

Attach to your tax return.

Name(s) as shown on return

Identifying number

Part I Current Year Credit

Table with 3 columns: Description, Line Number, and Value. Rows 1-6 cover Current Year Credit calculations including qualified wages, incremental increase, and pass-through entities.

Part II Allowable Credit (See Who must file Form 3800 to find out if you complete Part II or file Form 3800.)

Table with 3 columns: Description, Line Number, and Value. Rows 7-17 cover Allowable Credit calculations including regular tax, alternative minimum tax, foreign tax credit, and net income tax.

General Instructions

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

Purpose of Form

Employers of American Indians who are qualified employees use Form 8845 to claim the Indian employment credit.

Definitions

Qualified wages means any wages paid or incurred by an employer for services performed by an employee while such employee is a qualified employee (see below). It does **not** include wages attributable to services rendered during the 1-year period beginning with the day the employee starts work for the employer if any portion of such wages is used in figuring the work opportunity credit on Form 5884 or the New York Liberty Zone business employee credit on Form 8884. Wages has the same meaning given in section 51.

Qualified employee health insurance costs means any amount paid or incurred by an employer for health insurance coverage for an employee while the employee is a qualified employee. **Do not** include amounts paid or incurred for health insurance under a salary reduction arrangement.

Qualified employee means, for any tax period, any employee who meets **all three** of the following tests.

1. The employee is an enrolled member, or the spouse of an enrolled member, of an Indian tribe. Each tribe determines who qualifies for enrollment and what documentation, if any, is issued as proof of enrollment status. Examples of appropriate documentation will vary from one tribe to another and may include a tribal membership card, Certified Degree of Indian Blood (CDIB) card, or letter from the tribe or tribal enrollment office. Employers should retain a copy of the proof of enrollment status provided by the employee.

2. Substantially all the services performed by the employee for the employer are performed within an Indian reservation (defined below).

3. The employee's principal residence while performing such services is on or near the reservation where the services are performed.

However, the employee shall be treated as a qualified employee for any tax year only if more than 50% of the wages paid or incurred by the employer to the employee during the tax year are for services performed in the employer's trade or business. Each member of a controlled group must meet this requirement independently. Also, see the instructions for lines 1 and 2.

The following are **not** qualified employees.

- Any individual who bears any of the relationships described in sections 152(a)(1) through 152(a)(8) to, or is a dependent described in section 152(a)(9) of, the employer.
- If the employer is a corporation, any individual who bears any of the relationships described in sections 152(a)(1) through 152(a)(8) to, or is a dependent described in section 152(a)(9) of, an individual who owns (or is considered to own under section 267(c)) more than 50% in value of the outstanding stock of the corporation.
- If the employer is an estate or trust, any individual who is a grantor, beneficiary, or fiduciary of the estate or trust (or a dependent, as described in section 152(a)(9), of that individual), or any individual who is a relative, as described in sections 152(a)(1) through 152(a)(8), of the grantor, beneficiary, or fiduciary of the estate or trust.
- If the employer is other than a corporation, estate, or trust, any individual who owns directly or indirectly more than 50% of the capital and profits interest, including constructive ownership, in the entity.

- Any person who owns (or is considered to own under section 318) more than 5% of the outstanding or voting stock of the employer or, if not a corporate employer, more than 5% of the capital or profits interest in the employer.
- Any individual who performs services involving the conduct of Class I, II, or III gaming as defined in section 4 of the Indian Gaming Regulatory Act and any individual performing any services in a building housing such gaming activity.

Indian tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in, or established under, the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. See the Federal Register dated July 12, 2002 (67 FR 46328), for the most recent listing of federally recognized Indian tribes.

Indian reservation means a reservation as defined in section 3(d) of the Indian Financing Act of 1974 or section 4(10) of the Indian Child Welfare Act of 1978.

Early Termination of Employee

Generally, if the employer terminates a qualified employee less than 1 year after the date of initial employment, the following rules apply.

- No wages or qualified employee health insurance costs may be taken into account for the tax year the employment is terminated.
- Any credits allowed for prior tax years by reason of wages paid or incurred to that employee must be recaptured. Include the recapture amount on the line for recapture taxes on your income tax return. Also, any carryback or carryover of the credit must be adjusted.

These rules do not apply if:

- The employee voluntarily quits;
- The employee is terminated because of misconduct; or
- The employee becomes disabled. However, if the disability ends during the first year of employment, the employer must offer reemployment to that employee.

An employee is not treated as terminated if the corporate employer is acquired by another corporation covered under the rules in section 381(a) and the employee continues to be employed by the acquiring corporation. Nor is a mere change in the form of conducting the trade or business treated as a termination if the employee continues to be employed in such trade or business and the taxpayer retains a substantial interest in such trade or business.

Specific Instructions

Part I—Current Year Credit

Figure the credit for your trade or business on lines 1 through 4. Skip lines 1 through 4 if you are only claiming a credit that was allocated to you from a pass-through entity. The following rules apply for lines 1 and 2.

- The total amount of qualified wages and qualified employee health insurance costs for each qualified employee for any tax year is limited to \$20,000.
- Members of a controlled group of corporations and businesses under common control are treated as a single employer in determining the credit.
- For a short tax year, multiply the wages limit by the number of days in the short tax year and divide the result by 365.

Line 1

Enter the total qualified wages and qualified employee health insurance costs paid or incurred for qualified employees during the tax years. An employee is not a qualified employee if the total amount of wages paid or incurred by the employer to the employee during the tax year (whether or not for services within an Indian reservation) exceeds \$35,000.

Line 2

Enter the total qualified wages and qualified employee health insurance costs paid or incurred by the employer (or predecessor) for qualified employees during **calendar year 1993** (as if section 45A had been in effect during 1993). If none, enter zero. For this purpose, an employee is not a qualified employee if the total amount of wages paid or incurred by the employer to the employee during calendar year 1993 (whether or not for services within an Indian reservation) exceeds \$30,000.

Line 4

Generally, you must reduce the deductions on your return for salaries and wages and health insurance costs by the credit on line 4, even if you cannot take the full credit this year because of the tax liability limit. If you capitalized any costs on which you figured the credit, reduce the amount capitalized by the credit attributable to these costs.

Line 6

If you have a credit from a passive activity, stop here and go to Form 3800.

S corporations and partnerships. Allocate the line 6 credit among the shareholders or partners. Show the credit for each shareholder or partner on Schedule K-1. Electing large partnerships include this credit in "general credits."

Estates and trusts. Allocate the line 6 credit between the estate or trust and the beneficiaries in proportion to the income allocable to each. On the dotted line to the left of the amount on line 6, the estate or trust should enter its part of the total Indian employment credit. Label it "1041 Portion" and use this amount in Part II (or on Form 3800, if required) to figure the credit to claim on Form 1041.

Cooperatives. Most tax-exempt organizations cannot take the Indian employment credit, but a cooperative described in section 1381(a) takes the Indian employment credit to the extent it has tax liability. Any excess is shared among its patrons, but any credit recapture applies as if the cooperative had claimed the entire credit.

Part II—Allowable Credit

The credit allowed for the current year may be limited based on your tax liability. Use Part II to figure the allowable credit unless you must file **Form 3800**, General Business Credit.

Who must file Form 3800. You must file Form 3800 if you have:

- An Indian employment credit from a passive activity,
- More than one credit included in the general business credit (other than a credit from Form 8844 or 8884), or
- A carryback or carryforward of any of those credits.

See the instructions for Form 3800 to find out which credits are included in the general business credits.

Line 13

See section 38(c)(4) for special rules that apply to married couples filing separate returns, controlled corporate groups, regulated investment companies, real estate investment trusts, and estates and trusts.

Line 14

Although you may not owe alternative minimum tax (AMT), you generally must still compute the tentative minimum tax (TMT) to figure your credit. For a small corporation exempt from the AMT under section 55(e), enter zero. Otherwise, complete **and** attach the applicable AMT form or schedule and enter the TMT on line 14.

Line 17

If you cannot use all of the credit because of the tax liability limit (line 16 is smaller than line 6), carry the unused credit back 1 year and then forward up to 20 years. See the instructions for Form 3800 for details.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide 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 section 6103.

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

- Recordkeeping** 7 hr., 53 min.
- Learning about the law or the form** 1 hr., 40 min.
- Preparing and sending the form to the IRS** 1 hr., 53 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.

