Instructions for Form 8845

(Rev. January 2022)

Indian Employment Credit

Department of the Treasury
Internal Revenue Service

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

Future Developments

For the latest information about developments related to Form 8845 and its instructions, such as legislation enacted after they were published, go to *IRS.gov/Form8845*.

What's New

Credit extension. The Taxpayer Certainty and Disaster Tax Relief Act of 2020 extended the Indian employment credit to cover qualified wages and qualified employee health insurance costs paid or incurred in tax years beginning in 2021.

Coronavirus-related employee retention credit. You may claim an employee retention credit on an employment tax return such as Form 941, Employer's QUARTERLY Federal Tax Return. Wages paid after December 31, 2020, and before July 1, 2021, and used to figure this coronavirus-related employee retention credit can't also be used to figure a credit on Form 8845. See *Qualified Wages*.

Credit for qualified sick and family leave wages. You may claim a credit for qualified sick and family leave wages on an employment tax return such as Form 941. Wages paid after March 31, 2021, and before October 1, 2021, and used to figure that credit, can't also be used to figure a credit on Form 8845. See *Qualified Wages*.

Disaster-related employee retention credit. You may claim a 2020 qualified disaster employee retention credit on Form 5884-A, Employee Retention Credit for Employers Affected by Qualified Disasters. Wages used to figure that disaster-related employee retention credit can't also be used to figure a credit on Form 8845. See *Qualified Wages*.

Employee retention credit. Wages paid after June 30, 2021, and before January 1, 2022, and used to figure the Indian employment credit can't also be used to figure a coronavirus-related employee retention credit.

General Instructions

Purpose of Form

Use Form 8845 to claim the Indian employment credit if you paid or incurred qualified wages and/or qualified employee health insurance costs to/for a qualified employee during your tax year.

Partnerships, S corporations, cooperatives, estates, and trusts must file this form to claim the credit. All others aren't required to complete or file this form if their only source for this credit is a partnership, S corporation, cooperative, estate, or trust. Instead, they can report this credit directly on Form 3800, General Business Credit.

Qualified Wages

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 doesn't include wages attributable to services rendered during the 1-year period (if applicable, 2-year period if employee is a long-term family assistance recipient under section 51) 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. See section 45A(b)(1) for details.

Qualified wages do not include:

- Wages paid to or incurred for any employee after December 31, 2020, and before July 1, 2021, if you use the same wages to claim the employee retention credit on an employment tax return such as Form 941;
- Wages paid to or incurred for any employee after March 31, 2021, and before October 1, 2021, if you use the same wages to claim the credit for qualified sick and family leave wages on an employment tax return such as Form 941; and
- Wages paid to or incurred for any employee generally after December 27, 2019, and before April 17, 2021, if you use the same wages to claim the 2020 qualified disaster employee retention credit on Form 5884-A.

Information about any future disaster credits that reduce qualified wages may be posted under "Recent Developments" at *IRS.gov/Form8845*.

Qualified Employee Health Insurance Costs

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. Don't include amounts paid or incurred for health insurance under a salary reduction agreement.

Qualified Employee

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 below).

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.

No wages shall be taken into account with respect to an individual who:

- Bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50% in value of the outstanding stock of the corporation, or, if the taxpayer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than 50% of the capital and profits interests in the entity (determined with the application of section 267(c)),
- If the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in subparagraphs (A) through (G) of section 152(d)(2) to a grantor, beneficiary, or fiduciary of the estate or trust, or
- Is a dependent (described in section 152(d)(2)(H)) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

The following are also not qualified employees.

- A 5% owner: 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. See section 416(i)(1)(B) for details.
- 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

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 February 1, 2019, (84 FR 1200) and subsequent updates, for the most recent listing of federally recognized Indian tribes.

Indian Reservation

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 isn’t 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, figure 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 year. An employee isn't 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 $50,000.

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 isn't 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

In general, you must reduce your deduction for salaries and wages by the amount on line 4, even if you can't take the full credit this year because of the tax liability limit. If you capitalized any salaries and wages on which you figured the credit, reduce the amount capitalized by the amount attributable to these costs.

Line 5

Enter the total Indian employment credits from the appropriate box of:

- Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., box 15 (code P);
- Schedule K-1 (Form 1120-S), Shareholder's Share of Income, Deductions, Credits, etc., box 13 (code P);
- Schedule K-1 (Form 1041), Beneficiary's Share of Income, Deductions, Credits, etc., box 13 (code L); or
- Form 1099-PATR, Taxable Distributions Received From Cooperatives, box 12 (box 11 for 2019; box 10 before 2019), or other notice of credit allocation.

Partnerships, S corporations, cooperatives, estates, and trusts report the above credits on line 5. All other filers figuring a separate credit on earlier lines also report the above credits on line 5. All others not using earlier lines to figure a separate credit can report the above credits directly on Form 3800, Part III, line 1g, and not file Form 8845.

Line 7

Cooperatives. 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.

If the cooperative is subject to the passive activity rules, include on line 5 any Form 8845 credit from passive activities disallowed for prior years and carried forward to this year. Complete Form 8810, Corporate Passive Activity Loss and Credit Limitations, to determine the allowed credit that must be allocated to patrons. For details, see the Instructions for Form 8810.

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.

If the estate or trust is subject to the passive activity rules, include on line 5 any Form 8845 credit from passive activities disallowed for prior years and carried forward to this year. Complete Form 8582-CR, Passive Activity Credit Limitations, to determine the allowed credit that must be allocated between the estate or trust and the beneficiaries. For details, see the Instructions for Form 8582-CR.

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 and business taxpayers filing this form is approved under OMB control number 1545-0074 and 1545-0123 and is included in the estimates shown in the instructions for their individual and business income tax return.

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.