

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION "21-Day" Filing Req.
	CORRESPONDENCE SYMBOL OWS
	DATE April 5, 2002

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 22-01

TO : ALL STATE WORKFORCE LIAISONS
ALL STATE WORKFORCE AGENCIES
ALL STATE WORKER ADJUSTMENT LIAISONS
ALL ONE-STOP CENTER SYSTEM LEADS
/S/

FROM : EMILY STOVER DeROCCO
Assistant Secretary

SUBJECT : Tax Relief Period Granted by the Internal Revenue Service (IRS) to Employers Affected by the September 11, 2001, Terrorist Attacks for the "21-Day" Filing Requirement.

1. Purpose. To transmit to the State Workforce Agencies (SWAs) guidance on the availability of relief from the "21-day" requirement for submitting IRS Form 8850, under the Work Opportunity Tax Credit (WOTC) Program and the Welfare-to-Work Tax Credit (WtWTC).

2. References. IRS Notices 2001-61, 2001-63 and 2001-68, IRS Revenue Procedure 2001-53, the *Ticket to Work and Work Incentives Improvement Act of 1999*, (P.L. 106-170); Internal Revenue Code (IRC) of 1986, 26 USC §51 and §51A, as amended; and ETA Handbook No. 408, Second Edition, November 1998.

3. Background. The Small Business Job Protection Act of 1996, P.L. 105-34, as amended, created the WOTC Program. One of its key provisions is the "21-day period" filing requirement, which all participating employers and/or their consultants must meet in order to qualify for receiving a Certification. This statutory provision requires that all requests for certification under the WOTC Program or the Welfare-to-Work Tax Credit, created in 1997, must be sent to the State Workforce Agencies (SWAs) within 21 days after the employment start day of the new hire. The terrorist attacks that took place on September 11, 2001, in New York and Virginia affected many participating employers/consultants. The IRS created and granted a "relief" period to address these unique circumstances.

4. Information. The President issued federal disaster declarations on September 11 and 13, 2001, on account of the September 11 terrorist attacks. The September 11 declaration covers five New York Counties: Bronx, Kings, New York (boroughs of Brooklyn and Manhattan), Queens and Richmond. The September 13 declaration covers Arlington County in the Commonwealth of Virginia.

RECISSIONS	EXPIRATION DATE Continuing
-------------------	--------------------------------------

On November 2, 2001, the IRS released Revenue Procedure 2001-53 and Notice 2001-68. Revenue Procedure 2001-53 lists various additional tax-related acts for which a postponement may be granted. Section 15 of the "Revenue Procedure" lists the act of submitting IRS Form 8850 to the SWAs. The notice, in turn, provides to "affected taxpayers" a "120-day postponement of the deadline to submit IRS Form 8850, if the deadline falls within the period beginning on September 11, and ends on November 30, 2001. This relief applies retroactively to September 11, 2001. Employers that believe they are entitled to this relief should mark "September 11, 2001, Terrorist Attack" in red ink on the top of their IRS Form 8850s.

The information contained in Notices 2001-61 and 2001-63 does not pertain to employers/consultants. Notice 2001-61 defines "affected taxpayers." This definition is used in Notice 2001-68, which grants the 120-day postponement only to "affected taxpayers." Notice 2001-63, grants a short postponement to all taxpayers. This postponement applies to all IRS Forms 8850, that were filed with the State Workforce Agencies (SWAs) between September 10 and September 24. Thus, if an employer's 21st day was September 12, the due date for the IRS Form 8850, would be September 24.

Please note that, for all applicable deadlines described above, a timely postmark or equivalent from a private delivery service serves as sufficient evidence of timely filing, if the SWA receives IRS Form 8850 after the postponement deadline. For a list of acceptable private delivery services for purposes of submitting IRS Form 8850 to the SWAs, See **IRS Notice 2001-62, attached**.

5. Guidance. The following questions explain how this relief applies to employers submitting IRS Form 8850.

a. Who are "affected taxpayers" for purposes of the 120-day postponement of the IRS form 8850?

As relevant to IRS Form 8850, "affected taxpayers" means: 1) those employers whose principal place of business is located in the areas named in the President's federal disaster declarations of September 11 and 13, 2001, and 2) those employers whose principal place of business is located elsewhere but whose records necessary to meet the submission deadline are located in one of these areas.

b. If an IRS Form 8850 is not marked "September 11, 2001, Terrorist Attack," will that prevent the employer from qualifying for the 120-day postponement?

No. Employers should mark the forms as described above to assist in the processing, **but the marking is not required**. If not marked, subsequent correspondence may be necessary.

c. How should SWAs process IRS Forms 8850, that are late and not marked as described above, but would be timely if the submitting employer qualifies for relief?

The SWAs should not automatically reject these forms. If the form was due between September 10 and September 24, 2001, it must be

treated as "timely submitted" by September 24, regardless of the employer's circumstances. For forms submitted after September 24, there are a variety of approaches that a SWA might take. Any reasonable approach is acceptable from the IRS's perspective and does not require approval from the National Office of the IRS.

The choice of approach will be an administrative decision to be made by each SWA, subject to any guidance the SWAs may receive from DOL. As an example of one reasonable approach, a SWA might contact every submitting employer whose IRS Form 8850 appears late, with a letter inquiring whether the employer believes he/she qualifies as an "affected taxpayer" and explain why. As another example, the SWA might make an administrative decision to treat every submitting employer as entitled to the relief on the basis of the date and address information revealed in the form itself.

6. Action Required. State Workforce Agency (SWA) Administrators are requested to provide this information and guidance to all WOTC/WtW State Coordinators and ensured it is implemented.

7. Inquiries. Direct all questions to the appropriate Regional WOTC/WtWTC Coordinator.

8. Attachments.

Notice 2001-61
Notice 2001-62
Notice 2001-63
Notice 2001-68
Revenue Procedure 2001-53