

Tax Legislative Update

From Christianson & Associates, PLLP

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The President recently signed into law the “Hiring Incentives to Restore Employment Act of 2010” (HIRE Act, P.L. 111-147). The centerpiece of this Act is a payroll tax holiday and up to \$1,000 tax credit for businesses that hire unemployed workers. In addition to these new hiring incentives, the HIRE Act also includes a one-year extension of the enhanced small business expensing option under Code Sec. 179.

Payroll tax holiday and up to \$1,000 credit for employers who hire unemployed workers

To help stimulate the hiring of workers by the private sector, the new laws exempts any private-sector employer that hires a worker who has 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 employee for the remainder of 2010. A company could save a maximum of \$6,621 if it hired an unemployed worker and paid that worker at least \$106,800 – the maximum amount of wages subject to Social Security taxes – by the end of the year. As an additional incentive, for any qualified worker hired under this initiative that the employer keeps on payroll for a continuous 52 weeks, the employer is eligible for an additional non-refundable tax credit of up to \$1,000 after the 52-week threshold is reached, to be taken on their 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 (February 3, 2010) are eligible for the payroll tax forgiveness and the retention bonus, but only wages paid after March 18, 2010 receive the exemption for payroll taxes. Some additional benefits of the new hiring incentive include:

- 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 nonprofit organizations – public sector jobs are generally not eligible for either benefit, however, employment by a public higher education institution qualifies.
- There is no minimum weekly number of hours that the new employee must work for the employer to be eligible, and there is no limit 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 (i.e. another type of employment tax credit), the employer must select one benefit or the other for 2010. There is no double dipping.
- An employer cannot 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 a 60-day period ending on the date the employment begins.

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- The incentive isn't 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 doesn't 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 allowing 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 the rounding, the retained worker's wages during the 52-consecutive-week period exceed \$16,129.03. However, the credit isn't available for pay not treated as wages under the Code (e.g., remuneration paid to domestic workers).

Extension of enhanced small business expensing The new law gives a one-year lease on life to 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. Had the HIRE Recovery Act not been passed and signed into law, these dollar limits would have dropped this year to \$134,000 and \$530,000 respectively.