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Early releases of draft forms and instructions are at IRS.gov/draftforms. Please note that drafts may remain on IRS.gov even after the final release is posted at IRS.gov/downloadforms, and thus may not be removed until there is a new draft for the subsequent revision. All information about all revisions of all forms, instructions, and publications is at IRS.gov/formspubs.

Almost every form and publication also has its own easily accessible information page on IRS.gov. For example, the Form 1040 page is at IRS.gov/form1040; the Form W-2 page is at IRS.gov/w2; the Publication 17 page is at IRS.gov/pub17; the Form W-4 page is at IRS.gov/w4; the Form 8863 page is at IRS.gov/form8863; and the Schedule A (Form 1040) page is at IRS.gov/schedulea. If typing in the links above instead of clicking on them: type the link into the address bar of your browser, not in a Search box; the text after the slash must be lowercase; and your browser may require the link to begin with “www.”. Note that these are shortcut links that will automatically go to the actual link for the page.

If you wish, you can submit comments about draft or final forms, instructions, or publications on the Comment on Tax Forms and Publications page on IRS.gov. We cannot respond to all comments due to the high volume we receive, but we will carefully consider each one. Please note that we may not be able to consider many suggestions until the subsequent revision of the product.

2016

Instructions for Form 8845

Indian Employment Credit

Department of the Treasury
Internal Revenue Service

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

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Future Developments

For the latest information about developments related to Form 8845 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/form8845*.

General Instructions

Purpose of Form

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

Partnerships and S corporations must file this form to claim the credit. All others are generally not required to complete or file this form if their only source for this credit is a partnership, S corporation, estate, trust, or cooperative. Instead, they can report this credit directly on Form 3800, General Business Credit. The following exceptions apply.

- You are an estate or trust and the source credit can be allocated to beneficiaries. For more details, see the instructions for Form 1041, Schedule K-1, box 13, code L.
- You are a cooperative and the source credit can or must be allocated to patrons. For more details, see the instructions for Form 1120-C, Schedule J, line 5c.

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 doesn't include wages attributable to services rendered during the 2-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. 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. Don't include amounts paid or incurred for health insurance under a salary reduction agreement.

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(d)(2)(A) through 152(d)(2)(G) to, or is a dependent described in section 152(d)(2)(H) of, the employer.
- If the employer is a corporation, any individual who bears any of the relationships described in sections 152(d)(2)(A) through 152(d)(2)(G) to, or is a dependent described in section 152(d)(2)(H) 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(d)(2)(H), of that individual), or any individual who is a relative, as described in sections 152(d)(2)(A) through 152(d)(2)(G), 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.
- If the employer is a corporation, 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 October 1, 2010 (75 FR 60810), 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 isn't 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.

Member of Controlled Group or Business Under Common Control

For purposes of figuring the credit, all members of a controlled group of corporations (as defined in section 52(a)) and all members of a group of businesses under common control (as defined in section 52(b)), are treated as a single employer. As a member, figure your credit based on your proportionate share of qualified wages and qualified employee health insurance costs giving rise to the group's Indian employment credit. Enter your share of the credit on line 4. Attach a statement showing how your share of the credit was figured, and write "See Attached" next to the entry space for line 4.

Specific Instructions

Figure the credit for your trade or business on lines 1 through 4. 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.
- 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 year. An employee isn't 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 $45,000.

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 isn't 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 can't 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 5

Enter total Indian employment credits from:

- Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., box 15 (code P);
- Schedule K-1 (Form 1120S), Shareholder's Share of Income, Deductions, Credits, etc., box 13 (code P);
- Schedule K-1 (Form 1041), Beneficiary's Share of Income, Deductions, Credits, etc., box 13 (code L); and
- Form 1099-PATR, Taxable Distributions Received From Cooperatives, box 10, or other notice of credit allocation.

Partnerships and S corporations must always report the above credits on line 5. Also, estates and trusts that can allocate the above credits to beneficiaries and cooperatives that can allocate the above credits to patrons must always report these credits on line 5. All other filers figuring a separate credit on earlier lines must also report the above credits on line 5. All others not using earlier lines to figure a separate credit can report the above credits directly on Form 3800, Part III, line 1g.

Line 7

Cooperatives. A cooperative described in section 1381(a) must allocate to its patrons the credit in excess of its tax liability limit. Therefore, to figure the unused amount of the credit allocated to patrons, the cooperative must first figure its tax liability. While any excess is allocated to patrons, any credit recapture applies as if the cooperative had claimed the entire credit.

If the cooperative is subject to the passive activity rules, include on line 5 any Indian employment credit from passive activities disallowed for prior years and carried forward to this year. Complete Form 8810, Corporate Passive Activity Loss and Credit Limitations, to determine

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the allowed credit that can be allocated to patrons. For details, see the Instructions for Form 8810.

Estates and trusts. Allocate the Indian employment credit on line 6 between the estate or trust and the beneficiaries in the same proportion as income was allocated and enter the beneficiaries' share on line 7.

If the estate or trust is subject to the passive activity rules, include on line 5 any Indian employment credit from passive activities disallowed for prior years and carried forward to this year. Complete Form 8582-CR, Passive Activity Credit Limitations, to determine the allowed credit that must be allocated between the estate or trust and the beneficiaries. For details, see the Instructions for Form 8582-CR.

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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 burden for individual taxpayers filing this form is approved under OMB control number 1545-0074 and is included in the estimates shown in the instructions for their individual income tax return. The estimated burden for all other taxpayers who file this form is shown below.

Recordkeeping	1 hr., 25 min.
Learning about the law or the form	6 min.
Preparing and sending the form to the IRS	7 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.