

## The ABCs of Due Diligence

## During our presentation today we will discuss:

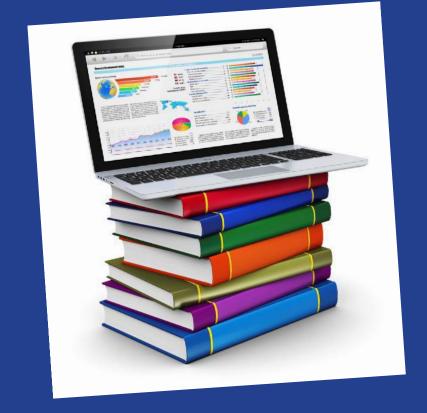
- Paid preparer due diligence requirements for tax year 2024 returns claiming the:
  - Earned Income Tax Credit (EITC).
  - Child Tax Credit (CTC)/ Additional Child Tax Credit (ACTC)/ Credit for Other Dependents (ODC).
  - American Opportunity Tax Credit (AOTC).
  - Head of Household (HOH) filing status.
- Consequences of not meeting your due diligence requirements.
- Frequently asked due diligence questions and answers.

## We will also share the following information:

- IRS initiatives and ongoing efforts to help tax professionals including:
  - Tax Professional Awareness Week.
  - Webinars training modules and videos.
  - IRS Document Upload Tool.
- Online resources @ IRS.GOV in the Tax Preparer Toolkit/EITC Central.

## Question of the Day

How would you define due diligence in your own words?



## Preparer Due Diligence Requirements

Ask all the right questions and document your client's answers.

Compute the credits based on the facts.

Complete and submit Form 8867.

Keep records.



## The first due diligence requirement is:

Ask all the right questions and document your client's answers.



## Asking the Right Questions

- Ask direct but open-ended questions, avoid leading questions. Listen to your client's responses and ask more questions if the information provided is incorrect, incomplete or inconsistent.
- Use your expertise and skills to find out the right information for you to prepare a complete accurate tax return.
- Document and keep a paper or electronic copy of all the questions you asked, and the responses provided by your client.

## Poll Question #1

As a paid tax preparer, are you required to request documentation if your client is claiming her niece, HOH and EITC?

- A. Yes, supporting documentation is always required.
- B. No, but you must ask additional questions if the responses do not appear to be correct, consistent and complete.
- C. No, aunts nor uncles are never required to provide supporting documents.

# 24

## Poll Question #1 (Answer)

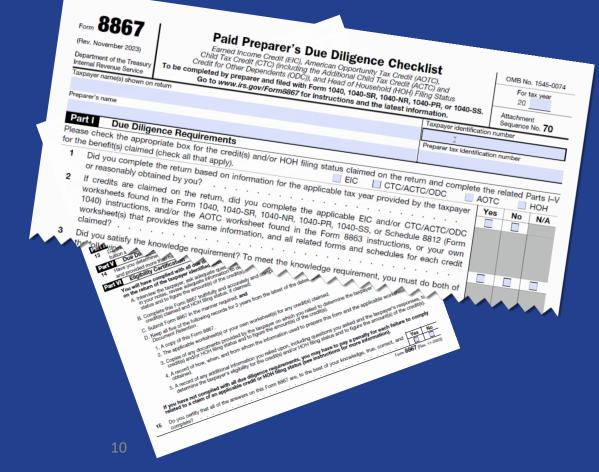
As a paid tax preparer, are you required to request documentation if your client is claiming her niece, HOH, and EITC?

- A. Yes, supporting documentation is always required.
- B. No, but you must ask additional questions if the responses do not appear to be correct, consistent and complete.
- C. No, aunts nor uncles are never required to provide supporting documents.

## The next two due diligence requirements are:

Compute the credits based on the facts.

Complete and submit Form 8867.



## Compute the Credits

- 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 create a record of the computation, including the method and information used.

## Complete and Submit Form 8867

- Complete Form 8867 for each return or refund claimed.
- 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).



## The final due diligence requirement is:





## Keeping Records

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

## Keep records of:

- Form 8867.
- All applicable worksheets or computations.
- How, when and from whom you received the information to prepare Form 8867 and the applicable worksheets or computations.
- Any documents or information provided to you that you relied on.



## How long should you keep your records?

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

Keep your records for 3 years from latest of the:

- Return due date (not including extensions).
- Signing preparer who e-filed: date e-filed.
- Signing preparer who did not e-file: date when you gave your client the return for signature.
- Nonsigning preparer: date submitted to signing preparer.



## Poll Question #2

To meet your due diligence requirements, you do not have to keep all questions and answers (Q&A) in your paper or electronic files.

True or False?

## Poll Question #2 (Answer)

False, any questions asked, and answers relied upon to determine tax benefit eligibility must be retained by you, the paid tax preparer either electronically or on paper.

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

## Consequences of not meeting your due diligence requirements

Consequences can include but are not limited to:

- Preparer Penalties We can review the returns you prepare and assess a penalty for each failure to meet due diligence requirements.
- Client Audits We can examine your client's returns and if we disallow certain credits, your client must pay back any amount refunded in error plus any interest and penalties.

## What should you do if you receive a letter from the IRS?

We send educational letters to preparers who have submitted returns with a high likelihood of errors or who fail to include Form 8867, Paid Preparer Due Diligence Checklist.

If you receive a letter from us, do not ignore it, you should:

- Act Review your return preparation methods.
- Change Make any necessary changes to your office procedures to consistently meet all four due diligence requirements.

## Letter 5025-F, You Prepared Inaccurate Tax Returns – You Risk Penalties from an Audit



Department of the Treasury Internal Revenue Service Wage and Investment IRS 4800 Buford Highway MS 50 Chamblee GA 30341

04/09/2024 Preparer ID number

Contact felephone number 866-860-4259 Contact e-mail address: wi.rcpreparerresponse@irs.gov

[Recipient name] [Address line 1]

[Address line 2] [Address line 3]

> Alert: Our review shows you prepared inaccurate tax returns in [YYYY]. You risk preparer penalties from an audit, and we may inform your clients about mistakes you made on their returns.

## Dear [Name]:

## Why we're sending you this letter

Our review of the tax returns you prepared in [YYYY] shows client returns inaccurately claiming tax benefits and that you possibly failed your due diligence requirements. Failure to perform such due diligence can result in penalties under Internal Revenue Code Section 6695(g), Failure to be Diligent in Determining Eligibility for Certain Tax Benefits, and 1.6695-2(a) of the Income Tax Regulations. We may also inform your clients that you prepared their returns inaccurately.

In addition, you and your clients may face one or all the following consequences:

## You may face:

- · A preparer audit and a penalty of \$560 per failure for each tax benefit per return or claim for refund filed in [YYYY]; in [YYYY], average total penalty was around \$60,000.
- . The suspension or termination of your e-filing privileges.
- · A referral to the IRS Criminal Investigation Division.

## Your client may face:

- . An audit, which will hold their refund until we can determine eligibility.
- . An obligation to repay any refund, plus interest, if ineligible for the tax benefit claimed on the return.
- · A ban from claiming the tax benefit for 2 years (if the claim was due to reckless or intentional disregard of rules and regulations) or 10 years (if the claim was due to fraud ).

We can't tell you which returns were questionable or provide specific information from those returns; however, we found the following primary issues:

Remember: It's your job to make sure your client is eligible for any tax benefits claimed.

· Conduct an in-depth interview with every client each year.

Letter 5025-F (Rev. 11-2022) Catalon Number 74818A

## What you need to do

Meet your specific due diligence requirements. The most common reason we assess due diligence penalties is for failure to meet the knowledge requirement. You should always:

- · Apply a commonsense standard to the information your client provides.
- Ask additional probing and relevant questions if any information appears to be incorrect, inconsistent,
- . Document additional questions you ask and the client's response.

This letter is for your information to ensure you are aware of the due diligence requirements and potential consequences for not meeting them. You don't need to respond. We'll check returns you prepare claiming these benefits to ensure you're meeting your due diligence requirements.

## Where you can find more information

- Review Publication 4687. Paid Preparer Due Diligence.
- Use the preparer toolkit on our website at IRS.gov/toolkit, which includes a free Bue Diligence Training and other resources.
- · QR Code:



Find forms or publications by visiting IRS.gov/forms or calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact us at the phone number or email address on the first page of this letter. For security purposes, don't include any personally identifiable information (PII) belonging to your clients in an email. PII includes information used to distinguish or trace the identity of an individual.

Sincerely.

Ishmael P. Alejo Ishmael P. Alejo Refundable Credits Program Management

> Letter 5025-F (Rev. 11-2022) Catalog Number 74818A



## SO Tax Forum

## Letter 4858, You May Not Have Met Your Due Diligence Requirements

Department of the Treasury Internal Revenue Service Wage & Investment [RS] [Street address] [City, State ZIP]	Date: Preparer ID number: Contact telephone number: 886-860-4259
[Recipient name] [Address line 1] [Address line 2] [Address line 3]	Confact e-mail address: wi.rcpreparerresponse@irs.gov

## Dear [Name]:

## Why we're sending you this letter

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

Paid preparers must follow all due diligence requirements. If you don't prepare accurate returns in compliance with Internal Revenue Code Section 6695(g) and Section 1.6695-2(b) of the Income Tax Regulations, you may face:

- An audit and \$0 penalty per failure, with a maximum penalty of \$0 per return.
- · Suspension or termination of your e-filing privileges.
- · Referral to the IRS Criminal Investigation Division.

## Your clients may face:

- An audit, which would prevent them from claiming the credits or receiving a refund until we determine eligibility.
- · An obligation to repay any refund, plus interest, if ineligible for the tax benefit claimed on the return.
- A ban from claiming the tax benefit for 2 years (if the claim was due to reckless or intentional disregard of rules and regulations) or 10 years (if the claim was due to fraud).

Remember: It's your job to make sure your client is eligible for claimed tax benefits.

## What you must do to ensure you meet your due diligence requirements

- Complete and send Form 8867, Paid Preparer's Due Diligence Checklist, with every future return or claim for refund you prepare claiming any of the benefits listed above.
- Complete all worksheets, or equivalents, showing how you computed the credits claimed on a return or amended return.
- 3. Conduct an in-depth interview with every client each year. Question any client if any information seems incorrect, inconsistent, or incomplete. Apply a commonsense standard to the information your client provides. Ask additional probing and relevant questions if any information appears to be incorrect, inconsistent, or incomplete. Document your questions and the client's responses.

Letter 4858 (Rev. 3-2023) Catalog Number 58736R  Keep required records for the retention period. This includes copies of documents relied on to determine benefit eligibility and compute credit amounts.

## Common earned income tax credits (EITC) errors include claiming:

- An incorrect amount of earned income. This includes under reporting wages or income and misreporting income and expenses from Schedule C. Profit or Loss from Business.
- · EITC for children who didn't meet the qualifying relationship, residency, age, or joint return tests.
- . EITC for tax year 2021 for specified students under age 24 who didn't claim a qualifying child.
- EITC for a married client not filing a joint return who doesn't meet the additional rules to claim the EITC as a separated spouse.

## What happens next

You don't need to respond to this letter. We'll continue to review the returns you prepare claiming these benefits to ensure you're meeting your due diligence requirements and initiate the compliance activities referenced above if necessary.

## Where you can find more information

- · Review Publication 4687, Paid Preparer Due Diligence.
- Use the tax return preparer toolkit by visiting IRS.gov/toolkit or scanning the code below. The toolkit
  includes a free due diligence training module and other resources.



Find tax forms or publications by visiting IRS.gov/forms or calling 800-TAX-FORM (800-829-3676).

If you have questions, you can contact us at the phone number or email address on the first page of this letter. For security purposes, don't include any personally identifiable information (PID) belonging to your clients. PII includes information used to distinguish or trace an individual's identifiable.

Note: We can't provide you with information about specific returns

Sincerely,

Ishmael P. Alejo

Ishmael P. Aleio

Director, Refundable Credits Program Management

Letter 4858 (Rev. 3-2023) Catalog Number 58736R



## Tax Forum

## Letter 5364, Missing Forms 8867



Date: 04/10/2024 Preparer ID Number:

Contact telephone number: 866-860-4259 Contact e-mail: wi.rcpreparerresponse@irs.gov

Missing Forms 8867 Alert

## Dear [Name]:

## Why we're sending you this letter

[Address line 3]

We're writing to make you aware of due diligence requirements for paid preparers because we received paper returns you prepared in 2022 claiming at least one of the benefits listed below without a Form 3867, 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 \$560 per failure, with a maximum penalty of \$2.240 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 Forms 8867 or amend any returns to include the missing Forms 8867. We'll continue to monitor future returns you prepare that claim these benefits to ensure you're meeting your due diligence requirements.

## Where you can find more information

- Publication 4687, Paid Preparer Due Diligence, available on our website at www.irs.gov/forms.
- . The preparer toolkit on our website at www.irs.gov/toolkit.



Letter 5364 (Rev. 11-2022) Catalog Number 66109G If you have questions, you can contact us at the phone number or email address on the first page of this letter. For security purposes, don't include any personally identifiable information (PII) belonging to your clients. PII includes information used to distinguish or trace the identity of an individual.

Sincerely,

Ishmael P. Alejo
Ishmael P. Alejo

Director, Refundable Credits Program Management

Enclosure:

List of 2022 returns without Form 8867

Letter 5364 (Rev. 11-2022) Catalog Number 66109G



## NO Tax Forum

## Letter 6595, Pre-Filing Season Phone Call Letter



## [Recipient name]

[Address line 1] [Address line 2] [Address line 3]

## For your reference

January 15, 2024

6595 (en-sp) Preparer ID number:

Contact telephone number: 866-860-4259 Contact email address: wi.rps@irs.gov

Our review of tax returns you prepared for your clients in [YYYY] shows inaccurate tax benefit claims and your possible failure to meet due diligence requirements.

## What you need to know

Paid tax return preparers are required to follow due diligence regulations found under Treasury Regulation Section 1.6995-2. A penalty can be assessed under Internal Revenue Code (IRC) Section 6695(g) for not meeting due diligence requirements for the following tax benefits:

- . Earned Income Tax Credit (EITC).
- American Opportunity Tax Credit (AOTC),
- Child Tax Credit (CTC) / Additional Child Tax Credit (ACTC) / Credit for Other Dependent
- . Head of Household (HOH) filing status

An IRS employee will call you in early January to discuss and additional requirements. Generally, the call may last up to an inutes.

## What you can expect during the call

The IRS employee will discuss:

- · Your due diligence requirements in preparation for the upcoming filing season,
- · Consequences of preparing erroneous tax returns,
- · Any issues, concerns, questions, and
- . How to update your address or telephone number, if necessary,

## What if you don't want to accept the telephone call

You aren't required to accept this educational call. However, your participation is highly recommended. The employee will review information to help ensure the returns you prepare for your clients are complete and correct so they can avoid a potential audit.

## What will happen going forward

We'll continue to monitor future returns you prepare. You may be subject to a due diligence examination or other actions if subsequent return filings show inaccurate claims of tax benefits.

If you have questions, you can contact us at the phone number or email address at the top of this letter. For security purposes, on't include any personally identifiable information (PII) belonging to your clients in an email. PII includes information used to distinguish or trace the identity of an individual.

Letter 6595 (en-sp) (10-2023) Catalog Number 94326N An IRS employee will call you in early January to discuss your due diligence requirements. Generally, the call may last up to 30 minutes.



## NN Tax Forum

## Educational Office Visit



## Video 1



## Preparer Notification





## The Exam





## Due Diligence: Penalties and Next Steps

(January 2023)	Report of Tax F	Return Prepa	rer Penalt∖	/ Case	
Preparer's name	торонгон нален		Preparer's SSN or		
reparers name			reparers son or	Liit	
Street address	City		State	ZIP code	
Select one box. Preparer is	Employer preparer	Self-employed pre	eparer En	nployee preparer	
Examining Area/Function	Agreement		In reply refer to		
	None				
Name and title of person with whom pe	Date of report				
The following information identifies	the tax return or claim for	or which penalty is bei	ng charged		
Check if multiple violations exist. S	ee attached listing				
Taxpayer's name			Taxpayer's SSN or EIN		
,.,			,,		
Street address	City		State	ZIP code	
Tax period		Master file tax code			
Kind of Pres	parer Penalty Charged	•		Amount	
A. Understatement due to unreasonable	e positions. (IRC Sec. 669-	4(a))			
B. Understatement due to willful or reck	iless conduct. (IRC Sec. 6)	594(b))			
C. Failure to furnish a copy to taxpayer					
D. Failure to sign return. (IRC Sec. 669	5(b))				
E. Failure to furnish identifying number.					
F. Failure to retain copy or list. (IRC Se					
<ul> <li>G. Failure to file correct information ret</li> </ul>					
H. Negotiating of check. (IRC Sec. 669					
<ol> <li>Failure to be diligent in determining e</li> </ol>					
J. Disclosure or use of information by p	reparers of returns. (IRC S	lec. 6713)			
Total penalties					
Examiner's signature					
Other information					
I have read the information on the back	of this form that ovalains t	boso popultios as thou s	alato to tay enture or	ronaror	
Consent to Assessment and Collection					
the United States District Court the find the tax return preparer penalty.					
D				Date	
Preparer's signature					

## Poll Question #3

The penalty amount under Internal Revenue Code section 6695(g) for one return or claim for refund filed in 2025 can be up to:

- A. \$635
- B. \$500
- C. \$2,540



## Poll Question #3 (Answer)

The penalty amount under Internal Revenue Code section 6695(g) for one return or claim for refund filed in 2025 can be up to:

- A. \$635
- B. \$500
- C. \$2,540



## Video 2



## Frequently asked due diligence requirement; questions and answers

Question: I've known my client for years; do I still need to perform due diligence?

**Answer:** Yes. You must make reasonable inquiries to determine your client's eligibility for certain benefits and document your client's responses. Even if you believe you already know the answers, you must ensure your information is current, and includes any life changes.

## Frequently asked due diligence requirement; questions and answers *cont*:

Question: What documents should I ask for when interviewing my client for a tax return claiming certain tax benefits and HOH filing status?

Answer: Due diligence does not necessarily require you to request documentation. However, you must make reasonable inquiries if the client gives you information that appears incorrect, incomplete, or inconsistent. In some cases, a reasonable inquiry may entail asking for documentation.

## Poll Question #4

When is Form 8867, Paid Preparer's Due Diligence required?

- A. For a return claiming EITC, CTC/ACTC/ODC, AOTC or HOH filing status.
- B. When completing an electronic return, per Internal Revenue Code 7896.
- C. For a return that claims the credit for child and dependent care expenses.

## Poll Question #4 (Answer)

When is Form 8867, Paid Preparer's Due Diligence required?

- B. When completing an electronic return, per Internal Revenue Code 7896.
- C. For a return that claims the credit for child and dependent care expenses.



## IRS initiatives and ongoing efforts to help tax professionals

IRS provides tax professionals with various online tools and information to help tax professionals prepare accurate returns.

Let's discuss some of the initiatives and efforts, such as the:

- Tax Professionals Awareness Week.
- Webinars, videos and training module.
- IRS Document Upload Tool.

## 2024

## Tax Professional Awareness Week

<b>MIRS</b>	Earned Income Tax Credit & Other Refundable Credits								
EITC Central	Tax Preparer Toolkit	Partner Toolkit	Other Refundable Credits	Search Q					
Tax Professional Awareness Week									
About Refundable Credits for Preparers		Tax Professional Awareness Week							
Hot Topics for	Return Preparers								
Preparer Due l	Diligence	What is Tax Professional Awareness Week?							
Due Diligence	Training Module	A week of educational initiatives that equips tax professionals with the tools and information they need before filing seasor help them prepare accurate returns. The event is designed to empower tax professionals with updated knowledge and skill							
Nationwide Ta	x Forum Videos	the evolving field of taxation.							
Due Diligence	Videos	Why are Tax Professionals so important?							
Preparer Com	pliance - Focused	Paid tax professionals play an important role in assisting taxpayers with their filing obligations. In Fiscal Year 2022, paid tax							

## Tax Professional Awareness Week cont:

## Stay informed - Access resources designed to enhance your expertise in tax preparation.

- EITC Assistant
- EITC Due Diligence Training Module
- e-Services
- <u>Filing Taxes After Divorce or Separation</u>
- Interactive Tax Assistant
- IRS National Tax Forums Online
- PTIN Requirements for Tax Return Preparers
- Tax Return Preparer Toolkit
- Tax Pro Account
- Webinars for Tax Professionals

## **Online Publications:**

- Publication 1345, Handbook for Authorized IRS e-file Providers of Individual Income Tax Return
- Circular 230, Regulations Governing Practice before the Internal Revenue Service Treasury Department
- Publication 5895, Who Do You Trust to Prepare Your Return?

## Webinars & Videos

- Webinars for tax practitioners, offer a variety of tax related topics. Continuing Education Credits are available for most webinars.
  - Search @ irs.gov "webinars".
- The <u>IRS Video Portal</u> contains video and audio presentations on topics of interest to small businesses, individuals and tax professionals. You will find video clips of tax topics, archived versions of live panel discussions and webinars.
  - Search @ irs.gov "video portal".

## Document Upload Tool for Tax Professionals

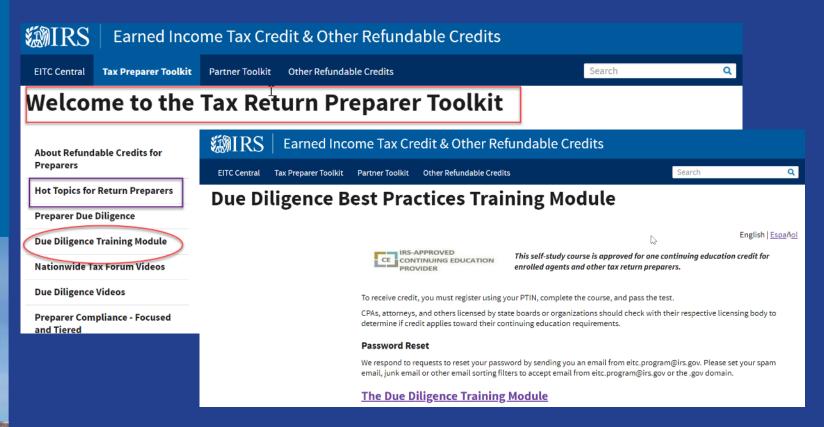
The IRS Document Upload Tool allows users to securely upload documents to the IRS in response to:

- Specific IRS notices or letters.
- Correspondence due diligence audits.

Provides electronic confirmation that IRS received the documents.



## Online Educational Resources



Tax Preparer Toolkit: <a href="https://www.irs.gov/toolkit">https://www.irs.gov/toolkit</a>

## Contact Information:

## EITC.program@irs.gov



## Thank you for attending.

