

Department of the Treasury Internal Revenue Service

Attach to your return.

Name(s) as shown on return

Identifying number

Part I Current Year Indian Employment Credit

Table with 6 main rows for Part I. Row 1: Total of qualified wages... Row 2: Calendar year 1993 qualified wages... Row 3: Incremental increase... Row 4: Current year credit... Row 5: Indian employment credits from... Row 6: Total current year credit.

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

Table with 14 main rows for Part II. Row 7a: Individuals... Row 7b: Corporations... Row 7c: Other filers... Row 8: Credits that reduce regular tax... Row 9: Net regular tax... Row 10: Tentative minimum tax... Row 11: Net income tax... Row 12: If line 9 is more than \$25,000... Row 13: Subtract line 10 or line 12... Row 14: Indian employment credit allowed for the current year.

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 1 hr., 5 min.
Preparing and sending the form to the IRS 1 hr., 14 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. 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

The Indian employment credit, under section 45A, 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 corresponding amounts paid or incurred during calendar year 1993 by the employer (or predecessor).

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 targeted 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 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 the services performed during that period by the employee for the employer are performed within an Indian reservation (defined in next column).
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 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 individual who bears any of the relationships described in sections 152(a)(1) through (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 section 152(a)(1) through (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 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. Report the amount on the "Recapture taxes" line of the income tax return and write "45A" to the left of the entry. 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 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

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.

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 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. But any credit recapture under item 2 of **Early Termination of Employee** applies as if the cooperative had kept the entire credit and had not shared it among its patrons.

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, jobs, alcohol used as fuel, research, low-income housing, enhanced oil recovery, disabled access, renewable electricity production, Indian employment, employer social security and Medicare taxes paid on certain employee tips, and contributions to selected community development corporations.

The empowerment zone employment credit, while a component of the general business credit, is figured separately on Form 8844 and is never carried to Form 3800.

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 to any tax year that 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.

