

Part III – Administrative, Procedural, and Miscellaneous

Work Opportunity Tax Credit (WOTC) Transition Relief under Internal Revenue Code § 51

Notice 2020-78

I. PURPOSE

This notice provides transition relief for certain employers claiming the Work Opportunity Tax Credit (WOTC) under § 51 of the Internal Revenue Code (Code). Specifically, this notice provides transition relief by extending the 28-day deadline for employers described in section IV of this notice to request certification from a designated local agency (DLA)¹ that an individual hired on or after January 1, 2018, and before January 1, 2021, is a member of the designated community resident targeted group or the qualified summer youth employee targeted group.

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) defines “qualified wages” as wages paid or incurred by an employer during the taxable year to an individual who is certified as a member of a targeted group. Section 51(d)(1) lists the targeted groups, which include designated community residents defined in § 51(d)(5) and qualified

¹ Section 51(d)(12) provides that a “DLA” is a State employment security agency (sometimes referred to as a State Workforce Agency) established in accordance with 29 U.S.C. §§ 49-49n.

summer youth employees defined in § 51(d)(7).

Pursuant to § 51(d)(13)(A), 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 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. The Form 8850 (Pre-Screening Notice and Certification Request for the Work Opportunity Credit) is the pre-screening notice that must be submitted to the DLA to request certification.

Among the requirements for an individual to be certified as a member of a targeted group described in § 51(d)(5) or (7), the individual must be certified by the DLA as having a principal place of residence within an empowerment zone² where the individual continuously resides. Any wages paid to or incurred on behalf of the individual for services rendered while the individual is not living at a residence within an empowerment zone do not qualify for the WOTC.

III. TAXPAYER CERTAINTY AND DISASTER TAX RELIEF ACT AMENDMENTS

The WOTC has been subject to several legislative extensions and modifications since its enactment by § 1201 of the Small Business Job Protection Act of 1996, Pub. L. 104-188, 110 Stat. 1755 (August 20, 1996). Most recently, the Taxpayer Certainty and Disaster Tax Relief Act (Act), enacted as Division Q of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534, 3226 (December 19, 2019),

² Section 1393(b) provides that for purposes of the Code, the term “empowerment zone” means an area designated as such under § 1391.

amended § 51 of the Code to extend the WOTC through December 31, 2020.

Specifically, § 143 of the Act amended § 51(c)(4) of the Code to extend the WOTC for an employer that hires individuals who are members of a targeted group with respect to wages paid or incurred to such individuals who begin work for the employer after December 31, 2019, but not after December 31, 2020.

In addition, § 118(a) of the Act amended § 1391(d)(1) of the Code to provide that any designation of an empowerment zone ends on the earliest of (1) December 31, 2020, (2) the termination date designated by the State and local governments as provided for in their nomination, or (3) the date the appropriate Secretary³ revokes the designation. Section 118(b) of the Act provides that where a nomination of an empowerment zone included a termination date of December 31, 2017, § 1391(d)(1)(B) of the Code will not apply with respect to such designation if, after the date of the enactment of the Act, the entity that made such nomination amends the nomination, in such manner as the Secretary of the Treasury may provide, to provide for a new termination date. The amendment made by § 118(a) of the Act applies to taxable years beginning after December 31, 2017.

On June 11, 2020, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) issued Revenue Procedure 2020-16, 2020-27 IRB 10, to explain how a State or local government is deemed to extend the termination date designated in an empowerment zone nomination until December 31, 2020. Revenue Procedure 2020-16 provides that if a State or local government did not submit a written

³ Section 1393(a)(1) of the Code defines the term “appropriate Secretary” as the Secretary of Housing and Urban Development (in the case of any nominated area designated under § 1391 that is located in an urban area as defined in § 1393(a)(3)) or the Secretary of Agriculture (in the case of any nominated area designated under § 1391 that is located in a rural area as defined in § 1393(a)(2)).

declination to the IRS by August 10, 2020, and if the appropriate Secretary did not revoke the empowerment zone designation, then the termination date provided in that empowerment zone nomination is automatically extended to December 31, 2020.

IV. GRANT OF RELIEF

Because the Act extended the WOTC through December 31, 2020, and retroactively extended the period for which an empowerment zone designation is in effect under § 1391(d)(1) from December 31, 2017, to December 31, 2020, employers need additional time to comply with the DLA certification requirements of § 51(d)(13)(A)(ii).

The Treasury Department and the IRS understand that, due to the expiration of empowerment zone designations at the end of 2017 and the uncertainty of whether empowerment zone designations would be extended, some employers that hired members of targeted groups described in § 51(d)(5) and (7) may not have submitted Form 8850 to the DLA within 28 days of the individual beginning work. To be eligible for the relief provided by this notice, an employer that did not submit Form 8850 to the DLA within 28 days of an individual beginning work must submit the completed Form 8850 to the DLA by the date set forth in section IV.A of this notice.

In addition, the Treasury Department and the IRS are aware that some employers that hired members of targeted groups described in § 51(d)(5) and (7) may have submitted Form 8850 to the DLA within 28 days of an individual beginning work, regardless of the expiration of the empowerment zone designations. To be eligible for the relief provided by this notice, an employer that submitted Form 8850 to the DLA and subsequently received a denial letter from the DLA by reason of the expiration of the empowerment zone designations must re-submit the completed Form 8850 by the date

set forth in section IV.A of this notice. In the event that an employer submitted Form 8850 to the DLA and was not issued a denial letter by the DLA, the employer does not need to re-submit Form 8850 to be eligible for the relief provided in this notice.

For these reasons, the Treasury Department and the IRS are providing employers with additional time to submit Form 8850 with the DLAs in accordance with the following timeframe.

A. Additional time for employers that hired or hire designated community residents or qualified summer youth employees between January 1, 2018, and December 31, 2020 to submit a completed Form 8850 to the DLA.

An employer that hired an individual who is a designated community resident described in § 51(d)(5), or a qualified summer youth employee described in § 51(d)(7), and who began work for that employer on or after January 1, 2018, and before January 1, 2021, will be considered to have satisfied the requirements of § 51(d)(13)(A)(ii), whether or not the employer submitted the completed Form 8850 to the DLA within 28 days of the individual beginning work for the employer, if the employer submits the completed Form 8850 to the DLA to request certification no later than January 28, 2021. In the event that an employer submitted Form 8850 to the DLA and was not issued a denial notification by the DLA, the employer does not need to re-submit Form 8850.

B. Application of 28-day requirement to individuals hired on or after January 1, 2021.

An employer that hires a member of a targeted group described in § 51(d)(5) or (7), who begins work for the employer on or after January 1, 2021, is not eligible for the

transition relief described in this notice with respect to that new employee.

V. EFFECTIVE DATE

The effective date of this notice is December 11, 2020.

VI. DRAFTING INFORMATION

The principal author of this notice is Christopher Dellana of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes).

For further information regarding the WOTC, contact Mr. Dellana at (202) 317-5500 (not a toll-free number).