

Work Opportunity Tax Credit (WOTC) Guidance and Transition Relief

Notice 2016-22

I. PURPOSE

This notice provides guidance and transition relief for employers claiming the Work Opportunity Tax Credit (WOTC) under §§ 51 and 3111(e) of the Internal Revenue Code (Code), as extended and amended by the Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, *div. Q* (the PATH Act). Section 142(a) of the PATH Act amended § 51(c) of the Code to extend the WOTC through December 31, 2019. Section 142(b) of the PATH Act amended § 51(d) of the Code to expand the “targeted groups” of individuals, the employment of whom may qualify the employer for a credit listed in the statute, to include qualified long-term unemployment recipients (as defined in § 51(d)(15) of the Code). This notice provides guidance and transition relief beyond the 28-day deadline in § 51(d)(13)(A)(ii) of the Code for employers that hire members of targeted groups (other than qualified long-term unemployment recipients) on or after January 1, 2015, and on or before May 31, 2016. This notice also provides guidance and transition relief beyond the 28-day deadline in § 51(d)(13)(A)(ii) of the Code for

employers that hire members of the new targeted group of qualified long-term unemployment recipients on or after January 1, 2016, and on or before May 31, 2016.

II. BACKGROUND

Section 51(a) of the Code provides the WOTC to employers based on a percentage of qualified wages paid during the taxable year. Section 51(b) of the Code defines qualified wages as wages paid or incurred by an employer during the taxable year to an individual who is a member of a targeted group. Section 51(d)(1) of the Code lists the targeted groups. Pursuant to § 51(d)(13)(A) of the Code, an individual is not treated as a member of a targeted group unless (1) on or before the day the individual begins work, the employer obtains certification from the designated local agency (DLA) that the individual is a member of a targeted group; or (2) the employer completes a pre-screening notice on or before the day the individual is offered employment and submits such notice to the DLA to request certification not later than 28 days after the individual begins work. To request certification from a DLA, an employer submits IRS Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit*, to the DLA no later than the 28th day after the day an individual who is a member of a targeted group begins work for the employer. An employer also must submit a Department of Labor Employment and Training Administration (ETA) Form 9061 (Individual Characteristics Form) or 9062 (Conditional Certification) to the DLA. Section 51(d)(12) of the Code provides that a DLA means a State employment security agency established in accordance with 29 U.S.C. §§ 49-49n.

Since originally enacted by § 1201 of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, the WOTC has been subject to a series of legislative extensions and modifications.

III. AMENDMENTS MADE BY THE PATH ACT

The PATH Act extends the WOTC through December 31, 2019 for taxable employers that hire members of a targeted group and for qualified tax-exempt organizations described in § 501(c) of the Code that hire qualified veterans.

The PATH Act also amends § 51(d)(1) of the Code to add qualified long-term unemployment recipients to the list of targeted groups, effective as of January 1, 2016. Section 51(d)(15) of the Code defines a qualified long-term unemployment recipient as any individual who is certified by a DLA as being in a period of unemployment which is not less than 27 consecutive weeks and includes a period in which the individual was receiving unemployment compensation under State or Federal law. This additional targeted group does not apply for purposes of qualified tax-exempt organizations taking the credit provided by § 3111(e) against an employer social security tax.

IV. GUIDANCE AND TRANSITION RELIEF

An employer must obtain certification that an individual is a member of a targeted group before the employer may claim the WOTC. As stated in Section II of this notice, § 51(d)(13)(A) of the Code provides that an individual is not treated as a member of a targeted group unless (i) on or before the day the individual begins work for the employer, the employer obtains certification from a DLA that the individual is a member of a targeted group; or (ii) on or before the day the individual is offered employment with the employer, a prescreening notice (IRS Form 8850) is completed and no later than 28

days after the individual begins work the employer submits the prescreening notice to the DLA for certification. An employer obtains certification of an individual's targeted group status from a DLA by submitting both the IRS Form 8850 and an ETA Form 9061 or 9062 to the DLA. Employers are encouraged to submit both the IRS Forms 8850 and the ETA Forms 9061 or 9062 together in the same submission.

A. QUALIFIED LONG-TERM UNEMPLOYMENT RECIPIENTS

The PATH Act's amendment and expansion of the targeted groups described in § 51(d)(1) of the Code to include long-term unemployment recipients will require changes to forms used by employers to request certification for qualified long-term unemployment recipients hired on or after January 1, 2016. For purposes of this notice, a qualified long-term unemployment recipient is any individual who on the day before the individual begins work for the employer, or, if earlier, the day the individual completes the IRS Form 8850 as a prescreening notice in accordance with the certification described in § 51(d)(13)(A)(ii), is in a period of unemployment that is (i) not less than 27 consecutive weeks, and (ii) includes a period (which may be less than 27 weeks) in which the individual received unemployment compensation under State or Federal law.

The IRS Form 8850 and ETA Forms 9061 and 9062 are being modified consistent with the guidance in this notice so that they can be used to request certification by the DLAs for qualified long-term unemployment recipients. Those modified forms and instructions will indicate the information that must be provided on the forms for the employer to receive certification from the DLA that the individual is a qualified long-term unemployment recipient. The Treasury Department and the IRS

anticipate that the modified forms will include a requirement that the individual signing the form attest that he or she meets the requirements to be a qualified long-term unemployment recipient and a requirement that the individual attest to the period(s) during which the individual was unemployed and the period the individual received unemployment compensation.

B. TRANSITION RELIEF

Because the PATH Act extended the WOTC retroactively for 2015 for members of targeted groups described in § 51(d)(1)(A) through (d)(1)(I) of the Code, and because the PATH Act created a new targeted group described in § 51(d)(1)(J) of the Code (qualified long-term unemployment recipients), employers need additional time to comply with the requirements of § 51(d)(13)(A)(ii) of the Code for those targeted groups. For these reasons, the Treasury Department and the IRS have determined that it is appropriate to provide employers with additional time to file IRS Form 8850 with the DLAs.

1. Additional time for employers that hired or hire members of targeted groups other than qualified long-term unemployment recipients between January 1, 2015 and May 31, 2016

An employer that hired or hires a member of a targeted group described in § 51(d)(1)(A) through (d)(1)(I) of the Code and who began or begins work for that employer on or after January 1, 2015, and on or before May 31, 2016, will be considered to have satisfied the requirements of § 51(d)(13)(A)(ii) of the Code if the employer submits the completed IRS Form 8850 to the DLA to request certification no later than June 29, 2016.

2. Additional time for employers that hired or hire long-term unemployment recipients between January 1, 2016 and May 31, 2016

An employer that hired or hires an individual who is a long-term unemployment recipient described in § 51(d)(1)(J) of the Code and who began or begins work for that employer on or after January 1, 2016, and on or before May 31, 2016, will be considered to have satisfied the requirements of § 51(d)(13)(A)(ii) if the employer submits the completed IRS Form 8850 to the DLA to request certification no later than June 29, 2016.

3. Application of 28-day requirement to individuals hired on or after June 1, 2016

An employer that hires a member of a targeted group described in § 51(d)(1)(A) through (d)(1)(J) of the Code, including a long-term unemployment recipient, who begins work for that employer on or after June 1, 2016, is not eligible for the transition relief described in this notice with respect to any such new hire.

V. DRAFTING INFORMATION

The principal author of this notice is R. Lisa Mojiri-Azad of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding the WOTC, contact Ms. Mojiri-Azad at (202) 317-5500 (not a toll-free number).