Work Opportunity Tax Credit and Welfare-to-Work Tax Credit

Notice 97–54

The Taxpayer Relief Act of 1997, Pub. L. No. 105–34, (the Act) was enacted on August 5, 1997. The Act extended and amended the Work Opportunity Tax Credit (WOTC) under section 51 of the Internal Revenue Code and created the Welfare-to-Work tax credit under new section 51A of the Code. This notice describes the principal statutory changes. It also announces the release of a new Form 8850 (issued September 1997) for use in pre-screening job applicants and requesting certifications in connection with both credits and a transition period for using the earlier version of Form 8850 (issued September 1996), which does not reflect the changes contained in the Act.

WOTC Overview

The WOTC is a tax credit for employers who hire individuals belonging to one of the targeted groups listed in section 51 of the Code. For purposes of the credit, an individual is not a member of a targeted group unless the individual is certified as such by the State employment security agency (SESA). *See* section 51(d)(11) of the Code and Notice 96-52, 1996-2 C.B. 218.

• *Extension and Amendment of WOTC*

Prior to amendment, (1) the WOTC was scheduled to expire on September 30, 1997, (2) there were seven targeted groups, (3) the credit was 35 percent of first-year wages up to $6,000 (for a maximum credit of $2,100 per individual), and (4) the minimum employment period was generally 400 hours or 180 days. Act section 603 made several changes to the WOTC. First, it extended the credit to cover individuals who begin work by June 30, 1998. The Act modified the definitions of two targeted groups: (i) qualified recipients of benefits under Aid to Families with Dependent Children (AFDC) or a successor program and (ii) qualified veterans. It added a new targeted group consisting of certain individuals who receive supplemental security income (SSI) benefits under the Social Security Act. It increased the credit percentage to 40 percent for certified workers who work at least 400 hours (for a maximum credit of $2,400 per individual). Finally, the Act amended the minimum employment period so that employers may also claim the WOTC for certified workers who work at least 120 hours but less than 400 hours. Workers who meet this minimum work requirement will entitle the employer to a credit of 25 percent of qualified wages. No credit is available for workers who work less than 120 hours.

• *Certification Process*

There are two ways an employer can satisfy the requirement to obtain a certification that a worker is a member of a targeted group. First, the employer can obtain a certification from the SESA, on or before the day the individual begins work, stating that the individual belongs to a targeted group. Section 51(d)(11)(A)(i) of the Code.

Alternatively, the employer can complete a "pre-screening notice" with respect to the prospective employee on or before the day the individual is offered employment. Then, within 21 days after the individual begins work, the employer submits that notice to the SESA as part of a request for certification. Section 51(d)(11)(A)(ii). For this purpose, employers have been using Form 8850, *Work Opportunity Tax Credit Pre-Screening Notice and Certification Request* (issued September 1996). (See Revised Form 8850 discussion on page 8.)

Welfare-to-Work Tax Credit Overview

The new Welfare-to-Work tax credit, added by section 801 of the Act, is a tax credit for employers who hire individuals certified by the SESAas long-term family assistance recipients. The credit is effective for wages paid to such individuals who begin work after December 31, 1997, and before May 1, 1999. Long-term family assistance recipients are (1) members of a family that has received family assistance (AFDC or a successor program) for at least 18 consecutive months ending on the hiring date; (2) members of a family that has received family assistance for a total of at least 18 months (whether or not consecutive) after August 5, 1997; and (3) members of a family that ceases after August 5, 1997, to be eligible for family assistance because of either federal or state time limits.

The Welfare-to-Work tax credit is 35 percent of qualifying first-year wages and 50 percent of qualifying second-year wages. For this purpose (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. For each employment year, up to $10,000 of wages (in contrast with the $6,000 maximum for the WOTC) may be considered in determining the amount of the Welfare-to-Work tax credit.

Although the substantive requirements are different for the WOTC and the Welfare-to-Work tax credit, the certification process is the same. Thus, the employer must either receive a certification from the SESA on or before the day the individual begins work, stating that the individual is a long-term family assistance recipient, or the employer must complete a "pre-screening notice" on or before the day the individual is offered employment. In the latter case the employer must, within 21 days after the individual begins work, submit that notice to the SESA as part of a request for certification.

Coordination of WOTC and Welfare-to-Work Tax Credit

The Welfare-to-Work tax credit is coordinated with the WOTC so that in any one taxable year an employer cannot claim both credits with respect to the same individual. For example, assume that an individual begins work on March 1, 1998, and works at least 400 hours for an employer whose taxable year is the calendar year. The employer pays "first-year wages" from March 1998 through February 1999, and pays "second-year wages" from March 1999 through February 2000. If the individual is certified as both a member of one of the WOTC targeted groups and a long-term family assistance recipient and the requirements for both credits are otherwise satisfied, the employer will have the following choices. For 1998, the employer may claim either the WOTC (40 percent of wages up to $6,000) or the

Welfare-to-Work tax credit (35 percent of wages as defined in section 51A(b)(5) of the Code up to $10,000). For 1999, the employer may choose again which credit to claim. The WOTC would be based solely on the amount of first-year wages (up to the $6,000 limit) paid in 1999, during the balance of the first employment year (i.e., January and February 1999). The Welfare-to-Work tax credit would have two components: 35 percent of the amount of first-year wages (up to the $10,000 limit) paid in January and February 1999, and 50 percent of the amount of the second-year wages (up to a separate $10,000 limit) paid in March through December 1999. For 2000, the taxpayer could claim only the Welfare-to-Work tax credit, based on the amount of second-year wages (up to the second $10,000 limit) paid in January and February 2000.

Revised Form 8850

On September 20, 1997, the IRS issued a revised and renamed Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.* The changes to the WOTC and the enactment of the Welfare-to-Work tax credit are reflected on a single form to simplify the certification process for prospective employees, employers, and SESAs.

How to Get the Revised Form 8850

The new form is available to computer users through the IRS home page on the World Wide Web, http://www.irs.ustreas.gov, and by modem directly at 703-321-8020 (not a toll-free number). Employers may also request Form 8850 by calling 1-800-TAX-FORM (1-800-829-3676).

Transition Relief

Employers should begin using the new Form 8850 for employees whose first day of work is on or after October 1, 1997 (for the WOTC), or on or after January 1, 1998 (for the Welfare-to-Work tax credit). Employers may continue to use the old Form 8850, however, for individuals who are in one of the original seven WOTC targeted groups and begin work before January 1, 1998.

Employers that submit Forms 8850 to SESAs are not entitled to the applicable credits unless the employers receive the required certifications. Before claiming the WOTC or the Welfare-to-Work tax credit with respect to an individual, the employer must receive a certification from the SESA that the individual is, in fact, a member of a targeted group or a long-term family assistance recipient, as the case may be.

The principal author of this notice is Robert Wheeler of the Office of 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).