does not include salaries and wages paid or incurred for services rendered by a WIN employee after the end of the 24-month period beginning with the date of initial employment (as defined in paragraph (c)(1) of $\S 1.50 \mathrm{~A}-3$ ) of the WIN employee.
(g) Ineligible individuals. The term "WIN expenses" does not include salaries and wages paid or incurred for services rendered by a WIN employee who-
(1) Bears any of the relationships described in paragraphs (1) through (8) of section 152(a) of the Code to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation (determined with the application of section 267(c) of the Code),
(2) If the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of section 152(a) of the Code to a grantor, beneficiary, or fiduciary of the estate or trust, or
(3) Is a dependent (described in section 152(a)(9) of the Code) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (1), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.
(h) WIN employee. For purposes of $\S \S 1.50 \mathrm{~A}-1$ through $1.50 \mathrm{~B}-5$ the term "WIN employee" means an employee who is certified by the Secretary of Labor as meeting the requirements of paragraphs (a)(1) (i) and (ii) of this section.
(i) [Reserved]
(j) Special rule applicable to transactions to which section 381(a) applies and transactions involving a mere change in form of conducting a trade or business. The first 12 months of employment (whether or not consecutive) 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 $\S 1.50 \mathrm{~B}-$ 1), shall not be affected by transactions to which the rule contained in paragraph (f) (relating to transaction to
which section 381(a) (relating to certain corporate acquisitions) applies), or paragraph (g) (relating to a mere change in form of conducting a trade or business) of $\S 1.50 \mathrm{~A}-4$ applies.
[38 FR 6161, Mar. 7, 1973]

## $\S 1.50 \mathrm{~B}-2$ Electing small business corporations.

(a) General rule-(1) In general. In the case of an electing small business corporation (as defined in section 1371 (b)), WIN expenses (as defined in paragraph (a) of $\S 1.50 \mathrm{~B}-1$ ) shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such corporation's taxable year, and shall be taken into account for the taxable years of such shareholders within which or with which the taxable year of such corporation ends. The WIN expenses for each employee shall be apportioned separately. In determining who are shareholders of an electing small business corporation on the last day of its taxable year, the rules of paragraph (d)(1) of $\S 1.1371-1$ and of paragraph (a)(2) of §1.1373-1 shall apply.
(2) Shareholder as taxpayer. A shareholder 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 the expenses allocated to him. If a shareholder takes into account in determining his WIN expenses any WIN expenses with respect to an employee of an electing small business corporation, and if the employment of such employee is terminated in a termination subject to the rules contained in paragraph (a) of $\S 1.50 \mathrm{~A}-3$, or if the electing small business corporation fails to pay comparable wages and such failure is subject to the rules contained in paragraphs (a) (2) and (3) of $\S 1.50 \mathrm{~A}-$ 3 , then such shareholder shall make a recapture determination under the provisions of section 50 A (c) and (d) of the Code and §1.50A-3. See §1.50A-5.
(3) Computation of the first 12 months of employment. The first 12 months of employment (whether or not consecutive) and the period described in section $50 \mathrm{~B}(\mathrm{c})(4)$ of any WIN employee for purposes of determining the amount of WIN expenses (as defined in paragraph (a) of $\S 1.50 \mathrm{~B}-1$ ) 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 claiming 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 $50 \mathrm{~B}(\mathrm{c})(4)$, with respect to any WIN employee, shall not be deemed to begin again because of the making of a valid election under section 1372.
(b) Summary statement. An electing small business corporation shall attach to its return a statement showing the apportionment to each shareholder of its WIN expenses with respect to each WIN employee.
(c) Examples. Paragraph (a) of this section may be illustrated by the following examples:

Example 1. (i) X Corporation, an electing small business corporation which files its returns on the basis of the calendar year, hired WIN employees on July 1, 1972, whose employment was continuous for the next 24 months. A, a shareholder, has a 10 percent interest in X Corporation. X Corporation incurred $\$ 24,000$ in wages with respect to these WIN employees in calendar year 1972, and $\$ 48,000$ in calendar year 1973. Assuming that during 1972 shareholder A did not directly incur any other WIN expenses and did not own any other interest in other electing small business corporations, partnerships, estates, or trusts that incurred WIN expenses, for taxable year 1972 shareholder A's 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 $\S 1.50 \mathrm{~A}-3$ 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 $\S 1.50 \mathrm{~A}-3$. 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 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 |

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]

## $\S 1.50 \mathrm{~B}-3$ 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 $\S 1.50 \mathrm{~B}-1)$ 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 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 $\S 1.50 \mathrm{~A}-3$, or if there is a failure (which is subject to the rules is paragraphs (a) (2) and (3) of $\S 1.50 \mathrm{~A}-3$ ) 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 $\S 1.50 \mathrm{~A}-3$. See $\S 1.50 \mathrm{~A}-6$.
(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 ter-
minates, 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 consecutive) and the period described in section 50 B (c)(4) of any WIN employee for purposes of determining the amount of WIN expenses (as defined in paragraph (a) of $\S 1.50 \mathrm{~B}-1$ ) 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

