



THE HEROES EARNINGS ASSISTANCE AND RELIEF TAX ACT OF 2008

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The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART) was signed into law June 17, 2008. HEART provides important benefits to employers and employees beginning in 2009.

Differential Pay as Wages

Compensation:

HEART corrects a thirty-nine year old Internal Revenue Service (IRS) Revenue ruling and amends the definition of "differential wage payment" for purposes of the federal income tax withholding rules. As a result, up to \$20,000 of differential pay will be treated as compensation for withholding tax purposes and reported on IRS Form W-2.

Retirement Plans:

HEART amends the definition of "differential pay" and provides an activated employee with the option of: making pension plan contributions from their differential pay; or using the make up contribution provision contained in IRC Section 414(u). The employer will continue to be required to match any elective deferrals or employee contributions at the same rate as if the employee had not been mobilized.

Distributions to individuals called to active duty for at least 180 days

HEART makes permanent two important tax code provisions contained in the Pension Protection Act of 2006. The first provision created an exception for mobilized Reservists to make early withdrawals from retirement plans without triggering an early withdrawal tax. The second provision allows a Reservist who received a qualified distribution to contribute the funds to an Individual Retirement Account (IRA), during the two-year period beginning after the end of his or her active duty period. The IRA dollar limitations will not apply to any contribution made following this special repayment rule.

Employer wage credit for activated Reservists

HEART provides that an eligible small business employer, with less than 50 employees that provides eligible differential wage payments to every qualified employee, will be eligible for a 20% credit against the income tax liability resulting from differential wage payments. A qualified employee is defined as an individual who has been

an employee for the 91 day period immediately preceding the period in which a differential wage payment is made.

The credit will not apply to any payments made after December 31, 2009. However, it will act as a general business credit and be subject to the applicable rules. *Disposition of Unused Health Benefits*

HEART provides an employer the opportunity to amend their cafeteria plan or flexible spending account (FSA) to insure that a mobilized employee's account balance will not be forfeited by reason of their inability to use the funds while on active duty. If the employer election is made, the mobilized employee can make a tax-free withdrawal of the unused cafeteria plan or FSA funds.