

Absolutes

Planning for Death and Taxes

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*To Provide Tax and Business Consulting Services
that Drive Innovative Wealth Building Solutions*

HIRING INCENTIVES TO RESTORE EMPLOYMENT (HIRE) ACT

On March 18, 2010, President Obama signed the HIRE Act into law. The Act features a \$13 billion tax credit to encourage businesses to hire workers who have been unemployed for at least 60 days, an extension of increased expensing limits for small businesses, and new reporting and withholding requirements for foreign accounts. This News Release summarizes some of the major tax provisions of the Act.

Payroll Tax Forgiveness for Hiring Unemployed Workers

The first new tax benefit under the HIRE Act is the payroll tax exemption. Qualified employers who hire unemployed workers (qualified employees) this year (after February 3, 2010 and before January 1, 2011) may qualify for a 6.2 percent payroll tax incentive, in effect exempting them from their share of Social Security taxes on wages paid to these workers after March 18, 2010. Based on the FICA wage cap of \$106,800, the maximum value of the incentive is \$6,621 for any qualified employee. This reduced tax withholding will have no effect on the employee's future Social Security benefits, and employers would still need to withhold the employee's 6.2 percent share of Social Security taxes, as well as income taxes. The employer and employee's shares of Medicare taxes would also still apply to these wages.

Taxable businesses and tax-exempt organizations are qualified employers for the payroll tax exemption. Such employers in U.S. possessions, such as Puerto Rico or the Northern Mariana Islands, which are subject to social security tax, also qualify for the payroll tax exemption. Federal, State and local government employers generally do not qualify for the payroll tax exemption. However, public colleges and universities can qualify for the exemption. 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. The payroll tax exemption does not apply to household employers.

Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010 and before January 1, 2011. A qualified employee must have been unemployed or employed for less than 40 hours during the 60 day period ending on the date such employment begins. The employee cannot be a family member or related to anyone who owns more than 50% of the business. A qualified employee may be hired for any number of hours, full-time or part-time, since the benefits to the employer are tied only to 6.2 percent of any salary paid. It is important to remember that only employees qualify – those individuals that are paid W-2 wages. Payments paid to

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independent contractors or limited partners do not qualify for the payroll tax forgiveness.

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. The payroll tax exemption will apply to wages paid to a rehired employee who is otherwise a qualified employee.

The payroll tax exemption is claimed on Form 941, Employer's Quarterly Federal Tax Return, beginning with the second quarter of 2010. Qualified employees must certify by a signed affidavit (IRS Form W-11), 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. A copy of Form W-11 is included on page 4 of this News Release.

It is important to remember that since payroll taxes are deductible as an ordinary and necessary business expense, employers will have a correspondingly smaller business expense deduction on their 2010 tax returns. Also, a qualified employer may not claim the work opportunity tax credit on any wages paid to a qualified individual if those wages qualify the employer for payroll tax forgiveness, unless the employer opts out of payroll tax forgiveness as to that employee.

Business Credit for Retention of Certain Newly Hired Individuals in 2010

The second tax benefit under the HIRE Act is a retained worker business credit. Employers that hire qualified employees for payroll tax forgiveness and keep them on the payroll for at least 52 consecutive weeks may be eligible for a tax credit for each of those qualifying employees. The business tax credit is the lesser of \$1,000 or 6.2 percent of wages paid by the taxpayer to the qualified retained worker during a 52 consecutive week period. Therefore, any qualified retained worker who earns more than \$16,129 during the 52 consecutive week period would qualify his or her employer for the full \$1,000 retained worker credit.

A retained worker is defined the same as a "qualified individual" for purposes of the payroll tax forgiveness provision discussed above. Additionally, the worker must receive wages for the last 26 weeks of the 52 week period that are at least 80% of the wages paid during the first 26 weeks. This is to prevent businesses from manipulating the credit. The law also excludes wages earned by a domestic worker or an individual eligible for the foreign earned income exclusion.

Employers are eligible to claim both the work opportunity tax credit and the retention credit on the same qualified employee. The new hire retention credit will be claimed on the employer's 2011 income tax return.

Increase in Expensing of Certain Depreciable Business Assets

The HIRE Act extends the higher \$250,000 limit for small business expensing for another year. The \$250,000 amount applies to the cost of depreciable tangible personal property purchased for use in the active conduct of a trade or business for taxable years beginning in 2010. The maximum amount that the taxpayer may deduct is increased from \$125,000 to \$250,000. This \$250,000 amount is reduced, however, by the amount by which the cost

of the qualifying property placed in service during 2010 exceeds \$800,000.

The deduction amount continues to be limited to the taxpayer's taxable income derived from the active conduct of the trade or business. Any amount that exceeds the taxable income limitation may be carried forward to succeeding taxable years.

The HIRE Act does not contain an extension of the 50% bonus depreciation.

Reporting of Certain Foreign Accounts

The HIRE Act will be partially paid for by new measures heightening disclosure and reporting requirements for foreign accounts. Congress has instituted a broad range of new reporting and withholding requirements on taxpayers with foreign assets or foreign ownership.

Effective January 1, 2013, a U.S. entity that makes virtually any type of payment to a foreign financial institution will be required to withhold and remit 30% of the payment to the IRS. The types of payments subject to this requirement include interest, dividends, royalties, premiums, annuities, wages, and proceeds from the sale of property that can produce interest or dividends. The recipient foreign financial institution may avoid this 30% withholding by entering into an agreement with the IRS to identify all its account holders who are U.S. taxpayers and providing such identifying information to the IRS.

The Bank Secrecy Act requires that U.S. taxpayers file an annual report with the Treasury of any foreign financial accounts with an aggregate value of more than \$10,000 at any time during the year. This is known as the FBAR requirements. The HIRE Act, for the first time, makes this requirement part of the Internal Revenue Code. However, the Act differs from the Bank Secrecy Act in that it applies the reporting requirements only if the account value exceeds \$50,000. It remains to be seen how the IRS integrates this with the Treasury reporting requirement, which will continue to have a \$10,000 thresholds. A 40% penalty will apply to the portion of any underpayment attributable to an undisclosed foreign financial asset.

Due to concerns that U.S. taxpayers are using foreign trusts to avoid U.S. tax, the Act makes a number of changes in the rules governing foreign trusts. Under prior law, a foreign trust was subject to U.S. tax if it was established by a U.S. taxpayer and it had a U.S. beneficiary. The HIRE Act expands the classes of persons considered trust grantors and beneficiaries, thereby bringing more foreign trusts under U.S. tax jurisdiction. U.S. owners of foreign trusts are subject to new reporting requirements and penalties for failing to report.

The IRS normally has three years in which to audit a tax return after it has been filed. The Act extends that period to six years in the case of certain unreported income from a foreign financial account.

Form **W-11**
(April 2010)
Department of the Treasury
Internal Revenue Service

Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit

► Do not send this form to the IRS. Keep this form for your records.

To be completed by new employee. Affidavit is not valid unless employee signs it.

I certify that I have been unemployed or have not worked for anyone for more than 40 hours during the 60-day period ending on the date I began employment with this employer.

Your name _____ Social security number ► _____

First date of employment ____ / ____ / ____ Name of employer _____

Under penalties of perjury, I declare that I have examined this affidavit and, to the best of my knowledge and belief, it is true, correct, and complete.

Employee's signature ► _____ Date ► ____ / ____ / ____

Instructions to the Employer

Section references are to the Internal Revenue Code.

Purpose of Form

Use Form W-11 to confirm that an employee is a qualified employee under the HIRE Act. You can use another similar statement if it contains the information above and the employee signs it under penalties of perjury.

Only employees who meet all the requirements of a qualified employee may complete this affidavit or similar statement. You cannot claim the HIRE Act benefits, including the payroll tax exemption or the new hire retention credit, unless the employee completes and signs this affidavit or similar statement under penalties of perjury and is otherwise a qualified employee.

A "qualified employee" is an employee who:

- begins employment with you after February 3, 2010, and before January 1, 2011;
- certifies by signed affidavit, or similar statement under penalties of perjury, that he or she has not been employed for more than 40 hours during the 60-day period ending on the date the employee begins employment with you;
- is not employed by you to replace another employee unless the other employee separated from employment voluntarily or for cause (including downsizing); and
- is not related to you. An employee is related to you if he or she is your child or a descendent of your child,

your sibling or stepsibling, your parent or an ancestor of your parent, your stepparent, your niece or nephew, your aunt or uncle, or your in-law. An employee also is related to you if he or she is related to anyone who owns more than 50% of your outstanding stock or capital and profits interest or is your dependent or a dependent of anyone who owns more than 50% of your outstanding stock or capital and profits interest.

If you are an estate or trust, see section 51(i)(1) and section 152(d)(2) for more details.



Do not send this form to the IRS. Keep it with your other payroll and income tax records.

Cat. No. 10744F

Form **W-11** (4-2010)

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Business Succession Planning
Family Limited Partnerships
Commercial Mortgages
Tax Controversy
Corporate Tax Preparation

Tax & Estate Planning
Business Control
Business Organizations
Charitable Remainder Trusts
Asset/Debt Restructuring
Estate & Gift Tax Preparation
Partnership Tax Preparation