



# What's News in Tax

Analysis that matters from Washington National Tax

## IRS Extends Certification Deadline for Certain Employers Claiming the Work Opportunity Tax Credit

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Employers claiming the work opportunity credit may now have transition relief from filing deadlines.

IRS Notice 2021-43 (“Notice”) provides relief to certain employers claiming the work opportunity credit (“WOTC”)<sup>1</sup> for individuals who are members of either the “Designated Community Resident” targeted group or the “Qualified Summer Youth Employee” targeted group. Specifically, the Notice extends the 28-day deadline for employers to request certification from a designated local agency (“DLA”)<sup>2</sup> that an individual who begins work on or after January 1, 2021, and before October 9, 2021, is a member of either targeted group.

### Background

The WOTC is a federal income tax credit available to employers that hire certified members of certain targeted groups specified in the Code who face significant barriers to employment, including Designated Community Residents or Qualified Summer Youth Employees.

The amount of the tax credit under WOTC equals a percentage of qualified wages paid in a given tax year to an employee certified by the DLA as being a member of a group specified under the WOTC rules.

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<sup>1</sup> Section 51. Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended (the “Code”) or the applicable regulations promulgated pursuant to the Code (the “regulations”).

<sup>2</sup> Section 51(d)(12).

An individual is not treated as a member of a targeted group unless:

- On or before the day the individual begins work, the employer obtains certification from the DLA that the individual is a member of a targeted group, or
- The employer completes a pre-screening notice on or before the day the individual is offered employment and submits the notice to the DLA to request certification that the individual is a member of a targeted group not later than 28 days after the individual begins work.<sup>3</sup>

Form 8850, *Pre-Screening Notice and Certification Request for the Work Opportunity Credit*, is the pre-screening notice that must be submitted by the employer to the DLA to request certification that an individual is a member of a targeted group.

### Designated Community Resident and Qualified Summer Youth Employee

To be certified as a Designated Community Resident or a Qualified Summer Youth Employee, an individual must be certified by the DLA as having a principal place of residence within an eligible area where the individual continuously resides. Any wages paid to or incurred on behalf of the individual for services rendered while the individual is not living at a residence within an eligible area do not qualify for the WOTC.

A Designated Community Resident is an individual who is certified by a DLA as having:

- Attained age 18 but not age 40 on the hiring date, and
- A principal place of abode within an empowerment zone, enterprise community, renewal community, or rural renewal county.<sup>4</sup>

A Qualified Summer Youth Employee means any individual who:

- Performs services for the employer between May 1 and September 15,
- Is certified by the DLA as having attained age 16 but not 18 on the hiring date (or, if later, on May 1 of the calendar year involved),
- Has not been an employee of the employer prior to the available WOTC credit period, and
- Is certified by the DLA as having a principal place of abode within an employment zone, enterprise community, or renewal community.<sup>5</sup>

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<sup>3</sup> Section 51(d)(13)(A).

<sup>4</sup> Section 51(d)(5).

<sup>5</sup> Section 51(d)(7).

## Recent Legislation Extending the WOTC and Empowerment Zone Designations

The effective date of the WOTC was extended to provide that the WOTC applies to wages paid or incurred for members of a targeted group who begin work after December 31, 2020, and before January 1, 2026.<sup>6</sup>

Empowerment zone designations were scheduled to be terminated on December 31, 2020. However, those designations were extended through 2025.<sup>7</sup> And, in Revenue Procedure 2021-18, Treasury and the IRS provided that if a state or local government declined the extension in a written notification to the IRS by May 25, 2021, and if the Appropriate Secretary did not revoke the empowerment zone designation, then the termination date provided in that empowerment zone nomination would be automatically extended to December 31, 2025. As a result, on May 26, 2021, all empowerment zone designations were extended from December 31, 2020, to December 31, 2025.

Because the empowerment zone designations were not automatically extended until May 26, 2021, employers that hired an individual who is a Designated Community Resident or a Qualified Summer Youth Employee and who began work for that employer on or after January 1, 2021, may not have submitted Form 8850 to the DLA within 28 days of the individual beginning work.

The Notice provides transition relief for an employer that hires or hired an individual who is a Designated Community Resident or a Qualified Summer Youth Employee and who begins or began work for that employer on or after January 1, 2021, and before October 9, 2021. Such an employer will be considered to have satisfied the WOTC requirements whether or not the employer submitted the completed Form 8850 to the DLA within 28 days of the individual beginning work for the employer, if the employer submits the completed Form 8850 to the DLA to request certification no later than November 8, 2021.

If an employer hired an individual who is a Designated Community Resident or a Qualified Summer Youth Employee who began work on or after January 1, 2021, and before May 26, 2021, and the employer submitted Form 8850 to the DLA but either was not issued a denial notification by the DLA or was issued a certification, then the employer does not need to re-submit Form 8850 to request certification from the DLA.

An employer that submitted Form 8850 to the DLA and subsequently received a denial letter from the DLA due to the expiration of the empowerment zone designations must re-submit the completed Form 8850 by November 8, 2021.

However, an employer that hires an individual who is a Designated Community Resident or a Qualified Summer Youth Employee and who begins work for the employer on or after October 9, 2021, is not eligible for the transition relief described in the Notice with respect to that new employee.

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<sup>6</sup> Section 113 of the Taxpayer Certainty and Disaster Tax relief Act of 2020, enacted as Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260 (the "Act").

<sup>7</sup> Section 118(a) of the Act

## KPMG Observation

Some employers claiming the WOTC may have not filed or properly filed the Form 8850 because the termination dates designated in empowerment zone nominations were not automatically extended until after the deadline set forth in Revenue Procedure 2021-18. Notice 2021-43 provides clarity and transition relief for these employers to claim the WOTC by extending the deadline to file the Form 8850.



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