

Part III - Administrative, Procedural, and Miscellaneous

Section 51 - Work Opportunity Tax Credit

Notice 2009-28

PURPOSE

Section 51 of the Internal Revenue Code (the Code) provides for a Work Opportunity Tax Credit (WOTC) for employers who hire individuals who are members of targeted groups. Section 1221 of the American Recovery and Reinvestment Tax Act of 2009 (ARRTA), enacted February 17, 2009, Div. B, Tit. I of Pub. L. No. 111-5, amended § 51 to add two new targeted groups for purposes of the WOTC. New § 51(d)(14) provides that unemployed veterans and disconnected youth who begin work for an employer during 2009 or 2010 shall be treated as members of a targeted group for purposes of the WOTC.

This notice provides sets forth the statutory definitions of “unemployed veteran” and “disconnected youth,” and provides guidance on the definition of “disconnected youth.” It also provides transition relief for employers who hire unemployed veterans or disconnected youth after December 31, 2008, and before July 17, 2009.

I. STATUTORY DEFINITION OF UNEMPLOYED VETERAN

For purposes of § 51(d)(14), the term “veteran” means any individual who is certified by the designated local agency (as defined in § 51(d)(12) as a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. § 49-49n)) as:

- (1) having served on active duty (other than active duty for training) in the Armed Forces of the United States (Armed Forces) for a period of more than 180 days; or
- (2) having been discharged or released from active duty in the Armed Forces for a service-connected disability.

Section 51(d)(14)(B)(i) provides that the term “unemployed veteran” means any veteran who is certified by the designated local agency as:

- (1) having been discharged or released from active duty in the Armed Forces at any time during the 5-year period ending on the hiring date; and
- (2) being in receipt of unemployment compensation under State or Federal law for not less than four weeks during the one-year period ending on the hiring date.

II. DISCONNECTED YOUTH

A. Statutory Definition

Section 51(d)(14)(B)(ii) provides that the term “disconnected youth” means any individual who is certified by the designated local agency:

- (I) as having attained age 16 but not age 25 on the hiring date;
- (II) as not regularly attending any secondary, technical, or post-secondary school during the 6-month period preceding the hiring date;
- (III) as not regularly employed during such 6-month period; and
- (IV) as not readily employable by reason of lacking a sufficient number of basic skills.

The Conference Agreement on ARRTA, H.R. Rep. No. 111-16, at 554, states:

For purposes of the disconnected youths, it is intended that a low level of formal education may satisfy the requirement that an individual is not readily employable by reason of lacking a sufficient number of skills. Further, it is intended that the Internal Revenue Service, when providing general guidance regarding the various new criteria, shall take into account the administrability of the program by the State agencies.

B. Not regularly attending any secondary, technical or post-secondary school

For purposes of § 51(d)(14)(B)(ii)(II), the term “not regularly attending” means that the individual states in writing that during the six months preceding his or her hiring date, he or she has not attended a secondary, technical or postsecondary school for more than an average of 10 hours per week, not counting periods during which the school is closed for scheduled vacations.

For purposes of § 51(d)(14)(B)(ii), the term “secondary school” means:

- (1) A secondary school as defined in 20 U.S.C. § 7801(38); or
- (2) a for-profit secondary school that otherwise meets the definition in 20 U.S.C. § 7801(38).

A General Education Development (GED) program is not a secondary school for purposes of § 51(d)(14)(B)(ii).

For purposes of § 51(d)(14)(B)(ii) and § 51(d)(14)(B)(ii)(IV), the terms “technical school” and “post-secondary school” mean institutions of higher education as defined in 20 U.S.C. §§ 1001; 1002(a)(1), (b) and (c); and 1059c(b)(3).

C. Not regularly employed

For purposes of section 51(d)(14)(B)(ii)(III), an individual was not regularly employed if, during each consecutive three-month period within the six months preceding his or her hiring date, the individual earned less than an amount equal to the gross amount he or she would have been paid at the minimum wage if he or she worked 30 hours every week during the three-month period.

For purposes of the preceding sentence, "minimum wage" is the higher of (1) the federal minimum wage (as defined in 29 U.S.C. section 206(a)(1)) or (2) the generally applicable State minimum wage (if any).

D. Not readily employable by reason of lacking a sufficient number of basic skills

For purposes of § 51(d)(14)(B)(ii)(IV), an individual is not readily employable by reason of lacking a sufficient number of basic skills if the individual states in writing that he or she does not have a certificate of graduation from a secondary school or a GED Certificate. For purposes of § 51(d)(14)(B)(ii)(IV), an individual also is not readily employable by reason of lacking a sufficient number of basic skills if the individual states in writing that he or she has a certificate of graduation from a secondary school or a GED Certificate that was awarded no less than 6 months preceding his or her hiring date and has not held a job or been admitted to a technical school or post-secondary school since receiving the certificate.

EFFECTIVE DATE

New § 51(d)(14) is effective for individuals who begin work for the employer after December 31, 2008, and before January 1, 2011.

TRANSITION RELIEF

Section 51(d)(13) provides that an individual shall not be treated as a member of a targeted group unless the employer obtains certification from a designated local agency on or before the day the individual begins work that the individual is a member of a targeted group or completes a pre-screening notice (IRS Form 8850) on or before the day the individual is offered employment and submits such notice to the designated local agency to request certification not later than 28 days after the individual begins work. However, under this notice, any employer who hires an unemployed veteran or a disconnected youth (as defined in § 51(d)(14)) after December 31, 2008, and before July 17, 2009, will be considered to satisfy the deadline in § 51(d)(13)(A)(ii)(II) if the employer submits the pre-screening notice to the designated local agency to request certification not later than August 17, 2009.

DRAFTING INFORMATION

The principal author of this notice is Robin Ehrenberg of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other individuals participated in its development. For further information regarding this notice contact Ms. Ehrenberg at (202) 622-6080 (not a toll-free call).