

Part III – Administrative, Procedural, and Miscellaneous

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

Notice 2021-43

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) for certain employees beginning work after December 31, 2020, in response to legislation permitting the designation of an Empowerment Zone, defined in § 1393(b) of the Code, to be extended from December 31, 2020, through December 31, 2025. Specifically, section IV of this notice provides transition relief by extending the 28-day deadline for employers to request certification from a designated local agency (DLA)¹ that an individual who begins work on or after January 1, 2021, and before October 9, 2021, is a member of the Designated Community Resident targeted group or the Qualified Summer Youth Employee targeted group.²

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.

² For purposes of this notice, the terms “Designated Community Resident” and “Qualified Summer Youth Employee” refer to those individuals certified by a DLA as having a principal place of residence within an Empowerment Zone.

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 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 that the individual is a member of a targeted group 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 by the employer to the DLA to request certification that an individual is a member of a targeted group.

To be certified as a Designated Community Resident or a Qualified Summer Youth Employee, an individual must be certified by the DLA as having a principal place of residence within an Empowerment Zone where the individual continuously resides. For such individuals, 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 OF 2020 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, § 113 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (December 27, 2020), amended § 51(c)(4) of the Code to extend the effective date of WOTC. As amended by the Act, § 51(c)(4) provides that WOTC applies to wages paid or incurred with respect to members of a targeted group who begin work after December 31, 2020, and before January 1, 2026. 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, 2025, (2) the termination date designated by the State and local governments as provided for in their nomination, or (3) the date the “Appropriate Secretary”³ revokes the designation. Section 118(d) of the Act provides that where a nomination of an Empowerment Zone included a termination date of December 31, 2020, § 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 or her designee 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, 2020.

³ Section 1393(a)(1) of the Code provides that the “Appropriate Secretary” is 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)).

On March 26, 2021, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) released Revenue Procedure 2021-18, 2021-15 I.R.B. 1007 (April 12, 2021), to explain how a State or local government is deemed to extend the termination date designated in an Empowerment Zone nomination until December 31, 2025. Revenue Procedure 2021-18 provides that if a State or local government did not submit a written declination to extend an Empowerment Zone to the IRS by May 25, 2021, 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, 2025.

IV. GRANT OF RELIEF

As explained below, because the Act extended the WOTC and the period for which Empowerment Zone designations are in effect through December 31, 2025, employers may need additional time to comply with the certification requirements of § 51(d)(13)(A)(ii).

The Treasury Department and the IRS understand that, because the termination dates designated in Empowerment Zone nominations are not automatically extended until after the deadline set forth in Revenue Procedure 2021-18 for submitting a written declination has passed, employers that hired an individual who is a Designated Community Resident or a Qualified Summer Youth Employee and who began work for that employer on or after January 1, 2021, 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 individuals who are Designated Community Residents or Qualified Summer Youth Employees may have submitted Form 8850 to the DLA within 28 days of the 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 due to 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. If 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 to the DLAs in accordance with the following timeframe.

A. Additional time for employers hiring individuals who are Designated Community Residents or Qualified Summer Youth Employees who begin work on or after January 1, 2021, and before October 9, 2021, to submit a completed Form 8850 to the DLA no later than November 8, 2021.

An employer that hires or hired an individual who is a Designated Community Resident or a Qualified Summer Youth Employee and who begins or began work for that employer on or after January 1, 2021, and before October 9, 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 November 8, 2021. If an employer hired an individual who is a Designated Community Resident or a Qualified Summer Youth Employee who began work on or after January 1, 2021, and before May 26, 2021, and the employer submitted Form 8850 to the DLA but either was not issued a denial notification by the DLA or was issued a certification, then the employer does not need to re-submit Form 8850 to request certification from the DLA.

B. Application of 28-day requirement to individuals who begin work on or after October 9, 2021.

An employer that hires an individual who is a Designated Community Resident or a Qualified Summer Youth Employee and who begins work for the employer on or after October 9, 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 August 10, 2021.

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).