



April 18, 2012

Legal Alert: The VOW to Hire Heroes Act of 2011 provides tax credits to certain tax-exempt organizations that hire eligible unemployed veterans.

The VOW to Hire Heroes Act of 2011, originally enacted November 21, 2011, has been expanded to provide Work Opportunity Tax Credits (WOTC) to certain tax-exempt organizations that hire eligible unemployed veterans. An organization described in Internal Revenue Code (IRC) Section 501(c) that is exempt from taxation under IRC Section 501(a) and hires a veteran who meets certain service and employment criteria between November 22, 2011 and January 1, 2013 is eligible to receive tax credits which can offset any Social Security tax liability the organization may have.

The total tax credit accrues for the first year of the qualified veteran's employment and is limited to \$6,240 per qualified veteran. The credits can offset all of the employer's Social Security tax liability for an applicable period and any unused amounts can be carried forward to future periods.

In order to receive the tax credits, an employer must file a Form 8850 Pre-Screening Notice and Certification Request for the Work Opportunity Credit to certify a veteran as a member of the targeted group. Once a veteran is certified as a qualified veteran, has worked at least 120 hours, and the employer has filed its employment tax return, the employer may file Form 5884-C to claim the tax credit. The tax credit will not affect the Social Security tax liability reported on the employer's employment tax return and the IRS recommends that employers not reduce their required deposits in anticipation of any credit.

For a link to the full article including links the IRS forms mentioned above and the IRS notice providing guidance on the VOW to Hire Heroes Act of 2011, click here <http://tinyurl.com/7jbxmv2>.

This alert is meant to provide information on the VOW to Hire Heroes Act of 2011 as it pertains to tax-exempt organizations only.

This alert is meant to provide general information only, not legal advice. Please contact Judith Moldover at Lawyers Alliance for New York at (212) 219-1800 x 250 or visit our website www.lawyersalliance.org for further information.

Lawyers Alliance for New York is the leading provider of business and transactional legal services for nonprofit organizations that are improving the quality of life in New York City neighborhoods. Our network of pro bono lawyers from law firms and corporations and staff of experienced attorneys collaborate to deliver expert corporate, tax, real estate, employment, intellectual property, and other legal services to community organizations. By connecting lawyers, nonprofits and communities, we help nonprofits to develop affordable housing, stimulate economic development, promote community arts, and operate and advocate for vital programs for children and young people, the elderly, and other low-income New Yorkers.

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Legal Alert: The VOW to Hire Heroes Act of 2011 provides tax credits to certain tax-exempt organizations that hire eligible unemployed veterans.

The VOW to Hire Heroes Act of 2011, enacted November 21, 2011, provides an expanded Work Opportunity Tax Credit (WOTC) to businesses that hire eligible unemployed veterans and for the first time also makes the credit available to certain tax-exempt organizations. On February 9, 2012, the IRS released the guidance and forms that certain tax-exempt employers can use to claim the newly-expanded tax credit for hiring veterans.

What organizations are “qualified employers” and eligible to receive the tax credits?

An employer that is an organization described in Internal Revenue Code (IRC) Section 501(c), exempt from taxation under IRC Section 501(a) and hires a qualified veteran who begins work on or after November 22, 2011, and before January 1, 2013 is eligible to receive the tax credits. An employer that is an agency or instrumentality of the federal government, or of a state, local or Indian tribal government, is not a qualified employer unless it is an organization described in Code section 501(c) that is exempt from tax under Code section 501(a).

Who are “qualified veterans?”

Veterans that are qualified for purposes of the tax credit have served on active duty (not including training) in the U.S. Armed Forces for more than 180 days or have been discharged or released from active duty for a service-connected disability, and have not had a period of active duty (not including training) of more than 90 days that ended during the 60-day period ending on the hiring date. In addition, a veteran is considered qualified for purposes of the tax credit if, one of the following is true:

- the veteran was a member of a family receiving assistance under the Supplemental Nutrition Assistance Program (SNAP) (food stamps) for at least a 3-month period during the year prior to the hiring date;
- the veteran was unemployed for at least 4 weeks (whether or not consecutive) but less than 6 months (whether or not consecutive) in the year prior to the hiring date;
- the veteran was unemployed for at least 6 months (whether or not consecutive) in the year prior to the hiring date;
- the veteran was entitled to compensation for a service-connected disability and hired not more than 1 year after being discharged or released from active duty in the U.S. Armed Forces; or
- the veteran was entitled to compensation for a service-connected disability and unemployed for at least 6 months (whether or not consecutive) in the year prior to the hiring date.

How much is the tax credit?

The tax credit can be claimed for the first year of the qualified veteran's employment and is calculated based on the number of hours the veteran works and which of the qualification criteria in the bullets above is applicable. The total tax credit is limited to \$6,240 per qualified veteran but can be credited against all of the employer's Social Security tax liability for the applicable period (not only the portion of the tax liability attributed to the qualified veteran). The tax credit can not be more than the employer's social security tax liability for the applicable period, however, any unused credit can be carried forward to the next period.

How is the claim for tax credits made and processed?

First, the employer must complete Form 8850 Pre-Screening Notice and Certification Request for the Work Opportunity Credit, to pre-screen and make a written request to its State Workforce Agency to certify a veteran as a member of a targeted group for purposes of qualifying for the work opportunity tax credit. This form is not filed with the Internal Revenue Service; it is filed with the appropriate State Workforce Agency. The state work opportunity tax credit coordinator for the State Workforce Agency must certify the job applicant is a member of a targeted group.

For Form 8850, visit <http://www.irs.gov/pub/irs-pdf/f8850.pdf>

Once a veteran is certified as a qualified veteran by a State Workforce Agency and the veteran has worked at least 120 hours, the tax-exempt employer may file Form 5884-C to claim the tax credit. Form 5884-C is filed after the qualified tax-exempt organization has filed its employment tax return for the employment tax period for which the credit is claimed. The tax credit will not affect the employer's Social Security tax liability reported on the organization's employment tax return.

For Form 5884-C, visit <http://www.irs.gov/pub/irs-pdf/f5884c.pdf>.

For a link to frequently asked questions related to the VOW to Hire Heroes Act of 2011 provided by the IRS, including a matrix to determine the amount of the tax credit that an employer can claim, visit <http://tinyurl.com/7jbxmv2>.

Because Form 5884-C will not be processed simultaneously with the qualified tax-exempt organization's employment tax return, the IRS recommends that qualified tax-exempt organizations not reduce their required deposits in anticipation of any credit. A qualified tax-exempt organization that reduces its deposits in anticipation of the credit may receive a system-generated notice; however, the balance due, including any related penalties and interest, resulting from the reduction in deposits to reflect the credit, will be abated when the credit is applied, generally without any taxpayer action.

This alert is meant to provide information on the VOW to Hire Heroes Act of 2011 as it pertains to tax-exempt organizations only.

For a link to the IRS's notice providing guidance on the VOW to Hire Heroes Act of 2011, visit <http://www.irs.gov/pub/irs-drop/n-12-13.pdf>.

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