Following are some of the questions preparers asked us about fulfilling their refundable credit due diligence requirements and our answers:

Preparer Question	<b>IRS Answer</b>
How did the PATH act of 2015 change my <b>due diligence</b> requirements?	The PATH Act extended the application of IRC § 6695(g) from returns or claims for refund including the Earned Income Tax Credit (EITC), to also cover the Child Tax Credit (CTC) and the American Opportunity Tax Credit (AOTC). All paid tax return preparers who determine the eligibility for, or the amount of, the EITC, CTC or the AOTC are now subject to the refundable credit due diligence requirements and the penalties for failure to comply with these requirements. The penalties apply to preparers who sign the return, preparers who prepare the refundable credit portion of a return but do not sign the return, and employers of these preparers.
I use good return preparation software. Why can't I <b>rely on my</b> <b>software to meet my due diligence</b> <b>requirements</b> ?	You cannot depend on your software exclusively. Tax software is a tool to assist you and is not a substitute for your knowledge of the tax law and professional judgment and responsibility. You are the person who can best evaluate the information your client gives you and apply your knowledge of the law to that information. Software cannot be designed to address every possible due diligence issue you may encounter.
What are the <b>record keeping</b> <b>requirements</b> related to refundable credit due diligence?	<ul> <li>Record Keeping Requirement</li> <li>Keep the following: <ul> <li>A copy of the Form 8867, <i>Paid Preparer's Due Diligence Checklist</i></li> <li>A copy of worksheets or equivalent documents</li> <li>A copy of any questions you asked your client to comply with the knowledge requirement and your client's responses</li> <li>A copy of any document your client gives you on which you relied to determine eligibility for a credit or to compute the amount of a credit</li> </ul> </li> </ul>

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	• A record of how, when, and from whom you obtained the information used to complete the return
	Keep these documents for three years from the latest of the following:
	<ul> <li>The due date of the return</li> <li>The date you electronically filed the tax return</li> <li>The date you presented the paper return to your client for signature</li> <li>The date you gave the part of the return for which you are responsible to the signing tax return preparer, if you are a nonsigning tax return preparer</li> </ul>
	Keep these records in either paper or electronic format in a secure place to protect your client's personal information.
Is it true that if I <b>employ other</b> <b>preparers</b> and they don't meet their due diligence requirements, my firm can be penalized?	Yes, it's true. IRS can assess penalties against a firm that employs others to prepare tax returns if the employee does not meet the due diligence requirements for the EITC, the CTC, or the AOTC. But, only if one of the following apply:
	<ul> <li>Management participated in or, prior to the time the return was filed, knew of the failure to comply with the due diligence requirements; or</li> <li>The firm failed to establish reasonable and appropriate procedures to ensure compliance with the due diligence requirements; or</li> <li>The firm establishes appropriate compliance procedures but disregards those procedures through willfulness, recklessness, or gross indifference, including ignoring facts that would lead a person of reasonable prudence and competence to investigate or figure out the employee was not complying.</li> </ul>
How can I as an <b>employer protect</b>	If you employ other preparers, here are some examples

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myself from penalties caused by my employees not meeting due diligence requirements?of how you can protect yourself from penalties for not meeting due diligence requirements when preparing returns with a claim of the EITC, the CTC, or the AOTC: <ul><li>Review your current office procedures to make sure they address all appropriate due diligence requirements.</li><li>Review your procedures with your employees to make sure they clarly understand their responsibilities and your expectations of them.</li><li>Conduct annual due diligence training or instruct your staff to complete the online module that we offer in both English and Spanish.Must I use Form 8867 as part of the due diligence process?Yes, you are required to complete, submit, and keep a corport of the due diligence requirements for the due diligence requirements for the EITC, the CTC or AOTC. You submit the form as part of an electronic return or attach it to a paper return.To document my compliance with due diligence requirements for the EITC, the CTC, and the AOTC, is it sufficient to keep a copy of Form 8867 that is signed and dated by my client?When questioning a client whoAsking questions about the source and amount of</li></ul>		
Sure they address all appropriate due diligence requirements.Review your procedures with your employees to make sure they clearly understand their responsibilities and your expectations of them.Conduct annual due diligence training or instruct your staff to complete the online module that we offer in both English and Spanish.Test your employee's knowledge of due diligence and your procedures.Perform recurring quality review checks on your employee's work including credit computations, questions they asked clients, documents they reviewed, and the records kept.Must I use Form 8867 as part of the due diligence process?Yes, you are required to complete, submit, and keep a copy of Form 8867, Paid Preparer's Due Diligence Checklist, for every claim of the EITC, CTC or AOTC. You submit the form as part of an electronic return or attach it to a paper return.To document my compliance with due diligence requirements for the EITC, the CTC, and the AOTC, is it sufficient to keep a copy of Form 8867 that is signed and dated by my client?Keeping a copy of the Form 8867 is one of your due diligence requirements. Having your client sign and date the form fory our records may be sufficient to worksheets and document any additional questions you ask your client and your client's responses to those questions at the time you are interviewing your client.	my employees not meeting due	meeting due diligence requirements when preparing returns with a claim of the EITC, the CTC, or the AOTC:
the due diligence process?copy of Form 8867, Paid Preparer's Due Diligence Checklist, for every claim of the EITC, CTC or AOTC. You submit the form as part of an electronic return or attach it to a paper return.To document my compliance with due diligence requirements for the EITC, the CTC, and the AOTC, is it sufficient to keep a copy of Form 		<ul> <li>sure they address all appropriate due diligence requirements.</li> <li>Review your procedures with your employees to make sure they clearly understand their responsibilities and your expectations of them.</li> <li>Conduct annual due diligence training or instruct your staff to complete the online module that we offer in both English and Spanish.</li> <li>Test your employee's knowledge of due diligence and your procedures.</li> <li>Perform recurring quality review checks on your employees' work including credit computations, questions they asked clients,</li> </ul>
due diligence requirements for the EITC, the CTC, and the AOTC, is it sufficient to keep a copy of Form 8867 that is signed and dated by my client?diligence requirements. Having your client sign and date the form for your records may be sufficient to document when and from whom you got the return information. But you must also keep the computation worksheets and document any additional questions you ask your client and your client's responses to those questions at the time you are interviewing your client.You can keep this documentation either electronically or on paper.	-	copy of Form 8867, <i>Paid Preparer's Due Diligence</i> <i>Checklist</i> , for every claim of the EITC, CTC or AOTC. You submit the form as part of an electronic
When questioning a client who       Asking questions about the source and amount of	due diligence requirements for the EITC, the CTC, and the AOTC, is it sufficient to keep a copy of Form 8867 that is signed and dated by my	<ul><li>diligence requirements. Having your client sign and date the form for your records may be sufficient to document when and from whom you got the return information. But you must also keep the computation worksheets and document any additional questions you ask your client and your client's responses to those questions at the time you are interviewing your client.</li><li>You can keep this documentation either electronically</li></ul>
	When questioning a client who	Asking questions about the source and amount of

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reports income that seems inadequate to support a family, is it sufficient to accept an answer that government benefits are received? Do we need to specify the type and amount?	income used to support a household for due diligence has two purposes. One purpose is to ensure your client is reporting all income that contributes to the client's total earned income and AGI. There is no support test for the EITC. But, you need to know the source and amount of income to determine filing status and eligibility for the dependency exemption. The other purpose is to ensure no other person is entitled to claim the same child for the child-related benefits. Due diligence requires you to make additional inquiries if the information you receive from your client appears to be incorrect, inconsistent, or incomplete.
I know taxpayers need to report all income but what about expenses? What if the client <b>doesn't want to</b> <b>claim business expenses</b> to keep their taxable income higher and qualify for more EITC?	A self-employed individual is required to report all business income and deduct all allowable business expenses. They do not have the option of reporting what is most beneficial. Revenue Ruling 56-407, 1956-2 C.B. 564, addresses whether taxpayers may disregard allowable deductions in computing net earnings from self-employment for self-employment tax purposes. Revenue Ruling 56- 407 held that under §1402(a), every taxpayer (with the exception of certain farm operators) must claim all allowable deductions in computing net earnings from self-employment for self-employment tax purposes. Because the net earnings from self-employment are included in earned income for EITC purposes, this ruling is relevant.
What should a preparer do if he or she feels the <b>taxpayer is not</b> <b>providing all expenses</b> in order to inflate income and claim a larger credit?	<ul> <li>As a preparer, you need to be alert to this type of situation. To meet the knowledge requirement, you must follow up on your suspicion, ask additional questions, document the answers, and make a judgment about whether the answers make sense. If they don't, you have a responsibility to ask additional questions, and possibly ask for documentation until you are confident the return you are preparing is accurate.</li> <li>You must also use professional judgment regarding the credibility of your client and the answers you receive.</li> </ul>

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	If you are not comfortable with the answers or credibility of the client, then due diligence dictates you <b>do not</b> prepare the return.
	You may also want to present your client with the Publication 4717, <i>Help Your Tax Preparer get You the</i> <i>Credits You Deserve</i> , This publication explains a paid tax preparer's due diligence requirements and the consequences of not filing an accurate return.
Must I review the birth certificate to verify the age of a qualifying child?	No, it's not required. But, if you have reason to question a child's age, you may want to request the birth certificate. If the client provides a birth certificate and you use it to determine eligibility for, or the amount of, the EITC, the CTC, or the AOTC, you need to keep a copy of the birth certificate.
How do you handle the situation when you <b>decline to complete a</b> <b>return with a claim of the EITC,</b> <b>the CTC, or the AOTC</b> ? The client then refuses to leave his or her information with you.	<ul> <li>Any client has the option of deciding not to complete a return with a preparer and therefore would have no reason to leave information with that preparer.</li> <li>If the preparer wants to report the taxpayer who he thinks will erroneously claim EITC with another preparer, use the process described in the Fraud section of the Frequently Asked Questions.</li> </ul>
Consider what due diligence requires in the following situation. The household is made up of an unmarried couple, their natural child, and the grandmother of the child. The child is the qualifying child of all three for purposes of the EITC. The grandmother is the	To meet your due diligence requirements, you must ask the appropriate questions and document the questions you asked and your client's answers. You do not have the responsibility to verify the AGI of the parents. As a service to your customer, you may want to explain what happens when more than one person uses
client and neither one of the parents is a client. The grandmother says they all agreed she should take the credit and she has the highest income.	<ul><li>explain what happens when more than one person uses the same qualifying childthe IRS may reject the return or the IRS may reject the claim after an audit.</li><li>You may also want to present your client with the new Publication 4717, Help Your Tax Preparer get You the</li></ul>
What responsibility do you have to verify this information?	Credits You Deserve (new version of the publication coming later this year). This publication explains a paid tax preparer's due diligence requirements and the

Preparer Question	<b>IRS Answer</b>
	consequences of not filing an accurate return.
We have a checklist to make sure our clients are eligible for the EITC. We determined they were not eligible and did not claim the EITC on the return. But, the <b>IRS</b> <b>sent a letter saying they might</b> <b>qualify</b> . Why?	If your client appears to qualify for the EITC but does not, you are instructed to put a "no" on the EITC line. The IRS does check for the "no" on the EITC line before sending out a notice. We have heard of this problem previously but never have enough information to determine if it is IRS's error, software error or preparer error. Please submit information to EITC.program@irs.gov if you did mark the "no" and we send your client a letter.
Do due diligence requirements, including the requirement of three- year retention, <b>apply to returns</b> <b>prepared by VITA</b> ?	No. The due diligence requirements apply only to paid return preparers.
Must I review Social Security cards or keep a copy?	No. There is no requirement to review Social Security cards, but it is a best practice to review them. You are more likely to get the child's name and number correct if copied directly from the card. Also, having copies of cards is helpful in resolving e-file rejects. If the client provides a Social Security card and you use it to determine eligibility for, or the amount of, the EITC, the CTC, or the AOTC, you need to keep a copy of the card with your records.
How is a <b>preparer selected for a due diligence audit</b> ?	The IRS selects preparers for due diligence visits based on the high likelihood that the returns they prepare are in error. We base the likelihood on a set of standard criteria applied to all returns. See "What to Expect during a Due Diligence Audi"t for additional information.