

HIRE Act's Tax Incentives to Businesses

June 2010

The "Hiring Incentives to Restore Employment Act of 2010" (The HIRE Act) was signed into law earlier this year. It provides tax benefits to businesses that hire and retain unemployed workers in 2010. Since the law's enactment, the IRS has issued guidance as to how the new law affects employers. Following is a summary.

Payroll Tax Holiday

A key element of the HIRE Act is a payroll tax holiday relating to Social Security taxes:

- The HIRE Act relieves employers of the obligation to pay their share of Social Security (i.e., OASDI) employment taxes on qualifying wages paid to certain newly hired employees if the law's requirements are met.
- An employer's potential maximum tax benefit is \$6,621: 6.2% of the employee's wages up to \$106,800 – the maximum amount of wages subject to Social Security taxes (in 2010).
- Workers hired after February 3, 2010, and before January 1, 2011, are eligible for the payroll tax forgiveness if certain conditions are met.
- However, only wages paid after March 18 qualify to receive the exemption for payroll taxes.
- The new employee cannot be a replacement for a former employee unless the former employee was terminated for cause or left voluntarily. Following a layoff, when business activity picks up again, the payroll tax exemption may apply with respect to the hiring of a new employee by the employer
- Employers must obtain signed affidavits (Form W-11 or its equivalent) from the workers certifying that they have not been employed for more than 40 hours during the 60-day period ending on the date employment began.

- No minimum weekly hour work requirement for new employees must be met in order for an employer to be eligible for the payroll tax break.
- There is no limit on the total amount of payroll tax an employer may be forgiven.
- The payroll tax break doesn't reduce payroll taxes paid during the first calendar quarter of 2010. Instead, the tax reduction is treated as a payment against the employer's second quarter Social Security tax liability.
- In addition to income taxes, employers are still required to withhold the employee's 6.2% share of Social Security taxes.
- The reduced tax withholding will have no bearing on an employee's future Social Security benefits.
- The employee's and the employer's share of Medicare taxes (1.45% each – on all wages) continues to apply.
- For workers that are otherwise eligible for the Work Opportunity Tax Credit (WOTC), the employer must select between the WOTC or the Social Security payroll tax reduction benefit under the HIRE Act; both cannot be claimed.

Retention Credit

The HIRE Act also offers employers a tax credit for retaining the workers they hire.

- The amount of the tax credit that the employer may generally claim for each newly hired workers retained for at least 52 weeks is equal to the lesser of: 1) \$1,000, or 2) 6.2% of wages paid to the retained worker during the 52-week period.

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- Accordingly, the credit for a retained worker will be \$1,000 if the retained employee's wages during the 52-consecutive-week period exceeds a little over \$16,000.
- The credit is only applicable to the extent the amount of wages paid to the employee during the last 26 weeks of the 52-week period is at least 80% of the amount paid during the first 26 weeks of the period.
- The tax credit under the HIRE Act is claimed in the tax year in which the employee first satisfies the requirement of working 52 consecutive weeks for the employer.

The employee cannot be a relative of the employer in order for either tax benefit to be claimed.

Sec. 179 Expensing

The HIRE Act also extends the 2009 enhanced expensing rules for small businesses under IRC Section 179 for tax years beginning in 2010. Under the expensing rules, qualifying businesses have the option to currently deduct the cost of business machinery and equipment, rather than depreciating it over a number of years.

- The HIRE Act provides that, for tax years beginning in 2010, a business may expense up to a maximum amount of \$250,000.
- The expensing election amount begins to phase out when a business purchases expensing-eligible assets in excess of \$800,000.
- These limits are in keeping with expensing levels in 2008 and 2009, which had expired.
- Prior to the HIRE Act's enactment, expensing limits for 2010 were \$134,000 of qualifying assets, with a phaseout beginning in excess of \$530,000 of qualifying assets.
- The election applies to most non-real estate assets.

If we can be of assistance to you in applying the HIRE Act's provisions to your business, please call Doeren Mayhew today at (248) 244-3000.

