS Publication 1345A, *Filing Season Supplement For Authorized e-file Providers*, for an explanation of error reject codes. If you need further assistance, the appropriate Help Desk can be accessed via the new centralized, toll-free number **1-866-255-0654**. You may also refer to **www.irs.gov**. Click on "Tax Professionals."

EITC Recertification

7) What is EITC recertification?

EITC recertification refers to the requirement that a taxpayer whose EITC is denied or reduced for tax years starting after 1996 as a result of the deficiency procedures must attach a completed Form 8862, *Information To Claim Earned Income Credit After Disallowance*, to the next tax return on which he or she claims the EITC. See pages 10 and 11 for details.

8) Is my client required to recertify when claiming the EITC?

If the EITC was denied or reduced for any tax year starting after 1996, a taxpayer should have received a CP-79, *EIC Recertification Letter*, from the IRS after the examination was completed. The CP-79 explains the requirement to file Form 8862. Even though the taxpayer attaches a properly completed Form 8862 to his or her return, the taxpayer may still be required to furnish documentation before a refund is released.

9) Is my client prohibited from claiming the EITC for a period of years?

Certain taxpayers who have been denied EITC in the past, may be prohibited from claiming the EITC for a two or 10-year period. The prohibition may be imposed when the EITC claimed for a year after 1996 is denied or reduced as a result of the deficiency procedures and the claim is determined to be due to reckless or intentional disregard of the EITC rules, or to fraud.

If the taxpayer's claim is due to the reckless or intentional disregard of the EITC rules and regulations, that taxpayer will be prohibited from claiming the EITC for the next two years. As with the Form 8862 requirement, the first year of the prohibition is the first year for which a return has not yet been filed.

If the taxpayer is found to have fraudulently claimed the EITC, the taxpayer will be prohibited from claiming the EITC for the next 10 years.

In both situations, after the prohibition period is over, the taxpayer must attach Form 8862 to the next return on which he or she claims the EITC. But see the exception on page 10.

Due Diligence

10) What do I need to do to meet the due diligence requirements of section 6695(g) of the Internal Revenue Code when preparing a return or claim for refund with the EITC?

Preparers of EITC returns and claims for refund (whether paper or electronically filed) are expected to exercise due diligence in getting accurate information to determine eligibility and in correctly computing the EITC amount. Please refer to page 9 for specific requirements.

11) Must I use Form 8867, Paid Preparer's Earned Income Credit Checklist, as part of the due diligence process?

No. It is not necessary to use Form 8867 to meet the preparer due diligence requirements. However, you must either use Form 8867 or otherwise record the information necessary to complete Form 8867 in your paper or electronic files. Electronic records must meet the requirements of Revenue Procedure 97-22, 1997-1 C.B. 652.

Due Diligence *(continued)*

12) Is there a penalty for not meeting the preparer due diligence requirements?

Yes. Failure to meet the preparer due diligence requirements could result in a \$100 penalty for each failure under IRC section 6695(g). For more information on these requirements, refer to page nine of the Due Diligence section.

Social Security Numbers (SSNs)

13) Must taxpayers and qualifying children all have SSNs?

Yes. There are several types of taxpayer identification numbers that can be used when filing a federal tax return, but only a SSN can be used when claiming the EITC. Moreover, if a Social Security card says “Not Valid for Employment”, and the card holder obtained the SSN to get a federally funded benefit, the SSN cannot be used when claiming the EITC.

14) How can I tell if my clients and their children have the right kind of SSNs?

If the Social Security card does not contain the legend **Not Valid for Employment**, then the number can be used for EITC purposes. If a client or their qualifying child has a Social Security card that states “Not Valid for Employment”, you will need to ask the reason for obtaining the SSN.

15) Must I review Social Security cards?

No. However, because the IRS uses SSNs to identify taxpayers, it is important that you explain to your clients that all names must appear on the return exactly as they appear on the Social Security card.

16) How can I avoid mismatches of SSNs?

One of the primary reasons for the rejection of a return or a delay in processing a return is an incorrect SSN. It is important, therefore, that you check the accuracy of each SSN, as well as the spelling of the name associated with the number. Ask your client if he or she received a notice of an incorrect SSN for any prior tax year.

17) If there is a mismatch, what can I do to help?

If the problem is not yet resolved:

- Check the Social Security card for accuracy of the name and number on the return.
- Ask if a name or other change has been reported to the Social Security Administration (SSA).
- Determine if the problem was due to an error in recording or transcribing the number.
- Refer your client to the SSA to resolve the problem before filing a return if you cannot determine the problem.

18) Where can I learn more about surname entry formats?

A detailed discussion of surname entry formats can be found in Publication 1346, *Electronic Return File Specifications and Record Layouts for Individual Income Tax Returns*. The specific references can be located in Part 1, Section 7 – Formats for Name Controls, Name Lines, and Addresses. If your software product “interprets” the name control from entries in the full name field, entries in the full name field should also conform to the name control format.

Reporting Suspicious

19) How do I report my suspicions if I think a client or another preparer is doing something questionable?

As a tax professional, you have a vested interest (as both a taxpayer and tax preparer) in the protection of the tax filing system. Report your suspicions of unscrupulous tax preparers by sending an email to the IRS Office of Refund Crimes at **HQ-ORF@ci.irs.gov**. All other suspicious activity should be reported by calling 1-800-829-0433.

You can also file Form 211, *Application for Reward for Original Information*, if you want to be considered for a reward for information leading to the detection of violations of the Internal Revenue Code. Publication 733, *Rewards for Information Provided by Individuals to the Internal Revenue Service*, provides information about this program.



[EDITOR'S NOTE]

We welcome your comments on how to make this a better toolkit in future years. Please send comments to:

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Room C4-162
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Need More Help?

Taxpayer Advocate Service

The Taxpayer Advocate Service is independent from the IRS and has increased staff and authority to help solve difficult tax problems. Local Taxpayer Advocates are available to help deal with unresolved problems with the IRS. Taxpayers are assigned personal advocates who are ready to listen and address concerns quickly and fairly. Call toll-free **1-877-777-4778** for the Taxpayer Advocate Service.

IRS Services For You

Access the IRS through the Internet. The IRS Web site at **www.irs.gov** can provide answers to many questions, offer forms and publications for download and is completely searchable by keyword. Additionally, some tax forms can now be completed online. For information specifically for tax preparers, go to "Tax Professionals" on the home page. Two email newsletters – *Digital Dispatch* and *IRS Local News Net* are available by clicking on "Subscription Services" within the "Tax Professionals" section.

The latest information on EITC issues is always available at **www.irs.gov/eitc**.

The IRS provides various toll-free phone services.

- To order current or prior year tax forms and publications, call **1-800-829-3676**.
- For questions related to individual taxes, call **1-800-829-1040**.
- For questions related to business taxes, call **1-800-829-4933**.
- For information pertinent to or help in resolving a client's account-related issues, call the IRS Practitioner Priority Line at **1-866-860-4259**.

Please note that:

- 1) you will need appropriate written taxpayer authorization to discuss a client's specific issues, and***
- 2) this line is NOT staffed to provide tax law assistance to tax practitioners.***

- To listen to pre-recorded messages covering various tax topics, call TeleTax at **1-800-829-4477**.
- If you or a client has access to TTY/TTD equipment for the hearing impaired, call **1-800-829-4059** to ask questions or to order forms and publications.



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www.irs.gov/eitc

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