



## **Caution: *DRAFT—NOT FOR FILING***

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information as a courtesy. **Do not file draft forms.** Also, do **not** rely on draft forms, instructions, and publications for filing. We generally do not release drafts of forms until we believe we have incorporated all changes. However, unexpected issues sometimes arise, or legislation is passed, necessitating a change to a draft form. In addition, forms generally are subject to OMB approval before they can be officially released. Drafts of instructions and publications usually have at least some changes before being officially released.

Early release drafts are at [IRS.gov/DraftForms](https://www.irs.gov/DraftForms), and may remain there even after the final release is posted at [IRS.gov/DownloadForms](https://www.irs.gov/DownloadForms). All information about all forms, instructions, and pubs is at [IRS.gov/Forms](https://www.irs.gov/Forms).

Almost every form and publication also has its own page on IRS.gov. For example, the Form 1040 page is at [IRS.gov/Form1040](https://www.irs.gov/Form1040); the Publication 17 page is at [IRS.gov/Pub17](https://www.irs.gov/Pub17); the Form W-4 page is at [IRS.gov/W4](https://www.irs.gov/W4); and the Schedule A (Form 1040) page is at [IRS.gov/ScheduleA](https://www.irs.gov/ScheduleA). If typing in a link above instead of clicking on it, be sure to type the link into the address bar of your browser, not in a Search box. Note that these are friendly 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 at [IRS.gov/FormsComments](https://www.irs.gov/FormsComments). We cannot respond to all comments due to the high volume we receive. Please note that we may not be able to consider many suggestions until the subsequent revision of the product.



# Instructions for Form 8867

## Paid Preparer's Due Diligence Checklist for the Earned Income Credit, American Opportunity Tax Credit, Child Tax Credit (including the Additional Child Tax Credit and Credit for Other Dependents), and/or Head of Household Filing Status

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 [IRS.gov/Form8867](http://IRS.gov/Form8867).

### What's New

**Form 8867 revised.** Form 8867 has been revised to include the credit for other dependents (ODC) and head of household (HOH) filing status.

**Credit for Other Dependents.** The Tax Cuts and Jobs Act modified the child tax credit (CTC) to provide for a \$500 nonrefundable credit for 2018, for qualifying dependents other than children who can be claimed for the CTC.

**Due diligence requirements for HOH filing status.** The Tax Cuts and Jobs Act expanded the due diligence requirements to cover eligibility to file as HOH.

**Penalty.** The penalty per failure to be diligent has increased to \$520 for returns or claims for refund filed in 2019.

**Social security number (SSN) required.** Children identified by an IRS individual taxpayer identification number (ITIN) or adoption taxpayer identification number (ATIN) no longer qualify for the CTC or refundable additional child tax credit (ACTC). A taxpayer must include an SSN valid for employment for each qualifying child for whom the credit is claimed. However, children without an SSN may still qualify for the new nonrefundable ODC.

### Reminders

**Multiple Forms 8867.** Multiple Forms 8867 may be submitted electronically for one return. See [Multiple Forms 8867 for one return](#), later.

**Childless Earned Income Credit (EIC).** Your client may be able to qualify for the EIC under the rules for taxpayers without a qualifying child if your client has a qualifying child for the EIC who is claimed as a qualifying child by another taxpayer. For more information, see Pub. 596.

**American Opportunity Tax Credit (AOTC).** For more information on eligibility for the AOTC, see Pub. 970.

## General Instructions

Form 8867 covers the EIC, the CTC/ACTC/ODC, the AOTC, and/or HOH filing status. You should check the boxes corresponding to all benefits actually claimed on the 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/ODC, the AOTC, and/or HOH filing status, you must complete Form 8867 and meet the other due diligence requirements described later in [Purpose of Form](#).

**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/ODC, the AOTC, and/or HOH filing status.

### 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, or mailing the return to the IRS for the taxpayer, 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 and/or HOH filing status 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 Regulations 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/ODC, the AOTC, and/or HOH filing status; therefore, there may be multiple Forms 8867 for one return or amended return. If there are multiple Forms 8867 for a paper return, attach all Forms 8867 to the return to be submitted to the IRS. If there are multiple Forms 8867 for an *e-filed* return, *e-file* will accept transmission of up to four Forms 8867. All Forms 8867 must be retained as provided in [Document Retention](#), later.

**Example.** Paid tax return preparer A determined taxpayer T's eligibility for, and the amount of, the EIC claimed on T's return. Paid preparer B determined T's eligibility for, and the 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 A as a nonsigning preparer must be provided to B to be filed along with T's return. The Form 8867 completed by B as the signing preparer should also 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/ODC, the AOTC, and/or HOH filing status. To meet these due diligence requirements, you may need to ask additional questions and obtain additional information to determine your client's eligibility to claim the EIC, the CTC/ACTC/ODC, the AOTC, and/or HOH filing status and to determine the amount(s) of any credit(s) claimed.

Failure to meet the due diligence requirements could result in a \$520 penalty for each failure. See section 6695(g) and Temporary Regulations section 1.6695-2T.

**You will have complied with the due diligence requirements set forth in Treasury Regulations for the EIC, the CTC/ACTC/ODC, the AOTC, and/or HOH filing status claimed on a return or claim for refund if you do all of the following.**

1. Meet the knowledge requirement by interviewing the taxpayer, asking adequate questions, contemporaneously documenting the questions and the taxpayer's responses on the return or in your notes, reviewing adequate information to determine if the taxpayer is eligible to claim the credit(s) and/or HOH filing status, and to determine the amount(s) of the credit(s) claimed.
2. Complete Form 8867 truthfully and accurately and complete the actions described on Form 8867 for any applicable credit(s) claimed and HOH filing status, if claimed.
3. Submit Form 8867 in the manner required.
4. Keep all five of the following records for 3 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 taxpayer documents you may have relied upon to determine eligibility for the credit(s) and/or HOH filing status.
  - d. A record of how, when, and from whom the information used to prepare Form 8867 and the applicable worksheet(s) was obtained.
  - e. A record of any additional questions you asked regarding eligibility for the credit(s), the amount of the credit(s), and/or eligibility for HOH filing status, 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 to claim the credit(s) and/or HOH filing status for which Form 8867 is being completed and to determine the amount(s) of any credit(s) claimed, even if the preparer is not the tax return preparer signing the tax return.

### Part I—Due Diligence Requirements

Complete questions 1–8 for all credits and/or HOH filing status for which you were the paid tax return preparer determining the taxpayer's eligibility for any credits for which you were the paid tax return preparer who determined the amount of the credit claimed.

#### Line 1

You should prepare the 2018 return based on information related to the 2018 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/ODC, 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/ODC in the instructions for Forms 1040 and 1040NR. The ACTC worksheet can also be found in the instructions for Forms 1040-SS and 1040-PR. 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. If the taxpayer claimed HOH filing status and did not claim any of the credits, check the "N/A" box.

#### Lines 3 and 4

As a paid tax return preparer, when determining the taxpayer's eligibility to claim a credit and/or HOH filing status and to determine 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 and/or HOH filing status 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 to claim the credit(s) and/or HOH filing status and to determine the amount(s) of any credit(s) claimed.

**Example 1.** Taxpayer X engages Preparer C to prepare his 2018 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 the ACTC. But 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. Preparer C must exercise due diligence to determine whether a credit can be claimed with respect to the children and whether Taxpayer X meets the earned income requirements to claim a credit. Because Preparer C is preparing Taxpayer X's 1040 for the year, Preparer C would have been required to exercise due diligence with respect to those items when preparing the return, and if he or she made the appropriate inquiries during that process, then no additional questions would be necessary. However, if he or she did not previously ask about the ages of the children and the income requirements, Preparer C is required to make reasonable inquiries. Reasonable inquiries could include the following.

- Are these your foster sons or adopted sons? If so, were the children placed in your home for foster care by an authorized placement agency or court order or were they lawfully placed in your home for adoption?
- How long did the children live with you during 2018?
- If the taxpayer is not the parent, did any other relative also reside with these children for more than half the year in 2018?
- How much did you charge to care for 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?

Preparer C must contemporaneously document these inquiries in his or her files, along with the responses.

**Example 2.** Assume the same facts as in *Example 1*, except that Preparer C also prepared X's 2017 return and at that time he or she was able to verify that the two boys are X's legally adopted children. When preparing X's 2018 return, C is not required to make additional inquiries to determine X's relationship to the two boys for purposes of the requirement that a return preparer must not know, or have reason to know, that a claim for the ACTC is based on false or incorrect information.

## Line 5

Keep copies of any documents provided by the taxpayer on which you relied to prepare the return and determine the taxpayer's eligibility for the benefits and to figure the amount(s) of the credit(s) and list the documents in the space provided. See [Document Retention](#) later, for more information on the due diligence recordkeeping requirements. You must request documents from the taxpayer to substantiate his or her eligibility for a tax credit or HOH filing status only if you did not already do so as part of exercising due diligence when preparing the return for the particular tax year.

The following are examples of documents that you may rely on to determine a taxpayer's eligibility to claim the credit(s), and/or HOH filing status and the amount(s) of any credit(s) claimed. This list is not all-inclusive and none of these documents are specifically required to demonstrate eligibility for the credits and/or HOH filing status.

### 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.

### Disability of Qualifying Child

- Statement of medical doctor.
- Statement of other health care provider.
- Statement of social services agency or program statement.

### Schedule C

- Business license.
- Forms 1099.
- Records of gross receipts provided by taxpayer.
- Taxpayer's summary of income or summary of income provided by taxpayer.
- Records of expenses provided by taxpayer.
- Taxpayer's summary of expenses or summary of expenses provided by taxpayer.
- Bank statements to show income and expenses.

## Line 6

If your client's return is selected for audit, the IRS may ask your client to provide documents to show eligibility for the credit(s) and/or HOH filing status claimed on the return or claim for refund and the computation of the amount(s) of any credit(s) claimed. The credit(s) and/or HOH filing status 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(s) of any credit(s) claimed if you help them understand that the IRS may ask for underlying documentation regarding eligibility to claim the credit(s) and/or HOH filing status and the computation of the amount of any credit(s) claimed.

## Line 7

Unless an exception applies, if the EIC, the CTC/ACTC, and/or the AOTC claimed in a prior year was denied for a reason other than a clerical or math error, a claim for the credit on the taxpayer's 2018 return will be denied unless Form 8862 is attached to the return. If the taxpayer is claiming only the ODC this year, and had the EIC, the CTC/ACTC, and/or the AOTC claim denied in the prior year, Form 8862 must be attached to the return. See the Form 8862 instructions for more information. If the taxpayer claimed HOH filing status and did not claim any of the credits, check the "N/A" box.

## Line 8

The EIC, the CTC/ACTC/ODC, 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/ODC, and/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 unless you prepared the individual's return and/or Schedule C and already exercised due diligence at that time. Additional guidance on Schedule C and the EIC is available as part of the EIC Tax Preparer Toolkit at [EITC.IRS](#).

If a taxpayer is not reporting self-employment income on Schedule C, check "N/A."

## Part II—Due Diligence Questions for Returns Claiming the EIC

### Line 9

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, 9b, and 9c only ask three specific questions related to claiming a qualifying child for the EIC, **all** of the eligibility requirements for claiming the EIC must be met. Therefore, your client may not claim the EIC unless all of the eligibility requirements for the EIC are satisfied, even if you answer "Yes" to questions 9a, 9b, and 9c.

**Line 9a.** If your client is eligible to claim the EIC for taxpayers without a qualifying child, answer question 9a and skip questions 9b and 9c.

**Line 9c—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, under these rules, the taxpayer may not claim a child as a qualifying child for the EIC, the taxpayer may be able to claim the EIC under the rules for a taxpayer without a qualifying child. For more information, see Pub. 596.

- 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 the EIC for the same child. Also, generally, EIC claims must be consistent with claims for other child-related benefits. For examples and details, see Pub. 596.

In many cases, the taxpayer may 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.

## Part III—Due Diligence Questions for Returns Claiming the CTC/ACTC/ODC

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/ODC. Lines 10, 11, and 12 only ask three specific questions about eligibility for the CTC/ACTC/ODC. However, your client must meet **all** of the eligibility requirements for claiming the CTC/ACTC/ODC. Therefore, your client may not claim the CTC/ACTC/ODC unless all of the eligibility requirements for these credits are satisfied, regardless of the answers to the questions on line 12.

## Line 12

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, which released a claim to exemption for the child, he or she is not entitled to claim the child for the CTC/ACTC/ODC.

If the taxpayer is the noncustodial parent and has a Form 8332 (or equivalent document) signed by the custodial parent, you should determine whether there is a more recent form or document revoking the release of the claim to exemption for the child. See the instructions for Form 8332 for more information.

## Part IV—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 and has paid the qualified tuition and related expenses used to figure the AOTC. Although line 13 only asks about substantiation of qualified tuition and related expenses, your client must meet **all** of the eligibility requirements for claiming the AOTC. Therefore, your client may not claim the AOTC unless all of the eligibility requirements for the AOTC are satisfied, even if you answer “Yes” to the question on line 13.

## Line 13

**Qualified tuition and related expenses.** For more information determining whether expenses meet the definition of qualified tuition and related expenses, see Pub. 970.

**Tuition Statement (Form 1098-T).** Consult Pub. 970 and the Instructions for Form 8863 for procedures that need to be followed to claim the AOTC if the student did not receive Form 1098-T. Form 1098-T reports the amount the student paid to the institution for qualified tuition and related expenses during the calendar year, as well as certain refunds, reimbursements, scholarships, and grants processed and administrated by the school.

A taxpayer may claim the AOTC only for qualified tuition and related expenses actually paid during the calendar year. Amounts reported on the Form 1098-T may not accurately reflect amounts actually paid for qualified expenses. Therefore, you must verify the amount of qualified tuition and related expenses actually paid by, or on behalf of, the student to determine the amount of the AOTC for which your client may claim the AOTC. 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.

## Part V—Due Diligence Questions for Claiming HOH

### Line 14

As a paid tax return preparer, you must exercise due diligence to determine whether a taxpayer meets all of the eligibility requirements to qualify for HOH filing status. Although line 14 only asks about substantiation that the taxpayer was unmarried (or considered unmarried) and provided more than half of the cost of keeping up a home for the year for a qualifying person, your client must meet **all** of the eligibility requirements for claiming HOH filing status. Your client may not claim HOH filing status unless all of the eligibility requirements for HOH filing status are satisfied, even if you answer “Yes” to the question on line 14.

For more information on HOH filing status and on determining whether your client provided more than half of the cost of keeping up a home for a qualifying person, see your tax return instructions.

## Part VI—Credit Eligibility Certification

### Line 15

Failure to meet the due diligence requirements for claiming the EIC, the CTC/ACTC/ODC, the AOTC, and/or HOH filing status could result in a \$520 penalty for each failure. For example, if you are paid to prepare a return claiming the EIC, the CTC/ACTC/ODC, the AOTC, and/or HOH filing status, and you fail to meet the due diligence requirements for all of these credits, you could be subject to a penalty of \$2,080.

## Document Retention

To meet the due diligence requirements for the EIC, the CTC/ACTC/ODC, the AOTC, and/or HOH filing status 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 that are claimed that are specified in [Due Diligence Requirements](#), earlier.
3. Copies of any documents provided by the taxpayer on which you relied to determine eligibility to claim the credit(s) and/or HOH filing status, and the amount(s) of any credit(s) claimed.
4. A record of how, when, and from whom the information used to prepare Form 8867 and the applicable worksheet(s) was obtained.
5. A record of any additional questions you may have asked to determine eligibility to claim the credit(s) and/or HOH filing status and the amount(s) of any credit(s) claimed.

You must keep those records for 3 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 Rev. Proc. 97-22 (or later update). Rev. Proc. 97-22 is on page 9 of Internal Revenue Bulletin 1997-13, which is available at [IRS.gov/pub/irs-irb97-13.pdf](https://www.irs.gov/pub/irs-irb97-13.pdf).

**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.

---

# DRAFT AS OF September 26, 2018