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2011 Tax Legislation: Law, Explanation & Analysis, ¶103, Work Opportunity for Unemployed Veterans

Summary

The work opportunity credit for hiring qualified veterans has been extended through December 31, 2012. The credit has been modified to allow a credit for hiring unemployed veterans, double the credit for hiring qualified veterans with service-connected disabilities who have been unemployed, and continue the credit for all veterans with a service-connected disability. In addition, a tax-exempt organization will also be allowed a tax credit against its FICA tax obligations for hiring a qualified veteran.

Background

The work opportunity tax credit provides an elective credit to employers that hire individuals from targeted groups that have a high unemployment rate (Code Sec. 51). The credit is 40 percent of qualified wages paid to each member of a targeted group during the first year of employment if the employee performs at least 400 hours of service. The credit is 25 percent of qualified wages paid to each member of a targeted group during the first year of employment if the employee works less than 400 hours, but at least 120 hours. No credit is available for employees who work fewer than 120 hours.

Qualified wages are generally limited to \$6,000 for most targeted groups but there are increased limits for certain groups. The work opportunity credit is part of the general business credit and subject to its carry back and forward rules. An employer's deduction for wages is reduced by the amount of credit claimed (Code Sec. 280C(a)). Tax-exempt organizations, other than certain cooperatives, cannot claim the credit. In addition, the credit is scheduled to expire for individuals who begin work after December 31, 2011.

Qualified veterans. Qualified veterans are treated as members of a targeted group for whom an employer may claim the work opportunity tax credit (Code Sec. 51(d)(1)(B)). A qualified veteran is a veteran who is certified as a member of a family that receives assistance under a supplemental nutrition assistance program under the Food, Conservation, and Energy Act of 2008 (P.L. 110-246) for at least a three-month period ending during the 12-month period ending on the hiring date (Code Sec. 51(d)(3)(A)(i)).

The veteran must also have served on active duty, other than for training, in the Armed Forces for more than 180 days or have been discharged or released from active duty for a service-connected disability. A veteran who was on extended active duty on any day during the 60-day period ending on the hiring date does not qualify. A veteran is considered to be on extended active duty if on active duty, other than for training, for a period of more than 90 days. This restriction prevents employers from receiving the credit for hiring current members of the Armed Forces or those discharged within 60 days before they are hired (Code Sec. 51(d)(3)(B)).



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The targeted veterans group also includes veterans with service-connected disabilities (Code Sec. 51(d)(3)(A)(ii)). These individuals must be certified by a designated local agency as entitled to compensation for a service-connected disability, and as either

- having a hire date that is not more than one year after having been discharged or released from active duty in the U.S. Armed Forces, or
- having been unemployed for an aggregate of six months or more during the one-year period ending on the hiring date.

Compensation for a service-connected disability requires a 10 percent or higher disability rating for the service-connected injury (Code Sec. 51(d)(3)(C)). The active duty rules continue to apply.

Unemployed veterans. Unemployed veterans who begin work for an employer during 2009 or 2010 are treated as members of a separate targeted group for whom the employer may claim the work opportunity tax credit (Code Sec. 51(d)(14)). For this purpose, an unemployed veteran includes any individual who is certified by the designated local agency as;

- having served on active duty in the Armed Forces for more than 180 days or having been discharged or released from active duty in the Armed Forces for a service-connected disability,
- having been discharged or released from active duty in the Armed Forces at any time during the five-year period ending on the hiring date, and
- having received unemployment compensation under state or federal law for at least four weeks during the one-year period ending on the hiring date.

The definition of veteran for purposes of this targeted group is generally the same as for the qualified veterans group, except that it is relieved of the limitation of Code Sec. 51(d)(3)(B)(ii) of not having served on extended active duty on any day during the 60-day period ending on the hiring date. Thus, the employer may receive a credit for hiring unemployed veterans from the new targeted group even if they departed from service within the last 60 days before the hiring date.

Certification. An individual may not be treated as a member of a targeted group unless an employer obtains written certification from a state employment security agency on or before the day the individual begins work. Alternatively, as part of a written certification request, the employer may complete a prescreening notice on or before the day the employee is offered a job, and submit the notice to the designated local agency within 28 days after the employee commences work.



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NEW LAW EXPLAINED

Work opportunity credit for qualified veterans modified and extended through 2012.—The work opportunity credit is extended for hiring qualified veterans through December 31, 2012 ([Code Sec. 51\(c\)\(4\)\(B\)](#)), as amended by the VOW to Hire Heroes Act of 2011 (P.L. 112-XX). Thus, the credit applies to wages paid to qualified veterans who begin work for the employer before January 1, 2013.

Comment

The credit for all other targeted groups remains available only through December 31, 2011.

The definition of a qualified veteran has also been expanded. Effective for individuals hired after November 21, 2011, a qualified veteran includes any veteran who is certified by the designated local agency as being unemployed either:

- for at least four weeks but less than six months during the one year period ending on the hiring date (short-term unemployed), or
- for at least six months during the one-year period ending on the hiring date (long-term unemployed) ([Code Sec. 51\(d\)\(3\)\(A\)](#), as amended by the 2011 Heroes Act).

The limit on qualified wages used in calculating the credit is \$6,000 for a short-term unemployed veteran (for a maximum credit of \$2,400). The limit on qualified wages is \$12,000 for a long-term unemployed veteran (for a maximum credit of \$4,800) ([Code Sec. 51\(b\)\(3\)](#), as amended by the 2011 Heroes Act).

In addition, the limit on qualified wages used in calculating the credit for a veteran with a service-connected disability is doubled to \$24,000 (for a maximum credit of \$9,600) if the veteran is certified as having been unemployed for an aggregate of six months or more during the one-year period ending on the hiring date ([Code Sec. 51\(b\)\(3\)](#), as amended by the 2011 Heroes Act). The limit on qualified wages for a veteran with a service-connected disability remains \$12,000 (for a maximum credit of \$4,800) if the veteran is hired no more than one year after having been discharged or released from active duty in the U.S. Armed Forces.

Compliance Note

The credit is computed on Form 5884, Work Opportunity Credit, and the amount is carried over to Form 3800, General Business Credit. Form 5884 must be attached to the taxpayer's income tax return.

Certification. A designated local agency will certify a qualified veteran as meeting the required periods of unemployment if the individual is in receipt of unemployment compensation under State or Federal law for the required period of time ([Code Sec. 51\(d\)\(13\)\(D\)](#), as added by the 2011 Heroes Act). Thus, an individual is a



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short-term unemployed veteran if the designated local agency certifies the individual has received unemployment compensation for at least four weeks but less than six months during the one year period ending on the hiring date. Similarly, an individual is either a long-term unemployed veteran or a long-term unemployed veteran with service-connected disability if the designated local agency certifies that the individual has received unemployment compensation for at least six months during the one-year period ending on the hiring date. The Secretary of Treasury may provide alternative methods for certification of a veteran as a short-term or long-term unemployed qualified veteran.

Tax-Exempt Organizations. Effective for individuals hired after November 21, 2011, a tax-exempt organization may claim a credit against its Federal Insurance Contribution Act (FICA) tax obligation for hiring a qualified veteran with respect to whom the work opportunity credit would be allowed if the organization was not a tax-exempt organization ([Code Sec. 3111\(e\)\(1\)](#)), as added by the 2011 Heroes Act). A tax-exempt organization for this purpose is any employer that is a [Code Sec. 501\(c\)](#) organization exempt from tax ([Code Sec. 3111\(e\)\(5\)](#)), as added by the 2011 Heroes Act).

The credit amount is allowed against the organization's FICA tax obligation on wages paid to the veteran during the one-year period beginning with the day the qualified veteran begins work for the organization ([Code Sec. 3111\(e\)\(4\)](#)). The credit amount to be taken against the employer's FICA obligation will equal only 26 percent (rather than 40 percent) of qualified wages paid to the qualified veteran during the first year of employment if the veteran performs at least 400 hours of service and 16.25 percent (rather than 25 percent) of the qualified wages paid to the qualified veteran during the first year of employment if the veteran works less than 400 hours, but at least 120 hours. No credit is available for a veteran who works fewer than 120 hours ([Code Sec. 3111\(e\)\(3\)](#)), as added by the 2011 Heroes Act).

The dollar limits on qualified wages used in calculating the work opportunity credit will also apply in calculating the credit against a tax-exempt organization's FICA obligation for hiring a qualified veteran. In addition, the exempt organization can only take into account qualified wages paid to the qualified veteran that further the exempt activities or function of the organization ([Code Sec. 3111\(e\)\(3\)\(C\)](#)), as added by the 2011 Heroes Act). The total amount of credit allowed to a tax-exempt organization for hiring all qualified veterans cannot exceed the total amount of FICA tax imposed on the organization as an employer on wages paid to all employees during the period the qualified veterans are hired ([Code Sec. 3111\(e\)\(2\)](#)), as added by the 2011 Heroes Act).

U.S. possessions. The credit allowed to tax-exempt organizations against FICA tax obligations for hiring qualified veterans is extended to U.S. possessions with a mirror tax code system (Act Sec. 261(f) of the 2011 Heroes Act). The U.S. Treasury will pay each of these possessions an amount equal to that possession's loss caused by the credit. The amount is based on information provided by the government of the possession. A mirror code possession is one that determines the income tax liability of its residents by reference to U.S. income tax laws as if the possession were the United States. Mirror code possessions are the United States Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.



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The U.S. Treasury will also pay each non-mirror code possession an amount estimated to be equal to the aggregate benefits that would have been provided to its residents by reason of the credit if the possession had a mirror code tax system. The possession, however, must establish to the satisfaction of the Secretary of the Treasury that it has implemented, or will implement, an income tax benefits which is substantially equivalent to the credit. Non-mirror code possessions are Puerto Rico and American Samoa.

A tax-exempt organization that hires a qualified veteran and claims the FICA credit against taxes imposed by a U.S. possession, or who is eligible for a credit-related payment from a non-mirror code possession, cannot claim the credit against U.S. income tax liability. Instead, the amount of work opportunity credit claimed by the tax-exempt organization against U.S. income taxes with respect to the qualified veteran must be reduced by the amount FICA credit, or other tax benefit, claimed against U.S. possession income.

Comment

For purposes of the rules permitting the U.S. Treasury to disburse refunds arising from tax credits, payments made under these provisions are treated as refunds due from the credit.

► **Effective date.** The amendments made by this section apply to individuals who begin work for the employer after the date of the enactment (Act Sec. 261(g) of the VOW to Hire Heroes Act of 2011 (P.L. 112-XX)).

Law source: Law at [§5007](#), [§5008](#), and [§5016](#).

- Act Sec. 261(a) of the VOW to Hire Heroes Act of 2011 (P.L. 112-XX), amending [Code Sec. 51\(b\)\(3\)](#);
- Act Sec. 261(b), amending Code Sec. 51(d)(3)(A);
- Act Sec. 261(c), amending [Code Sec. 51\(d\)\(13\)](#);
- Act Sec. 261(d), amending [Code Sec. 51\(c\)\(4\)\(B\)](#);
- Act Sec. 261(e)(1), amending [Code Sec. 52\(c\)](#);
- Act Sec. 261(e)(2), adding [Code Sec. 3111\(e\)](#) and (f);
- Act Sec. 261(g), providing the effective date.

Reporter references: For further information, consult the following CCH reporters.

- Standard Federal Tax Reporter, [§4803.01](#)
- Tax Research Consultant, [BUSEXP: 54,250](#)
- Practical Tax Explanation, §13,805.10