



IRS Addresses Differential Wage Payments to Active Military Duty Personnel

In a revenue ruling, the IRS confirms that differential wage payments to individuals on active military duty for more than 30 days are treated as wages for income tax withholding, but not for FICA and FUTA purposes, and are to be reported on the individual's W-2. The ruling also addresses how the amount of taxes to be withheld is calculated.

Background

Last year, the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART) was enacted, which added a new Section 3401(h) to the Internal Revenue Code. This section provides that "differential wage payments" made by an employer after December 31, 2008 for an employee on active duty are treated as wages to the employee for purposes of income tax withholding. (See our June 18, 2008 [For Your Information](#).) A differential wage payment is defined as any payment which (a) is made by an employer for any period during which an individual is on active military duty for more than 30 days, and (b) represents all or a portion of the wages the individual would have received from the employer if the individual were performing service for the employer.

The IRS has now clarified the reporting and withholding treatment of these payments for employers.

Revenue Ruling 2009-11

In [Revenue Ruling 2009-11](#), the IRS confirms that differential wage payments by employers to employees while they are on active military duty for more than 30 days are subject to withholding for federal income tax, but are not taxed under the Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA).

Further, the IRS indicates that because they are not a payment for services in the employer's current payroll period, differential wage payments are supplemental wages. To determine the amount of withholding for total supplemental wages less than \$1 million, employers may aggregate differential pay with ordinary wages paid during that payroll period and treat the two as a single wage payment for the payroll period. The withholding method used for regular wages is then used, taking into consideration the Form W-4 submitted by the employee. Alternatively, if the differential wage payment is (a) either not paid concurrently with regular wages or is separately identifiable on the employer's payroll records, and (b) income tax has been withheld from the regular wages paid during the same or preceding calendar year, the employer may withhold at an optional 25% flat rate for 2009. The determination of tax to be withheld under this alternative method is made without reference to any payment of

regular wages and without regard to the number of withholding allowances claimed by the employee or requests for any additional withholding on Form W-4.

Finally, the ruling provides that employers must use Form W-2 to report the amount of wages paid and income tax withheld.

Conclusion

The IRS guidance provides useful clarification of how to report military wage differential payments made by employers. Buck's consultants would be pleased to discuss this guidance with you.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.