

400 CMR 7.00: NATIONAL GUARD HIRING TAX CREDIT

Section

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7.01: Purpose and Scope

400 CMR 7.00 establishes the procedures for establishing eligibility for and thereafter claiming the National Guard Hiring Tax Credit pursuant to M.G.L. c. 62, § 6(aa) and c. 63, § 38KK.

7.02: Definitions

The following words and phrases shall have the meanings in 400 CMR 7.00 set forth as follows, unless the context clearly indicates otherwise:

Certification. The written certification issued by MOBD pursuant to 400 CMR 7.03 certifying that a Qualified Employer is eligible to claim the National Guard Hiring Tax Credit.

Commissioner. The Commissioner of Revenue or the Commissioner's duly authorized representative.

MOBD. The Massachusetts Office of Business Development.

National Guard Hiring Tax Credit. The tax credit authorized pursuant M.G.L. c. 62, § 6(aa) and c. 63, § 38KK.

Qualified Employee. An individual who:

- (a) is an active member of the Massachusetts National Guard in good standing;
- (b) works at least 35 hours per week, without a termination date, and receives benefits at least equal to those provided to other full-time employees of the employer or works part-time at least 18 hours per week and is currently enrolled in a higher education, vocational, or other acceptable educational program;
- (c) works in Massachusetts; and
- (d) permanently resides in Massachusetts with no plans to return to a former home in another state.

Qualified Employer. An individual or entity that:

- (a) conducts business in Massachusetts;
- (b) is subject to the Massachusetts unemployment insurance laws;
- (c) employs no more than 100 full-time employees;
- (d) is not debarred from doing business with the Commonwealth of Massachusetts; and
- (e) is not a unit of state, local, or federal government.

7.03: Certification of Eligibility

(1) A Qualified Employer may establish its eligibility to claim the National Guard Hiring Tax Credit by applying for and receiving a Certification from MOBD. Applications for Certification shall be made on a form required by MOBD, and shall include:

- (a) information sufficient to establish that the applicant is a Qualified Employer;
- (b) information sufficient to establish that the individual hired meets all of the criteria of a Qualified Employee, including a document from the adjutant general stating the individual's date of service in the Massachusetts National Guard;
- (c) documentation showing the Qualified Employer hired the Qualified Employee on or after July 1, 2022;

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- (d) documentation showing that the Qualified Employee has been employed for at least six continuous months; and
- (e) information sufficient to establish that the applicant is a duly organized and existing entity in good standing with the Commonwealth of Massachusetts and is compliant with all applicable state and federal tax and employment laws.

(3) MOBD reserves the sole discretion to determine whether an applicant is eligible for a National Guard Hiring Tax Credit. If MOBD determines that an applicant is not eligible to claim the National Guard Hiring Tax Credit, it will notify the applicant of that determination in writing.

(4) MOBD shall not issue Certificates for more than a total of \$1,000,000 annually. MOBD shall review and approve applications on a rolling basis, commencing January 1<sup>st</sup> of each year, until it has issued Certificates authorizing a total cumulative of \$1,000,000 in credits for the year.

7.04: Process for Claiming the National Guard Hiring Tax Credit

(1) For the tax years beginning on or after January 1, 2023, a Qualified Employer may claim the National Guard Hiring Tax Credit on the tax return filed for the year that is six months after the Qualified Employee began working for the Qualified Employer. The Qualified Employer shall include in its filing the certificate number provided in the Certification.

(2) A Qualified Employer may apply for a new Certificate, entitling it to claim an additional credit in the taxable year following the initial claimed credit, for the same Qualified Employee if such Employee is continuously employed. Any new Certificate will be issued in the same manner and based on the same criteria as the original Certificate. No employer shall be authorized to claim a National Guard Hiring Tax Credit more than twice for any one Qualified Employee.

(3) A Qualified Employer may carry forward the amount of credit that exceeds the tax due for a taxable year to any of the three subsequent taxable years.

(4) National Guard Hiring Tax Credits shall not be transferrable or refundable.

7.05: Recordkeeping

A Qualified Employer claiming the National Guard Hiring Tax Credit shall retain records necessary to substantiate the employer's eligibility to claim the credit in accordance with 830 CMR 62C.25.1, including:

- (a) the document from the adjutant general stating the individual's date of service in the Massachusetts National Guard;
- (b) Certificate issued by MOBD establishing eligibility;
- (c) employment records sufficient to show the Qualified Employee was employed for not less than six consecutive months; and
- (d) records sufficient to demonstrate that the Qualified Employee's primary place of employment and primary place of residence were in Massachusetts during the six consecutive months of employment.

7.06: Severability

The provisions of 400 CMR 7.00 are severable. If any provisions of 400 CMR 7.00 or the applications of such provisions to any person or circumstance are held invalid or unconstitutional, the other provisions of 400 CMR 7.00, or the application of such provisions to any person or circumstance other than that as to which it is held invalid or unconstitutional, will not be affected thereby.

REGULATORY AUTHORITY

M.G.L. c. 62, § 6(aa); M.G.L. c. 63, § 38KK.