

LAW REVIEW 845

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Law Gives Small Businesses Tax Credit on Differential Pay

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For more than 20 years, ROA has pushed for federal legislation to provide a tax break for civilian employers of National Guard and Reserve personnel. This effort has finally paid off. On June 17, President George W. Bush signed into law the Heroes Earnings Assistance and Relief Tax Act (HEART Act), Public Law 110-245. Section 111 of this new law allows certain small business employers a tax credit for up to 20 percent of the differential wage payments made to Active Duty members of the Armed Forces.

“I have long advocated the use of carrots as well as sticks in seeking to persuade civilian employers to support service in the Reserve Components by employees,” said LtGen Dennis McCarthy, USMC (Ret.), ROA’s executive director. “I am most pleased that there finally is a carrot to offer to employers who go above and beyond the requirements of the Uniformed Services Employment and Reemployment Rights Act [USERRA] by making up the difference for junior Reserve Component personnel whose military salaries are less than their civilian salaries.”

For example, Joe Smith, an employee of the XYZ Corp., a qualified small business, earns far more as a civilian than he does while on active duty. XYZ has voluntarily chosen to provide him \$1,000 per month, representing this difference. Under this new law, the employer can claim a credit of \$200 per month (20 percent of the differential salary payment), part of the General Business Credit.

An eligible small business employer, as defined in this section, is an employer who employed an average of fewer than 50 employees on business days during the taxable year. The differential payments must have been made in accordance with a written plan of the employer, and differential payments of up to \$20,000 per year are covered by this incentive. If the employer is found to have violated USERRA in a taxable year, the employer will lose the incentive for that taxable year and the next two such years. As currently written, this incentive only applies to differential payments made between June 17, 2008 (the date of enactment of the HEART Act), and Dec. 31, 2009.

“This new provision is temporary and limited in scope, but at least we have accomplished something in an area where we have had nothing but frustration for more than two decades,” LtGen McCarthy said. “ROA will continue the effort to broaden and sweeten the incentive provided to employers of Reserve Component personnel.”