

Part IV - Items of General Interest

Industry Issue Resolution Regarding the Work Opportunity and Welfare-to-Work Tax Credits

Announcement 2006-49

On August 8, 2005, in IR-2005-81, the Internal Revenue Service and the Treasury Department announced that the Industry Issue Resolution (IIR) Program would address concerns relating to “member of a family receiving assistance” requirements for the work opportunity and welfare-to-work tax credits. Employers had expressed concern that, before the issuance of Rev. Rul. 2003-12, 2003-2 C.B. 1007, states applied the family-member requirements in a manner inconsistent with the holding in that revenue ruling and, as a result, employers were not permitted to claim credits that should have been allowed. A multi-functional team was formed to analyze the relevant facts. Based upon the analysis conducted by the team, the IRS and Treasury have concluded that the states applied the family-member requirements in a manner consistent with the holding of Rev. Rul. 2003-112 in all but a small number of cases and that these cases had an insignificant impact on the aggregate amount of work opportunity and welfare-to-work tax credits employers were permitted to claim.

Consequently, no administrative resolution through the IIR program is appropriate.

BACKGROUND

Section 51 of the Internal Revenue Code allows a work opportunity tax credit (WOTC) to an employer who paid qualified wages during the taxable year to an individual who is a member of a targeted group described in section 51(d). To be a member of a targeted group, an individual must be certified by the designated local agency (state workforce agency) as satisfying the applicable conditions for that group. To qualify for three of the targeted groups (qualified IV-A recipient, qualified veteran, and qualified food stamp recipient), the individual must be certified by the state workforce agency as being “a member of a family receiving assistance” under a stated benefit program for a specified period of time.

Section 51A allows a welfare-to-work (W-t-W) tax credit to an employer who paid qualified wages during the taxable year to an individual who is a long-term family assistance recipient. A long-term family assistance recipient under section 51A must be certified as “a member of a family receiving assistance” under rules similar to the certification requirements for qualified IV-A recipients, qualified veterans, and qualified food stamp recipients under section 51.

In 2002, the Internal Revenue Service received a request for clarification of the standards under which an individual could be certified as “a member of a family receiving assistance” who qualifies for inclusion in one of these four groups (affected groups). The Service then issued Rev. Rul. 2003-112, which holds that an individual can be certified as a member of a family receiving assistance if the individual’s family

receives assistance for the requisite period and the individual is included on the grant (and thus receives assistance) for some portion of the specified period.

During the period before publication of the ruling, some state workforce agencies might have applied standards differing from the standard in Rev. Rul. 2003-112.

Because the Service did not limit the retroactive effect of the ruling, the application of a different standard could have resulted in an incorrect denial of certification for some employees. Under normal procedures, an employer that believes a denial of certification is incorrect would request that the state workforce agency reconsider its denial and would be allowed a credit only if, after reconsideration, the agency certified the employee.

A trade association representing service providers that screen employees for credit eligibility and assist employers in submitting requests for their certification proposed an alternative procedure. Under the alternative procedure, employers would be permitted to claim credits for a percentage of requests for certification that were denied before issuance of Rev. Rul. 2003-112. The proposal became the subject of an Industry Issue Resolution (IIR) project.

IIR PROCESS: INDUSTRY DATA, IRS STUDY, AND CONCLUSION

The trade association asserted that its member data indicated that certification rates varied among states and were lower for the targeted groups requiring certification as a member of a family receiving assistance (affected groups). However, the data did not provide a complete picture of WOTC employers and certification rates. The data also did not differentiate between denials for administrative reasons (such as lack of

timeliness or original signature) and denials for technical reasons (failure to meet a statutory requirement for a targeted group), nor did it provide a valid basis for determining what proportion of the denials for technical reasons were the result of the application of a standard differing from that set forth in Rev. Rul. 2003-112.

In response to the IIR submission, the Service undertook a study to determine whether a significant portion of the denials of requests for certification issued before the publication of Rev. Rul. 2003-112 were the result of state agencies taking a position inconsistent with the conclusion in the revenue ruling. In doing so, the Service worked with state authorities and the Department of Labor to collect data on the reasons for denials of requests for certification in the four affected groups and conducted a statistical analysis of that data. The Service also considered information presented by interested parties. Based upon this study, the Service has determined that only an insignificant fraction (less than one percent) of the denials of requests for certification in the four affected groups resulted from state workforce agencies taking a position inconsistent with Rev. Rul. 2003-112.

Accordingly, the Service and Treasury have concluded that any failures prior to the issuance of Rev. Rul. 2003-112 to apply a standard consistent with the standard set forth in the ruling had a negligible effect on the aggregate amount of credits taxpayers were permitted to claim. Therefore, no Internal Revenue Service administrative resolution is necessary or appropriate, and no credit will be allowed **by the Service** for any WOTC and W-t-W tax credit claims without proper certification by a designated local agency in accordance with the statute. An employer that believes an employee

was improperly denied certification prior to the publication of Rev. Rul. 2003-112 may request that the appropriate state workforce agency reconsider the denial.

DRAFTING INFORMATION

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