

***Caution: DRAFT FORM***

This is an advance proof copy of an IRS tax form. It is subject to change and OMB approval before it is officially released.

If you have any comments on this draft form, you can submit them to us on our web site. Include the word DRAFT in your response. You may make comments anonymously, or you may include your name and e-mail address or phone number. We will be unable to respond to all comments due to the high volume we receive. However, we will carefully consider each suggestion. So that we can properly consider your comments, please send them to us within 30 days from the date the draft was posted.

Name(s) shown on return

Identifying number

<b>1</b>	Total of qualified wages and qualified employee health insurance costs paid or incurred during the tax year . . . . .	<b>1</b>	
<b>2</b>	Calendar year 1993 qualified wages and qualified employee health insurance costs (see instructions). If none, enter -0- . . . . .	<b>2</b>	
<b>3</b>	Incremental increase. Subtract line 2 from line 1. If zero or less, enter -0- . . . . .	<b>3</b>	
<b>4</b>	Multiply line 3 by 20% (.20). See instructions for the adjustment you must make to salaries and wages . . . . .	<b>4</b>	
<b>5</b>	Indian employment credit from partnerships, S corporations, cooperatives, estates, and trusts . . . . .	<b>5</b>	
<b>6</b>	Add lines 4 and 5. Cooperatives, estates, and trusts, go to line 7. Partnerships and S corporations, stop here and report this amount on Schedule K. All others, stop here and report this amount on Form 3800, line 1g . . . . .	<b>6</b>	
<b>7</b>	Amount allocated to patrons of the cooperative or beneficiaries of the estate or trust (see instructions) . . . . .	<b>7</b>	
<b>8</b>	Cooperatives, estates, and trusts, subtract line 7 from line 6. Report this amount on Form 3800, line 1g . . . . .	<b>8</b>	

**General Instructions**

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

**Purpose of Form**

Employers of American Indians who are qualified employees use Form 8845 to claim the Indian employment credit.

Taxpayers that are not partnerships, S corporations, cooperatives, estates, or trusts, and whose only source of this credit is from those pass-through entities, are not required to complete or file this form. Instead, they can report this credit directly on line 1g of Form 3800.

**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 work opportunity credit on Form 5884. Wages has the same meaning given in section 51.

**Qualified employee health insurance costs** means any amount paid or incurred by an employer for health insurance coverage for an employee while the employee is a qualified employee. Do not include amounts paid or incurred for health insurance under a salary reduction arrangement.

**Qualified employee** means, for any tax period, any employee who meets all three of the following tests.

1. The employee is an enrolled member, or the spouse of an enrolled member, of an Indian tribe. Each tribe determines who qualifies for enrollment and what documentation, if any, is issued as proof of enrollment status. Examples of appropriate documentation will vary from one tribe to another and may include a tribal membership card, Certified Degree of Indian Blood (CDIB) card, or letter from the tribe or tribal enrollment office. Employers should retain a copy of the proof of enrollment status provided by the employee.
2. Substantially all the services performed by the employee for the employer are performed within an Indian reservation (defined on page 2).
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 only if more than 50% of the wages paid or incurred by the employer to the employee during the tax year are for services performed in the employer's trade or business. Each member of a controlled group must meet this requirement independently. Also, see the instructions for lines 1 and 2.

The following are not qualified employees.

- Any individual who bears any of the relationships described in sections 152(d)(2)(A) through 152(d)(2)(G) to, or is a dependent described in section 152(d)(2)(H) of, the employer.
- If the employer is a corporation, any individual who bears any of the relationships described in sections 152(d)(2)(A) through 152(d)(2)(G) to, or is a dependent described in section 152(d)(2)(H) 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(d)(2)(H), of that individual), or any individual who is a relative, as described in sections 152(d)(2)(A) through 152(d)(2)(G), 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.
- If the employer is a corporation, 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 1, 2010 (75 FR 60810), 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, the following rules apply.

- No wages or qualified employee health insurance costs may be taken into account for the tax year the employment is terminated.
- Any credits allowed for prior tax years by reason of wages paid or incurred to that employee must be recaptured. Include the recapture amount on the line for recapture taxes on your income tax return. Also, any carryback or carryover of the credit must be adjusted.

These rules do not apply if:

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

### Member of Controlled Group or Business Under Common Control

For purposes of figuring the credit, all members of a controlled group of corporations (as defined in section 52(a)) and all members of a group of businesses under common control (as defined in section 52(b)), are treated as a single employer. As a member, compute your credit based on your proportionate share of qualified wages and qualified employee health insurance costs giving rise to the group's Indian employment credit. Enter your share of the credit on line 4. Attach a statement showing how your share of the credit was figured, and write "See Attached" next to the entry space for line 4.

### Specific Instructions

Figure the credit for your trade or business on lines 1 through 4. The following rules apply for lines 1 and 2.

- The total amount of qualified wages and qualified employee health insurance costs for each qualified employee for any tax year is limited to \$20,000.
- For a short tax year, multiply the wages limit by the number of days in the short tax year and divide the result by 365.

#### Line 1

Enter the total qualified wages and qualified employee health insurance costs paid or incurred for qualified employees during the tax years. An employee is not a qualified employee if the total amount of wages paid or incurred by the employer to the employee during the tax year (whether or not for services within an Indian reservation) exceeds \$45,000.

#### 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 this purpose, an employee is not a qualified employee if the total amount of wages paid or incurred by the employer to the employee during calendar year 1993 (whether or not for services within an Indian reservation) exceeds \$30,000.

#### Line 4

Generally, you must reduce the deductions on your return for salaries and wages and health insurance costs by the credit on line 4, 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 7

**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 had claimed the entire credit.

**Estates and trusts.** Allocate the Indian employment credit on line 6 between the estate or trust and the beneficiaries in the same proportion as income was allocated and enter the beneficiaries share on line 7.

**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.

<b>Recordkeeping</b> . . . . .	2 hr., 23 min.
<b>Learning about the law or the form</b> . . . . .	1 hr., 23 min.
<b>Preparing and sending the form to the IRS</b> . . . . .	1 hr., 29 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.