



IRS Nationwide **Tax Forum** | 2023

Answers to Your Frequently Asked Questions About Due Diligence

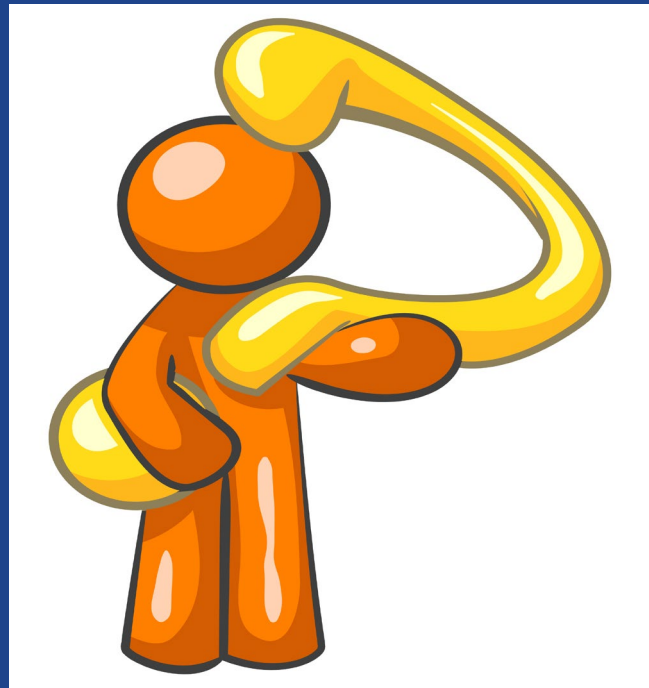
Rev. Date – 07/12/2023

Today our seminar will:

- Discuss the specific paid preparer due diligence requirements for 2023 returns claiming the:
 - Earned Income Tax Credit (EITC)
 - Child Tax Credit (CTC)/Additional Child Tax Credit (ACTC) /Credit for Other Dependents (ODC)
 - American Opportunity Tax Credit (AOTC)
 - Head of Household (HOH) filing status
- Review due diligence documentation requirements.
- Describe IRS's due diligence educational contact methods and the due diligence audit process.
- Address paid preparers' most frequently asked questions about due diligence requirements.
- Share IRS's online educational resources for paid preparers.

Question of the Day

What does Due Diligence mean to you?



Preparer Due Diligence

As a paid tax return preparer, you must:

Ask all
the right
questions.

Compute
the credits
based on
the facts.

Complete
and
submit
Form
8867.

Keep
records.

Preparer Due Diligence

Ask all the right
questions.

Due Diligence Documentation



Document all questions asked that are needed to verify a claim for:

- Child Tax Credit/Additional Child Tax Credit/Credit for Other Dependent.
- Earned Income Tax Credit.
- American Opportunity Tax Credit.
- Head Of Household.

Be sure to keep a paper or electronic copy of all questions and answers.

Documentation

Poll Question #1

Is a paid tax preparer required to request documentation if the client is a grandparent claiming Earned Income Tax Credit for their grandchild?

- A. Yes, documentation is always required.
- B. No, but the preparer must make additional inquiries if responses to probing questions do not appear to be correct, consistent and complete.
- C. No, grandparents are never required to provide supporting documents.

Documentation

Poll Question #1 (Answer)

Is a paid tax preparer required to request documentation if the client is a grandparent claiming Earned Income Tax Credit for their grandchild?

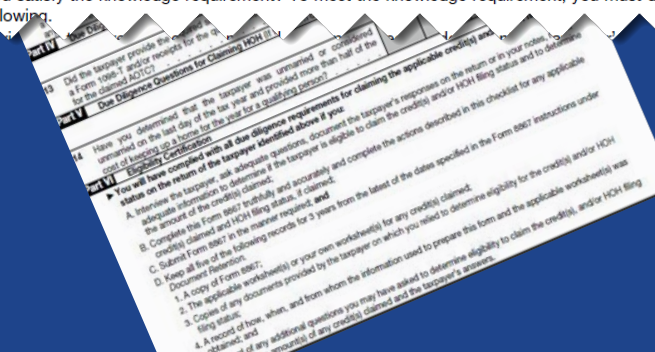
- A. Yes, documentation is always required.
- B. No, but the preparer must make additional inquiries if responses to probing questions do not appear to be correct, consistent and complete.**
- C. No, grandparents are never required to provide supporting documents.

Complete and Submit Form 8867

Form <b style="font-size: 24pt;">8867 (Rev. November 2022) Department of the Treasury Internal Revenue Service	<b style="font-size: 18pt;">Paid Preparer's Due Diligence Checklist <i>Earned Income Credit (EIC), American Opportunity Tax Credit (AOTC), Child Tax Credit (CTC) (including the Additional Child Tax Credit (ACTC) and Credit for Other Dependents (ODC)), and Head of Household (HOH) Filing Status</i> To be completed by preparer and filed with Form 1040, 1040-SR, 1040-NR, 1040-PR, or 1040-SSE. Go to www.irs.gov/Form8867 for instructions and the latest information.	OMB No. 1545-0074 For tax year 20 Attachment Sequence No. 70
Taxpayer name(s) shown on return		Taxpayer identification number
Preparer's name		Preparer tax identification number

Part I Due Diligence Requirements
 Please check the appropriate box for the credit(s) and/or HOH filing status claimed on the return and complete the related Parts I-V for the benefit(s) claimed (check all that apply).

	Yes	No	N/A
1 Did you complete the return based on information for the applicable tax year provided by the taxpayer or reasonably obtained by you? (See instructions if relying on prior year earned income.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 If credits are claimed on the return, did you complete the applicable EIC and/or CTC/ACTC/ODC worksheets found in the Form 1040, 1040-SR, 1040-NR, 1040-PR, 1040-SS, or Schedule 8812 (Form 1040) instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same information, and all related forms and schedules for each credit claimed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 Did you satisfy the knowledge requirement? To meet the knowledge requirement, you must do both of the following:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>





TaxForum

IRS Nationwide

2023

Preparer Due Diligence

Keep records

Form 8867

Poll Question #2

To satisfy due diligence when clients claim certain tax benefits, a paid tax preparer should keep all questions and answers (Q&A) in their files to substantiate the claim and complete Form 8867.

True or False?

Form 8867

Poll Question #2 (Answer)


To satisfy due diligence when clients claim certain tax benefits, a paid tax preparer should keep all questions and answers (Q&A) in their files to substantiate the claim and complete Form 8867.

True, any questions asked and answers that were relied on to determine tax benefit eligibility must be kept in the preparer's files, either electronically or on paper.

What Should You Do if You Receive a Letter?

- Do not ignore.
- Take action.
- Review due diligence requirements.
- Review your office procedures.

Letter 5025-F – You Prepared Inaccurate Tax Returns - You Risk Penalties from an Audit

 <p>Department of the Treasury Internal Revenue Service Wage and Investment 4800 Buford Highway MS 50 Chamblee, GA 30341</p>	<p>Date: 04/05/2023 Preparer ID number: Contact telephone number: 866-860-4259 Contact e-mail address: wi.rcpreparerresponse@irs.gov</p>
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<p>[Recipient name] [Address line 1] [Address line 2] [Address line 3]</p>	<p>Alert: Our review shows you prepared inaccurate tax returns in [YYYY]. You risk preparer penalties from an audit, and we may inform your clients about mistakes you made on their returns.</p>
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Dear [Name]:

Why we're sending you this letter

Our review of the tax returns you prepared in [YYYY] shows client returns inaccurately claiming benefits and that you possibly failed your due diligence requirements. Failure to perform such due diligence can result in penalties under Internal Revenue Code Section 6695(g), Failure to be Diligent in Determining Eligibility for Certain Tax Benefits, and 1.6695-2(a) of the Income Tax Regulations. We may also inform your clients that you prepared their returns inaccurately.

In addition, you and your clients may face one or all the following consequences:

You may face:

- A preparer audit and a penalty of \$560 per failure for each tax benefit per return or claim for which you are ineligible in [YYYY]; in [YYYY], average total penalty was around \$ 60,000.
- The suspension or termination of your e-filing privileges.
- A referral to the IRS Criminal Investigation Division.

Your client may face:

- An audit, which will hold their refund until we can determine eligibility.
- An obligation to repay any refund, plus interest, if ineligible for the tax benefit claimed on the return.
- A ban from claiming the tax benefit for 2 years (if the claim was due to reckless or intentional disregard of rules and regulations) or 10 years (if the claim was due to fraud).

We can't tell you which returns were questionable or provide specific information from those returns; however, we found the following primary issues:

Remember: It's your job to make sure your client is eligible for any tax benefits claimed.

- Conduct an in-depth interview with every client each year.


Letter 5025-F (Rev. 11-2022)
 Catalog Number 74818A

Where you can find more information

- Review Publication 4687, Paid Preparer Due Diligence.
- Use the preparer toolkit on our website at [IRS.gov/toolkit](https://www.irs.gov/toolkit), which includes a free Due Diligence Training and other resources.
- QR Code:



Letter 5364 - Missing Forms 8867



Department of the Treasury
 Internal Revenue Service
 Wage & Investment
 4800 Buford Highway Mail Stop #50
 Chamblee, GA 30341

Date: 02/08/2023

Preparer ID Number:

Contact telephone number: 866-860-4259

Contact e-mail: wlrcpreparerresponse@irs.gov

[Recipient name]
 [Address line 1]
 [Address line 2]
 [Address line 3]

Missing Forms 8867 Alert

Dear [Name]:

Why we're sending you this letter

We're writing to make you aware of due diligence requirements for paid preparers because we received returns you prepared in 2022 claiming at least one of the benefits listed below without a Form 8867, Preparer's Due Diligence Checklist:

- Head of Household (HoH) filing status
- Earned Income Tax Credit (EITC)
- American Opportunity Tax Credit (AOTC)
- Child Tax Credit (CTC) / Additional Child Tax Credit (ACTC) / Credit for Other Dependents (OCDEIP)

We've enclosed a list of these returns with this letter for you to review.


Paid preparers must comply with all due diligence requirements. Under IRC Section 6695(g), you may be liable for a penalty of \$560 per failure, with a maximum penalty of \$2,240 per return.

What you need to do

This letter is for your information only. You don't need to respond. Do not send us a copy of any missing Forms 8867 or amend any returns to include the missing Forms 8867. We'll continue to monitor future returns you prepare that claim these benefits to ensure you're meeting your due diligence requirements.

Where you can find more information

- Publication 4687, Paid Preparer Due Diligence, available on our website at www.irs.gov/forms.
- The preparer toolkit on our website at www.irs.gov/toolkit.



Letter 5364 (Rev. 11-2022)
 Catalog Number 66109G

What you need to do

This letter is for your information only. You don't need to respond. Do not send us a copy of any missing Forms 8867 or amend any returns to include the missing Forms 8867. We'll continue to monitor future returns you prepare that claim these benefits to ensure you're meeting your due diligence requirements.

Where you can find more information

- Publication 4687, Paid Preparer Due Diligence, available on our website at www.irs.gov/forms.
- The preparer toolkit on our website at www.irs.gov/toolkit.



Letter 5364 (Rev. 11-2022)
 Catalog Number 66109G

Letter 5364 (Rev. 11-2022)
 Catalog Number 66109G

Letter 4858 - You may not have met your due diligence requirements

 <p>Department of the Treasury Internal Revenue Service Wage & Investment [Street address] [City, State ZIP]</p>	<p>Date: 02/08/2023 Preparer ID number: Contact telephone number: 866-860-4259 Contact e-mail address: wi.rcpreparerresponse@irs.gov</p>
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<p>[Recipient name] [Address line 1] [Address line 2] [Address line 3]</p>

You may not have met your due diligence requirements

Dear [Name]:

Why we're sending you this letter
 You are preparing tax returns during the 2022 filing season claiming at least one of the benefits listed below. Paid preparers must comply with all due diligence requirements for the following credits and filing status. You are preparing tax returns during the 2022 filing season claiming at least one of the benefits listed below. We're reaching out again because our review suggests you haven't met due diligence requirements. Paid preparers must comply with all due diligence requirements for the following credits and filing status.

- Earned Income Tax Credit (EITC)
- American Opportunity Tax Credit (AOTC)
- Child Tax Credit (CTC) / Additional Child Tax Credit (ACTC) / Credit for Other Dependents (ODC)
- Head of Household (HoH) filing status

If you don't prepare accurate returns and comply with due diligence requirements under Internal Revenue Code Section 6695(g) and Section 1.6695-2(b) of the Income Tax Regulations, you may face:

- A preparer audit and a penalty of \$560 per failure for each tax benefit per return filed in 2022; on average a preparer was penalized \$60,000 dollars during an audit.
- The suspension or termination of your e-filing privileges.
- A referral to the IRS Criminal Investigation Division.

Your client may face:

- An audit, which will hold their refund until we can determine eligibility.
- An obligation to repay any refund, plus interest, if ineligible for the tax benefit claimed on the return.
- A ban from claiming the tax benefit for 2 years (if the claim was due to reckless or intentional disregard of rules and regulations) or 10 years (if the claim was due to fraud).

Remember: It's your job to make sure your client is eligible for any tax benefits claimed.

What you need to do

You don't need to respond to this letter.

1. Complete and send Form 8867, Paid Preparer's Due Diligence Checklist, with every future return or claim for refund you prepare which claims any of the benefits listed above.

Letter 4858 (Rev. 9-2022)
 Catalog Number 58736R

2. Complete all worksheets, or equivalents, showing how you computed the credits claimed on a return or amended return.
3. **Conduct an in-depth interview with every client each year.** Question any client if any information seems incorrect, inconsistent, or incomplete. Apply a commonsense standard to the information your client provides. Ask additional probing and relevant questions if any information appears to be incorrect, inconsistent, or incomplete. Document your questions and the client's responses.
4. Keep all required records for the applicable retention period, including copies of any documents you relied on to determine eligibility for the benefits listed above and to compute the amount of the credits.

Common EITC errors include:

- Claiming an incorrect amount of earned income. Mistakes include under reporting wages and misreporting income and expenses from Schedule C, Profit or Loss from Business.
- Claiming qualifying children for EITC who don't appear to meet the relationship, residency, age, or joint return tests.
- Claiming EITC under HoH filing status without appearing to meet the marriage, qualifying person, or cost of keeping up a home test.

What happens next

We'll continue to review returns you prepare claiming these benefits to ensure you're meeting your due diligence requirements and initiate the compliance activities referenced above if necessary.

Where you can find more information

- Review Publication 4687, Paid Preparer Due Diligence.
- Use the tax return preparer toolkit on our website at www.irs.gov/toolkit, which includes a free due diligence training module and other resources.



- Find tax forms or publications by visiting www.irs.gov/forms or calling 800-TAX-FORM (800-829-3676).

Phone Calls

Is it really the IRS?

IRS representative will:

- Provide an IRS employee ID number.
- Not demand any payments.
- Ask security questions to confirm appropriate preparer on the line.

Educational Office Visit



Video – Part I

Preparer Notification



The Exam



Due Diligence Penalties and Next Steps

Form 5816 (January 2023)		Department of the Treasury - Internal Revenue Service	
Report of Tax Return Preparer Penalty Case			
Preparer's name		Preparer's SSN or EIN	
Street address	City	State	ZIP code
Select one box. Preparer is <input type="checkbox"/> Employer preparer <input type="checkbox"/> Self-employed preparer <input type="checkbox"/> Employee preparer			
Examining Area/Function	Agreement <input type="checkbox"/> Full <input type="checkbox"/> None	In reply refer to	
Name and title of person with whom penalty was discussed (if applicable)		Date of report	
The following information identifies the tax return or claim for which penalty is being charged			
<input type="checkbox"/> Check if multiple violations exist. See attached listing			
Taxpayer's name		Taxpayer's SSN or EIN	
Street address	City	State	ZIP code
Tax period	Master file tax or		
Kind of Preparer Penalty Charged			
A. Understatement due to unreasonable positions. (IRC Sec. 6694(a))			
B. Understatement due to willful or reckless conduct. (IRC Sec. 6694(b))			
C. Failure to furnish a copy to taxpayer. (IRC Sec. 6695(a))			
D. Failure to sign return. (IRC Sec. 6695(b))			
E. Failure to furnish identifying number. (IRC Sec. 6695(c))			
F. Failure to retain copy or list. (IRC Sec. 6695(d))			
G. Failure to file correct information returns. (IRC Sec. 6695(e))			
H. Negotiating of check. (IRC Sec. 6695(f))			
I. Failure to be diligent in determining eligibility for certain tax benefits. (IRC Sec. 6695(g))			
J. Disclosure or use of information by preparers of returns. (IRC Sec. 6713)			
Total penalties			
Examiner's signature		Date	
Other information			
<p>I have read the information on the back of this form that explains these penalties as they relate to tax return preparers.</p> <p>Consent to Assessment and Collection - I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States District Court the findings in this report, therefore, I give my consent to the immediate assessment and collection of the tax return preparer penalty.</p>			
Preparer's signature		Date	

I have read the information on the back of this form that explains these penalties as they relate to tax return preparers.

Consent to Assessment and Collection - I do not wish to exercise my appeal rights with the Internal Revenue Service or to contest in the United States District Court the findings in this report, therefore, I give my consent to the immediate assessment and collection of the tax return preparer penalty.

Preparer's signature

Date

Catalog Number 24295B

www.irs.gov

Form **5816** (Rev. 1-2023)

Part 1

Penalty

Poll Question #3

The penalty amount under Internal Revenue Code section 6695(g) for one return or claim for refund filed in 2024 can be up to:

- A. \$600
- B. \$2,400

Penalty

Poll Question #3 (Answer)

The penalty amount under Internal Revenue Code section 6695(g) for one return or claim for refund filed in 2024 can be up to:

A. \$600

B. \$2,400

Video 2

Tax Preparers' Most Frequently Asked Questions Received By The IRS

What documents should paid preparers ask for when interviewing a client for a tax return claiming certain tax benefits and Head of Household filing status?

Answer

Due diligence does not necessarily require you to request documentation. However, you must make reasonable inquiries if the client gives you information that appears incorrect, incomplete, or inconsistent. In some cases, a reasonable inquiry may entail asking for documentation.

Tax Preparers' Most Frequently Asked Questions Received By The IRS- cont.

I've known my client for years, so do I still need perform Due Diligence?

Answer

Yes. You must make reasonable inquiries to determine the client's eligibility for the tax benefit and must document the client's responses. Even if you believe that you already know the answers to your inquiries, you must ensure that your information is current, as some facts such as the residency of qualifying persons may have changed.

Form 8867

Poll Question #4

When would you file Form 8867, *Paid Preparer's Due Diligence Checklist*?

- A. For a return claiming EITC, CTC, ODC, AOTC, or HOH filing status.
- B. When completing an electronic return, per Internal Revenue Code 7896.
- C. For a return that claims the Child and Dependent Care Expense.

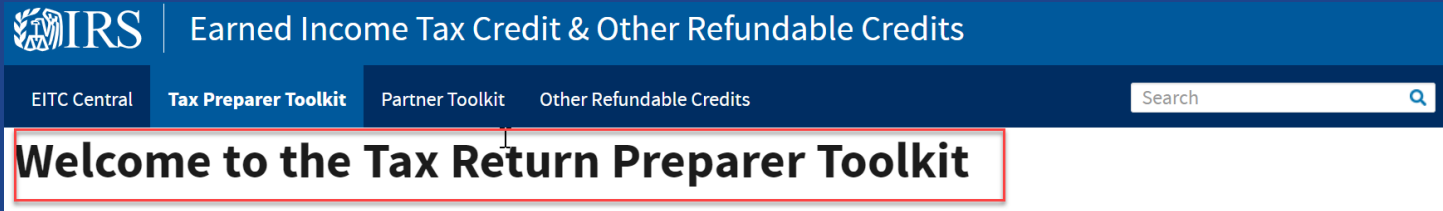
Form 8867

Poll Question #4 (Answer)

When would you file Form 8867, *Paid Preparer's Due Diligence Checklist*?

- A. For a return claiming EITC, CTC, ODC, AOTC, or HOH filing status.
- B. When completing an electronic return, per Internal Revenue Code 7896.
- C. For a return that claims the Child and Dependent Care Expense.

Online Educational Resources



IRS | Earned Income Tax Credit & Other Refundable Credits

EITC Central | **Tax Preparer Toolkit** | Partner Toolkit | Other Refundable Credits

Search

Welcome to the Tax Return Preparer Toolkit

About Refundable Credits for Preparers

Hot Topics for Return Preparers

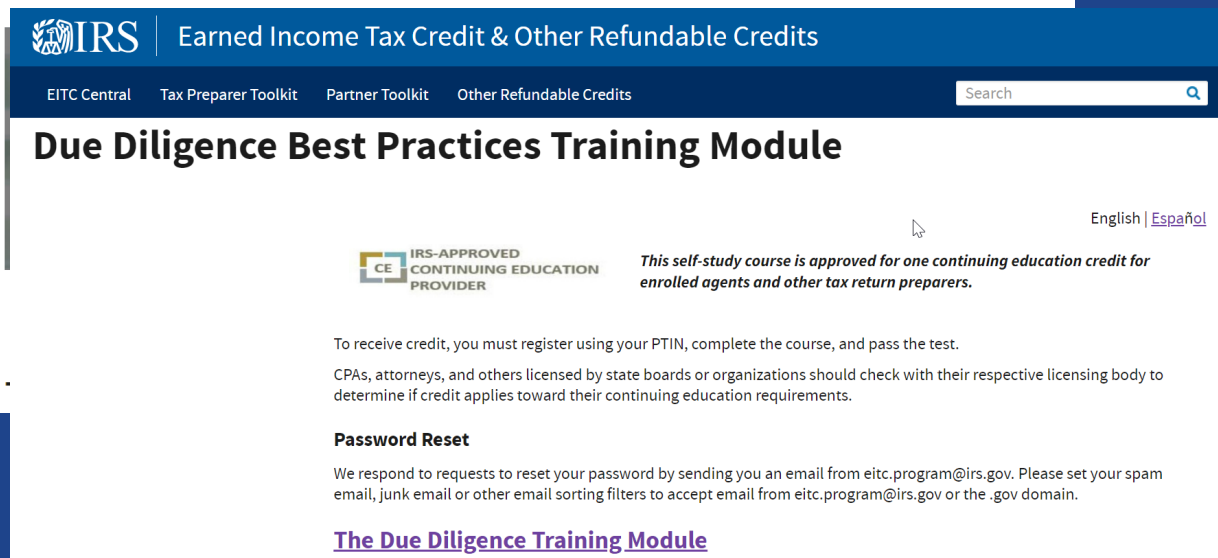
Preparer Due Diligence

Due Diligence Training Module

Nationwide Tax Forum Videos

Due Diligence Videos

Preparer Compliance - Focused and Tiered



IRS | Earned Income Tax Credit & Other Refundable Credits

EITC Central | Tax Preparer Toolkit | Partner Toolkit | Other Refundable Credits

Search

Due Diligence Best Practices Training Module

English | [Español](#)

CE IRS-APPROVED CONTINUING EDUCATION PROVIDER

This self-study course is approved for one continuing education credit for enrolled agents and other tax return preparers.

To receive credit, you must register using your PTIN, complete the course, and pass the test.

CPAs, attorneys, and others licensed by state boards or organizations should check with their respective licensing body to determine if credit applies toward their continuing education requirements.

Password Reset

We respond to requests to reset your password by sending you an email from eitc.program@irs.gov. Please set your spam email, junk email or other email sorting filters to accept email from eitc.program@irs.gov or the .gov domain.

[The Due Diligence Training Module](#)

Tax Preparer Toolkit: <https://www.irs.gov/toolkit>

Thank you for attending.