

IRS extends transitional relief period to file Form 8850 to claim WOTC through September 28, 2016

Overview

On June 17, 2016, the Internal Revenue Service (IRS) issued Notice 2016-40, providing guidance to employers claiming the Work Opportunity Tax Credit (WOTC) under Internal Revenue Code (IRC) §§51 and 3111(e).¹ For certain employers seeking to qualify for the WOTC, Notice 2016-40 provides additional time beyond the original transitional relief period noted in Notice 2016-22 (issued by the IRS on March 7, 2016) which had the effect of temporarily waiving the 28-day deadline specified in IRC §51(d)(13)(A) to submit Form 8850 (Pre-screening Notice and Certification Request for the Work Opportunity Credit) to Designated Local Agencies (DLA).

This Tax Alert summarizes this IRS guidance.

Protecting Americans from Tax Hikes of 2015

The Protecting Americans from Tax Hikes Act of 2015 (PATH),² retroactively extended the WOTC expiration date from December 31, 2014 to December 31, 2019, as applied to business that hire employees who fall within certain targeted groups.³

Notice 2016-22 Transitional Relief – additional time to submit Form 8850

In Notice 2016-22, issued March 7, 2016, the IRS acknowledged that the PATH's retroactive extension of the WOTC may cause employers to "need additional time to comply with the requirements of IRC §51(d)(13)(A)[,]" namely, the filing of Form 8850 with a DLA.⁴ To address this concern, Notice 2016-22 provided transitional relief applicable to the timing for filing Form 8850 (generally through June 29, 2016) for employers that hire a member of certain targeted groups.

Notice 2016-40 Transitional Relief – extends period to submit form 8850 by three months

Notice 2016-40 extends the transition relief period in the following manner: For employers hiring members of a targeted group described in IRC §51(d)(1)(A) through (d)(1)(I) of the Code on or after January 1, 2015, and on or before August 31, 2016, employers will now be considered to have satisfied the requirements of §51(d)(13)(A)(ii) if they submit the completed Form 8850 to the applicable DLA to request certification not later than *September 28, 2016*.⁵

Notice 2016-40 also extends the transition relief period for employers that hire a member of the new targeted group, qualified long-term unemployment recipients,⁶ on or after January 1, 2016 and on or before August 31, 2016. As specified in the Notice, similar to the previously existing WOTC target groups noted above, employers will be

¹ The WOTC is a federal income tax credit of up to \$9,600 for each qualified newly hired employee, depending upon qualified category. See, IRC §51(a), (b).

² H.R. 2029 114th Cong. (2015-2016).

³ The members of the target groups that qualify under WOTC are defined in IRC §51(d).

⁴ Notice 2016-22.

⁵ Notice 2016-40.

⁶ The term qualified long-term unemployment recipient is defined as "any individual who is certified by the designated local agency as being in a period of unemployment which—(A) is not less than 27 consecutive weeks, and (B) includes a period in which the individual was receiving unemployment compensation under State or Federal law." PATH Sec 142(b), amending IRC §51(d).

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considered to have satisfied the requirements of §51(d)(13)(A)(ii) if they submit the completed Form 8850 to the applicable DLA to request certification not later than *September 28, 2016*.

Notice 2016-40 only modifies the transition relief provided in section IV.B of Notice 2016-22, and does so by extending the period of the transition relief as indicated in Section III of Notice 2016-40. In all other respects, Notice 2016-40 does not modify or add to the guidance originally provided in Notice 2016-22.

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