

HIRING INCENTIVES TO RESTORE EMPLOYMENT ACT

With all of the press coverage of the healthcare reform legislation, the HIRE bill passed into law almost unnoticed.

The *Hiring Incentives to Restore Employment (HIRE) Act* has the potential to benefit every U.S. business, from a one-person consulting firm to a Fortune 50 multinational corporation. Benefits are available even to employers who pay no income tax, such as tax-exempt entities and taxable entities operating at a loss.

To take advantage of this new legislation, you are going to have to act fast. Like the end of a Final Four basketball game, you must take your shot before the buzzer. The tax incentives in the HIRE Act expire at the end of the year.

President Obama signed the HIRE Act on March 18, 2010. The new law directs \$18 billion in tax credits toward employers who hire unemployed workers during 2010.

The law also extends enhanced deductions to companies that expand by adding machinery and equipment or replace existing business assets, other than buildings, during 2010.

TAX CREDIT FOR HIRING NEW EMPLOYEES

The centerpiece of the HIRE Act is a tax credit for employers to offset all or a portion of the Social Security tax by hiring new employees who have been unemployed for at least 60 days.

The Old Age, Survivors and Disability Insurance (OASDI) is the retirement and disability benefits portion of FICA. For 2010, the OASDI is 6.2 percent of earnings up to \$106,800, for a maximum tax of \$6,621.60. Both the employer and the employee pay the OASDI tax.

There is also a Medicare Hospital Insurance (HI) portion of the FICA tax, which is 1.45 percent of earnings with no annual limit. The HIRE Act tax credit does not offset the HI tax.

The HIRE Act provides qualified employers who hire qualified employees with a payroll tax credit to offset the OASDI tax for earnings paid to these employees between March 19, 2010, and Dec. 31, 2010.

Credit Example

If you hire five qualified employees at a rate of \$5,000 per month beginning April 1, 2010, you will be entitled to a credit of \$13,950:

$$5 \text{ employees} \times \$5,000 \text{ monthly compensation} \times 9 \text{ months} \times 6.2\% = \$13,950$$

- **Planning tip:** There is no limit on the number of new employees what can qualify for the credit.

The credit available to the employer does not adversely affect the employee's Social Security benefits. The government will transfer an amount equal to the employer's share of OASDI into the Social Security system on the employee's behalf.

QUALIFIED EMPLOYEES

A qualified employee is anyone hired after Feb. 3, 2010, and before Jan. 1, 2011, who has not been employed for more than 40 hours during the 60-day period ending with the date employment begins.

The qualified employee cannot be a relative of the employer nor own, directly or indirectly, more than 50 percent of the business. Finally, the qualified employee cannot have replaced another employee, unless the former employee separated from employment voluntarily or for cause.

- **Planning tip:** Qualified employees may already be on your payroll. Anyone who commenced employment after Feb. 3, 2010, is a potential candidate. If a qualified employee is already on your payroll, credit-eligible compensation is that paid after March 18, 2010. Be sure to obtain the required certification from qualified employees.
- **Planning tip:** There is no minimum number of hours that the new employee is required to work. Both full- and part-time employees qualify for the credit. Consider taking on additional part-time help now to increase the amount of credit-eligible compensation.
- The credit is available only for employees. You do not get a credit for hiring an independent contractor, and the credit is not available to self-employed persons. Also, certain relatives and business owners do not qualify for the credit.
- **Planning tip:** There is no requirement that the qualified employee have received unemployment benefits. So students, recent graduates and first-time job seekers qualify for the credit. There is no minimum or maximum age requirement. You can even recall laid-off workers and obtain the credit. However, you cannot qualify for the credit by letting a worker go, just to rehire them after Feb. 3, 2010.

The new employee must certify in writing that he or she meets the "employed no more than 40 hours during the prior 60 days" requirement. The IRS plans to issue a form for the certification.

- **Planning tip:** Since the credit applies to 2010 compensation only, the sooner the qualified employee begins work, the larger your credit is likely to be. For employees who will earn less than the maximum credit-eligible compensation (\$106,800) in 2010, consider structuring their compensation arrangement to pay a higher rate in 2010 and a lower rate in 2011. However, to qualify for the retention credit, compensation during the second 26 weeks must be at least 80 percent of the compensation paid during the first 26 weeks.
- There is no credit to offset the employer's share of the HI portion of the payroll tax. And the credit is not available to the employee, so you must withhold the entire employee's share of the OASDI and HI payroll tax from the employee.

RETENTION CREDIT

After 52 consecutive weeks of employment, the employer receives an additional credit equal to the lesser of (a) \$1,000 or (b) 6.2 percent of the compensation paid to the employee during the 52-week period. To qualify for the retention credit, the employee's compensation during the second 26 weeks of the period must be at least 80 percent of that employee's compensation during the first 26 weeks. There is no partial credit if employment terminates before the first anniversary for any reason.

- **Planning tip:** There is no minimum number of work hours required. As long as you meet the 80 percent of compensation test, retaining an employee part-time through the first anniversary of employment can result in a credit.

Unlike the credit for hiring new employees, which is a credit against the employer's payroll tax, the retention credit is a credit against your income tax.

Therefore, the retention credit is unavailable for employers who pay no income taxes, such as tax-exempt entities and unprofitable businesses. However, tax-exempt entities subject to the tax on unrelated business income may be eligible for the credit.

WOTC COULD PROVIDE MORE TAX SAVINGS

If your new hire is a member of a targeted disadvantaged group, the Work Opportunity Tax Credit (WOTC) may provide a greater benefit than the newly enacted credits. The per-employee WOTC can reach \$2,400 or \$4,800 during the first year of employment or up to \$9,000 over two years, depending on the qualified job applicant.

The WOTC is available through Aug. 31, 2011, to employers who hire from the following groups:

- Families receiving temporary or long-term assistance to needy families
- Veterans receiving food stamps or disability assistance
- Ex-felons
- 18-39-year-old residents of federally designated Enterprise Communities or Renewal Communities

- Disabled persons participating in a vocational rehabilitation program
- 16-17 year-olds residing in designated Renewal Communities
- 18-39 year-old members of families receiving Food Stamps
- Supplemental Security Income (SSI) recipients

To qualify for the WOTC, you must complete the required paperwork within the first 28 days after employment begins. Generally, you will have to:

1. Pre-screen the employee by having the employee complete the first page of the IRS Pre-Screening Notice and Certification Request, Form 8850.
2. For those employees who appear to qualify for the credit, you should:
 - a. Complete the second page of Form 8850; and
 - b. Complete one of the following U.S. Department of Labor forms:
 - i. ETA-9061, if the employee has not been conditionally certified by an appropriate state agency; or
 - ii. ETA-9062, if the employee has been pre-certified.

You only have 28 days after employment begins to deliver all of this paperwork to the appropriate agency in your state. Check the Web site of your state's labor or employment department to determine local procedures and appropriate agencies to contact.

- **Planning tip for employees who qualify for both credits:** You can choose between the WOTC and the new credit on an employee-by-employee basis.

TIPS FOR JOB SEEKERS

The HIRE Act credits are only available to employers. They are not available to employees or self-employed individuals. However, if you are unemployed, you are potentially more valuable to a prospective employer.

Most employers are eligible for the credit, including most charities and other tax-exempt entities. Federal and state government employers are not eligible for the credit; however institutions of higher learning, including colleges and universities, can claim the credit.

- **Planning tip for job seekers:** If you have been employed less than 40 hours during the last 60 days, let prospective employers know that you are an “eligible employee.” And remind prospective employers that if you begin work sooner, more of your compensation will be credit-eligible.

EXPENSING ELECTION LIMIT

The HIRE Act extends the expensing election limit, but not bonus depreciation, through 2010 for companies that purchase equipment, vehicles and other business assets. The election is not available for the purchase of buildings and other real property assets.

For qualifying property purchased and placed in service during 2010, the HIRE Act has increased the expense election amount to \$250,000. The election is available, whether your equipment is new or used.

- **Planning tip:** If you need to purchase additional assets of almost any type for your business, there is no better time than now – from a tax perspective. To qualify for the write-off, the asset must be placed into service before the end of your tax year.

The deduction is limited for some larger businesses. Companies that purchase more than \$800,000 of qualifying property during 2010, have their deduction reduced, dollar-for-dollar, for purchases in excess of \$800,000. So no deduction is available to companies that acquire more than \$1,050,000 of qualifying property.

If your business uses a fiscal year as its tax accounting year, the new deduction limit applies to property purchased and placed in service during the tax year beginning in 2010.

OTHER PROVISIONS OF THE HIRE ACT

BUILD AMERICA BONDS

As an alternative to issuing tax-exempt bonds, state and local governments may issue Build America Bonds, or BABs, to finance certain capital projects.

Unlike most state and local bonds that pay interest that is exempt from federal – and sometimes state – income taxes, the interest received on BABs is taxable to the bondholder. But the bondholder receives a tax credit to offset the taxes paid on the interest received.

The HIRE Act offers issuers of BABs another alternative.

Instead of offering a tax credit to the bondholders, the issuing agency – the state or local government – can receive a cash payment from the federal government in lieu of the tax credit. This provision should allow issuing agencies to offer a higher rate of interest on BABs and make them more attractive to investors who could not benefit from the tax credit because they pay little or no federal income tax.

FOREIGN ACCOUNT TAX COMPLIANCE

To help pay for the cost of the tax benefits, the HIRE Act provides the IRS with new tools to locate and prosecute U.S. individuals who hide assets overseas.

These provisions affect U.S. persons and entities investing outside the United States and foreign persons and entities investing into the United States. These provisions will affect most non-U.S. financial institutions, funds and collective investment structures as well as many trustees and family officers who invest through these entities.