



Eligible exempt organizations should prepare 2015 WOTC claims for qualified veteran employees

The IRS has issued guidance ([Notice 2016-22](#)) on the retroactive application for 2015 of the Work Opportunity Tax Credit (WOTC), which was extended for 2015-2019 by the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), enacted December 18, 2015.

Eligible exempt organizations may claim the credit against employer social security tax liability for employment of qualified veterans.

For more information on the employer implications of the PATH Act see our [special report](#).

Background on exempt organization WOTC for veterans

The WOTC is a federal tax credit offered to organizations that hire certain categories of employees. For "qualified tax-exempt organizations" (an organization described in IRC §501(c) and exempt under IRC §501(a)), IRC §3111(e) provides a WOTC credit against the employer's share of Old-Age, Survivors, and Disability Insurance tax (Social Security) on wages paid to employment of all of its employees during the period that it employed a qualified veteran. The employer's share of Social Security tax is 6.2% of wages. The tax-exempt WOTC credit that applies against the employer's share of Social Security tax ranges from 16.25% to 26% of certain first-year wages paid to a qualified veteran during that period, depending on the number of hours worked.

IRC §52(c)(1) prohibits a tax-exempt (IRC §501(c)) organization from claiming any WOTC category other than as provided in IRC §52(c)(2) for payroll taxes for employment of qualified veterans. IRC § 51(d)(3) defines "qualified veteran" for these purposes. To be considered a qualified veteran, the individual must: (1) have served on active duty (not including training) in the US Armed Forces for more than 180 days or have been discharged or released from active duty for a service-connected disability; and (2) not have any day of service during a period of "extended active duty" in the US Armed Forces during the 60-day period ending on the hiring date. "Extended active duty" is a period of more than 90 days of active duty (other than training).

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In addition, to constitute a "qualified veteran" eligible for the credit, the veteran must fit into one of the following categories:

- Be a member of a family receiving assistance under the Supplemental Nutrition Assistance Program (SNAP) (food stamps) for at least a three-month period ending during the 12-month period ending on the hiring date
- Be unemployed for a period or periods totaling at least four weeks (whether or not consecutive) but less than six months in the one-year period ending on the hiring date
- Be unemployed for a period or periods totaling at least six months (whether or not consecutive) in the one-year period ending on the hiring date
- Be entitled to compensation for a service-connected disability and hired not more than one year after being discharged or released from active duty in the US Armed Forces
- Be entitled to compensation for a service-connected disability and unemployed for a period or periods totaling at least six months (whether or not consecutive) in the one-year period ending on the hiring date

Before a qualified tax-exempt organization can claim the WOTC for wages paid to a veteran, it must first obtain certification from the appropriate state employment security agency (SESA) that a veteran qualifies. This is done one of two ways. The organization must either receive the certification by the day the qualified individual begins work or it must complete [Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity Credit](#), on or before the day it offers the individual a job. If the organization completes the Form 8850, it generally must be signed by an officer of the organization and the veteran and submitted to the SESA of the state in which the organization is located and where the veteran works by the 28th calendar day after the date the veteran begins work. If the employer completes Form 8850, it must receive the certification before actually claiming the credit.

Qualified tax-exempt organizations claim the credit on [Form 5884-C, Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans](#), as a credit against the employer's share of Social Security tax. This form is filed after the organization files its employment tax return for the employment tax period for which it is claiming the credit and is filed separately from all other tax returns it files.

WOTC extension and IRS guidance

Among other changes, the PATH Act extended the WOTC for five years, from 2015 through 2019. Prior to the extension, the WOTC had expired on January 1, 2015. The WOTC had been in hiatus for most of 2015 until its retroactive reinstatement in December. Typically, an employee must complete Form 8850 within the first 28 days of employment. In the past, however, the IRS has made special provisions after previous hiatus periods that allow companies to disregard the 28-day requirement.

Notice 2016-22 includes transition relief beyond the 28-day deadline for employers that hire eligible individuals on or after January 1, 2015, and on or before May 31, 2016. For eligible individuals that begin work in this period, employers will have until June 29, 2016, to submit completed Forms 8850 to the designated local agencies to request certification. For individuals who begin work for an employer on or after June 1, 2016, the normal 28-day deadline for submitting Form 8850 applies.

Ernst & Young LLP insights

Eligible tax-exempt organizations may be able to claim a credit of up to \$6,240 per qualified veteran against their share of Social Security tax on wages paid to all employees during the period. The credit will not affect the employer's Social Security tax liability reported on the organization's employment tax return (e.g., [Form 941](#) or Form [944](#)).

Form 5884-C is filed after the eligible tax-exempt organization has filed its employment tax return for the employment tax period for which the credit is claimed.

The credit is limited to the amount of employer Social Security tax owed on wages paid to all employees for the period the credit is claimed.

Notice 2016-22 creates a deadline of June 29, 2016, for submitting Form 8850 for qualified veterans that begin work on or after January 1, 2015, and on or before May 31, 2016.

Exempt organizations that qualify for the credit should begin preparing to file claims under the instructions included in the guidance.

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