

## Indian Employment Credit

► For fiscal years beginning in 1993 and ending in 1994.

► Attach to your return.

1993

Name(s) as shown on return

Identifying number

**Part I Current Year Indian Employment Credit**

- |   |  |   |
|---|--|---|
| 1 Total of qualified wages and qualified employee health insurance costs paid or incurred during the tax year, after December 31, 1993 . . . . .            | 1  |   |
| 2 Calendar year 1993 qualified wages and qualified employee health insurance costs (see instructions). If none, enter -0- . . . . .                         | 2  |   |
| 3 Incremental increase. Subtract line 2 from line 1 . . . . .   | 3  |   |
| 4 Current year credit. Multiply line 3 by 20% (.20) (see instructions) . . . . .  | 4  |   |
| If you are a— Then enter total of current year Indian employment credit(s) from—  |  |   |
| 5 Indian employment credits from flow-through entities      a Shareholder . . . . .<br>b Partner . . . . .<br>c Beneficiary . . . . .<br>d Patron . . . . . | Schedule K-1 (Form 1120S, lines 12d, 12e, or 13 . . . . .)<br>Schedule K-1 (Form 1065, lines 13d, 13e, or 14 . . . . .}<br>Schedule K-1 (Form 1041), line 13 . . . . .<br>Written statement from cooperative . . . . . | 5 |
| 6 <b>Total current year credit.</b> Add lines 4 and 5. (S corporations, partnerships, estates, trusts, and cooperatives, see instructions) . . . . .        | 6  |   |

**Part II Tax Liability Limitation** (See Who Must File Form 3800 to see if you complete Part II or file Form 3800.)

- |   |  |
|---|--|
| 7a Individuals. Enter amount from Form 1040, line 40 . . . . .  | 7  |
| b Corporations. Enter amount from Form 1120, Schedule J, line 3 (or Form 1120-A, Part I, line 1) . . . . .  | 8a<br>8b<br>8c<br>8d<br>8e<br>8f<br>8g<br>8h |
| c Other filers. Enter regular tax before credits from your return . . . . .   |  |
| 8 Credits that reduce regular tax before the Indian employment credit:  |  |
| a Credit for child and dependent care expenses (Form 2441, line 10) . . . . .   |  |
| b Credit for the elderly or the disabled (Schedule R (Form 1040), line 21) . . . . .  |  |
| c Mortgage interest credit (Form 8396, line 11) . . . . .   |  |
| d Foreign tax credit (Form 1116, line 32, or Form 1118, Sch. B, line 12) . . . . .  |  |
| e Possessions tax credit (Form 5735, line 14) . . . . .   |  |
| f Orphan drug credit (Form 6765, line 10) . . . . .   |  |
| g Credit for fuel from a nonconventional source . . . . .   |  |
| h Qualified electric vehicle credit (Form 8834, line 17) . . . . .  |  |
| i Add lines 8a through 8h . . . . .   | 8i   |
| 9 Net regular tax. Subtract line 8i from line 7 . . . . .   | 9  |
| 10 Tentative minimum tax (see instructions):  |  |
| a Individuals. Enter amount from Form 6251, line 26 . . . . .   |  |
| b Corporations. Enter amount from Form 4626, line 14 . . . . .  |  |
| c Estates and trusts. Enter amount from Form 1041, Schedule H, line 37 . . . . .  |  |
| 11 Net income tax:  |  |
| a Individuals. Add line 9 above and line 28 of Form 6251 . . . . .  |  |
| b Corporations. Add line 9 above and line 16 of Form 4626 . . . . .   |  |
| c Estates and trusts. Add line 9 above and line 39 of Form 1041, Schedule H . . . . .   |  |
| 12 If line 9 is more than \$25,000, enter 25% (.25) of the excess (see instructions) . . . . .  |  |
| 13 Subtract line 10 or line 12, whichever is greater, from line 11. If less than zero, enter -0- . . . . .  |  |
| 14 <b>Indian employment credit allowed for the current year.</b> Enter the <b>smaller</b> of line 6 or line 13. This is your <b>General Business Credit</b> for 1993. Enter here and on Form 1040, line 44; Form 1120, Schedule J, line 4e; Form 1120-A, Part I, line 2a; Form 1041, Schedule G, line 2c; or the appropriate line of other income tax returns . . . . . | 14   |

**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.

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

**Recordkeeping** . . . . . 5 hr., 59 min.  
**Learning about the law or the form** . . . . . 42 min.  
**Preparing and sending the form to the IRS** . . . . . 50 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the IRS and the Office of Management and Budget at the addresses listed in the instructions for the tax return with which this form is filed.

**General Instructions**

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

**Purpose of Form**

Section 13322 of the Revenue Reconciliation Act of 1993 amended section 38 and added new section 45A to provide for the Indian

employment credit. The credit is allowed to employers of American Indians who are qualified employees (see **Definitions**). Use Form 8845 to figure the credit.

Generally, the credit is 20% of the excess of an employer's current year qualified wages and qualified employee health insurance costs (up to \$20,000 per employee) over the sum of the comparable costs paid or incurred during calendar year 1993 by the employer (or predecessor).

**Who Must File Form 3800**

If for this year you have more than one of the credits included in the general business credit

listed below, or have a carryback or carryforward of any of the credits, or have an Indian employment credit from a passive activity, you must complete **Form 3800**, General Business Credit, instead of completing Part II of Form 8845 to figure the tax liability limitation.

The general business credit consists of the following credits:

- Investment (Form 3468),
- Jobs (Form 5884),
- Alcohol used as fuel (Form 6478),
- Research (Form 6765),
- Low-income housing (Form 8586),
- Enhanced oil recovery (Form 8830),
- Disabled access (Form 8826), and
- Renewable electricity production (Form 8835).

The Revenue Reconciliation Act of 1993 added the following four new credits:

- Empowerment zone employment (Form 8844),
- Indian employment (Form 8845),
- Employer social security and Medicare taxes paid on certain employee tips (Form 8846), and
- Contributions to certain community development corporations (Form 8847).

Generally, the new credits are allowed for expenditures incurred after 1993. Form 8844 first applies for the 1994 tax year. See the above listed new forms or Form 3800 for details.

## 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 jobs credit on Form 5884. Wages has the same meaning as given in section 51.

**Qualified employee health insurance costs** means any amount paid or incurred by an employer for health insurance to the extent such amount is attributable to coverage provided to any employee while such employee is a qualified employee. No amount paid or incurred for health insurance under a salary reduction arrangement may be included.

**Qualified employee** means, for any tax period, any employee of an employer if the employee meets all of the following tests:

1. The employee is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe. The tribe keeps the enrollment list.

2. Substantially all of the services performed during that period by the employee for the employer are performed within an Indian reservation.

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

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

The following are **not** qualified employees:

- Any relative of the employer described in sections 152(a)(1) through 152(a)(8) or a dependent of the employer described in section 152(a)(9).
- 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.

- If the employer is a corporation, any individual who owns (or is considered to own under section 267(c)) more than 50% in value of the outstanding stock of the corporation (or a dependent, as described in section 152(a)(9), of that individual).
- If the employer is other than a corporation, 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 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.
- 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.

**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 21, 1993 (58 FR 54364), 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:

1. No wages or qualified employee health insurance costs may be taken into account for the tax year the employment is terminated, and
2. Any credits allowed for prior tax years by reason of wages paid or incurred by the employer to that employee must be recaptured. Also, any carryback or carryover of the credit is adjusted.

These rules do not apply if:

- The employee voluntarily quits.
- The employee is terminated because of misconduct.
- The employee becomes disabled. However, if the disability ends before the end of the first year of employment, the employer must offer reemployment to the former employee.

An employee is not treated as terminated if the corporate employer is acquired by another corporation 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

Complete lines 1 through 4 to figure the current year credit for your trade or business. Skip lines 1 through 4 if you are claiming only a credit that

was allocated to you from a flow-through entity. The following rules apply to lines 1 and 2:

- An employee is not a qualified employee if the total amount of wages paid or incurred by the employer to the employee (whether or not for services within an Indian reservation) exceeds the amount determined at an annual rate of \$30,000. This wage limit will be adjusted for inflation for tax years beginning after 1994.
- The aggregate 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.

**Line 1.**—Enter the total qualified wages and qualified employee health insurance costs paid or incurred for qualified employees during the tax year, after December 31, 1993.

**Line 2.**—If the fiscal year was a full 12 months, 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 a short tax year, multiply the amount determined above by a fraction, the numerator of which is the number of days in the short tax year and the denominator of which is 365. Enter the result on line 2.

**Line 4.**—In general, you must reduce the deductions on your return for salaries and wages and health insurance costs by the line 4 credit amount. This reduction must be made even if you cannot take the full credit this year because of the tax liability limitation. If you capitalized any costs on which you figured the credit, reduce the depreciable basis by the amount of 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. Attach Form 8845 to the return and show the credit for each shareholder or partner on Schedule K-1.

**Estates and trusts.**—The line 6 credit is allocated 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 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.

**Line 10.**—Enter the tentative minimum tax (TMT) that was figured on the appropriate alternative minimum tax (AMT) form or schedule. Although you may not owe AMT, you must still compute the TMT to figure your credit.

**Line 12.**—See section 38(c)(3) for special rules for married couples filing separate returns, controlled corporate groups, and estates and trusts.

**Line 14.**—If you cannot use part of the credit because of the tax liability limitation (line 13 is smaller than line 6), carry it back 1 year (but only if that year ended after August 9, 1993) and then forward for 15 years. No carryback is allowed to any year ending before August 10, 1993. See the Instructions for Form 3800 for details.

