

Keys to Mastering Due Diligence Requirements and What to Expect During a Due Diligence Audit Tuesday, August 10, 2021

Start Time: 11:00am Eastern / 10:00am Central 9:00am Mountain / 8:00am Pacific

Note: You should be hearing music while waiting for webinar to start.

Having Technical Issues?

View the "Technical Issues" troubleshooting guide in the Materials drop-down menu on the left side of this page

Today our webinar will:

- Discuss paid preparer due diligence requirements
- Review due diligence documentation requirements
- Describe IRS' due diligence educational contact methods
- Explain the due diligence audit process
- Share IRS' online educational resources for paid preparers

Due Diligence Tax Benefits









Earned Income Tax Credit

(EITC)

Child Tax Credit (CTC)

Additional Child Tax Credit (ACTC)

Credit for Other Dependents (ODC)

American Opportunity Tax Credit

(AOTC)

Head of Household Filing Status

(HOH)

Online Educational Resources



Earned Income Tax Credit & Other Refundable Credits

EITC Central

Tax Preparer Toolkit

Partner Toolkit

Other Refundable Credits

Search

Q

Welcome to the Tax Return Preparer Toolkit

About Refundable Credits for Preparers

Hot Topics for Return Preparers

Preparer Due Diligence

Due Diligence Training Module

Nationwide Tax Forum Videos

Due Diligence Videos



irs.gov/toolkit

Due Diligence

As a paid tax return preparer, you must:

Complete and submit Form 8867

Compute the credits based on the facts

Ask all the right questions

Keep records for three years

Form 8867

Treas. Reg. 1.6695-2(b)(1) Complete Form 8867 for each return or refund claim

Based on information from your client *or* that you otherwise reasonably obtain or know

File it with the tax return or claim for refund (if e-filed)

or

Provide it to your client (if not e-filed)

or

Provide it to signing preparer (if a nonsigning preparer)

Form 8867

Complete and submit Form 8867

8867 Paid Preparer's Due Diligence Checklist	OMB No. 1545-0074
Form Earned Income Credit (EIC), American Opportunity Tax Credit (AOTC), Child Tax Credit (CTC) (including the Additional Child Tax Credit (ACTC) and Credit for Other Dependents (ODC), and Head of Household (HOH) filling Status	20 20
Department of the Treasury Internal Revenue Service Go to www.irs.gov/Form8867 for Instructions and the latest Information.	Attachment Sequence No. 70
Taxpayer name(s) shown on return Taxpayer ident	fication number
Enter preparer's name and PTIN	
Enter preparer's name and PTIN	
Part I Due Diligence Requirements	
Please check the appropriate box for the credit(s) and/or HOH filing status claimed on the return and complet	
	AOTC HOH Yes No N/A
1 Did you complete the return based on information for tax year 2020 provided by the taxpayer or reasonably obtained by you?	Yes No N/A
2 If credits are claimed on the return, did you complete the applicable EIC and/or CTC/ACTC/ODC	
worksheets found in the Form 1040, 1040-SR, 1040-NR, 1040-PR, or 1040-SS instructions, and/or the AOTC worksheet found in the Form 8863 instructions, or your own worksheet(s) that provides the same	
List those documents provided by the taxpayer, if ar	y, that you relied on:
b Did you contemporaneously document your inquiries? (Documentation should include the questions	
you asked, whom you asked, when you asked, the information that was provided, and the impact the	
information had on your preparation of the return.)	
5 Did you satisfy the record retention requirement? To meet the record retention requirement, you must keep a copy of your documentation referenced in 4b, a copy of this Form 8867, a copy of any	
applicable worksheet(s), a record of how, when, and from whom the information used to prepare Form 8867 and any applicable worksheet(s) was obtained, and a copy of any document(s) provided by the	

Compute the Credits

Treas. Reg. 1.6695-2(b)(2)

Figure each applicable credit

Based on information from your client *or* that you otherwise reasonably obtain or know

Use appropriate worksheets such as those found in instructions for Form 1040 or Form 8863

Use your own similar worksheets and keep records of information used and how computations were made

Preparer Due Diligence

Ask all the right questions

Knowledge



You **must not** know or have reason to know any information is incorrect.



You **cannot** ignore the implications of information you receive or know.





You **must** make additional reasonable inquiries if a reasonable and well-informed tax return preparer, knowledgeable in the law, would conclude the information provided to you appears to be **incorrect, inconsistent, or incomplete**.



Record these inquiries and your client's answers when you meet with your client.

Knowledge – Example 1

Tara

Never married Niece and nephew
Lived with her part of
year

For the EITC, CTC/ACTC, ODC or HOH filing status, make reasonable inquiries to determine each child's residency, relationship, income and sources of support, and Tara's contribution towards household upkeep expenses

Contemporaneously document these inquiries and the responses

Knowledge – Example 2

Michael

Age 32

Never married

Form 1098-T

State University received \$4,000 in qualified tuition and related expenses

At least a half-time undergraduate student

Make reasonable inquiries

Form 1098-T does not show all information needed to determine Michael's eligibility for the AOTC

Contemporaneously document these inquiries and the responses

Knowledge – Example 3

David

Age 50

Never married

No children

Earned \$10,000 from self-employment No other income or expenses

Make reasonable inquiries to determine if David is eligible for EITC for himself, including whether his business income and expenses are correct

Contemporaneously document these inquiries and the responses

Are Client Documents Needed?



Additional documents can be helpful when information seems incorrect, inconsistent or incomplete to prepare a return or claim for refund claiming:

EITC

CTC/ACTC/ODC

AOTC

HOH

If you see it and rely on it, keep a record of it.

Preparer Due Diligence

Keep records for three years

Keep Records

Treas. Reg. 1.6695-2(b)(4)

Keep records of:

- Form 8867
- Applicable worksheets
- How, when and from whom you received the information for the form and worksheets
- Any documents you relied on
- Any additional information you relied on

Keep Records

Treas. Reg. 1.6695-2(b)(4)

Keep for **3 years** from latest of the date:

- Return due (not including extensions)
- Return or claim e-filed
- Presented to client for signature (if not e-filed)
- Submitted to signing preparer (if a nonsigning preparer)

Contact Methods





Letter 5025 – You May Not Have Met Due Diligence Requirements



Why we're sending you this letter

A review of the returns you prepared shows you may not have met your due diligence requirements and may have prepared inaccurate returns for your clients, claiming at least one of the following:

- · Earned Income Tax Credit (EITC)
- Child Tax Credit (CTC) / Additional Child Tax Credit (ACTC) / Credit for Other Dependents (ODC)
- · American Opportunity Tax Credit (AOTC)
- · Head of Household (HoH) filing status

Paid preparers must know and follow due diligence requirements. You may be penalized if you don't prepare accurate returns and comply with due diligence requirements under Internal Revenue Code Sections 6695(g) and 1.6695-2(b) of the Income Tax Regulations. The penalty is per failure for tax returns filed in

Failure to exercise due diligence can also result in an audit, the suspension or termination of your e-filing privileges, or a referral to the IRS Criminal Investigation Division. We may also audit your clients which could prevent them from claiming the credits for a period of time in the future.

We can't tell you which returns were questionable or provide specific information from those returns; however,

- Know and follow due diligence requirements
- You may be penalized if you don't comply
- Penalty is \$545 per failure for returns filed in 2022

Letter 4858 – You May Not Have Met Due Diligence Requirements



You may not have met your due diligence requirements

Why we're sending you this letter

We're writing to make you aware of due diligence requirements for paid preparers.

You prepared tax year returns claiming at least one of the benefits listed below.

- · Head of Household (HoH) filing status
- Earned Income Tax Credit (EITC)
- American Opportunity Tax Credit (AOTC)
- Child Tax Credit (CTC) / Additional Child Tax Credit (ACTC) / Credit for Other Dependents (ODC)

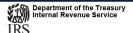
Our review of these returns indicates you may not have met your due diligence requirements.

Paid preparers must comply with all due diligence requirements. If you do not prepare accurate returns and comply with due diligence requirements under Internal Revenue Code section 6695(g) and section 1.6695-2(b) of the Income Tax Regulations, you may be penalized. The penalty is per failure for tax returns filed in

The failure to exercise due diligence can also result in an audit, the suspension or termination of your e-filing privileges, or a referral to the IRS Criminal Investigation Division. We may also audit your clients which could prevent them from claiming the credits for a period of time in the future.

- You must comply with all due diligence requirements
- If you do not, you may be penalized
- Penalty is \$545 per failure for returns filed in 2022

Letter 5364 – Missing Forms 8867



Missing Forms 8867 Alert

Why we're sending you this letter

We're writing to make you aware of due diligence requirements for paid preparers because we received six or more tax year paper returns you prepared claiming at least one of the benefits listed below without a Form 8867, Paid Preparer's Due Diligence Checklist:

- · Head of Household (HoH) filing status
- Earned Income Tax Credit (EITC)
- · American Opportunity Tax Credit (AOTC)
- . Child Tax Credit (CTC) / Additional Child Tax Credit (ACTC) / Credit for Other Dependents (ODC)

We've enclosed a list of these returns with this letter for you to review.

Paid preparers must comply with all due diligence requirements. Under IRC Section 6695(g), you must include Form 8867 with each return claiming one or more of the benefits listed above. Failure to do so may result in a penalty of per failure, with a maximum penalty of per return.

What you need to do

This letter is for your information only. You don't need to respond. Do not send us a copy of any missing

- You must comply with all due diligence requirements
- Include Form 8867 with each return claiming HOH, EITC, CTC/ACTC/ODC or AOTC
- Failure to do so may result in a penalty of \$545 per failure, and up to \$2,180 per return

What Should You Do if You Receive a Letter?

- Don't Panic
- Take action
- Review due diligence requirements
- Review your office procedures

Educational Phone Calls – Is it *really* the IRS?

IRS representative will:

- Provide an IRS employee ID number
- Refer to previous IRS contact
- Ask security questions to confirm preparer's identity
- Provide educational information
- Not demand any payments

Educational Office Visit





Preparer Notification

Interview





Closing Conference



Video Part I – Placeholder



Preparer Notification

Interview



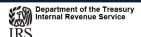


Closing
Conference



Video Part II – Placeholder

Examination Report – Letter 1125



We have enclosed a copy of our examination report explaining why we are proposing a tax return preparer penalty. Please review this proposed assessment and let us know whether or not you agree by following the directions provided in this letter.

What to Do If You Agree

If you agree to the assessment and collection of the proposed penalty or penalties, please sign, date, and return one copy of the enclosed Form 5816, Report of Tax Return Preparer Penalty Case, in the envelope provided. Make your check or money order payable to the United States Treasury for the amount indicated on the form. If you agree but cannot pay in full, pay what you can within 30 days from receipt of this notice and we will send you a bill for the remaining amount with information about your payment options.

What to Do If You Disagree

If you don't agree with our findings, you may request a meeting or a telephone conference with the supervisor of the person whose name is shown above. If you still do not agree with our findings, you have the right to request a conference with our Appeals Office. You may request an appeals conference as follows:

1. If the total penalties shown in our report are \$25,000 or less, send us a letter requesting Appeals

We are proposing a return preparer penalty

If you agree, please sign and return our report, Form 5816

If you don't agree, you can request a meeting with the supervisor or our Appeals Office

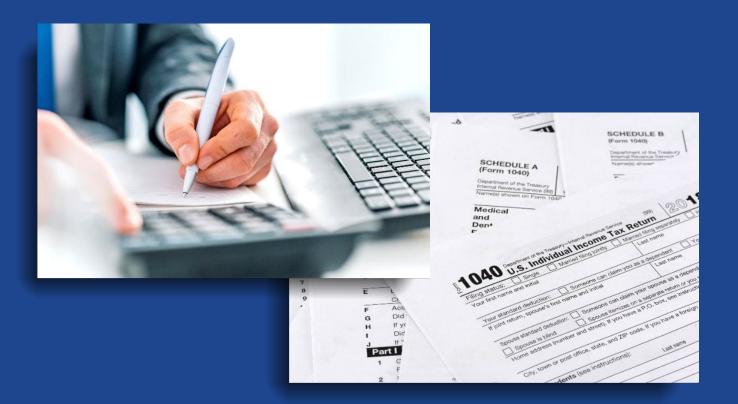
Due Diligence Penalties and Next Steps

Preparer's name		Prep	arer's PTIN, SSN, or EIN
Street address	City	State	ZIP code
Delegations have December in		Self-employed prepare	-
Select one box. Preparer is	Employer preparer Agreeme		Employee preparer
	Full	None	bly reler to
		Date	of report
The following information ide	entifies the tax return or claim	for which penalty is being cha	arged
Taxpayer's name		Тахр	ayer's SSN or EIN
Street address	City	State	ZIP code
Tax period			

I. Failure to comply with due diligence requirements. (IRC Sec. 6695(g))

Examiner's signature	
Examiner's signature	
	

Due Diligence Correspondence Examination



Online Educational Resources



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irs.gov/toolkit

Key Points

IRS.gov/toolkit

Use the return preparer toolkit as a due diligence resource

Four Requirements

Know the rules for tax benefits subject to due diligence

Review your procedures to ensure you comply with the four requirements

Form 8867

Complete
Form 8867
when filing a
return or claim for
the EITC,
CTC/ACTC/ODC,
AOTC or HOH

Key Points

Keep Records

Keep required documentation for three years

Client records can be helpful

If you see it and rely on it, keep a record of it

IRS Contact Methods

Avoid IRS letters, calls, visits and enforcement actions by practicing due diligence

Penalties Can Be Costly

For returns or claims filed in 2022:

\$545 per failure Up to \$2,180 per return