

# PUBLICATION

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## Three Percent Withholding Repeal and Job Creation Act

December 20, 2011

On November 21, President Obama signed the Three Percent Withholding Repeal and Job Creation Act (the Act). The Act includes three significant tax provisions:

- Repeal of the three percent withholding requirement on government contractors;
- Creation of additional tax incentives to encourage employers to hire unemployed and disabled veterans; and
- Expansion of the IRS's authority to continuously levy on certain assets of delinquent taxpayers.

The purpose of this Alert is to provide a brief overview of these significant provisions.

### Overview of the Act

#### 1. Repeal of the Three Percent Government Withholding.

In 2005, Congress passed highly controversial legislation requiring state, local and federal governments to withhold three percent of certain payments made to government contractors and vendors. Congress responded to the controversy by extending the effective date on several occasions, so the withholding requirement never took effect. But the threat of three percent withholding loomed over government contractors, making it difficult for them to project future cash flows from government contracts and impairing their ability to plan for the future of their businesses. In the Act, Congress finally ended the controversy by repealing the three percent withholding requirement altogether.

#### 2. Tax Incentives for Hiring Veterans.

The Act encourages employers to hire qualifying veterans by expanding and extending the existing Work Opportunity Tax Credit (WOTC), which was set to expire after December 31, 2011. The Act:

- Extends the expiration date of the WOTC for qualified veterans, so it now applies to employers hiring qualified veterans who start work on or before December 31, 2012.
- Increases the existing WOTC available to employers hiring veterans with service-connected disabilities who have been unemployed for at least six months, from 40 percent of the first \$12,000 of wages (up to \$4,800 per worker) to 40 percent of the first \$24,000 of wages (up to \$9,600 per worker). The WOTC for employers hiring veterans with a service-related disability within one year of discharge from service remains at 40 percent of the first \$12,000 of wages (up to \$4,800 per worker).
- Expands the availability of employer tax credits by creating the Returning Heroes Tax Credit that provides a credit to employers hiring qualified veterans who have not suffered a service-related disability. The new credit is 40 percent of the first \$6,000 of wages (up to \$2,400 per worker) for qualified veterans who have been unemployed for at least four weeks, and 40 percent of the first \$14,000 of wages (up to \$5,600 per worker) for qualified veterans who have been unemployed for at least six months.
- Streamlines the process for certifying that a veteran meets the definition of a qualified veteran.

- Allows tax-exempt organizations hiring qualified veterans to receive a credit against payroll taxes calculated in the same way that the WOTC is determined, but using 26 percent of the qualified veteran's wages instead of 40 percent of wages. Only wages for services in furtherance of the tax-exempt organization's exempt purpose can be used to determine the credit. Prior to the Act, no credit was available to tax-exempt organizations.
- Continues to provide that no credit is available if the worker performs less than 120 hours of service for the employer, and that if the worker performs less than 400 hours the percentage of wages used to compute the credit is reduced from 40 percent to 25 percent (or from 26 percent to 16.5 percent in the case of a tax-exempt organizations).

### 3. Expands Continuous Levy Authority.

Prior to the Act, if a vendor of "goods or services" to the federal government had an outstanding tax liability, the IRS could impose a continuous levy on 100 percent of the amounts owed to such taxpayer to satisfy the deficiency, meaning that the IRS could take 100 percent of the payments to the taxpayer. The Act expands this authority to cover all payments owed to vendors (not simply those made in exchange for goods and services). Consequently, even if the products sold to the government are not considered "goods" of the taxpayer, the IRS can levy on the full amount payable to the taxpayer for such property.

### **Conclusion**

Should you have questions or otherwise wish to discuss any aspect of the Act, please contact any of the attorneys in the Firm's Tax Department.