12-14-2007

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Work Opportunity Tax Credit Extended to Employees Residing in “Rural Renewal Counties”

-by Neil E. Harl

The Small Business and Work Opportunity Tax Act of 2007¹, in addition to other changes in the Work Opportunity Tax Credit,² the 2007 tax act extended the credit to newly-hired employees residing in a “rural renewal county.”³ The credit amount is up to a maximum of 40 percent of the first $6,000 of “qualified first-year wages” paid to an eligible employee who is a “designated community resident” and who works for at least 400 hours during the first year of employment.⁴ Thus, the credit could be as much as $2400 for each eligible employee.⁵

The provision has been extended to August 31, 2011.⁶ For an employer who hires an eligible individual on August 31, 2011, the credit would be available for wages paid through August 30, 2012 inasmuch as “qualified first year wages” means “... wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer.”⁷

Rural Renewal Counties

As noted, an individual must reside in a “rural renewal county.”⁸ That term is defined as “... any county which is outside a metropolitan statistical area (defined as such by the Office of Management and Budget) and during the 5-year periods 1990 through 1994 and 1995 through 1999 had a net population loss.”⁹ Thus, it is not necessary for the employer to be located in a rural renewal county, only that the employee have the “principal place of abode within ... [a] rural renewal county.”¹⁰ Indeed, the term “qualified wages” does not include wages paid or incurred for services performed while the individual’s principal place of abode is outside a rural renewal county.¹¹

Designated community resident

A “designated community resident” is an individual who is certified by the designated local agency as having attained the age of 18 but not the age of 40 on the hiring date and as having his or her principal place of abode within a rural renewal county.¹² Note that there is no limit on the amount of wage or salary such an employee who qualifies as a “designated community resident” can receive and still be eligible although there are limitations imposed on “related individuals.”¹³

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Next issue will be published on January 11, 2008. Happy Holidays to You and Yours!
Ineligible individuals

The 2006 legislation\(^\text{14}\) had specified that the term “qualified wages” does not include (1) an individual who is related to the taxpayer;\(^\text{15}\) (2) an individual who is a dependent of the taxpayer;\(^\text{16}\) (3) an individual who is related to a shareholder who owns (within the meaning of I.R.C. § 267(c)) more than 50 percent of the stock in the case of a corporation;\(^\text{17}\) (4) an individual who is a dependent of a shareholder owning more than 50 percent of the stock of a corporation;\(^\text{18}\) (5) an individual who is a grantor, beneficiary or fiduciary of the taxpayer, if the taxpayer is an estate or trust;\(^\text{19}\) (6) an individual who is a dependent of an individual described in (5);\(^\text{20}\) or (7) an individual who is related to an individual described in (5).\(^\text{21}\) Likewise, wages are not qualified wages if paid to a retired employee who was not a targeted group employee when employed earlier.\(^\text{22}\)

Adjustment to wage deduction

An employer’s deduction for wages is reduced by the amount of the work opportunity credit claimed.\(^\text{23}\)

Meaning of “wages” for agricultural labor

The term “wages” generally has the same meaning as under I.R.C. § 3306(b).\(^\text{24}\) However, if services performed by an employee during more than one-half of any pay period constitute agricultural labor, the term “unemployment insurance wages” means an amount equal to so much of the remuneration as constitutes “wages” within the meaning of I.R.C. § 3121(a), except that the contribution and benefit base for each calendar year is deemed to be $6,000.\(^\text{25}\) By referencing the term “wages” to I.R.C. § 3121(a), it excludes wages paid in-kind to agricultural labor.\(^\text{26}\)

Certification rules and procedures

An employer must obtain certification from a “designated local agency” (which generally means a state employment security agency) that the potential employee is a member of the targeted group (including a resident of a rural renewal county).\(^\text{27}\) The employer must either obtain written certification from the designated local agency on or before the day the individual begins work or completes a pre-screening notice on or before the date employment is offered and not later than the 28th day after the individual begins work for the employer, the employer submits the notice, signed by the employer and employee, to the designated local agency as part of the written request for certification from the agency.\(^\text{28}\)

Forms to be used

Form 5884, Work Opportunity Credit, is used to claim the credit. Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits, is used in the pre-screening and certification process. In addition, the employer is to complete U.S. Department of Labor ETA Form 9061, Individual Characteristics Form (or ETA Form 962, Conditional Certification Form, if the applicant had already been conditionally certified).

FOOTNOTES


4 I.R.C. §§ 51(a), (b)(3).

5 Id.


7 I.R.C. § 51(b)(2).

8 I.R.C. § 51(d)(5)(C).

9 I.R.C. § 51(d)(5)(C)(i), (ii).


13 I.R.C. § 51(e)(1).


16 Treas. Reg. § 1.51-1(e)(1)(ii).

17 Treas. Reg. § 1.51-1(e)(1)(iii).

18 Treas. Reg. § 1.51-1(e)(1)(iv).

19 Treas. Reg. § 1.51-1(e)(1)(v).

20 Treas. Reg. § 1.51-1(e)(1)(vi).

21 Treas. Reg. § 1.51-1(e)(1)(vii).

22 I.R.C. § 51(i).

23 I.R.C. § 280C(a).

24 I.R.C. § 51(c)(1).


26 See I.R.C. § 3121(a)(8).


28 I.R.C. § 51(d)(13)(A). In Perdue Farms, Inc. v. United States, 99-2 U.S. Tax Cas. (CCH) ¶ 50,659 (D. Md. 1999), a business that did not receive certification as a result of cessation of processing activities by a local agency was still entitled to claim the targeted jobs credit, a predecessor of the work opportunity tax credit. See also H.E. Butt Grocery Co. v. United States, 108 F. Supp. 2d 709 (W.D. Tex. 2000) (individuals eligible to receive credit were entitled to receive the credit even though not certified).