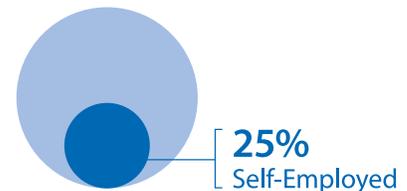


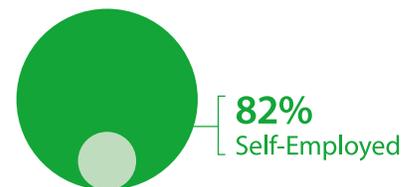
# THE EARNED INCOME TAX CREDIT —AMERICA'S MOST EFFECTIVE ANTI-POVERTY PROGRAM— ELUDES 70,000 NEW YORKERS WHO NEED IT MOST

Each year the New York State Department of Taxation and Finance (“the Department”) denies 70,000 hard-working New Yorkers approximately \$40 million in Earned Income Tax Credits (“EITC”) through burdensome, lengthy desk audits. A staggering 80 percent of the audits among EITC filers are conducted upon the 25 percent of filers who report self-employment income. By comparison, the overall audit rate among all New Yorkers who report self-employment income is only 8 percent. The vast difference in audit rates between self-employed EITC filers and other self-employed New Yorkers is inexplicable and unjust. In the end, the onerous desk audits rob thousands of wage-earning New Yorkers of a significant portion of their annual income (up to 40 percent for many families), making it more difficult for these families to pay for basic necessities, including food, rent, and clothing.

## COMPOSITION OF EITC FILERS



## AUDITS AMONG EITC FILERS



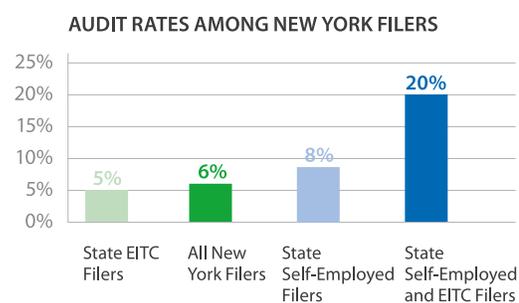
## WHO ARE THE 70,000?

They are housekeepers, babysitters, cab drivers, and other lower-income workers who receive cash wages and must report those wages as “self-employment” income.

Many have employers who will not provide them with proof of wages earned.

They include:

- **Ana**, who cleans houses, earns \$10,000 each year, and supplied the Department with 12 months worth of bank statements to prove receipt of her cash wages
- **Victor**, who works as a construction day laborer and who kept a hand-written daily log of each job, wages earned, and hours worked
- **Carla**, who works as an assistant manager at a local furniture store and whose boss refuses to put her on the company payroll or verify her income with the Department



## STATUS

The Cash Earners Coalition, which launched in December 2011, includes tax experts, attorneys and anti-poverty advocates who are dedicated to eliminating the barriers that workers face in securing New York’s EITC. So far, the Coalition’s efforts have led to:

- S7064/A9965 that outlines income documentation standards for cash earners
- The 2012 EITC Summits that featured the cash earners issue
- The recognition of cash earners as a group warranting the Department’s attention
- The launch of the Department’s Pilot Project that sends postcards to cash earners mid-year reminding them how to document their income for tax purposes
- Meeting with the Department to simplify the language in Audit Inquiry Letters

## RECOMMENDATIONS

The Clinic encourages the Department to ensure that struggling, hard-working New Yorkers receive the EITC that they are entitled to by:

- Supporting S1985 to ensure that cash earners may avoid an audit;
- Discontinuing the burdensome, disproportionate desk audits among EITC claimants who report self-employment income;
- Allowing filers to prove income with a range of paper and electronic documents;
- Designating a new tax status for cash earners so they are not forced to file as “self-employed” business owners;
- Simplifying the language and softening the tone of the audit inquiry letters; and
- Formalizing existing guidance that outlines straightforward methods for cash earners to follow in documenting their income.

# CASH EARNER STORIES

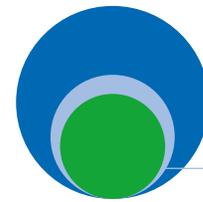
Only 45 percent of filers who receive audit letters respond to the audit. Of those, a disappointing one-third receive the funds that they have claimed.

But when filers request reconsideration of their audits, an IRS study found that nearly half of the negative EITC decisions were reversed. In the end, these filers received an average of 94 percent of the EITC amount claimed on the original return.

Non-responsive filers are presumed to have claimed or received the EITC in error. But we now know that tax filers who do not respond to audit letters either lack the resources to endure an audit or do not understand the audit inquiry letters in the first place.

Finally, filers who receive help on navigating the audit inquiry process are more likely to receive the EITC.

## AUDIT LETTERS AND RESPONSE RATES



**117,702**  
Audit Inquiry Letters sent every year

**45%**  
Respond

**70%**  
Respondents denied by EITC



## ANA

Ana is a housekeeper in New York City who is paid in cash. She has a daughter, Jenny, who is 13 years old and lives with her full time. Ana tried to apply for the EITC each year since 2007 and has been denied because the Department says she cannot sufficiently document her \$10,000 annual income. Her last claim for the EITC totaled \$2,853 or 28 percent of her family's annual income. Ana receives SNAP benefits to make ends meet.

Ana began working with a Clinic staff attorney to work on her 2007 EITC refund denial. To prove her income for her 2010 EITC claim, Ana sent the Department an entire year's worth of bank statements showing regular deposits of her earned wages; it was not enough. The Department asked Ana to prove that the deposits came from earned income and not from public assistance; it also asked Ana to prove Jenny was her daughter and that Jenny lived with her all year long. Ana worked with a Clinic staff attorney to gather evidence (Social Security Card, birth certificate, and school records) proving she is Jenny's mother and that Jenny has always lived with her with her full-time.

In April 2012, four years after Ana applied for the 2007 EITC, the Department agreed to issue Ana 100 percent of the EITC amount she claimed on her 2007 return. But Ana has become so discouraged by the lengthy ordeal that she says she will no longer apply for the EITC.

- 04/08 ● Received audit inquiry letter
- 04/08 ● Responded to audit
- 11/10 ● Began working with the Clinic
- 11/10 ● Re-submitted audit inquiry response
- 01/12 ● Audit re-opened
- 04/12 ● Audit Resolved

## TONY

Tony is married to Amanda. Together, they have three children and live in Chinatown. Tony and Amanda have filed their family's taxes with the Clinic for the past few years.

Tony and Amanda have two sons and two daughters. The three older children graduated from Cornell University and Barnard College. The youngest son is a senior at NYU. Tony and Amanda are extremely proud of their children.

Tony lost his job at a small merchandising company in Chinatown in the middle of 2009. His boss insisted on paying him in cash. Soon after, Tony learned that his boss failed to pay into the unemployment insurance fund on his behalf. Tony hasn't been able to get in touch with his former boss since he lost his job.

Amanda babysits for a family in the neighborhood two days per week. She also gets paid in cash.

Tony and Amanda's income for 2009 was \$8,922. With Tony unable to get unemployment benefits, the couple was counting on their tax refund to make ends meet. They applied for the EITC and were due a refund of \$1,071—approximately 12 percent of their total annual income. But they were denied the EITC because neither Tony nor Amanda could sufficiently document their income. It took two years of back and forth with the Department and the assistance of a Clinic staff attorney before the Department agreed to issue the couple their 2009 tax refund.

- 09/10 ● Received Adjustment of Refund Notice for 2009 due to lack of income verification
- 12/10 ● Appealed Adjustment of Income
- 03/12 ● Department agrees to adjust refund based on only \$5,000 of reported income
- 04/12 ● Audit fully resolved after Department agrees to issue full refund based on \$8,922 in income

## SOURCES:

Michael Collins, *MoneyUP: A Field Study*, University of Wisconsin- Madison (2010)  
 Money.CNN.com  
 New York State Department of Taxation and Finance  
 Office of Temporary and Disability Assistance



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