

**§ 1.50B-1**

each partner's credit earned of \$6,000 (20 percent of \$30,000) was allowed under section 40 as a credit against his liability for tax.

(ii) On January 1, 1973, AB partnership terminates the employment of its employees accounting for 50 percent of its WIN expenses incurred to that date, or \$30,000 in salaries and wages. The actual period of employment for these WIN employees was 6 months. For the taxable year 1972, each partner's recomputed credit earned is \$3,000 (20 percent of \$15,000). The income tax imposed by chapter 1 of the Code on each of the partners for the taxable year 1973 is increased by the \$3,000 decrease in his credit earned for the taxable year 1972 (that is, \$6,000 original credit earned minus \$3,000 recomputed credit earned).

*Example 2.* (i) The facts are the same as in subdivision (i) of example 1, except that on January 1, 1973, partner A sells one-half of his 50 percent interest in AB partnership to C, to form the ABC partnership. No other changes in the partners' proportionate interest in the general profits of the partnership occurred during 1973. Under paragraph (a)(2) of this section, each partner's share of the WIN expenses was apportioned on December 31, 1973, as follows:

	Period ending Dec. 31, 1973
Total WIN expenses for the taxable year	\$60,000
Partner A's share (25 percent) .....	15,000
Partner B's share (50 percent) .....	30,000
Partner C's share (25 percent) .....	15,000

(ii) Under paragraph (a)(2) of this section, on January 1, 1973, the employment of these WIN employees shall be deemed terminated by partner A with respect to 50 percent of the WIN expenses allocated to him since immediately after the January 1, 1973, sale, A's proportionate interest in the general profits of ABC partnership is reduced to 50 percent of his proportionate interest in the general profits of AB partnership for 1972. The period of employment of the WIN employees accounting for the 50 percent of the WIN expenses originally allocated to A is 6 months (that is, the period beginning with July 1, 1972, and ending with December 31, 1972). For the taxable year 1972 partner A's recomputed credit earned is \$3,000 (20 percent of \$15,000). The income tax imposed by chapter 1 of the Code on partner A for the taxable year 1973 is increased by the \$3,000 decrease in his credit earned for the taxable year 1972 (that is, \$6,000 original credit earned minus \$3,000 recomputed credit earned).

[38 FR 6160, Mar. 7, 1973]

**§ 1.50B-1 Definitions of WIN expenses and WIN employees.**

(a) *WIN expenses*—(1) *In general.* Except as otherwise provided in para-

graphs (b) through (g) of this section, for purposes of §§1.50A-1 through 1.50B-5, the term “work incentive program expenses” (referred to in §§1.50A-1 through 1.50B-5 as “WIN expenses”) means the salaries and wages paid or incurred by the taxpayer for services rendered during the first 12 months of employment (whether or not consecutive) by an employee who is certified by the Secretary of Labor as—

(i) Having been placed in employment by the taxpayer (or if the taxpayer is a partner of a partnership, beneficiary of an estate or trust, or a shareholder of an electing small business corporation, by such partnership, estate, trust, or electing small business corporation) under a work incentive (WIN) program established under section 432(b)(1) of the Social Security Act (42 U.S.C. 632(b)(1)), and

(ii) Not having displaced any individual from employment.

The term “WIN expenses” includes only salaries and wages paid or incurred in taxable years beginning after December 31, 1971. See paragraph (c) of §1.50A-3 for rules relating to the determination of the first 12 months of employment (whether or not consecutive).

(2) *Examples.* The provisions of subparagraph (1) of this paragraph may be illustrated by the following examples:

*Example 1.* X Corporation, an accrual basis taxpayer which files its return on the basis of the calendar year, hired an employee on July 1, 1971, who was certified by the Secretary of Labor under this paragraph. The first 12 months of employment were continuous. X is entitled to the credit provided by section 40 with respect to the salaries or wages incurred during its taxable year beginning January 1, 1972, for services rendered by that employee during the period beginning July 1, 1971, and ending June 30, 1972.

*Example 2.* Y, a cash basis taxpayer who files his return on the basis of the calendar year, employed A, an employee certified by the Secretary of Labor under this paragraph, on July 1, 1971. A's first 12 months of employment were continuous. Y paid A on the basis of a semimonthly payroll period, but paid his payroll 2 days after the close of the payroll period during which the wages were earned. Thus, Y paid A on January 2, 1972, for services rendered between December 16, 1971, and December 31, 1971. Y is entitled to the credit provided by section 40 with respect to the wages paid for services rendered by A during the period beginning December 16, 1971, and ending June 30, 1972, because those wages

were paid by Y in a taxable year beginning after December 31, 1971.

(b) *Salaries and wages.* For purposes of this section, the term “salaries and wages” means only cash remuneration including a check. Amounts deducted and withheld from the employee’s pay (for example, taxes and contributions to health and retirement plans) shall be deemed to be cash remuneration even though not actually paid directly to the employee.

(c) *Trade or business expenses.* The term “WIN expenses” includes only salaries and wages which are paid or incurred in a trade or business of the taxpayer and which are deductible in computing taxable income. Thus, salaries and wages paid to domestic employees in a private home are not “WIN expenses”.

(d) *Reimbursed expenses—(1) In general.* The term “WIN expenses” does not include salaries and wages to the extent that the taxpayer is reimbursed for such salaries or wages from any source.

(2) *Example.* Subparagraph (1) of this paragraph may be illustrated by the following example:

*Example.* X Company, which makes its return on the basis of the calendar year, hired WIN employees on January 1, 1972. X Company has a cost-plus construction contract with the Federal Government. The fact that X has a construction contract with the Federal Government or anyone else does not change its character from a normal business transaction in which there has been a sale of materials and services. Thus, the salaries or wages paid or incurred for services rendered by these WIN employees would not be reimbursed expenses, and X would be entitled to the credit provided by section 40.

(e) *Geographical limitation—(1) In general.* The term “WIN expenses” does not include salaries and wages paid or incurred for services rendered outside the United States (as defined in sections 638 (relating to Continental Shelf areas) and 7701(a)(9)). However, services rendered by any WIN employee outside the United States (as defined in sections 638 (relating to Continental Shelf areas) and 7701(a)(9)) shall contribute to such employee’s first 12 months of employment (whether or not consecutive) for purposes of paragraph (a) of §1.50A-3 and paragraph (a) of this section.

(2) *Example.* Subparagraph (1) of this paragraph may be illustrated by the following example:

*Example.* X Corporation, which files its return on the basis of the calendar year, hired A, a WIN employee, on January 1, 1972, and continuously employed him for the following 24-month period. During January and February of 1972, X paid A’s wages while he received training conducted in Puerto Rico. For the remainder of the calendar year A performed services for X within the United States. For purposes of paragraph (a) of §1.50A-3 and paragraph (a) of this section, A’s first 12 months of employment are January 1, 1972, to December 31, 1972. Under subparagraph (1) of this paragraph no wages paid to A for services rendered during the months of January and February of 1972 may be taken into account by X under paragraph (a) of this section as WIN expenses because the services were rendered outside the United States. However, X may take into account wages he has incurred with respect to A for the period March 1, 1972, to December 31, 1972.

(f) *Maximum period of training or instruction.* The term “WIN expenses” does not include salaries and wages paid or incurred for services rendered by a WIN employee after the end of the 24-month period beginning with the date of initial employment (as defined in paragraph (c)(1) of §1.50A-3) of the WIN employee.

(g) *Ineligible individuals.* The term “WIN expenses” does not include salaries and wages paid or incurred for services rendered by a WIN employee who—

(1) Bears any of the relationships described in paragraphs (1) through (8) of section 152(a) of the Code to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation (determined with the application of section 267(c) of the Code),

(2) If the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of section 152(a) of the Code to a grantor, beneficiary, or fiduciary of the estate or trust, or

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(3) Is a dependent (described in section 152(a)(9) of the Code) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (1), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

(h) *WIN employee.* For purposes of §§ 1.50A-1 through 1.50B-5 the term “WIN employee” means an employee who is certified by the Secretary of Labor as meeting the requirements of paragraphs (a)(1) (i) and (ii) of this section.

(i) [Reserved]

(j) *Special rule applicable to transactions to which section 381(a) applies and transactions involving a mere change in form of conducting a trade or business.* The first 12 months of employment (whether or not consecutive) and the period described in section 50B (c)(4) of any WIN employee, for purposes of determining the amount of WIN expenses (as defined in paragraph (a) of § 1.50B-1), shall not be affected by transactions to which the rule contained in paragraph (f) (relating to transaction to which section 381(a) (relating to certain corporate acquisitions) applies), or paragraph (g) (relating to a mere change in form of conducting a trade or business) of § 1.50A-4 applies.

[38 FR 6161, Mar. 7, 1973]

### § 1.50B-2 Electing small business corporations.

(a) *General rule—(1) In general.* In the case of an electing small business corporation (as defined in section 1371 (b)), WIN expenses (as defined in paragraph (a) of § 1.50B-1) shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such corporation’s taxable year, and shall be taken into account for the taxable years of such shareholders within which or with which the taxable year of such corporation ends. The WIN expenses for each employee shall be apportioned separately. In determining who are shareholders of an electing small business corporation on the last day of its taxable year, the rules of paragraph (d)(1) of § 1.1371-1 and of paragraph (a)(2) of § 1.1373-1 shall apply.

(2) *Shareholder as taxpayer.* A shareholder to whom WIN expenses are ap-

portioned shall, for purposes of the credit allowed by section 40, be treated as the taxpayer who paid or incurred the expenses allocated to him. If a shareholder takes into account in determining his WIN expenses any WIN expenses with respect to an employee of an electing small business corporation, and if the employment of such employee is terminated in a termination subject to the rules contained in paragraph (a) of § 1.50A-3, or if the electing small business corporation fails to pay comparable wages and such failure is subject to the rules contained in paragraphs (a) (2) and (3) of § 1.50A-3, then such shareholder shall make a recapture determination under the provisions of section 50A (c) and (d) of the Code and § 1.50A-3. See § 1.50A-5.

(3) *Computation of the first 12 months of employment.* The first 12 months of employment (whether or not consecutive) and the period described in section 50B(c)(4) of any WIN employee for purposes of determining the amount of WIN expenses (as defined in paragraph (a) of § 1.50B-1) shall not be affected by a change in the shareholders in such corporation and shall not be affected by a reduction in any shareholder’s proportionate stock interest in such corporation (for example, by a sale or redemption or by the issuance of additional shares). Thus, the first 12 months of employment (whether or not consecutive) of any WIN employee shall be the same with respect to any shareholder claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee. Also, such first 12 months of employment and the period described in section 50B(c)(4), with respect to any WIN employee, shall not be deemed to begin again because of the making of a valid election under section 1372.

(b) *Summary statement.* An electing small business corporation shall attach to its return a statement showing the apportionment to each shareholder of its WIN expenses with respect to each WIN employee.

(c) *Examples.* Paragraph (a) of this section may be illustrated by the following examples: