

Form 8932, Credit for Employer Differential Wage Payments (December 2008)

Purpose: This is the second circulated draft of the new Form 8932 for your review and comments. See below for a discussion of the major changes since the October 8, 2008, first circulated draft.

TPCC Meeting: None, but one may be arranged if requested.

Other Products: Circulations of draft tax forms, instructions, notices, and publications are posted at:

<http://taxforms.web.irs.gov/Circulations/index.htm>

Comments: Please email, fax, call, or mail any comments by **December 19, 2008**. The shortened Comments period is to allow timely release and printing of the form.

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Major Changes to Form 8932

Form

- The Form 8932 has been assigned OMB No. 1545-2126.

Instructions

Page 1 –

First Column

- Under *Purpose of Form*:
 - Within the third sentence under *Purpose of Form* the phrase “... qualified employees after June 17, 2008, and before ...” now reads “... qualified employees after December 31, 2008, and before.”

This change is based on legal advice obtained from Chief Counsel of the effect of Public Law (P.L.) 110-245 section 111 adding section 45P. The section 45P credit is computed for differential wage payments as defined in section 3401(h)(2). Because section 3401(h) is effective for remuneration paid after December 31, 2008 (P.L. 110-245 section 105), no section 45P credit is allowed for payments made prior to January 1, 2009.
 - Added a new third paragraph, which notes taxpayers (other than partnerships, S corporations, estates, and trusts) whose only source of this credit is from those pass-through entities do not have to complete this form and can report the credit directly on the Form 3800. This is added to clarify purpose of the form.

- Under *Definitions*:
 - Added directly following *Definitions* a new section titled *Eligible Differential Wage Payment* which provides the definition of an eligible differential wage payment. This section is added at the request of Chief Counsel to clarify the difference between eligible differential wage payment and differential wage payment.
 - In the first paragraph under *Differential Wage Payment* the phrase "... the payment must meet both ..." now reads "... the payment must be paid after December 31, 2008, and meet." This is based on the legal advice from Chief Counsel noted earlier.

Second Column

- Under *Uniformed Services* the phrase "... Army National Guard, Air National Guard, the commissioned corps ..." now reads "... Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps." This is based on the request from Chief Counsel.
- The paragraph under *Coordination With Other Credits* was rewritten to only note any research credit or orphan drug credit otherwise allowable for compensation paid to any employee is reduced by any credit allowed on this form for that employee. This is based on legal advice from Chief Counsel as military differential pay is not considered wages under section 3306 nor section 3121.

Page 2 –

First Column

- Added section titled *Line 3* which was initially omitted.

Second Column

- Under *Paperwork Reduction Act Notice*, the estimated burden hours have been updated.

Credit for Employer Differential Wage Payments

▶ Attach to your tax return.

Attachment
Sequence No. **161**

Name(s) shown on return	Identifying number
1 Eligible differential wage payments paid during the tax year (see instructions)	1
2 Multiply line 1 by 20% (.20) (see instructions for the adjustment you must make)	2
3 Credit for employer differential wage payments from partnerships, S corporations, cooperatives, estates, and trusts (see instructions)	3
4 Add lines 2 and 3. Cooperatives, estates, and trusts, go to line 5; partnerships and S corporations, report this amount on Schedule K; all others, report this amount on Form 3800, line 1w	4
5 Amount allocated to patrons of the cooperative or beneficiaries of the estate or trust (see instructions)	5
6 Cooperative, estates, and trusts. Subtract line 5 from line 4. Report this amount on Form 3800, line 1w	6

General Instructions

Section references are to the Internal Revenue Code.

Purpose of Form

The credit for employer differential wage payments was added as part of the general business credit. Use Form 8932 to claim the credit for payments you made to qualified employees during the tax year. Only differential wage payments made to qualified employees after December 31, 2008, and before January 1, 2010, can be used to figure the credit. The credit is available only to eligible small business employers. The credit is 20% of the first \$20,000 of differential wage payments paid to each qualified employee.

The credit for employer differential wage payments is part of the general business credit reported on Form 3800, General Business Credit.

Taxpayers (other than partnerships, S corporations, estates, and trusts) whose only source of this credit is from those pass-through entities are not required to complete or file this form. Instead, report this credit directly on line 1w of the 2008 Form 3800.

For details, see section 45P.

Definitions

Eligible Differential Wage Payment

An eligible differential wage payment is up to \$20,000 of the differential wage payments paid to the employee for the tax year.

Qualified Employee

A qualified employee is an employee of an eligible small business employer (defined later) for the 91-day period immediately preceding the period for which any differential wage payment (see below) is made.

Differential Wage Payment

To be considered a differential wage payment, the payment must be paid after December 31, 2008, and meet both of the following requirements.

- The payment is made by an eligible small business employer to a qualified employee for any period during which the employee is performing service in the uniformed services of the United States while on active duty for a period of more than 30 days.

- The payment represents all or a portion of the wages the employee would have received from the employer if the employee were performing services for the employer.

Eligible Small Business Employer

An eligible small business employer means any taxpayer that:

- Employed on average fewer than 50 employees on business days during the tax year, and
- Under a **written plan** of the employer, provides eligible differential wage payments to **every** qualified employee of the employer.

Uniformed Services

Uniformed services means the Armed Forces, Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of person designated by the President in time of war or national emergency.

Members of a Controlled Group Treated as a Single Employer

For figuring the credit, all persons treated as a single employer under subsection (b), (c), (m), or (o) of section 414 are treated as a single employer.

Coordination With Other Credits

The amount of any research credit or orphan drug credit otherwise allowable for compensation paid to any employee is reduced by the credit for differential wage payments figured for that employee.

Disallowance for Failure To Comply With Employment or Reemployment Rights of Members of the Reserve Components of the Armed Forces of the United States

No credit will be allowed to a taxpayer for:

- Any tax year beginning after June 17, 2008, in which the taxpayer is under a final order, judgment, or other process issued or required by a district court of the United States under section 4323 of title 38 of the United States Code with respect to a violation of chapter 43 of title 38; and
- The two succeeding tax years.

Carryback and Carryforward of Unused Credit

If there is any unused credit due to the tax liability limit on Form 3800, you cannot carryback any unused credit to any tax year ending before June 18, 2008. You will be able to carry the credit forward 20 years.

Specific Instructions

Line 1

Generally, an eligible small business employer (defined earlier) will be able to take a credit of 20% of the first \$20,000 in differential wage payments made to each qualified employee during the tax year.

Line 2

Generally, you must reduce the deductions on your return for salaries and wages by the credit on line 2, even if you cannot 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 3

Enter the amount of credit that was allocated to you as a partner, shareholder, patron of a cooperative, or beneficiary.

Line 5

Cooperative. 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 has claimed the entire credit.

Estates and trusts. Allocate the credit for employer differential wage payments on line 4 between the estate or trust and the beneficiaries in the same proportion as income allocated and enter the beneficiaries share on line 5.

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., 54 min.
Learning about the law or the form	30 min.
Preparing and sending the form to the IRS.	33 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.