

Part III - Administrative, Procedural, and Miscellaneous

Section 51 - Work Opportunity Tax Credit; Section 52 – Special Rules;

Section 3111(e) – Credit for Employment of Qualified Veterans

Notice 2012-13

I. PURPOSE

This notice provides guidance on Returning Heroes and Wounded Warriors Work Opportunity Tax Credits, included as § 261 of the VOW to Hire Heroes Act of 2011, Title II, subtitle D, of Pub. L. No. 112-056 (Act), enacted on November 21, 2011. Section 261 of the Act amended §§ 51, 52, and 3111 of the Internal Revenue Code to provide a credit for hiring certain qualified veterans. This notice also provides employers who hire qualified veterans additional time beyond the 28-day deadline in § 51(d)(13) for submitting Form 8850, Pre-screening Notice and Certification Request for the Work Opportunity Credit, to Designated Local Agencies (DLAs).

This notice provides additional guidance on electronic signature and electronic submission of Form 8850 and also informs all employers that the Internal Revenue

Service (IRS) will allow the signature and submission of Form 8850 by facsimile to DLAs that choose to accept such submissions.

This notice also requests comments on alternative methods for certification of a veteran as a qualified veteran described in clause (ii)(II), (iii), or (iv) of § 51(d)(3)(A),

II. BACKGROUND

Section 51 provides for a Work Opportunity Tax Credit (WOTC) for employers who hire individuals who are members of targeted groups. An employer must obtain certification that an individual is a targeted group member before the employer may claim the credit. Certification of an individual's targeted group status is obtained from a DLA. A DLA is a State employment security agency established in accordance with 29 U.S.C. §§ 49-49n. An employer must submit Form 8850 to the DLA not later than the 28th day after the individual begins work for the employer.

The WOTC applies to certain wages paid or incurred by employers with respect to a member of a targeted group. Prior to enactment of the Act, § 51(c)(4)(B) provided that wages paid or incurred with respect to an individual who begins work for the employer after December 31, 2011, are not taken into account for purposes of the WOTC. Thus, the credit is not available with respect to wages for persons who begin work after December 31, 2011, other than qualified veterans. The Act extended the

credit only with respect to qualified veterans who begin work for the employer on or before December 31, 2012.

The Act amends § 51(d)(3) to add two new categories to the qualified veteran targeted group. Under new § 51(d)(3)(A)(iii) and (iv), a qualified veteran is a veteran certified as having aggregate periods of unemployment of at least 4 weeks but less than 6 months in the year prior to being hired or certified as having aggregate periods of unemployment of 6 months or more in the year prior to being hired.

The amount of wages that an employer may take into account in computing the credit differs for the various categories of qualified veterans. The Act amends § 51(b)(3), which provides the amount of qualified wages that an employer may take into account in calculating the WOTC. Section 51(b)(3), as amended, provides that the amount of qualified wages taken into account is limited to \$6,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(i) (a veteran certified as being a member of a family receiving assistance under a supplemental nutrition assistance program under the Food and Nutrition Act of 2008 for at least a 3-month period ending during the 12-month period ending on the hiring date) and subsection (d)(3)(A)(iii) (a veteran certified as having aggregate periods of unemployment of at least 4 weeks but less than 6 months in the year prior to being hired); \$12,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii)(I) (a disabled veteran who is certified as having a hiring date which is not more than 1 year after discharge or release from active duty);

\$14,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(iv) (a veteran certified as having aggregate periods of unemployment of 6 months or more in the year prior to being hired); and \$24,000 per year in the case of any individual who is a qualified veteran by reason of subsection (d)(3)(A)(ii)(II) (a disabled veteran who is certified as having aggregate periods of unemployment of 6 months or more in the year prior to being hired).

The Act amends § 51(d)(13)(D) to provide that a veteran will be treated as being certified as having the requisite aggregate period of unemployment by the DLA if the veteran is certified as being in receipt of unemployment compensation for the applicable period. The Act also allows the Secretary of the Treasury to provide, at the Secretary's discretion, alternative methods for certification of a veteran as a qualified veteran described in clause (ii)(II), (iii), or (iv) of § 51(d)(3)(A).

The Act amends § 51(c)(4)(B) to extend the credit and allow an employer to claim the WOTC for qualified wages paid or incurred by the employer to a qualified veteran who begins work on or before December 31, 2012.

The Act also amends § 52 and § 3111 to make a credit available to "qualified tax-exempt organizations" that hire qualified veterans for which the WOTC would have been allowable under § 51 if the organization were not a qualified tax-exempt organization. Specifically, the Act adds new § 3111(e), which permits qualified tax-exempt

organizations that hire qualified veterans on or after November 22, 2011, to claim a credit against the employer share of social security tax imposed under § 3111(a).

The credit under § 3111(e)(1) is a credit against the tax imposed by § 3111(a) on wages paid by the qualified tax-exempt organization with respect to employment of all employees of the organization during the applicable period. Section 3111(e)(4) defines the “applicable period” as the 1-year period beginning with the day the qualified veteran begins work for the organization. The amount of the credit under § 3111(e) equals the amount of the credit determined under § 51 (after application of the modifications under § 3111(e)(3)) with respect to wages paid to the qualified veteran during the applicable period. However, under § 3111(e)(2), the aggregate amount allowed as a credit under § 3111(e) for all qualified veterans for any period with respect to which tax is imposed under § 3111(a) cannot exceed the amount of the employer social security tax imposed by § 3111(a) on all wages paid by the employer during such period.

As indicated above, the amount of the credit under § 3111(e) is determined under § 51 but is subject to modifications under § 3111(e)(3). Specifically, § 3111(e)(3) modifies the amount of the credit available to the qualified tax-exempt organization to 16.25 percent (rather than 25 percent) of the qualified first-year wages for the applicable period if the veteran performs less than 400 hours but at least 120 hours of service, or 26 percent (rather than 40 percent) of the qualified first-year wages for the applicable period if the veteran performs at least 400 hours of service for the qualified tax-exempt organization. Further, to calculate the amount of the credit, the qualified tax-exempt

organization only takes into account the wages paid to a qualified veteran for services in furtherance of activities related to the purpose or function constituting the basis of the organization's exemption under § 501. For example, wages for services in an unrelated trade or business (as defined in § 513) are not counted for purposes of the credit. Although wages are defined for purposes of the WOTC under § 51 as wages under the Federal Unemployment Tax Act, for purposes of the credit available to qualified tax-exempt organizations under § 3111(e), the term “wages” refers to wages under the Federal Insurance Contributions Act.

New § 3111(e)(5)(A) defines “qualified tax-exempt organization” as an employer that is an organization described in § 501(c) and exempt from taxation under § 501(a). Accordingly, 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 tax-exempt organization unless it is an organization described in § 501(c) that is exempt from tax under § 501(a).

The requirements for certification under § 51, as amended by the Act, apply to qualified tax-exempt organizations as well as to taxable employers. Accordingly, a qualified tax-exempt organization must obtain certification, as required under § 51, that an individual is a qualified veteran before it may claim the credit. The transition relief, guidance on filing Forms 8850 with electronic signatures, and allowance of signature and submission of Form 8850 by facsimile provided for in this notice apply to all employers, including qualified tax-exempt organizations.

III. TRANSITION RELIEF

Section 51(d)(13)(A) provides that an individual shall not be treated as a member of a targeted group unless (1) on or before the day the individual begins work, the employer obtains certification from the DLA that the individual is a member of a targeted group; or (2) the employer completes a pre-screening notice (Form 8850) on or before the day the individual is offered employment and submits such notice to the DLA to request certification not later than 28 days after the individual begins work. Because the credit, as amended, became effective on the day after enactment, the Treasury Department and the IRS believe it is appropriate to provide employers with additional time to file Form 8850 with a DLA. Accordingly, any employer who hires any qualified veteran described in § 51(d)(3) on or after November 22, 2011, and before May 22, 2012, will be considered to satisfy the requirements of § 51(d)(13)(A)(ii) if the employer submits the completed pre-screening notice to the DLA to request certification not later than June 19, 2012.

IV. FILING OF FORM 8850 WITH ELECTRONIC SIGNATURES

Before any employer may claim the WOTC for hiring any member of a targeted group (or, for qualified tax-exempt organizations, the § 3111(e) credit for hiring a qualified veteran), that individual must be certified by the DLA as a member of a targeted group. Section 51(d)(13)(A)(ii)(II) requires that, not later than the 28th day after

the individual begins work for the employer, the employer submit a notice, signed by the employer and the individual under penalties of perjury, to the DLA as part of a written request for certification. For purposes of this Section IV, “employer” refers to any employer required to submit a Form 8850 in order to obtain the WOTC under § 51 or the equivalent credit under § 3111(e), or an authorized representative of such an employer.

Employers may submit Form 8850 to the DLA electronically if the employer’s system satisfies the requirements in Ann. 2002-44, 2002-1 C.B. 809. This Notice makes available to employers two alternative methods of certification using electronic signatures in addition to the electronic submission of Form 8850 as provided in Ann. 2002-44. The alternative methods are available to any employer required to submit a Form 8850 in order to obtain the WOTC for any member of any targeted group under § 51 or the equivalent credit under § 3111(e).

First, an employer may print out a paper copy of the Form 8850 that was signed electronically by both the applicant and the employer in accordance with the requirements of Ann. 2002-44, and transmit that paper copy to the DLA (by mail or by facsimile following the rules in Section V of this notice).

Second, an employer may file Form 8850 using a method under which the applicant signs electronically but the employer signs in ink. More specifically, the applicant signs Form 8850 electronically and the Form 8850 is transmitted electronically

to the employer in accordance with the requirements detailed below. Once received and printed out, the paper copy of the Form 8850 shows “signed electronically” in the field for the applicant’s signature. The employer signs that paper copy of that Form 8850 in ink, complying with the signature and jurat requirements on Form 8850 and the Form 8850 instructions for the paper copy of Form 8850, and transmits that paper copy to the DLA (by mail or by facsimile following the rules in Section V of this notice). Under this second alternative method, the employer must satisfy all five of the following requirements with respect to the Form 8850 that is electronically signed by the applicant:

(i) In General. The electronic system must ensure that the information received is the information sent, and it must document all occasions of access that result in the transmission of a Form 8850. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the applicant signing the Form 8850, accessing the system, and submitting the Form 8850 is the applicant identified in the form.

(ii) Same Information as Paper Form 8850. The electronically signed Form 8850 must provide the DLA with exactly the same information as the paper Form 8850.

(iii) Jurat and Signature Requirements. The Form 8850 must be signed electronically by the applicant under penalties of perjury.

(A) Jurat. The jurat (perjury statement) must contain the language that appears on the paper Form 8850 for the applicant. The electronic system must inform the applicant that he or she must make the declaration contained in the jurat and that the declaration is made by signing the Form 8850. The instructions and the language of the jurat must immediately follow the information provided by the applicant, and must immediately precede the applicant's electronic signature.

(B) Electronic Signature. The electronic signature must (1) identify the applicant whose name is on the Form 8850 and the employer submitting the Form 8850, and (2) authenticate and verify the form. For this purpose, the terms "authenticate" and "verify" have the same meaning as they do when applied to a written signature on a paper Form 8850. An electronic signature can be in any form that satisfies the foregoing requirements.

(iv) Copies of Form 8850. The employer must be able to supply and, upon request by the IRS, the employer must supply (1) a paper copy of the Form 8850 submitted to the DLA, and (2) a statement that, to the best of the employer's knowledge, the Form 8850 was submitted by the employer with respect to the named applicant. The paper copy of the

electronically signed Form 8850 must provide exactly the same information as, but need not be a facsimile of, the paper Form 8850.

(v) Retention of Forms 8850 by the DLAs and Employers. Forms 8850 with an applicant's electronic signature have the same status as paper Forms 8850. Therefore, guidance that applies to paper Forms 8850 also applies to these Forms 8850. For example, as is the case for paper Forms 8850, electronic Forms 8850 are required to be retained by employers under their established record-keeping systems. For further information, see Rev. Proc. 98-25, 1998-1 C.B. 689, on information regarding the retention of records within an Automatic Data Processing System.

V. ALTERNATIVE METHOD OF FILING OR SIGNING FORM 8850--FILING OR SIGNING BY FACSIMILE

In addition to the electronic signature method of filing Form 8850 described in Section IV, the IRS will also allow the facsimile transmission of applicant and employer signatures on a Form 8850 if the applicable DLA accepts Form 8850 via facsimile, the applicant and employer intend the signatures on the faxed copy to be their signatures for purposes of the document, and the requirements of paragraphs (1) and (2) below are satisfied:

(1) Same Information as Paper Form 8850. The facsimile submission is a reproduction of Form 8850 that provides the DLA with exactly the same information as the paper Form 8850.

(2) Signature and Transmission Requirements. The Form 8850 is signed by the applicant and the employer, under penalties of perjury, and transmitted to the DLA in the following manner:

(i) An original Form 8850 is completed in paper copy and then signed in ink by the applicant;

(ii) The original Form 8850, signed by the applicant, is delivered to the employer either in person or by facsimile;

(iii) The employer signs in ink either the paper copy of Form 8850 that was signed by the applicant or the facsimile of that paper copy; and

(iv) The employer mails or faxes the signed Form 8850 to the DLA within the time prescribed by § 51(d)(13)(A)(ii) (or within the period authorized under Section III of this notice).

For purposes of this Section V, “employer” refers to any employer required to submit a Form 8850 in order to obtain the WOTC for any member of any targeted group

under § 51 or the equivalent credit under § 3111(e), or an authorized representative of such an employer.

VI. GUIDANCE FOR TAX-EXEMPT ORGANIZATIONS

Qualified tax-exempt organizations entitled to a credit under § 3111(e) must use Form 5884-C, Work Opportunity Credit for Qualified Tax-Exempt Organizations Hiring Qualified Veterans, to claim the credit. Although the credit under § 3111(e) is applied against the employer social security tax liability for the employment tax period in which the credit is claimed, the liability reported on the qualified tax-exempt organization's employment tax return (e.g., Form 941) is not reduced when that return is filed. Rather, the IRS will process Form 5884-C separately and refund the amount properly claimed on Form 5884-C to the qualified tax-exempt organization, subject to the limit of the amount of employer social security tax liability for the period in which the credit is claimed. Because Form 5884-C will generally not be processed simultaneously with the qualified tax-exempt organization's employment tax return, it is recommended that qualified tax-exempt organizations not reduce their required deposits in anticipation of any credit. A qualified tax-exempt organization that reduces its required employment tax deposits in anticipation of a credit under § 3111(e) 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 under § 3111(e), will be abated when the credit is applied, generally without any taxpayer action.

Form 5884-C is filed separately and should not be attached to any other return filed by the qualified tax-exempt organization. Form 5884-C should be filed after the qualified tax-exempt organization files its employment tax return for the tax period for which the credit is claimed and in accordance with the Form 5884-C instructions. Form 5884-C can be filed immediately after the qualified tax-exempt organization files its employment tax return and it must be filed within 2 years from the date the tax reported on the employment tax return was paid, or 3 years from the date the employment tax return was filed, whichever is later.

The qualified tax-exempt organization using Form 5884-C must calculate the cumulative credit to which the qualified tax-exempt organization is entitled under § 3111(e) for all qualified veterans hired on or after November 22, 2011. The qualified tax-exempt organization must reduce the cumulative credit by any credits claimed on any Forms 5884-C filed for prior tax periods. The amount refunded will be limited to the amount of employer social security tax reported on the employment tax return filed by the qualified tax-exempt organization for the employment tax period for which the credit is claimed. Any excess credit (i.e., any credit that exceeds the employer social security tax for the period the credit is claimed) may be carried forward and will be included in the qualified tax-exempt organization's cumulative calculation on Form 5884-C filed for a subsequent tax period to the extent provided in the instructions to Form 5884-C.

VII. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on alternative methods for certification of a veteran as a qualified veteran described in § 51(d)(3) in addition to the methods of signing and filing electronically or by facsimile described in this notice. In particular, comments related to certification of a veteran as a qualified veteran described in clause (ii)(II), (iii), or (iv) of § 51(d)(3)(A) are requested. Comments are also requested on alternative methods of filing Form 8850. Comments must be submitted by April 12, 2012. All materials submitted will be available for public inspection and copying. Comments should be submitted to Internal Revenue Service, CC:PA:LPD:RU (Notice 2012-13), Room 5203, PO Box 7604, Ben Franklin Station, Washington, DC 20224. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to the Courier's Desk, 1111 Constitution Avenue, NW, Washington, DC 20224, Attn: CC:PA:LPD:RU (Notice 2012-13), Room 5203. Submissions may also be sent electronically via the internet to the following email address: Notice.comments@irscounsel.treas.gov. Include the notice number (Notice 2012-13) in the subject line.

VIII. EFFECT ON OTHER DOCUMENTS

This Notice supplements Ann. 2002-44, 2002-1 C.B. 809.

EFFECTIVE DATE

Amendments made to § 51, § 52, and § 3111 by the Act are effective for individuals who begin work for the employer on or after November 22, 2011. As

described in Section III, any employer who hires any qualified veteran described in § 51(d)(3) on or after November 22, 2011, and before May 22, 2012, will be considered to satisfy the requirements of § 51(d)(13)(A)(ii) if the employer submits the completed pre-screening notice to the DLA to request certification not later than June 19, 2012. The alternative methods of signing and filing Forms 8850, as described in Sections IV and V, are effective for Forms 8850 filed with a DLA on or after March 10, 2012.

DRAFTING INFORMATION

The principal authors of this notice are Robin Ehrenberg and Ligeia Donis of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information on the submission of comments or the comments submitted, contact Regina Johnson at (202) 622-7180 (not a toll-free number). For further information regarding the WOTC for qualified veterans, electronic filing, and facsimile submissions, contact Ms. Ehrenberg at (202) 622-6080 (not a toll-free number). For further information on how to claim the WOTC on behalf of tax-exempt organizations, contact Ligeia Donis at (202) 622-6040 (not a toll-free number).