

§ 1.50A-6

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 paragraph (a) of §1.50A-3) the employment of any 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 the estate or trust, and each beneficiary who is treated, under paragraph (a) of §1.50B-3 as a taxpayer who paid or incurred such expenses. For purposes of each such recapture determination the period of employment of such 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 estate or trust and ending with the date of such employee or employees' termination (as defined in paragraph (a)(1)(ii) of §1.50A-3). For definition of "recapture determination" see paragraph (a)(3) of §1.50A-3.

(2) *Disposition of interest.* (i) If—

(a) WIN expenses are apportioned to an estate or trust, or to a beneficiary of an estate or trust who takes such expenses into account in computing his WIN expenses, and

(b) After the end of the estate's, trust's, or beneficiary'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 employees to which such WIN expenses relate, such estate's, trust's, or such beneficiary's proportionate interest in the income of the estate or trust is reduced (for example, by a sale, or by the terms of the estate or trust instrument) 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 estate, trust, or beneficiary to the extent of the actual reduction in such estate's, trust's, or beneficiary's proportionate interest in the income of the estate or trust. (For example, if \$100 of WIN expenses were apportioned to a beneficiary and if his proportionate interest in the income of the estate or trust 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 relates shall be deemed terminated as to that beneficiary to the extent of \$50.) Accordingly, a recapture determination shall be made with respect to such estate, trust, or beneficiary. 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 estate or trust 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 estate's, trust's, or beneficiary's proportionate interest in the income of the estate or trust for the taxable year of the apportionment under paragraph (a) of § 1.50B-3. However, once employment of an employee has been treated under this subparagraph as having terminated with respect to the estate, trust, or beneficiary to any extent, the percentage referred to shall be 33⅓ percent of the estate's, trust's, or beneficiary's proportionate interest in the income of the estate or trust for the taxable year of the apportionment under paragraph (a) of § 1.50B-3.

(iii) In determining a beneficiary's proportionate interest in the income of an estate or trust for purposes of this subparagraph, the beneficiary shall be considered to own any interest in such an estate or trust which he owns directly or indirectly (through ownership in other entities provided such 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 beneficiary). For example, if A, whose proportionate interest in the income of trust X is 30 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 30-percent interest in trust X. Any taxpayer who seeks to establish his interest in an estate or trust under the rule of this subdivision shall maintain adequate records to demonstrate his indirect interest in the estate or trust after any such transfer or transfers.

(b) *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 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 period described in paragraph (a)(1) of § 1.50A-3 for any WIN employee shall be the same with respect to a trust or estate and any beneficiary of such trust or estate which is allowed a credit under section 40 for salaries and wages paid or incurred for services rendered by such employee. Also, such period with respect to any WIN employee shall not be deemed to begin again as the result of the acquisition of the interest by another.

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

Example 1. (i) XYZ Trust, 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. For the taxable year 1972 the income of XYZ Trust is \$60,000, which is allocated equally to XYZ Trust and beneficiary A. Beneficiary A makes his returns on the basis of a calendar

§ 1.50A-7

year. Under paragraph (a) of this section, the WIN expenses were apportioned to XYZ Trust and to beneficiary A 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 (\$30,000/\$60,000)	30,000

Assuming that during 1972 beneficiary A did not directly incur any WIN expenses and that he did not own any interest in other estates, trusts, electing small business corporations, or partnerships incurring WIN expenses, the WIN expenses incurred by XYZ Trust and by beneficiary A are \$30,000 each. For the taxable year 1972, XYZ Trust and beneficiary A each had a credit earned of \$6,000. Each credit earned was allowed under section 40 as a credit against the liability for tax.

(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 end-

ing 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