

Part III. Administrative, Procedural, and Miscellaneous

Empowerment Zone Employment Credit

Notice 96-1

The Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66 (OBRA'93) added sections 1391 through 1397D (relating to empowerment zones and enterprise communities) to the Internal Revenue Code. See sections 13301 through 13303 of OBRA'93. Section 1397D of the Code authorizes the Secretary of the Treasury to prescribe such regulations as may be necessary or appropriate to carry out the purposes of sections 1394 through 1397C.

The empowerment zone employment credit is set forth in section 1396 of the Code. The amount of the credit is equal to a specified percentage of qualified zone wages, which are certain wages paid or incurred by an employer for services performed by a qualified zone employee. Certain questions have arisen about the definition of a 'qualified zone employee' in section 1396(d). In particular, questions have been raised about the appropriate period under section 1396(d)(1)(A) during which substantially all of the services performed by an employee for his or her employer must be performed within an empowerment zone in a trade or business of the employer.

The Internal Revenue Service intends to issue a notice of proposed rulemaking, pursuant to the authority provided by sections 1397D and 7805(a), clarifying the relevant period for this purpose. The proposed regulations will provide that an employer may elect either of the following two approaches with respect to each calendar year. The employer must use the same approach with respect to all of its employees in computing the credit for the year.

Under the first alternative, the relevant period for an employee is each pay period in which the employee provides services to the employer. If an employer has one pay period for certain employees and a different pay period for other employees (e.g., a weekly pay period for hourly wage employees and a bi-weekly pay period for salaried employees), the pay period actually applicable to a particular employee is the relevant pay period for

that employee under this alternative. The credit may be claimed with respect to qualified zone wages (within the meaning of section 1396(c)) for services provided during each pay period in which substantially all of the services performed by the employee for the employer are performed within an empowerment zone in a trade or business of the employer.

Under the second alternative, the relevant period for an employee is the entire calendar year with respect to which the credit is being claimed by that employer (or, for any employee who is employed by the employer for less than the entire calendar year, the portion of that calendar year during which the employee is employed by the employer). Under this alternative, an employee is not a qualified zone employee within the meaning of section 1396(d)(1) unless substantially all of the services performed by the employee for the employer during the calendar year are performed within an empowerment zone in a trade or business of the employer. If the employee is a qualified zone employee, the credit may be claimed with respect to qualified zone wages (within the meaning of section 1396(c)) for all services performed by the employee for the employer during the calendar year.

While the Service does not anticipate imposing specific record-keeping requirements in the regulations, under either alternative an employer would be expected to have and maintain records sufficient to establish, for each employee with respect to whom the empowerment zone employment credit is claimed, where the employee actually worked during the relevant period. The nine empowerment zones are located in portions of Atlanta, Baltimore, Chicago, Detroit, New York, Philadelphia/Camden, and the Kentucky Highlands (Clinton, Jackson, and Wayne Counties, Kentucky), Mid-Delta (Bolivar, Sunflower, Leflore, Washington, Humphreys, and Holmes Counties, Mississippi), and Rio Grande Valley (Starr, Cameron, Hidalgo, and Willacy Counties, Texas) regions.

These regulations will be proposed to be effective December 21, 1994, the date on which the nine empowerment zones authorized by OBRA'93 were designated by the Secretaries of Housing and Urban Development and Agriculture.

The Service requests comments regarding these alternative approaches, as well as comments on other issues relating to the empowerment zone employment credit with respect to which guidance may be helpful to employers. These comments should be submitted in writing by March 29, 1996, to Internal Revenue Service, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), CC:EBEO:4, Room 5203, 1111 Constitution Avenue, N.W., Washington, DC 20224, Attn: Robert G. Wheeler.

The principal author of this notice is Robert Wheeler of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further information regarding this notice contact Mr. Wheeler on (202) 622-6060 (not a toll-free call).