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IRS directive, work opportunity tax credit (WOTC)

The IRS has posted a directive jointly issued by the Large Business & International (LB&I) and Small Business/Self-Employed (SB/SE) divisions as instructions for IRS examiners on the treatment of work opportunity tax credit (WOTC) examinations under section 51.

The joint directive provides that examiners are not to challenge the timing of when a taxpayer claims the WOTC, if the claimed WOTC complies with all requirements of section 51, but the WOTC is claimed in the year the taxpayer receives a delayed certification from the state workforce agency.

The joint directive—[LB&I-04-1019-011](#) (dated October 10, 2019)—is effective for all LB&I and SB/SE taxpayers claiming the WOTC in the year their eligible employees are certified.

Background

The joint directive identifies the WOTC under section 51 as follows:

- Section 51 provides a WOTC for employers who hire and pay qualified wages to individuals who are certified members of targeted groups.
- Third-party payers (such as professional employer organizations) are not considered employers eligible to claim the WOTC.
- An employer may claim the WOTC upon receipt of a certification that an individual employee is a member of a targeted group.
- An employer must submit IRS Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit*, to the designated local agency (also referred to as the state workforce agency), to certify the employee. Form 8850 must be submitted no later than the 28th calendar day after the employee begins to work for the employer.
- After receipt of the certification from the state workforce agency, employers compute and claim the WOTC in the year in which they paid or incurred certified employees' qualified wages.

The directive further explains that extended delays associated with the WOTC certification process prevent some employers from being able to claim the WOTC on the tax return originally filed for the year in which the qualified wages were paid or incurred. This creates a need for employers to file multiple amended federal and state income tax returns, each year, to claim the WOTC in the year the employer paid or incurred the qualified wages. In lieu of filing amended returns, some employers have claimed the WOTC in the year they receive the delayed certifications for the qualified wages they paid or incurred in earlier year(s).

Examination guidance provided by joint directive

The joint directive provides that examiners are not to challenge the timing of when a taxpayer claims the WOTC, if the claimed WOTC complies with all requirements of section 51, but the WOTC is claimed in the year the taxpayer receives the delayed certification. To comply with section 280C, taxpayers claiming the WOTC must not claim or have claimed a deduction for wages equal to the WOTC.

If an examiner audits the WOTC, the examiner is directed:

- First, to determine the taxpayer's WOTC computation methodology
- Second, if the taxpayer consistently claims the WOTC in the year the delayed certification is received, to allow the taxpayer to claim the WOTC in that year
- Third, to allow the taxpayer an initial transition year to convert from its previous computation methodology to claiming the WOTC in the year of certification

The joint directive concludes that the examiner may verify a taxpayer's WOTC computation by confirming the amount and year qualified wages were paid; the year certifications were received; and that the taxpayer did not include the same qualified wages to compute other credits (such as empowerment zone, Indian employment, research credit, etc.). The taxpayer is to make available to the examiner, upon request, all relevant documentation to substantiate the WOTC.

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