

§ 1.50A-7

(ii) On January 1, 1973, XYZ Trust 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, XYZ Trust's and beneficiary A's recomputed credit is \$3,000 (20 percent of \$15,000). The income tax imposed by chapter 1 of the Code on XYZ Trust and on beneficiary 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).

*Example 2.* (i) The facts are the same as in subdivision (i) of example 1, except that on January 1, 1973, beneficiary A sells 50 percent of his interest in the income of XYZ Trust to B. No other changes in income interest occurred during 1973. Under paragraph (a)(2) of § 1.50B-4, each beneficiary's share and the trust's share of the WIN expenses are apportioned as follows:

	Period ending Dec. 31, 1972
Total WIN expenses for the taxable year	\$60,000
XYZ Trust (\$30,000/\$60,000) .....	30,000
Beneficiary A (\$15,000/\$60,000) .....	15,000
Beneficiary B (\$15,000/\$60,000) .....	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 beneficiary 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 income of XYZ Trust is reduced to 50 percent of his proportionate interest in the income of XYZ Trust for the taxable year 1972. The period of employment of the WIN employees accounting for the 50 percent of the WIN expense 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 beneficiary A's recomputed credit earned is \$3,000 (20 percent of \$15,000). The income tax imposed by chapter 1 of the Code on beneficiary 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 6159, Mar. 7, 1973]

**§ 1.50A-7 Partnerships.**

(a) *In general*—(1) *Termination of employment by a partnership.* If a partnership 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 § 1.50A-3 with respect to each partner who is treated, under paragraph (a) of § 1.50B-4, as a taxpayer with respect to such expenses. Each such recapture determination shall be made with respect to the share of the WIN expenses with respect to such employee which were taken into account by such partner under paragraph (a) of § 1.50B-4. For purposes of each such recapture determination the period of employment of any such employee 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 partnership 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 "recapture determination" see paragraph (a)(3) of § 1.50A-3.

(2) *Disposition of partner's interest.* (i) If—

(a) WIN expenses are allocated to a partner of a partnership who takes such expenses into account in computing his WIN expenses, and

(b) After the end of the partner's taxable year in which such allocation 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 partner's proportionate interest in the general profits of the partnership (or in the particular expenses) is reduced (for example, by a sale, by a change in the partnership agreement, or by the admission of a new partner) 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 partner to the extent of the actual reduction in such partner's proportionate interest in the general profits (or in the particular expenses) of the partnership. (For example, if \$100 of WIN expenses were taken into account by a partner and if his proportionate interest in the general profits of the partnership 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 partner to the

extent of \$50.) Accordingly, a recapture determination shall be made with respect to such partner. 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 partnership and ending with the date on which such reduction occurs.

(ii) The percentage referred to in subdivision (i) (b) of this subparagraph is 66 $\frac{2}{3}$  percent of the partner's proportionate interest in the general profits (or in the WIN expenses) of the partnership for the year of the apportionment under §1.50B-4(a). However, once employment of an employee has been treated under this subparagraph as having terminated with respect to the partner to any extent, the percentage referred to shall be 33 $\frac{1}{3}$  percent of the partner's proportionate interest in the general profits (or in the WIN expenses) of the partnership for the taxable year of the apportionment under paragraph (a) of §1.50B-4.

(iii) In determining a partner's proportionate interest in the general profits (or in the WIN expenses) of a partnership for purposes of this subparagraph, the partner shall be considered to own any interest in such a partnership which he owns directly or indirectly (through ownership in other entities provided the other entities' bases in such interests are determined in whole or in part by reference to the basis of such interest in the hands of the partner). For example, if A, whose proportionate interest in the general profits of partnership X is 20 percent, transfers all of such interest to Corporation Y in exchange for all 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 a 20 percent interest in partnership X. Any taxpayer who seeks to establish his interest in a partnership under the rule of this subdivision shall maintain adequate records to demonstrate his indirect interest in the partnership after any such transfer or transfers.

(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 partners of such partnership and shall not be affected by a change in the ratio in which the partners divide the general profits (or the WIN expenses) of the partnership. Thus, such period for any WIN employee shall be the same with respect to any partner claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee.

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

*Example 1.* (i) AB partnership, which makes its returns on the basis of the calendar year, hired employees under the 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. Partners A and B, who make their returns on the basis of a calendar year, share the profits and losses of AB partnership equally. Under paragraph (a)(2) of this section, each partner's share of the WIN expenses was apportioned as follows:

	Period ending Dec. 31, 1972
Total WIN expenses for the taxable year	\$60,000
Partner A's share (50 percent) .....	30,000
Partner B's share (50 percent) .....	30,000

Assuming that during 1972 A and B did not directly incur any WIN expenses and that they did not own any interest in other partnerships, electing small business corporations, estates, or trusts incurring WIN expenses, each partner's share of the WIN expenses is \$30,000. For the taxable year 1972, 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

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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 paragraphs (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