Baker Tilly Tax Alert
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2010 Jobs Legislation News

On March 18, 2010, President Obama signed the Hiring Incentives to Restore Employment Act (the HIRE Act). The centerpiece of the HIRE Act is a package of tax benefits for businesses that hire unemployed workers in 2010. The HIRE Act includes payroll tax forgiveness for Social Security taxes and tax credits for retaining newly hired employees.

Payroll Tax Holiday For Companies Hiring Unemployed Workers

Under the new law, for wages paid to qualified individuals beginning March 19, 2010, and before January 1, 2011, qualified employers do not have to pay the 6.2 percent employer portion of the Social Security tax. The wages paid must be for services performed in an employer's trade or business or in furtherance of its tax-exempt purpose or function.

- The payroll tax holiday applies only to the 6.2-percent Social Security portion of the employer's tax. It does not apply to the 1.45-percent Medicare portion of the employer's tax, nor does it apply to the employee's share of these taxes.
- The payroll tax holiday does not apply to self-employed individuals or independent contractors. Only wages paid to employees qualify.

A qualified employer is any employer other than the federal government and state or local governments. However, public higher education institutions are qualified employers.

A qualified individual is anyone who:

- Begins work for a qualified employer after February 3, 2010, and before January 1, 2011;
- Certifies by signed affidavit under penalties of perjury that they were employed for 40 hours or less during the 60-day period ending on the date the employment begins;
- Is not employed to replace another employee of the qualified employer (unless that former employee separated from employment voluntarily or for cause); and
- Is not related to the employer.

A qualified individual may be hired for any number of hours - full-time or part-time. No minimum or maximum hours are required.

An employer may qualify for the payroll tax holiday by rehiring workers who previously had been laid off. For example, if a factory that was closed due to lack of demand reopens, the payroll tax holiday can be claimed both for rehiring old workers and hiring new workers.

Although a qualified employee who begins work after February 3, 2010, can be eligible for the payroll tax holiday, only the employer's portion of the tax on the wages paid after March 18, 2010, and before January 1, 2011, will be forgiven.

Special rule for first calendar quarter of 2010. The payroll tax holiday does not apply to wages paid during the first calendar quarter of 2010. Instead, the amount of first quarter taxes that would have been forgiven will be applied as a credit for the second quarter. This delay will give the IRS time to issue guidance about the payroll tax holiday and will give employers time to adjust their payroll systems accordingly.

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Election out; coordination with the Work Opportunity Tax Credit (WOTC). Qualified employers may elect out of the payroll tax holiday. Unless the employer elects out, wages paid to a qualified individual will not qualify for the WOTC during the one-year period beginning on the date that the qualified employer hired the individual. The Committee Report indicates that the election can be made on an employee-by-employee basis.

> ***Note:*** *In many cases the WOTC is more valuable than the payroll tax holiday, especially for low-wage employees. The WOTC generally is 40 percent of "qualified first-year wages" of up to $6,000, for a maximum credit of $2,400 per worker. The payroll tax holiday is equal to 6.2 percent of wages and applies only to wages paid through December 31, 2010. Therefore, for an employee who earned $16,000, the WOTC would amount to $2,400, as compared to a payroll tax holiday of $992. However, the WOTC is harder to claim, because the employee must be certified by an agency as belonging to a "targeted group."*

New Credit for Retaining Qualifying New Hires

An employer that hires a new worker who qualifies for the payroll tax holiday and retains that worker for at least 52 consecutive weeks may be eligible for a tax credit. For each retained worker, the employer's general business credit is increased by the lesser of $1,000 or 6.2 percent of the wages paid to the retained worker. Generally, a retained worker qualifies for this new credit if he/she is a qualified individual for purposes of the payroll tax holiday and:

- Is employed by the employer on any date during the tax year;
- Continues to be employed by the employer for at least 52 consecutive weeks; and
- Receives wages for such employment during the last 26 weeks of the period that are least 80 percent of the wages received during the first 26 weeks of the period.

The retention credit cannot be carried back to tax years that begin before March 18, 2010; however, there are no special restrictions on the carry-forward of the credit (thus the credit will carry forward 20 years). For an employer on a calendar year, the increase to the general business credit will be claimed on its 2011 tax return (due to 52-consecutive week requirement).

Increased Section 179 Expensing for 2010

Under the HIRE Act, for the tax year beginning in 2010, the maximum amount a taxpayer may expense under section 179 is $250,000. Expense treatment begins to phase out once you purchase more than $800,000 of qualified property during the year. Off-the-shelf computer software continues to be section 179 property for another year.

Revenue Raisers and New Offshore Anti-Abuse Provisions

The legislation also includes a comprehensive set of measures to reduce offshore noncompliance, including:

- Additional withholding for payments made to foreign financial institutions and other foreign entities
- New disclosure requirements for individuals with an interest in specified foreign financial assets with an aggregate value greater than $50,000
- Increased understatement penalties for undisclosed foreign financial assets
- Extended statute of limitations for tax understatements attributable to foreign financial assets
- New reporting rules for passive foreign investment companies (PFICs)
- Delayed application of the worldwide interest allocation rules

Please contact your Baker Tilly advisor for more details on these new provisions.

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