April 8, 2010

The (HIRE) Act

Hiring Incentives to Restore Employment

HIRE

Tax Savings You Can Bank

- Reduced payroll taxes on qualifying new employees.
- Future tax credits for new employees that work 52 weeks or more.
- Only available for new hires during 2010.

New Savings for Employer's that Add Employees

On March 18th 2010 the President signed the "Hiring Incentives to Restore Employment Act of 2010" (the 2010 HIRE Act), into law. The centerpiece of this law is a payroll tax holiday and up-to-$1,000 tax credit for businesses that hire unemployed workers.

To help stimulate the hiring of employees by businesses, the new law exempts any business that hires a new employee who had been unemployed for at least 60 days from having to pay the employer's 6.2% share of the Social Security payroll tax on that new employee for the remainder of 2010. This savings is limited Social Security taxable wages paid to the new employee during 2010.

As an additional incentive, for any qualifying worker hired under this initiative that the business keeps on payroll for a continuous 52 weeks, the business is eligible for an additional non-refundable tax credit of up to $1,000 after the 52-week threshold is reached. This credit is taken on the businesses 2011 tax return. In order to be eligible, the employee's pay in the second 26-week period must be at least 80% of the pay in the first 26-week period.

Workers hired after the date of introduction of the legislation (Feb. 3, 2010) are eligible for the payroll tax forgiveness and the retention bonus, but only wages paid after the March 18th date of the new law's enactment receive the exemption for payroll taxes.

Qualifying New Employees

To qualify your company for the credit new employees must have been unemployed for at least 60 days prior to beginning employment with your company. They may not be related to any an owner or 2% or greater shareholder. They cannot be replacing a worker that left the same job for cause unless the prior employee quit or was terminated for cause.

The worker must sign an affidavit under penalty of perjury that he or she has been unemployed for at least 60 days before beginning work. This affidavit can be obtained on IRS form W-11.

Some Additional Features of the New Hiring Incentives

- The tax benefit of the new incentive is immediate. It puts money into a business' cash flow immediately, since the tax is simply not collected in the first place.
- The tax benefit generally applies only to private-sector employment, including non-profit organizations.
- There is no minimum weekly number of hours that the new employee must work for the employer to be eligible, and there is no maximum on the dollar amount of payroll taxes per employer that may be forgiven.
- For workers that would otherwise be eligible for the "Work Opportunity Tax Credit," the employer must select one benefit or the other for 2010—no double dipping.
- An employer can't claim the new tax breaks for hiring family members.
- A worker who replaces another employee who performed the same job for the employer is not eligible for the benefit, unless the prior employee left the job voluntarily or for cause.
- For the hiring to qualify, the new hire must sign an affidavit, under penalties of perjury, stating that he or she has not been employed for more than 40 hours during the 60-day period ending on the date the employment begins.
- The incentive is not biased towards either low-wage or high-wage workers. Under the measure, a business saves 6.2% on both a $40,000 worker and a $90,000 worker.
- The payroll tax holiday does not apply with respect to wages paid during the first calendar quarter of 2010, but the amount by which the Social Security payroll tax would have been reduced under the payroll tax holiday provision during the first calendar quarter is applied against the tax imposed on the employer for the second calendar quarter of 2010.
- The Act creates a similar new set of rules permitting a payroll tax holiday for railroad retirement tax purposes.

The credit for retaining qualifying new hires is the lesser of $1,000 or 6.2% of the wages paid by the taxpayer to the retained worker during the 52-consecutive-week period. Thus, the credit for a retained worker will be $1,000 if, disregarding rounding, the retained worker's wages during the 52-consecutive-week period exceed $16,129.03. However, the credit is not available for pay not treated as wages under the Code (e.g., remuneration paid to domestic workers).

FAQs About the Payroll Tax Exemption and Qualified Employers

Q: What is the payroll tax exemption?

A: The payroll tax exemption is an exemption from the employer's 6.2 percent share of social security tax on all wages paid to qualified employees from March 19, 2010 (the day after the date of enactment of the HIRE Act) through December 31, 2010. The employee's 6.2 percent share of social security tax and the employer and employee's shares of Medicare tax still apply to all wages.

Q: Which employers qualify for the payroll tax exemption?

A: Taxable businesses and tax-exempt organizations qualify for the payroll tax exemption. Such employers in U.S. possessions, such as Puerto Rico or the Northern

FAQs About the Payroll Tax Exemption and Qualified Employers (cont.)

Mariana Islands, that are subject to social security tax also qualify for the payroll tax exemption. Federal, State or local government employers generally do not qualify for the payroll tax exemption. However, public colleges and universities can qualify for the exemption.

Q: Does the payroll tax exemption apply to household employers?

A: No. The payroll tax exemption applies only to wages paid to a qualified employee performing services in the employer's trade or business or in activities in furtherance of a tax-exempt organization's exempt purpose.

Q: If an employer starts a new business, does the payroll tax exemption apply to wages paid to employees hired for the new business?

A: Yes, if they are qualified employees.

Q: If an employee laid off in 2009 has been receiving COBRA premium assistance, for which the employer has been taking the COBRA premium assistance credit, and the employer rehires the employee, can the employer take the payroll tax exemption under the HIRE Act for wages paid to the employee?

A: Yes, if the employee is a qualified employee.

FAQs About Qualified Employees

Q: Who are qualified employees?

A: Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, and who are not family members of or related in certain other ways to the employer.

Q: Do the qualified employees need to do anything to make it possible for their employer to claim the payroll tax exemption?

A: Yes, qualified employees must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment.

Q: Is the 60-day period continuous, and can it span 2009-2010?

A: The 60-day period must be continuous and can span 2009 -2010.

Q: Does the payroll tax exemption apply to wages paid to a qualified employee hired to replace an existing worker whose employment terminated?

A: The payroll tax exemption does not apply to wages paid to an employee who is hired to replace an existing worker, unless the existing worker terminated employment voluntarily or was terminated for cause.

Q: Does the payroll tax exemption apply to wages paid to an employee who was previously laid off and then rehired by the same or a related employer after a 60-day period?

A: Yes, an employer may apply the payroll tax exemption to wages paid to a rehired employee who is otherwise a qualified employee.

Q: If an employer lays an employee off because of lack of work and later, when work picks up, hires a new employee, can the payroll tax exemption apply to wages paid to the new employee?

A: Yes, if the new employee is a qualified employee (i.e., was employed for less than 40 hours during the prior 60 days).

Q: If an employer hires a recent graduate who has been in school for some or all of the 60 days preceding the start of his employment, does the payroll tax exemption apply to wages paid to the employee?

A: Yes, if the employee is a qualified employee.

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Our payroll department can help make sure you get every penny of the new tax credits you are entitled to. For more information or to get a copy of the W-11 affidavit form to qualify your new employees, give our payroll department a call.

Business Credit for Retention of Certain Newly Hired Individuals in 2010

Q: What is the new hire retention credit and what does it apply to

A: This is a general business credit to encourage retention of the new hires. The employer may claim the credit for each employee who is a qualified employee for purposes of the payroll tax exemption and who remains an employee for 52 consecutive weeks, provided that the employee's pay does not decrease significantly in the second half of the year. The amount of the credit is the lesser of $1,000 or 6.2 percent of wages (as defined for income tax withholding purposes) paid by the employer to the retained qualified employee during the 52 consecutive week period. The credit cannot be carried back but may be carried forward.

Q: How will the new hire retention credit be claimed?

A: The new hire retention credit will be claimed on the employer's 2011 income tax return.