

# The 2010 HIRE Act Goes to Work



The “Hiring Incentives to Restore Employment Act” (HIRE Act) was signed into law on March 18, 2010. The bill includes provisions that encourage companies to hire unemployed workers by exempting certain wages from the employer social security taxes, and by providing employers with a tax credit if new hires are retained for at least 52 consecutive weeks. This letter will outline the key tax changes affecting business payroll and income taxes.

## A) Social Security Tax Exemption (Tax Forgiveness)

The bill provides certain employers with relief from paying the employer share of the OASDI (6.2%) taxes on wages paid to a “qualified individual.” A qualified individual is anyone who:

- (1) Begins work for a qualified employer after February 3, 2010 and before January 1, 2011.
- (2) Certifies by signed affidavit under penalties of perjury (Form W11), that he was employed for a total of 40 hours or less during the 60-day period ending on the date the employment begins. This form is retained by the employer, do not send to the IRS.
- (3) Is not employed to replace another employee of the employer unless that former employee separated from employment voluntarily, or for cause; and is not related to the employer.
- (4) There is no limit to the total number of hires during this period.

Rehires would qualify if they meet the same qualifications as indicated above.

**Qualified Employers:** Businesses, agricultural employers, tax-exempt organizations, and public colleges and universities all qualify to claim this tax benefit. Household employers cannot claim this tax benefit.

This payroll tax relief applies only to wages paid with respect to employment beginning on March 19, 2010, and ending December 31, 2010. To make implementation of the tax relief more feasible, the social security tax exemption dollars earned in the first quarter will be reported starting with the second quarter on Form 941, *Employer's Quarterly Federal Tax Return*. The employer must deposit the full employer share of social security tax for wages paid in the first quarter as normal.

The employee share of social security and Medicare taxes must still be withheld from wages.

## **B) New Hire Tax Credit (Tax Credit for Retention)**

The bill also increases an employer's general business credit on its 2011 income tax return by the lesser of (a) \$1,000 or (b) 6.2% of the wages paid by the taxpayer to each qualified individual who is retained for at least 52 consecutive weeks. The credit is available in tax years ending after March 18, 2010. A "qualified individual" is defined as noted above and includes a person who:

- (1) Is employed by the employer on any date during the tax year;
- (2) Continues to be employed by the employer for a period of not less than 52 consecutive weeks; and receives for such employment during the last 26 weeks of the period that are at least 80% of such wages during the first 26 weeks of the period.

### **Here are some additional features of the new hiring incentive:**

- 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 elect to claim the employee's wages for the HIRE Act or the WOTC option.
- 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.
- The new hire law does not apply to the 1.45% Medicare portion of the employer's tax, nor any party of the employee's tax (both Social Security and Medicare requirements). It also does not affect the self-employment tax paid by self-employed individuals.



- The amount of employer tax forgiven per employee can't exceed \$6,621.60, which is 6.2% of the OASDI wage base of \$106,800.
- Wages earned by a qualified employee before March 19, but paid on or after March 19, do qualify for the employer's social security tax relief.

### **Extension of Enhanced Small Business Expensing (Section 179)**

The new law extends the enhanced expensing rules, which allow qualifying businesses the option to currently deduct the cost of business machinery and equipment instead of recovering it via depreciation over a number of years. For tax years beginning in 2010, the maximum amount that a business may expense is \$250,000, and the expensing election begins to phase out when a business buys more than \$800,000 of expensing-eligible assets. These dollar limits are the same as those that were in effect for 2008 and 2009.