

2016



Department of the Treasury
Internal Revenue Service

Instructions for Form 8867

Paid Preparer's Due Diligence Checklist for the Earned Income Credit (EIC), the Child Tax Credit (CTC)/Additional Child Tax Credit (ACTC), and/or the American Opportunity Tax Credit (AOTC)

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8867 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form8867.

What's New

Form 8867 expanded and revised. Due to changes in the law, the paid tax return preparer EIC due diligence requirements have been expanded to also cover the CTC/ACTC and the AOTC.

Form 8867 has been modified to account for these changes. In addition, Form 8867 has been streamlined. Completing the form is not a substitute for actually performing the necessary due diligence and completing all required forms and schedules when preparing the return.

Penalty now indexed for inflation. The paid tax return preparer due diligence penalty is now indexed for inflation. Therefore, the penalty for failure to meet the due diligence requirements with respect to returns and claims for refund filed in 2017 is \$510 per credit per return.

Refunds issued after February 15, 2017. Due to changes in the law, the IRS cannot issue refunds before February 15, 2017, for returns that claim the EIC or the ACTC. This applies to the entire refund, not just the portion associated with these credits. You should inform the taxpayer if his or her return includes a claim for the EIC and/or the ACTC.

Reminders

No retroactive claims of the EIC. Due to changes in the law, if the taxpayer didn't have an SSN by the due date of his/her 2016 return (including extensions), he/she can't claim the EIC on either an original or an amended 2016 return, even if he/she later gets an SSN. Also, if a child didn't have an SSN by the due date of the taxpayer's return (including extensions), the taxpayer can't count that child as a qualifying child in figuring the EIC on either an original or an amended 2016 return, even if that child later gets an SSN.

No retroactive claims of the CTC/ACTC or the AOTC. Due to changes in the law, if the taxpayer didn't have an SSN (or ITIN) by the due date of his/her 2016 return (including extensions), he/she can't claim the CTC/ACTC or the AOTC on either an original or an amended 2016 return, even if he/she later gets an SSN (or ITIN). Also, no CTC/ACTC or AOTC is allowed on an original or an amended 2016 return with respect to a child who didn't have an SSN, ATIN, or ITIN by the due date of the return (including extensions), even if that child later gets one of those numbers.

If the taxpayer applies for an ATIN or an ITIN on or before the due date of his/her 2016 return (including extensions) and the IRS issues the taxpayer an ATIN or an ITIN as a result of the application, the IRS will consider the ATIN or ITIN as issued on or before the due date of the return.

General Instructions

Form 8867 covers the EIC, the CTC/ACTC, and/or the AOTC. You should only complete columns corresponding to credits actually claimed on the taxpayer's return that you prepared.

Only paid tax return preparers should complete this form. If you were paid to prepare a return for any taxpayer claiming the EIC, the CTC/ACTC, and/or the AOTC, you must complete Form 8867 and meet the other due diligence requirements described in [Purpose of Form](#), later.

Form 8867 must be filed with the return. Form 8867 must be filed with the taxpayer's return or amended return claiming the EIC, the CTC/ACTC, and/or the AOTC.

Signing tax return preparers.

- If you are the paid tax return preparer signing the return and you are filing the return electronically, file the completed Form 8867 electronically with the return.
- If you are the paid tax return preparer signing the return and you are **not** electronically filing the return, provide the completed Form 8867 to the taxpayer with instructions to file this form with his or her return.
- If you are the paid tax return preparer signing the return and you are mailing the return to the IRS for the taxpayer (which should only be done *after* the taxpayer has reviewed and signed the paper return), mail the completed Form 8867 to the IRS with the return.

Nonsigning tax return preparers. If you are the paid tax return preparer for any of the credits covered by Form 8867 but you are not required to sign the return as preparer, provide the signing tax return preparer the completed form in either electronic or paper format.

You can find rules regarding who is a signing tax return preparer and a nonsigning tax return preparer in Regulation section 301.7701-15. If you are the only paid tax return preparer for the taxpayer's return, you are the signing tax return preparer and must sign the return as preparer. Failure to sign the return when required may subject you to a penalty.

Multiple Forms 8867 for one return. Form 8867 must be completed by a paid tax return preparer responsible for a taxpayer's claim of the EIC, the CTC/ACTC and/or the AOTC; therefore, there may be multiple Forms 8867 for one return or amended return. Only one Form 8867 may be filed. If there are multiple Forms 8867, file the Form 8867 prepared by the signing tax return preparer. If there are multiple Forms 8867, but none were prepared by the signing return preparer, file the Form 8867 covering the EIC, or if none, the CTC. All Forms 8867 must be retained as provided in [Document Retention](#).

Example 1. Paid tax return preparer A determined taxpayer T's eligibility for, and amount of, the EIC claimed on T's return. Paid preparer B determined T's eligibility for, and amount of, the AOTC claimed on T's return and also signs the return as the signing tax return preparer. Two Forms 8867 must be completed, one prepared by A for the EIC, and one prepared by B for the AOTC. The Form 8867 completed by B as the signing preparer should be filed with T's return.

Example 2. The facts are the same as *Example 1*, except B does not sign the return as the signing tax return preparer. The Form 8867 completed by A, which covers the EIC, should be filed with T's return.

Purpose of Form

As a paid tax return preparer, you are required to exercise due diligence when preparing any client's return or claim for refund. As part of exercising due diligence, you must interview the client, ask adequate questions, and obtain appropriate and sufficient information to determine the correct reporting of income, claiming of

tax benefits (such as deductions and credits), and compliance with the tax laws.

As a paid tax return preparer, you also must meet specific due diligence requirements set forth in Treasury Regulations when you prepare returns and claims for refund involving the EIC, the CTC/ACTC, or the AOTC. To meet these due diligence requirements, you may need to ask additional questions and obtain additional information to determine eligibility for, and the amount of, the EIC, the CTC/ACTC, or the AOTC. Failure to meet the EIC, CTC/ACTC, or the AOTC due diligence requirements could result in a \$510 penalty for each failure. See section 6695(g) and Regulation section 1.6695-2(b).

You have complied with the due diligence requirements set forth in Treasury Regulations for the EIC, the CTC/ACTC or the AOTC claimed on a return or claim for refund if you:

1. Complete Form 8867 truthfully and accurately and complete the actions described on Form 8867 for each credit claimed for which you are the paid tax return preparer.
2. Submit Form 8867 in the manner required.
3. Meet the knowledge requirement by interviewing the taxpayer, asking adequate questions, contemporaneously documenting the questions and the taxpayer's responses in your notes, reviewing adequate information to determine if the taxpayer is eligible to claim the credit(s) and in what amount(s), **and**
4. Keep all five of the following records for three years from the latest of the dates specified later, in [Document Retention](#):
 - a. A copy of Form 8867,
 - b. The applicable worksheet(s) or your own worksheet(s) for any credits claimed (see [Due Diligence Requirements](#), later),
 - c. Copies of any documents provided by the taxpayer on which you relied to determine eligibility for, and the amount of, the credit(s),
 - d. A record of how, when, and from whom the information used to prepare Form 8867 and worksheet(s) was obtained, and
 - e. A record of any additional questions you may have asked to determine eligibility for, and amount of, the credits, and the taxpayer's answers.

Specific Instructions

Enter the taxpayer's name as it appears on the return and enter the taxpayer identification number (TIN) for the taxpayer (primary TIN, if filing a joint return).

Enter the name and preparer tax identification number (PTIN) of the paid tax return preparer who determined the taxpayer's eligibility for, or the amount of, the credit(s) for which Form 8867 is being completed, even if that preparer is not the tax return preparer signing the tax return.

Due Diligence Requirements

Complete the appropriate column for each credit for which you were the paid tax return preparer determining the taxpayer's eligibility for, and amount of, the credit. Columns for credits for which you were not the paid tax return preparer should be left blank.

Line 1

You should prepare the 2016 return based on information related to the 2016 tax year only, as situations may change from year to year. If you are preparing a late or amended return or claim for refund, you should prepare the return based on the information related to the tax year of the return or claim for refund.

Line 2

You must complete the applicable IRS worksheet for the EIC, the CTC/ACTC, and/or the AOTC (or your own worksheet that provides the same information), as well as all required forms and schedules for each credit claimed on the return for which you are the paid tax return preparer. You can find the worksheets for the EIC and the CTC/ACTC in the instructions for Forms 1040, 1040A, 1040EZ, and 1040NR. The ACTC worksheet can also be found in the instructions

for Forms 1040SS and 1040PR. You can find the AOTC worksheet in the instructions for Form 8863. Completion of these forms, schedules, and worksheets assists you in determining the taxpayer's eligibility for the credit and the correct amount of the credit and is required under the due diligence requirements set forth in Treasury Regulations.

Lines 3 and 4

As a paid tax return preparer, when determining the taxpayer's eligibility for, or the amount of, a credit claimed on a return or claim for refund, you must not use information that you know, or have reason to know, is incorrect. You may not ignore the implications of information provided to, or known by you, and you must make reasonable inquiries if the information provided to you appears to be incorrect, inconsistent, or incomplete. You must make reasonable inquiries if a reasonable and well-informed tax return preparer, knowledgeable in the tax law, would conclude that the information provided to you appears to be incorrect, inconsistent, or incomplete. You must also contemporaneously document in your files any reasonable inquiries made and the responses to these inquiries.

You must know the tax law for each credit claimed on a return or claim for refund you prepare and use that knowledge to ask your client the right questions to get all the relevant facts to determine your client's eligibility for the credit(s) and the correct amount of the credit(s).

Example. Taxpayer X engages Preparer C to prepare his federal income tax return. During the intake interview, Taxpayer X states he is 25 years old, has never been married, and has two sons ages 12 and 10. X also states that he was self-employed, earned \$12,000 from his lawn care business, and had no business expenses or other income. Preparer C believes that X may be eligible for the EIC and ACTC. However, in order to meet the knowledge requirement, Preparer C must make additional inquiries. The ages of the children seem inconsistent with the age of the taxpayer. Additionally, the taxpayer's claim that he has no business expenses seems inconsistent with his income. Reasonable inquiries could include:

- Are these your foster sons, adopted sons? If so, were the children placed in your home by an adoption or foster care agency?
- How long did the children live with you during 2016?
- If the taxpayer is not the parent, did any other relative also reside with these children for more than half the year in 2016?
- How much did you charge to do each lawn?
- Do you have records of the amount of money you received from lawn work?
- Did you have any expenses for lawn mowing equipment, fuel or other supplies for your business? If not, how did you provide lawn care services?
- How many lawns did you take care of?

Line 5

Keep copies of any documents provided by the taxpayer on which you relied to determine the taxpayer's eligibility for the credit(s) and to compute the amount of the credit(s) and list the documents in the space provided. See [Document Retention](#), for more information on the due diligence recordkeeping requirements.

The following are examples of documents that you may rely on to determine taxpayers' eligibility for the credits or the amount of the credit. This list is not all-inclusive.

Residency of a Qualifying Child

- School records or statement
- Landlord or a property management statement
- Health care provider statement
- Medical records
- Child care provider records
- Placement agency statement
- Social service records or statement
- Place of worship statement
- Indian tribal official statement
- Employer statement

Disability of Qualifying Child

- Doctor statement

- Other health care provider statement
- Social services agency or program statement

Schedule C

- Business license
- Forms 1099
- Records of gross receipts provided by taxpayer
- Taxpayer summary of income
- Records of expenses provided by taxpayer
- Taxpayer summary of expenses
- Bank statements reconstruction

Line 6

If your client's return is selected for audit, the IRS may ask your client to provide documents to show eligibility for, and the amount of, the credit(s) claimed on the return or claim for refund. The credit(s) may not be allowed without this information. You can help your clients be prepared to answer questions about their eligibility for the credit(s) claimed and the correctness of the amount of the credit(s) claimed if you help them understand that the IRS may ask for underlying documentation regarding eligibility for and the computation of the amount of the credit(s).

Line 7

Unless an exception applies, if the EIC claimed in a prior year was denied for a reason other than a clerical or math error, a claim for the EIC on the taxpayer's 2016 return will be denied unless Form 8862 is attached to the return. See the Form 8862 instructions and Pub. 596 for more information.

Note. As a result of recent tax law changes, Form 8862 must be attached to a taxpayer's 2017 return if the CTC/ACTC and/or the AOTC is reduced or disallowed on the taxpayer's 2016 tax return for a reason other than a clerical or math error.

Line 8

The EIC, the CTC/ACTC and the AOTC are determined using information, that includes information about the kind and source of income reported on a taxpayer's return. For self-employed individuals, this information is generally reported on Schedule C (Form 1040) as income from self-employment. To exercise due diligence when determining eligibility for, and the amount of, the EIC, the CTC/ACTC, or the AOTC for a self-employed individual, you may also be required to ask additional questions to determine whether the Schedule C is correct and complete. Additional guidance on Schedule C and the EIC is available as part of the EIC Tax Preparer Toolkit at www.etic.irs.gov.

If the taxpayer is not reporting self-employment income on Schedule C, leave this line blank. Do not check any of the boxes on this line.

Specific Due Diligence Questions for Returns Claiming the EIC

As a paid tax return preparer, you must exercise due diligence to determine whether a taxpayer meets all of the eligibility requirements for the EIC. Although lines 9a and 9b only ask two specific questions related to claiming a qualifying child for the EIC, your client must meet **all** of the eligibility requirements for claiming the EIC. Therefore, your client may not claim the EIC if all of the eligibility requirements for the EIC are not satisfied, even if you answer "yes" to questions 9a and 9b.

Line 9

If your client is eligible to claim the EIC for taxpayers without a qualifying child, answer "yes" to questions 9a and 9b.

Line 9a

Tiebreaker rules. These rules determine if a taxpayer may claim a child as a qualifying child for the EIC when the child meets the definition of a qualifying child for more than one person.

- If only one of the persons is the child's parent, the child is treated as the qualifying child of the parent.

- If the parents file a joint return together and can claim the child as a qualifying child, the child is treated as the qualifying child of both of the parents.

- If the parents do not file a joint return together but both parents claim the child as a qualifying child, the child is treated as the qualifying child of the parent with whom the child lived for the longer period of time during the year. If the child lived with each parent for the same amount of time, the child is treated as the qualifying child of the parent who had the higher adjusted gross income (AGI) for the year.

- If no parent can claim the child as a qualifying child, the child is treated as the qualifying child of the person who had the highest AGI for the year.

- If a parent can claim the child as a qualifying child but no parent does so, the child is treated as the qualifying child of the person who had the highest AGI for the year, but only if that person's AGI is higher than the highest AGI of any of the child's parents who can claim the child.

Subject to the rules just described, the taxpayer and the other person(s) may be able to choose which of them treats the child as a qualifying child. If the taxpayer allows another person to treat the child as a qualifying child, the taxpayer is not eligible to claim EIC for the same child. Also, EIC claims must be consistent with claims for other credits and child-related benefits, such as the dependency exemption. For examples and details, see Pub. 596.

In many cases, the taxpayer should be able to tell you whether his or her AGI is higher than the AGI of the child's parents or other person who might also claim the child.

Due Diligence Questions for Returns Claiming the CTC/ACTC

As a paid tax return preparer you must exercise due diligence to determine whether a taxpayer meets all of the eligibility requirements for the CTC/ACTC. Lines 10a, 10b, and 10c only ask three specific questions about eligibility for the CTC/ACTC.

However, your client must meet **all** of the eligibility requirements for claiming the CTC/ACTC. Therefore, your client cannot claim the CTC/ACTC if all of the eligibility requirements for these credits are not satisfied, regardless of the answers to the questions on line 10.

Line 10

If the taxpayer is the custodial parent of the child claimed for the credit, and he or she has completed Form 8332 or signed a similar document containing the same information, releasing a claim to exemption for the child in question, he or she is not entitled to claim the CTC/ACTC.

If the taxpayer is the noncustodial parent and has a Form 8332 (or equivalent document) signed by the custodial parent, be sure to ask if there is a more recent form revoking the release of the exemption. See the instructions for Form 8332 for more information.

Due Diligence Questions for Returns Claiming the AOTC

As a paid tax return preparer you must exercise due diligence to determine whether a taxpayer meets all of the eligibility requirements for the AOTC. Although line 11 only asks about substantiation of qualified tuition and related expenses, your client may not meet **all** of the eligibility requirements for claiming the AOTC. Therefore, your client cannot claim the AOTC if all of the eligibility requirements for the AOTC are not satisfied, even if you answer "yes" to the question on line 11.

Line 11

Only qualified tuition and related expenses taken into account. For purposes of claiming the AOTC, only qualified tuition and related expenses may be taken into account to determine the amount of the credit a taxpayer may claim. Qualified tuition and related expenses are tuition and certain related expenses required for enrollment or attendance at an eligible educational institution. For more information on determining when tuition and expenses meet the definition of qualified tuition and related expenses, see Pub. 970.

Eligible educational institution. An eligible educational institution is a school offering higher education beyond high school. It is any college, university, vocational school, or other postsecondary educational institution eligible to participate in a student aid program run by the U.S. Department of Education. This term includes most, but not all, accredited public, nonprofit and privately-owned-for-profit postsecondary institutions and some foreign institutions. Eligibility information should be available from the school. More information, including a link to the list of most eligible schools, is available at www.irs.gov/individuals/eligible-educational-inst.

Form 1098-T. Unless an exception to reporting applies, a student enrolled or attending an eligible educational institution should receive a Form 1098-T from the institution. In 2016, Form 1098-T reports the amount billed by the institution, or the amount the student paid to the institution, for qualified tuition and related expenses during the calendar year, as well as certain refunds and reimbursements and scholarships and grants processed and administered by the school. A student may claim the AOTC only for qualified tuition and related expenses actually paid during the calendar year. The student may not be able to claim a credit for the exact amount reported as paid or billed on Form 1098-T. For more information on eligibility for the AOTC and on determining the expenses that qualify for the AOTC, see Pub. 970, Form 8863, and the instructions for Form 8863.

Credit Eligibility Certification

Line 12

Failure to meet the due diligence requirements for claiming the EIC, the CTC/ACTC or the AOTC could result in a \$510 penalty for each failure. For example, if you are paid to prepare a return claiming the EIC, the CTC/ACTC, and the AOTC, and you fail to meet the due diligence requirements for all of these credits, you could be subject to a penalty of \$1,530.

Document Retention

To meet the due diligence requirements for the EIC, the CTC/ACTC and the AOTC, you must keep all of the following records.

1. A copy of Form 8867;
2. The applicable worksheet(s) or your own worksheet(s) for any credits claimed specified in [Due Diligence Requirements](#), earlier;
3. Copies of any documents provided by the taxpayer on which you relied to determine eligibility for, and the amount of, the credit(s);
4. A record of how, when, and from whom the information used to prepare Form 8867 and the worksheet(s) was obtained; and
5. A record of any additional questions you may have asked to determine eligibility for, and the amount of, the credits, and the taxpayer's answers.

You must keep those records for three years from the latest of the following dates.

- The due date of the tax return (not including extensions).
- The date the return was filed (if you are a signing tax return preparer electronically filing the return).
- The date the return was presented to the taxpayer for signature (if you are a signing tax return preparer not electronically filing the return).
- The date you submitted to the signing tax return preparer the part of the return for which you were responsible (if you are a nonsigning tax return preparer).

These records may be kept on paper or electronically in the manner described in Revenue Procedure 97-22 (or later update). Revenue Procedure 97-22 is on page 9 of Internal Revenue Bulletin 1997-13, which is available at www.irs.gov/pub/irs-irbs/irb97-13.pdf.

Additional Resources

1. Additional information regarding the eligibility rules for the EIC may be found in section 32 and in Pub. 596.
2. Additional information regarding the eligibility rules for the CTC/ACTC may be found in section 24 and in Pub. 972.
3. Additional information regarding the eligibility rules for the AOTC may be found in section 25A, in Pub. 970, and on Form 8863 and the instructions for Form 8863.

Paperwork Reduction Act Notice. We ask for you to obtain the information on this form to carry out the Internal Revenue laws of the United States. You are required to obtain this information.

You are not required to obtain the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Internal Revenue Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Learning about the law or the form	18 min.
Preparing and sending the form	1 hr., 49 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. See the instructions for the tax return with which this form is filed.
