

Part III - Administrative, Procedural, and Miscellaneous

Work Opportunity and Welfare-to-Work Tax Credits – Notice

Notice 99-51

The Tax and Trade Relief Extension Act of 1998, Pub. L. No. 105-277 (the Act) was enacted on October 21, 1998. Among the Act's provisions were (1) the retroactive reenactment and extension of the Work Opportunity Tax Credit (WOTC) under section 51 of the Internal Revenue Code, and (2) the extension of the Welfare-to-Work (WtW) Tax Credit under section 51A of the Code. This notice briefly describes the two credits and clarifies their operation where an individual is employed by more than one employer in the process of moving from welfare to work.

Treasury and the IRS understand that similar questions may arise when individuals who are members of other targeted groups (such as qualified veterans and qualified ex-felons) move from one employer to another. Although this notice focuses primarily on certain former welfare recipients, the analysis set forth herein applies to members of any targeted group.

Background

Substantive Requirements for the WOTC

In general

Section 51 of the Code provides a tax credit to employers who hire individuals belonging to one of the eight targeted groups set forth in section 51(d) of the Code. The credit generally equals 40 percent of qualified first-year wages up to \$6,000 for certified workers who work at least 400 hours in the first year (for a maximum credit of \$2,400 per certified worker). Sections 51(a) and (b). The credit percentage is reduced to 25 percent of qualified first-year wages for certified workers who work at least 120 hours but less than 400 hours. Section 51(i)(3).

“Qualified first-year wages” are wages attributable to services rendered during the one-year period beginning on the date the individual begins to work for the employer. Section 51(b) of the Code.

Qualified IV-A Recipients constitute one of the eight targeted WOTC groups. A Qualified IV-A Recipient is a member of a family that receives assistance under a State plan approved under part A of Title IV of the Social Security Act (relating to assistance for needy families with minor children) for any nine months during the 18-month period ending on the hiring date.

For purposes of the credit, an individual is not a member of a targeted group unless the individual is certified as such by a designated local agency, usually a state employment security agency. Section 51(d) of the Code; Notice 96-52, 1996-2 C.B. 218; and Notice 97-54, 1997-2 C.B. 306.

Section 52(c) of the Code provides that the WOTC generally is not available to any organization that is exempt from tax.

The Act retroactively reenacted and extended the WOTC to June 30, 1999.

Substantive Requirements for the WtW Tax Credit

In general

Section 51A of the Code provides a tax credit to employers that hire individuals who are Long-Term Family Assistance Recipients, as defined in section 51A(c) of the Code. The amount of the WtW tax credit differs from the WOTC. The WtW tax credit is 35 percent of qualifying first-year wages and 50 percent of qualifying second-year wages of up to \$10,000. Sections 51A(a) and (b)(4).

“Qualified-first year wages” are wages attributable to service rendered during the one-year period beginning on the day the individual begins work for the employer. “Qualified second-year wages” are wages attributable to service rendered during the one-year period beginning on the day after the last day of the one-year period for measuring “qualified first-year wages.” Section 51A(b) of the Code. For purposes of the WtW tax credit (although not for the WOTC), wages include certain tax-exempt amounts relating to accident and health coverage, educational assistance programs, and dependent care assistance programs. Section 51A(b)(5). The maximum WtW tax credit for first-year wages is \$3,500 and for second-year wages is \$5,000. Section 51A(a).

A Long-Term Family Assistance Recipient is an individual whom the designated local agency certifies as belonging in one of the following groups:

(a) members of a family that have received family assistance under a State plan approved under part A of title IV of the Social Security Act for at least 18 consecutive months ending on the hiring date;

(b) members of a family that have received family assistance for a total of at least 18 months (whether or not consecutive) beginning after August 5, 1997, who are hired by the employer after February 5, 1999, and who have a hiring date which is not more than two years after the end of the earliest such 18-month period; or

(c) members of a family that cease after August 5, 1997, to be eligible for family assistance by reason of a limitation imposed by Federal or State law on the maximum period such assistance can be paid and who have a hiring date which is not more than two years after the date of such cessation.

Like the WOTC, the WtW tax credit generally is not available to any organization that is exempt from tax. Section 51A(d) of the Code.

The Act extended the WtW tax credit to June 30, 1999.

Coordination of the WOTC and WtW Tax Credit

In some instances, an individual meets the requirements both as a Qualified IV-A Recipient for purposes of the WOTC and as a Long-Term Family Assistance Recipient for purposes of the WtW tax credit. In any taxable year, an employer who hires such an individual may choose to claim either the WOTC or the WtW tax credit, but not both, with respect to that employee. Section 51A(e) of the Code. For a further discussion of the coordination of the WOTC and WtW tax credit, see Notice 97-54, *supra*.

Availability of Credits Where an Individual Moves from Employer to Employer while Moving from Welfare to Work

If an individual qualifies as a Qualified IV-A Recipient and/or a Long-Term Family Assistance Recipient on the hiring date, the WOTC and/or WtW tax credit, as applicable, generally is available to employers other than those described in section 52(c) of the Code, regardless of any other circumstances applicable to the individual on that date.

For example, if the individual meets the applicable statutory requirements (e.g., the nine out of 18-month requirement for WOTC purposes or one of the requirements for purposes of the WtW tax credit) on the hiring date, the employer may claim the applicable credit even if the individual was working for another employer immediately before the hiring date and even if that other employer claimed the same credit for all or part of the wages paid to the individual. However, a successor employer or a second employer that is part of the same controlled group of businesses generally is treated as a continuation of the first employer. Sections 51(k), 51A(d) and 52(a) and (b) of the Code.

For WOTC purposes, as noted above, the same analysis applies in the case of individuals other than Qualified IV-A Recipients. In each case, employment by an unrelated employer immediately prior to the hiring date does not preclude an individual from being a member of a targeted group if the individual can still meet the applicable

statutory requirements on the hiring date.

Examples

The following examples illustrate the application of these requirements where an employee is employed by more than one employer while moving from welfare to work.

For purposes of these examples, it is assumed that all of the applicable requirements for credit eligibility are met.

Example 1: On October 1, 1998, X, a charitable organization that is exempt from tax under section 501(a) of the Internal Revenue Code, hires A to participate in a transition-to-work program. A's family has been receiving assistance under a qualified IV-A program for the nine consecutive months ending on September 30, 1998. A works for X for three months in the job training program. On January 1, 1999, Y, a taxable business, hires A for a permanent job. On the day Y hires A, A is a qualified IV-A recipient for purposes of the WOTC, because A's family has received assistance under a qualified IV-A program during nine of the preceding 18 months. (In fact, A's family has received such assistance for nine of the preceding 12 months.) Y's only relationship to X is that it hires workers from X's transition-to-work program and occasionally makes charitable contributions to X. Therefore, Y is not a successor employer to X and is not part of the same controlled group of businesses as X. Y may claim the WOTC for up to \$6,000 of the wages Y pays to A for services rendered during the one-year period commencing on January 1, 1999, the day A begins to work for Y.

Example 2: The facts are the same as in Example 1, except that A works for X for 12 months, and Y hires A on October 1, 1999. On the day Y hires A, A is not a qualified IV-A recipient for purposes of the WOTC, because A's family only received assistance under a qualified IV-A program for six of the 18 months preceding the October 1, 1999 hiring date. Thus, Y may not claim the WOTC for any wages that it pays to A.

Example 3: On October 1, 1998, Z, a taxable business, hires B. B's family has been receiving assistance under a qualified IV-A program for the nine consecutive months ending on September 30, 1998. B works for Z for three months, and Z claims the WOTC with respect to wages paid to B. On January 1, 1999, Y, a taxable business, hires B. On the day Y hires B, B is a qualified IV-A recipient for purposes of the WOTC, because B's family has received assistance under a qualified IV-A program during nine of the preceding 18 months. (In fact, B's family has received such assistance for nine of the preceding 12 months.) Y has no relationship to Z. Therefore, Y is not a successor employer to Z and is not part of the same controlled group of businesses as Z. Y may claim the WOTC for up to \$6,000 of the wages Y pays to B for services rendered during the one-year period commencing on January 1, 1999, the day B begins to work for Y.

Example 4: The facts are the same as in Example 3, except that on January 1, 1999, Y acquired from Z substantially all of the property used in the trade or business in which Z employed B. As part of the same transaction, Y became B's employer. In the three months during which B worked for Z, Z claimed the WOTC with respect to \$4,000 of wages paid to B. Because Y is a successor employer to Z, Y is treated as a continuation of Z for purposes of the WOTC. Thus, Y may claim the WOTC only with respect to \$2,000 of wages that Y pays to B for services rendered during the nine-month period beginning on January 1, 1999, the day B starts to work for Y.

Example 5: On March 1, 1999, X, a charitable organization that is exempt from tax under section 501(a) of the Code, hires C to participate in its transition-to-work program. C's family received assistance under a qualified IV-A program for the 18 consecutive months beginning August 6, 1997, and ending February 5, 1999. C participates in X's program for four months. On June 30, 1999, Z, a taxable business, hires C. On the day Z hires C, C is a long-term family assistance recipient for purposes of the WtW tax credit, because C's family has received assistance under a qualified IV-A program for a total of 18 months beginning after August 5, 1997, C is hired by Z after February 5, 1999, and C has a hiring date which is not more than two years after the end of the 18-month period. Z's only relationship to X is that Z hires workers from X's transition-to-work program and occasionally provides technical assistance to X. Therefore, Z is not a successor employer to X and is not part of the same controlled group of businesses as X. Z may claim the WtW tax credit both for up to \$10,000 of the wages Z pays to C for services rendered during the one-year period commencing on June 30, 1999, the day C begins to work for Z, and for up to \$10,000 of the wages Z pays to C for services rendered during the next one-year period commencing on June 30, 2000.

(Under the facts of this example 5, C also is a qualified IV-A recipient for purposes of the WOTC. Thus, for any particular taxable year of Z in which Z pays C for services rendered during C's first one-year period of employment with Z, Z may elect to claim the WOTC rather than the WTW tax credit for wages paid to C. Notice 97-54, supra.)

Drafting Information

The principal author of this Notice is Robert Wheeler, Office of Assistant Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in its development. For further information regarding this Notice, contact Robert Wheeler at (202) 622-6060 (not a toll-free call).