# 2013
# Instructions for Form 8867

**Paid Preparer's Earned Income Credit Checklist**

## Future Developments

For the latest information about developments related to Form 8867 and its instructions, such as legislation enacted after they were published, go to *www.irs.gov/form8867*.

## General Instructions

Only paid preparers have to complete this form. The form must be submitted with the tax return of any taxpayer claiming the earned income credit (EIC) if a preparer was paid to complete the return. If you are a signing tax return preparer electronically filing the return, file the form electronically with the return. If you are a signing tax return preparer not electronically filing the return, give the taxpayer the completed form for filing. If you are a nonsigning tax return preparer, give the signing tax return preparer the completed form in electronic or non-electronic format.

## Purpose of Form

Paid preparers of federal income tax returns or claims for refund involving the EIC must meet due diligence requirements in determining the taxpayer's eligibility for, and the amount of, the EIC. Failure to do so could result in a $500 penalty for each failure. See Internal Revenue Code section 6695(g) and Part IV of this form.

## Specific Instructions

### Line 1

Enter the name and preparer tax identification number (PTIN) of the preparer who determined the taxpayer's eligibility for, or the amount of, the EIC, even if that preparer is not the signing preparer.

### Line 2

If the taxpayer was married at the end of the year, he or she usually must file a joint return to take the EIC. However, if the taxpayer and his or her spouse did not live together for the last 6 months of the year, the taxpayer may be eligible to use head of household filing status. See Pub. 501 for details.

### Line 3

For purposes of taking the EIC, a social security number (SSN) issued by the Social Security Administration (SSA) is not valid if "Not Valid for Employment" is printed on the social security card **and** the number was issued solely to allow the recipient of the SSN to apply for or receive a federally funded benefit. If the social security card specifies "Valid for Work Only With DHS Authorization," the taxpayer can take the EIC as long as the DHS (Department of Homeland Security) authorization is still valid. Any other SSN issued by the SSA is valid for EIC purposes. You may find it useful to look at the social security card.

### Line 8

Enter only the child's first name unless more than one child has the same first name. In that case, enter other identifying information to distinguish between the two children.

### Line 9

An **adopted child** is treated as the taxpayer's child by blood. An adopted child is a legally adopted child of the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer.

A **descendant** usually refers to a grandchild or great-grandchild of the taxpayer, or to a child, grandchild, or great-grandchild of the taxpayer's brother, sister, stepbrother, stepsister, half brother, or half sister.

A **foster child** is a child placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction. See Pub. 596 for details.

### Line 10

Check "Yes" if the child was not married at the end of 2013.

In general, check "No" if the child was married at the end of 2013. However, check "Yes" if a married child is not filing a 2013 joint return (or is filing it only to claim a refund of income tax withheld or estimated tax paid), and either:
- You can claim the child as your dependent, or
- The reason you cannot claim the child as your dependent is that you let the child's other parent claim him or her as a dependent under the special rules for children of divorced or separated parents.

For details and examples, see *Joint Return Test* in *Rule 8* in Pub. 596.

### Line 11

Even if the child did not live with the taxpayer for the required time, check "Yes" if the child was born or died during 2013 and the taxpayer's home was the child's home for more than half the time the child was alive in 2013. Also check "Yes" if the child lived with the taxpayer for over half of the year in one or more homeless shelters in the United States.

Temporary absences may count as time lived at home.

Military personnel on extended active duty outside the United States are considered to be living in the United States during that duty period.

A kidnapped child may be treated as living with the taxpayer for over half the year if the child lived with the taxpayer for over half the part of the year before the kidnapping. For details, see Pub. 596.

### Line 12

If you checked "No" on line 9, 10, 11, or 12, but there is more than one child, complete lines 8 through 14 for the other child(ren) (but for no more than three qualifying children). If the taxpayer does not have a qualifying child, go to Part III to see if the taxpayer can take the EIC for taxpayers who do not have a qualifying child.

### Line 13a

Check "No" if the taxpayer is filing a joint return and the only other person who could check "Yes" on lines 9, 10, 11, and 12 for the child is the taxpayer's spouse.

## Line 13c

If you checked "Yes" on line 13a, the child meets the conditions to be a qualifying child of both the taxpayer and at least one other person. However, only one of those persons can treat the child as a qualifying child and take, if otherwise eligible, all of the following tax benefits using that child: the child's dependency exemption, the child tax credit, head of household filing status, the credit for child and dependent care expenses, the exclusion for dependent care benefits, and the EIC. The other person(s) cannot take the EIC for people who do not have a qualifying child. In addition, the other person cannot take any of the six tax benefits just listed unless he or she has a different qualifying child. (There is an exception to this rule if the special rule for divorced or separated parents applies, because the noncustodial parent can claim an exemption and the child tax credit for the child; see *Rule 9* in Pub. 596.)

**Tiebreaker rules.** To determine which person can treat the child as a qualifying child, the following tiebreaker rules apply.
* If only one of the persons is the child's parent, the child is treated as the qualifying child of the parent.
* If the parents file a joint return together and can claim the child as a qualifying child, the child is treated as the qualifying child of the parents.
* If the parents do not file a joint return together but both parents claim the child as a qualifying child, the IRS will treat the child as the qualifying child of the parent with whom the child lived for the longer period of time during the year. If the child lived with each parent for the same amount of time, the IRS will treat the child as the qualifying child of the parent who had the higher adjusted gross income (AGI) for the year.
* If no parent can claim the child as a qualifying child, the child is treated as the qualifying child of the person who had the highest AGI for the year.
* If a parent can claim the child as a qualifying child but no parent does so claim the child, the child is treated as the qualifying child of the person who had the highest AGI for the year, but only if that person's AGI is higher than the highest AGI of any of the child's parents who can claim the child.

Subject to the rules just described, the taxpayer and the other person(s) may be able to choose which of them treats the child as a qualifying child. If the taxpayer allows another person to treat the child as a qualifying child, check "No" on line 13c. For examples and details, see Pub. 596.

In many cases, the taxpayer should be able to tell you whether his or her AGI is higher than the AGI of the child's parents or other person.

## Line 14

See the line 3 instructions for the definition of a valid SSN. If the child does not have a valid SSN because he or she was born and died during the year, check "Yes."

## Line 17

Check "Yes" if the taxpayer (or the taxpayer's spouse if filing a joint return) was born after December 31, 1948, and before January 2, 1989.

If the taxpayer's spouse died in 2013, see Pub. 596 before you answer.

## Line 22

Check "Does not apply" if:
* The taxpayer does not have a qualifying child, or
* The taxpayer's qualifying child is the taxpayer's son or daughter.

## Line 23

Check "Does not apply" if the answer to question 13a is "No."

## Lines 24 and 25

If a reasonable and well-informed tax return preparer knowledgeable in the law would conclude that any information the taxpayer has given you appears to be incorrect, incomplete, or inconsistent with the taxpayer's eligibility to claim the EIC, you must ask the taxpayer reasonable questions to get information that is correct, consistent, and complete. You must document the questions you asked and the answers you received. This is how you meet your knowledge requirement.

**Line 24.** Check "Does not apply" on line 24 if you did not need to ask any additional questions because you were not given any information that appeared to be incorrect, inconsistent, or incomplete.

**Line 25.** There are three separate questions on line 25. They are labeled (a), (b), and (c). If the answer to any of them ((a), (b), or (c)) is "No," check "No."

If the answer to all three is "Does not apply," check "Does not apply."

Otherwise, check "Yes."

## Lines 26 and 27

You must keep copies of any documents provided by the taxpayer that you relied on to determine whether any child is a qualifying child. See *Document Retention*, later, for details.

If you did not rely on any documents, check the appropriate box (m, n, t and/or u on line 26 or k or l on line 27).

Check all the boxes that apply. However, if you check box a, m, or n on line 26, do not check any other box from b to l on line 26. If you check box o, t, or u on line 26, do not check any other box from p to s on line 26. If you check box a, k, or l on line 27, do not check any other box on line 27.

There is no limit to the number of documents you can enter on lines 26l, 26s, or 27j. If you need more space, use a separate sheet of paper.

## Document Retention

You must keep the records described in 4a, 4b, 4c, 4d, and 4e in the due diligence checklist at the bottom of page 3 of Form 8867. You must keep those records for 3 years from the latest of the following dates that apply.
* The due date of the tax return (not including extensions).
* The date the return was filed (if you are a signing tax return preparer electronically filing the return).
* The date the return was presented to the taxpayer for signature (if you are a signing tax return preparer not electronically filing the return).
* The date you submitted to the signing tax return preparer the part of the return for which you were responsible (if you are a nonsigning tax return preparer).

These records may be kept on paper or electronically in the manner described in Revenue Procedure 97-22 (or later update). Revenue Procedure 97-22 is on page 9 of Internal Revenue Bulletin 1997-13, which is available at *www.irs.gov/pub/irs-irbs/irb97-13.pdf*.

**Paperwork Reduction Act Notice.** We ask for you to obtain the information on this form to carry out the Internal Revenue laws of the United States. You are required to obtain this information.

You are not required to obtain 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 Internal Revenue Code section 6103.

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

**Learning about the law or the form** . . . .          18 min.
**Preparing and sending the form** . . . . . .     1 hr., 49 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.