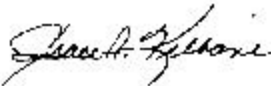


U. S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION ES/WOTC/WtW
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DIRECTIVE : EMPLOYMENT SERVICE PROGRAM LETTER No. 02-01

TO : ALL STATE EMPLOYMENT SECURITY AGENCIES

FROM : GRACE A. KILBANE 
 Administrator
 Office of Workforce Security

SUBJECT : Clarification of Amendment to Section 51(i)(2) of the Internal Revenue Code (IRC) Dealing With “Qualifying Rehires” and to Vocational Rehabilitation Referral Statutory Definition under the Work Opportunity Tax Credit (WOTC) Program and the Welfare-to-Work Tax Credit.

1. Purpose. To clarify the amendment to Section 51(i)(2) of the IRC dealing with “qualifying rehires,” and to identify the period of time requirement for referral of individuals from vocational rehabilitation programs as this applies to the WOTC and WtW tax credits.

2. References. The Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170), §505; the Small Business Job Protection Act of 1996 (P.L. 104-188), §1201 (d)(6)(B), as amended; Internal Revenue Code of 1986, §51 and §51A, as amended; ESPL No. 10-99, dated December 22, 1999; and ETA Handbook No. 408, Second Edition, November 1998.

3 Information and Background. The Ticket to Work and Work Incentives Improvement Act of 1999, amended section 51(i) (2) of the Internal Revenue Code of 1986, dealing with nonqualifying rehires to read as follows:

“No wages shall be taken into account under section [51](a) with respect to any individual if, prior to the hiring date of such individual, such individual had been employed by the employer at any time.”

Prior to this amendment, section 51(i)(2) read as follows:

“No wages shall be taken into account under section [51](a) with respect to any individual if, prior to the hiring date of such individual, such individual had been employed by the employer at any time during which he is not a member of a [WOTC/WtW] targeted group.”

4. Clarification of Amendment to Section 51(i)(2) of the IRC Regarding “Qualifying Rehires.”

In interpreting the clarifying amendment to section 51(i), the discussion of “breaks in employment” on page III-11 of ETA Handbook No. 408, Second Edition, November 1998, still applies. This means that an individual certified as a WOTC or WtW target group member, who begins to work for an employer, and who never worked for the employer before, can experience breaks in employment, return to this employer, and be rehired by this employer. Such hiring can occur during the initial year of employment in the case of the WOTC and the initial two years of employment in the case of WtW, and still qualify the employer to claim either tax credit. The practical effect of this amendment is that each taxpayer is limited to claiming the WOTC or WtW tax credit once for each eligible targeted group member. Prior to this amendment, if all requirements were met, the assumption was that the taxpayer could claim the WOTC or WtW tax credit year after year for the same targeted group member upon obtaining recertification. The amended language now legally bars that practice.

Special Rule for Continued Employment. A person, who was a “qualified summer youth” employee and meets the eligibility criteria for another target group, may be recertified by the designated local agency. This would qualify the employer to claim the remainder of the one-year WOTC credit. A new Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits, must be submitted for the second target group. The total period of eligibility for the credit, including the time during which the person is a certified summer youth employee, cannot exceed one year. A summer youth employee who continues to work for the same employer but does not immediately qualify for a second target group may be recertified at any time within the one-year period beginning with the date of initial hire as a summer youth. Eligibility must be established for the second target group.

5. Vocational Rehabilitation Referral. The second part of the definition in page II-7, of the 1998, Second Edition of ETA Handbook No. 408, for the Vocational Rehabilitation Referral reads as follows:

“...was referred to the employer upon, or at any time after, completing or while receiving rehabilitative services pursuant to an individualized written rehabilitative plan (IWRP) under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973;”

For purposes of the WOTC program certification process, the phrase “or at any time after” should be deleted so the statutory definition reads as follows:

“...having been referred to the employer upon completion of or while receiving rehabilitative services pursuant to an individualized written plan for employment (IPE) under a State plan for vocational rehabilitative services approved under the Vocational Rehabilitation Act of 1973...[as amended, 1998], or”

This change allows the State Employment Security Agencies or Designated Local Agencies to issue certifications to Vocational Rehabilitation (VR) Referrals for individuals who have received rehabilitation services up to two years after receipt of the last VR services.

6. Action Required. SESA Administrators are requested to share this guidance with the corresponding WOTC/WtW State Coordinators and ensure it is understood and implemented. The guidance contained in this directive becomes effective upon receipt.

7. Inquiries. Questions should be directed to Carmen Ortiz by e-mail at ceortiz@doleta.gov or by telephone at (202) 693-2786.

8. Attachment. Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170), §505.