

transfer satisfies the conditions of subparagraphs (1)(ii) (a), (c) and (d) of this paragraph.

*Example 1.* (i) On January 1, 1972, A, an individual, employed WIN employees in his sole proprietorship. A incurred WIN expenses with respect to these employees of \$12,000 for the taxable year ending December 31, 1972. For the taxable year 1972 A's credit earned of \$2,400 (20 percent of \$12,000) was allowed under section 40 as a credit against his liability for tax. On March 15, 1973, A transferred all of the assets used in his sole proprietorship to X Corporation, a newly formed corporation, in exchange for 45 percent of the stock of X Corporation.

(i) Under subparagraph (1)(i) of this paragraph, paragraph (a) of §1.50A-3 does not apply to the March 15, 1973, transfer to X Corporation.

*Example 2.* (i) The facts are the same as in Example 1 and in addition on June 1, 1973, X Corporation terminates the employment of WIN employees with respect to whom 50 percent of the WIN expenses were incurred during A's 1972 taxable year.

(ii) Under subparagraph (1)(i) of this paragraph, paragraph (a) of §1.50A-3 does not apply to the March 15, 1973, transfer to X Corporation. However, under subparagraph (3)(i) of this paragraph, paragraph (a) of §1.50A-3 applies to the June 1, 1973, termination of WIN employees by X Corporation. The actual period of employment of such WIN employees is 1 year and 5 months (that is, the period beginning on January 1, 1972, and ending on June 1, 1973). For taxable year 1972, A's recomputed credit earned is \$1,200 (20 percent of \$6,000). The income tax imposed by chapter 1 of the Code on A for the taxable year 1973 is increased by the \$1,200 decrease in his credit earned for the taxable year 1972 (that is, \$2,400 original credit earned minus \$1,200 recomputed credit earned).

*Example 3.* (i) The facts are the same as in Example 1 and in addition on April 1, 1973, X Corporation begins paying wages to the employees referred to in Example 1 which are less than the wages paid to its other employees who perform comparable services.

(ii) Under subparagraph (1)(i) of this paragraph, paragraph (a)(1) of §1.50A-3 does not apply to the March 15, 1973, transfer to X Corporation. However, under subparagraph (4) of this paragraph, paragraph (a) of §1.50A-3 applies to the failure of X Corporation to pay wages to the WIN employees which are equal to the wages paid to its other employees who perform comparable services. For taxable year 1972, A's recomputed credit earned is zero. The income tax imposed by chapter 1 of the Code on A for the taxable year 1973 is increased by the \$2,400 decrease in his credit earned for the taxable year 1972.

*Example 4.* (i) On January 1, 1972, partnership ABC, which makes its returns on the basis of a calendar year, employed WIN employees. Partnership ABC incurred WIN expenses with respect to these employees of \$20,000 for the taxable year. Partnership ABC has 10 partners who make their returns on the basis of a calendar year and share partnership profits equally. Each partner's share of the WIN expenses is 10 percent, that is, \$2,000. On March 15, 1973, partnership ABC transfers all of the assets used in its trade or business to the X Corporation, a newly formed corporation, in exchange for its stock and immediately thereafter transfers 10 percent of the stock to each of the 10 partners.

(ii) Under subparagraph (1)(i) of this paragraph, paragraph (a)(1) of §1.50A-1 does not apply to the March 15, 1973, transfer by the ABC Partnership to X Corporation.

*Example 5.* (i) The facts are the same as in Example 4 except that partnership ABC transfers 10 percent of the stock in X Corporation to each of eight partners, 20 percent to partner A, and cash to partner B.

(ii) Under subparagraph (1)(i) of this paragraph, with respect to all of the partners (including partner A) except partner B, paragraph (a)(1) of §1.50A-3 does not apply to the March 15, 1973, transfer by the ABC Partnership. Paragraph (a)(1) of §1.50A-3 applies with respect to partner B's \$2,000 share of the WIN expenses. See paragraph (a)(2) of §1.50A-7.

*Example 6.* (i) X Corporation operates a manufacturing business and a separate retail sales business. During the month of January 1972, X incurred WIN expenses in its manufacturing business. On February 10, 1973, X transfers all the assets used in its manufacturing business to Partnership XY in exchange for a 50 percent interest in such partnership.

(ii) Under subparagraph (1)(i) of this paragraph, paragraph (a)(1) of §1.50A-3 does not apply to the February 10, 1973, transfer to Partnership XY.

[T.D. 7263, 38 FR 6156, Mar. 7, 1973; 38 FR 8656, Apr. 5, 1973]

#### § 1.50A-5 Electing small business corporations.

(a) *In general*—(1) *Termination of employment by a corporation.* If an electing small business corporation (as defined in section 1371(b)) or a former electing small business corporation terminates (in a termination subject to the provisions of paragraph (a) of §1.50A-3) the employment of any WIN employee with respect to whom WIN expenses have been paid or incurred, a recapture determination shall be made under

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§1.50A-3 with respect to each shareholder who is treated, under paragraph (a) of §1.50B-2 as a taxpayer who paid or incurred such expenses. Each such recapture determination shall be made with respect to the pro rata share of the WIN expenses of such employee which were taken into account by such shareholder under paragraph (a) of §1.50B-2. For purposes of each such recapture determination the period of employment of such employee or employees shall be the period beginning with the initial date of employment (as defined in paragraph (c)(1) of §1.50A-3) with respect to the electing small business corporation and ending with the date of such employee's termination (as defined in paragraph (a)(1)(ii) of §1.50A-3). For the definition of the term "recapture determination" see paragraph (a)(3) of §1.50A-3.

### (2) Disposition of shareholder's interest.

#### (i) If—

(a) WIN expenses are apportioned to a shareholder of an electing small business corporation who takes such expenses into account in computing his WIN expenses, and

(b) After the end of the shareholder's taxable year in which such apportionment was taken into account and before the close of the period to which paragraph (a)(1) of §1.50A-3 applies with respect to the employee to which such WIN expenses relate, such shareholder's proportionate stock interest in such corporation is reduced (for example, by a sale or redemption, or by the issuance of additional shares) below the percentage specified in subdivision (ii) of this subparagraph,

then, on the date of such reduction the employment of such employee shall be deemed terminated with respect to such shareholder to the extent of the actual reduction in such shareholder's proportionate stock interest. (For example, if \$100 of WIN expenses were apportioned to a shareholder and if his proportionate stock interest is reduced from 60 percent to 30 percent (that is, 50 percent of his original interest), then the employment of the employee to which such WIN expenses relate shall be deemed terminated as to that shareholder to the extent of \$50.) Accordingly, a recapture determination shall be made with respect to such

shareholder. For purposes of such recapture determination the period of employment of any employee or employees with respect to whom WIN expenses were paid or incurred shall be the period beginning with the initial date of employment (as defined in paragraph (c)(1) of §1.50A-3) with respect to the electing small business corporation and ending with the date on which such reduction occurs.

(ii) The percentage referred to in subdivision (i)(b) of this subparagraph is 66⅔ percent of the shareholder's proportionate stock interest in the corporation on the date of the apportionment under paragraph (a) of §1.50B-2. However, once employment of an employee has been treated under this subparagraph as having terminated with respect to the shareholder to any extent, the percentage referred to shall be 33⅓ percent of the shareholder's proportionate stock interest in the corporation on the date of apportionment under paragraph (a) of §1.50B-2.

(iii) In determining a shareholder's proportionate stock interest in a former electing small business corporation for purposes of this subparagraph, the shareholder shall be considered to own stock in such corporation which he owns directly or indirectly (through ownership in other entities provided such other entities' bases in such stock are determined in whole or in part by reference to the basis of such stock in the hands of the shareholder). For example, if A, who owns all of the 100 shares of the outstanding stock of corporation X, a corporation which was formerly an electing small business corporation, transfers on November 1, 1973, 70 shares of X stock to corporation Y in exchange for 90 percent of the stock of Y in a transaction to which section 351 applies, then, for purposes of subdivision (i) of this subparagraph, A shall be considered to own 93 percent of the stock of X, 30 percent directly and 63 percent indirectly (*i.e.*, 90 percent of 70). Any taxpayer who seeks to establish his interest in the stock of a former electing small business corporation under the rule of this subdivision shall maintain adequate records to demonstrate his indirect interest in the corporation after any such transfer or transfers.

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(3) *Computation of the first 12 months of employment.* The period described in paragraph (a)(1) of § 1.50A-3 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 who is allowed 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 in the case of a corporation making a valid election under section 1372.

(b) *Election of a small business corporation under section 1372—(1) General rule.* If a corporation makes a valid election under section 1372 to be an electing small business corporation (as defined in section 1371(b)), then on the last day of the first taxable year immediately preceding the taxable year for which such election is effective, the employment of any WIN employees whose initial date of employment (as defined in paragraph (c)(1) of § 1.50A-3) occurred in taxable years prior to the first taxable year for which the election is effective (and whose employment has not been terminated prior to such last day) shall be considered as having been terminated on such last day with respect to the WIN expenses paid or incurred by such corporation and § 1.50A-3 shall apply to such corporation. However, if the corporation and each of the persons who are shareholders of the corporation on the first day of the first taxable year for which the election under section 1372 is to be effective, or on the date of such election, whichever is later, execute the agreement specified in subparagraph (2) of this paragraph, § 1.50A-3 shall not apply with respect to any such WIN expenses by reason of the election by the corporation under section 1372.

(2) *Agreement of shareholders and corporation.* (i) The agreement referred to in subparagraph (1) of this paragraph

shall be signed by the shareholders and by the corporation. The agreement shall recite that:

(a) In the event the employment of any WIN employee described in subparagraph (1) of this paragraph is later terminated (in a termination subject to the rules contained in paragraph (a) of § 1.50A-3) during a taxable year of the corporation for which the election under section 1372 is effective, each signer agrees to notify the district director or the director of the Internal Revenue service center of such termination, and agrees to be jointly and severally liable to pay to the district director or the director of the Internal Revenue service center an amount equal to the increase in tax which would have been imposed by § 1.50A-3 on the corporation but for the agreement under this paragraph.

(b) In the event any WIN employee described in subparagraph (1) of this paragraph is paid wages (as defined in section 50B(b) and paragraph (b) of § 1.50B-1) by such electing corporation, which are less than the wages paid to other employees of such electing corporation who perform comparable services (as defined in paragraph (a)(2)(ii) of § 1.50A-3), during a taxable year of the corporation for which the election under section 1372 is effective, each signer agrees to notify the district director or the director of the Internal Revenue service center of such failure to pay equal wages for comparable services, and agrees to be jointly and severally liable to pay to the district director or the director of the Internal Revenue service center an amount equal to the increase in tax which would have been imposed by § 1.50A-3 on the corporation as a result of such failure but for the election under section 1372.

For purposes of computing the period described in paragraph (a)(1) of § 1.50A-3, the period of employment by the corporation before the election under section 1372 shall be added to the period of employment by the electing small business corporation after such election.

(ii) The agreement shall set forth the name, address, and taxpayer account number of each party and the internal revenue district or service center in

which each such party files his or its income tax return for the taxable year which includes the last day of the corporation's taxable year immediately preceding the first taxable year for which the election under section 1372 is effective. The agreement may be signed on behalf of the corporation by any person who is duly authorized. The agreement shall be filed with the district director or the director of the Internal Revenue service center with whom the corporation files its income tax return for its taxable year immediately preceding the first taxable year for which the election under section 1372 is effective and shall be filed on or before the due date (including extensions of time) of such return. For purposes of the preceding sentence, the district director or the director of the Internal Revenue service center may, if good cause is shown, permit the agreement to be filed on a later date.

(c) *Examples.* This section may be illustrated by the following examples:

*Example 1.* (i) X Corporation, an electing small business corporation which makes its returns on the basis of the calendar year, hired employees under a WIN program on July 1, 1972, and incurred expenses for such employees during the following 12 months at an initial rate of \$10,000 per month. For taxable year 1972, X Corporation had 20 shares of stock outstanding which were owned equally by A and B who make their returns on the basis of a calendar year. Under paragraph (a) of this section, the WIN expenses were apportioned to the shareholders of X Corporation as follows:

	Period ending Dec. 31, 1973
Total WIN expenses for the taxable year	\$60,000
Shareholder A (10/20) .....	30,000
Shareholder B (10/20) .....	30,000

Assuming that during 1972 shareholders A and B did not directly incur any WIN expenses and that they did not own any interest in other electing small business corporations, partnerships, estates, or trusts incurring WIN expenses, the WIN expenses attributable to each shareholder is \$30,000. For the taxable year 1972, each shareholder'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, X Corporation terminates the employment of the 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 taxable year 1972, each shareholder's recomputed credit is \$3,000 (20 percent of \$15,000). The income tax imposed by chapter 1 of the Code on each of the shareholders 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, shareholder A sells five of his 10 shares of stock in X Corporation to C. No other changes in stock ownership occurred during 1973. Under paragraph (a)(2) of this section, the WIN expenses of X Corporation were apportioned on December 31, 1973, to the shareholders of X Corporation as follows:

	Period ending Dec. 31, 1972
Total WIN expenses for the taxable year	\$60,000
Shareholder A (5/20) .....	15,000
Shareholder B (10/20) .....	30,000
Shareholder C (5/20) .....	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 shareholder A with respect to 50 percent of the WIN expenses allocated to him since immediately after the January 1, 1973, sale A's proportionate stock interest in X Corporation is reduced to 50 percent of the proportionate stock interest in X Corporation which he held for taxable year 1972. The actual 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 January 1, 1973). The income tax imposed by chapter 1 of the Code on shareholder 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).

(d) *Termination or revocation of an election under section 1372.* The employment of employees with respect to whom WIN expenses were paid or incurred shall not be considered to have been terminated solely by reason of a termination or revocation of a corporation's election under section 1372.

[38 FR 6158, Mar. 7, 1973]

**§ 1.50A-6 Estates and trusts.**

(a) *In general*—(1) *Termination of employment by an estate or trust.* If an estate or trust terminates (in a termination subject to the provisions of