Work Opportunity Tax Credit – IRS Notice opens retroactive precertification period, extends deadline to June 29, 2016

March 17, 2016

In brief

On March 7, 2016, the Internal Revenue Service released Notice 2016-22. This Notice provides guidance and transition relief for employers claiming the Work Opportunity Tax Credit (WOTC). In summary, the notice: (1) establishes a retroactive period for precertification of employees who began working for an employer on or after January 1, 2015, through May 31, 2016; and (2) previews the updated prescreening forms being modified to include the new long term unemployed eligibility category.

This provides an opportunity for employers that already generated the WOTC to increase their credit. It also provides an opportunity for employers that have not claimed the WOTC to retroactively screen their employees for eligibility.

In detail

On December 18, 2015, President Obama signed the Protecting Americans from Tax Hikes Act of 2015, Pub. L. No. 114-113, div. Q (the PATH Act), which retroactively extends the WOTC to January 1, 2015, through December 31, 2019. In addition, the credit is expanded to include a new eligibility category, Long-Term Unemployment Recipient (click here for our Insight summarizing the extension and expansion of the WOTC).

The following provides new guidance on the application of the WOTC.

Transition relief for the retroactive period of January 1, 2015, through May 31, 2016

Legislation extending the WOTC had been on hiatus since December 31, 2014. Although the WOTC was extended for the period beginning January 1, 2015 through December 31, 2019, there was no guidance relating to the extension of the 28-day deadline in § 51(d)(13)(A)(ii) of the Code to precertify eligible candidates for the WOTC. It was anticipated that employees hired during this hiatus period beginning on January 1, 2015, until December 18, 2015, would be eligible for retroactive screening. As expected, the IRS has now issued such guidance.

Per the Notice, the IRS will allow an employer that hired or hires a member of a targeted group who begins work on or after January 1, 2015, and on or before May 31, 2016, to submit the completed IRS Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit to the designated local agency by June 29, 2016.
All employees beginning work on or after June 1, 2016, will be subject to the 28-day requirement.

**Modification of forms to include ‘Long-Term Unemployment Recipient’**

The PATH Act also added a new category to the list of targeted groups: ‘Long-Term Unemployment Recipient.’ This addition requires that the existing prescreening forms, which include IRS Form 8850, as well as Department of Labor Employment and Training Administration (ETA) Form 9061 (Individual Characteristics Form) or 9062 (Conditional Certification), be updated to reflect the new category. The modified forms and instructions will indicate the information that must be provided on the forms for the employer to receive certification for employees in this new category.

Long-term unemployment recipients became eligible for the WOTC as of January 1, 2016. Therefore, the retroactive period for employees in this category will begin on January 1, 2016, rather than January 1, 2015, and extends through May 31, 2016.

**The takeaway**

Employers now have additional time to prescreen employees hired in 2015 or the beginning of 2016 to see if they are eligible for certification to claim the WOTC. The new category for long term unemployment recipients in effect from January 1, 2016, also is available on a retroactive basis through May 31, 2016. This means that the normal 28-day requirement is waived for the new category and all categories for employees hired and beginning employment on or before May 31, 2016.

This is a tremendous opportunity for employers that already generated the WOTC to increase their credit. It also provides an opportunity for employers that have not claimed the WOTC to retroactively screen their employees for eligibility.

**Let’s talk**

If you have any questions regarding the WOTC, please contact:

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