

§ 1.50B-3

credit earned of \$480 (10 percent (A's ownership interest) multiplied by \$24,000 of WIN expenses multiplied by 20 percent) was allowed under section 40 as a credit against his liability for tax.

(ii) On March 1, 1973, shareholder A sold all of his interest to B, a new shareholder. Therefore, the employment of the WIN employees is deemed terminated for purposes of paragraph (a) of § 1.50A-3 with respect to shareholder A. For taxable year 1972, A's recomputed credit is zero because the termination occurred before the end of the period described in paragraph (a)(1) of § 1.50A-3. The income tax imposed by chapter 1 of the Code on A for the taxable year 1973 is increased by the \$480 decrease in his credit earned for the taxable year 1972 (that is, \$480 original credit earned minus zero recomputed credit earned). Under paragraph (a) of this section A has no credit earned for 1973.

(iii) Under paragraph (a)(1) of this section, assuming that during 1973 shareholder B did not directly incur any other WIN expenses and that he did not own any interest in other electing small business corporations, partnerships, estates, or trusts that incurred WIN expenses, shareholder B's credit earned is \$480 (10 percent (B's ownership interest) multiplied by \$24,000 of WIN expenses multiplied by 20 percent) and is allowable under

WIN employees	1	2	3	4	5	Total
Total WIN expenses ..	\$6,000	\$5,000	\$4,000	\$4,000	\$3,000
Shareholder A (3/10)	1,800	1,500	1,200	1,200	900	6,600
Shareholder B (2/10)	1,200	1,000	800	800	600	4,400
Shareholder C (5/10)	3,000	2,500	2,000	2,000	1,500	11,000

Assume that shareholders A, B, and C did not directly incur any other WIN expenses during their taxable year in which falls December 31, 1972 (the last day of Y Corporation's taxable year), and that such shareholders did not own any interest in other electing small business corporations, partnerships, estates or trust that incurred WIN expenses. The total WIN expenses of shareholder A are \$6,600, of shareholder B are \$4,400, and of shareholder C are \$11,000.

[38 FR 6162, Mar. 7, 1973]

§ 1.50B-3 Estates and trusts.

(a) *General rule*—(1) *In general.* In the case of an estate or trust, WIN expenses (as defined in paragraph (a) of § 1.50B-1) shall be apportioned among the estate or trust and its beneficiaries on the basis of the income of such estate or trust allocable to each. There shall be apportioned to the estate or trust for its taxable year, and to each

section 40 as a credit against his liability for tax. Under paragraph (a)(3) for purposes of determining the period of employment that may be taken into account by B the initial date of employment of these WIN employees relates back to the date they were first employed, *i.e.*, July 1, 1972. Thus, the first 12 months of employment ends on June 30, 1973.

Example 2. (i) Y Corporation, an electing small business corporation which files its return on the basis of the calendar year, hires five WIN employees in 1972. The WIN expenses incurred with respect to each employee are as follows:

WIN employee No.	WIN expenses
1	\$6,000
2	5,000
3	4,000
4	4,000
5	3,000
Total	22,000

On December 31, 1972, Y Corporation has 10 shares of stock outstanding which are owned as follows: A owns 3 shares, B owns 2 shares, and C owns 5 shares.

(ii) Under this section, the WIN expenses are apportioned to the shareholders of Y Corporation as follows:

WIN employees	1	2	3	4	5	Total
Total WIN expenses ..	\$6,000	\$5,000	\$4,000	\$4,000	\$3,000
Shareholder A (3/10)	1,800	1,500	1,200	1,200	900	6,600
Shareholder B (2/10)	1,200	1,000	800	800	600	4,400
Shareholder C (5/10)	3,000	2,500	2,000	2,000	1,500	11,000

beneficiary of such estate or trust for his taxable year in which or with which the taxable year of such estate or trust ends, his share (as determined under paragraph (b) of this section) of the total WIN expenses. The WIN expenses for each employee shall be apportioned separately.

(2) *Beneficiary as taxpayer.* A beneficiary to whom WIN expenses are apportioned shall, for purposes of the credit allowed by section 40, be treated as the taxpayer who paid or incurred such WIN expenses allocated to him. If a beneficiary takes into account in determining his WIN expenses any portion of the WIN expenses paid or incurred by an estate or trust and if the employee with respect to which the WIN expenses were paid or incurred is terminated in a termination subject to the rules in paragraph (a) of § 1.50A-3, or if there is a failure (which is subject

to the rules is paragraphs (a) (2) and (3) of § 1.50A-3) to pay such employee comparable wages then such beneficiary shall make a recapture determination under the provisions of section 50A (c) and (d) of the Code and § 1.50A-3. See § 1.50A-6.

(3) *Beneficiary.* For purposes of this section, the term “beneficiary” includes heir, legatee, and devisee.

(4) *Special rule for termination of interest.* If during the taxable year of an estate or trust a beneficiary’s interest in the income of such estate or trust terminates, WIN expenses paid or incurred by such estate or trust after such termination shall not be apportioned to such beneficiary.

(b) *Share.* A trust’s, estate’s, or beneficiary’s share of the WIN expenses with respect to each employee shall be:

(1) The total WIN expenses incurred in the taxable year of the estate or trust with respect to such employee, multiplied by

(2) The amount of income allocable to such estate or trust or to such beneficiary for such taxable year, divided by

(3) The sum of the amounts of income allocable to such estate or trust and all its beneficiaries taken into account under subparagraph (2) of this paragraph.

(c) *Limitation based on amount of tax.* In the case of an estate or trust, the \$25,000 amount specified in section 50A(a)(2), relating to limitation based on amount of tax, shall be reduced for the taxable year to—

(1) \$25,000, multiplied by

(2) The WIN expenses apportioned to such estate or trust under paragraph (a) of this section, divided by

(3) The WIN expenses apportioned among such estate or trust and its beneficiaries.

(d) *Computation of the first 12 months of employment.* The first 12 months of employment (whether or not consecu-

tive) 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 beneficiaries of an estate or trust and shall not be affected by a reduction or a termination of a beneficiary’s interest in the income of such estate or trust. Thus, the first 12 months of employment (whether or not consecutive) of any WIN employee shall be the same with respect to trust or estate, and any beneficiary of such trust or estate claiming a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee.

(e) *Summary statement.* An estate or trust shall attach to its return a statement showing the apportionment of WIN expenses with respect to each employee to such estate or trust and to each beneficiary.

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

Example 1. (1) XYZ trust, which makes its return on the basis of the calendar year, hires five WIN employees in 1972. The WIN expenses incurred with respect to each employee are as follows:

WIN employee No.	WIN expenses
1	\$6,000
2	5,000
3	4,000
4	4,000
5	3,000
Total	22,000

For the taxable year 1972 the income of XYZ trust is \$10,000 which is allocable as follows: \$5,000 to XYZ trust, \$2,000 to beneficiary A, and \$3,000 to beneficiary B. Beneficiaries A and B make their returns on the basis of a calendar year.

(2) Under this section, the WIN expenses are apportioned to XYZ trust and to its beneficiaries as follows:

WIN employees	1	2	3	4	5	Total
Total WIN expenses	\$6,000	\$5,000	\$4,000	\$4,000	\$3,000
XYZ Trust: \$5,000/10,000	3,000	2,500	2,000	2,000	1,500	\$11,000
Beneficiary A: \$2,000/10,000	1,200	1,000	800	800	600	4,400
Beneficiary B: \$3,000/10,000	1,800	1,500	1,200	1,200	900	6,600

§ 1.50B-4

26 CFR Ch. I (4-1-04 Edition)

Assume that beneficiary A hired a WIN employee during his taxable year 1972 and incurred \$6,000 in wages. Also, assume that beneficiary B did not hire WIN employees during his taxable year 1972 and that beneficiaries A and B did not own any interests in other trusts, estates, partnerships, or electing small business corporations that hired WIN employees. The WIN expenses of XYZ trust are \$11,000, of beneficiary A are \$10,400, and of beneficiary B are \$6,600.

(3) In the case of XYZ trust, the \$25,000 amount specified in section 50A(a)(2) is reduced to \$12,500, computed as follows: (i) \$25,000 multiplied by (ii) \$11,000 (WIN expense apportioned to the trust), divided by (iii) \$22,000 (total WIN expenses apportioned among such trust (\$11,000), beneficiary A (\$4,400), and beneficiary B (\$6,600)).

Example 2. The facts are the same as in example 1 except that beneficiary A's interest is reduced to zero. Under paragraph (a)(2) for purposes of determining the period of employment that may be taken into account by XYZ trust and by beneficiary B, the initial date of employment of the WIN employees relates back to the date they were first employed.

[38 FR 6163, Mar. 7, 1973]

§ 1.50B-4 Partnerships.

(a) *General rule*—(1) *In general.* In the case of a partnership, each partner shall take into account separately, for his taxable year with or within which the partnership taxable year ends, his share (as determined under subparagraph (3) of this paragraph) of the WIN expenses (as defined in paragraph (a) of § 1.50B-1) of employees employed by the partnership during such partnership's taxable year. The WIN expenses for each employee shall be allocated separately.

(2) *Partner as taxpayer.* Each partner shall be treated as the taxpayer who paid or incurred the share of the WIN expenses allocated to him. If a partner takes into account in determining his WIN expenses the WIN expenses of an employee of a partnership, 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 partnership 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 partner shall make a recapture determination under the provisions of section 50A (c) and (d) of the Code and § 1.50A-3. See § 1.50A-7.

(3) *Determination of partner's share.* (i) Each partner's share of the WIN expenses shall be determined in accordance with the ratio in which the partners divide the general profits of the partnership (that is, the taxable income of the partnership as described in section 702 (a)(9)) regardless of whether the partnership has a profit or a loss for the taxable year during which the WIN expenses are paid or incurred. However, if the ratio in which the partners divide the general profits of the partnership changes during the taxable year of the partnership, the ratio effective for the date on which the WIN expenses are paid or incurred shall apply.

(ii) Notwithstanding subdivision (i) of this subparagraph, if the deduction with respect to any WIN expenses is specially allocated and if such special allocation is recognized under section 704 (a) and (b) and paragraph (b) of § 1.704-1, then each partner's share of the WIN expenses shall be determined by reference to such special allocation effective for the date on which the WIN expenses are paid or incurred.

(4) *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) with respect to 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 partners of such partnership and shall not be affected by a change in the ratio in which the partners divide the general profits of the partnership. Thus, the first 12 months of employment (whether or not consecutive) and the 24-month period described in section 50B(c)(4) of 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) *Summary statement.* A partnership shall attach to its return a statement showing the allocation to each partner of its WIN expenses with respect to each WIN employee.

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