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On March 18, 2010, President Obama signed the new Hiring Incentives to Restore Employment Act (HIRE) into law. This federal legislation creates brand-new tax incentives for hiring and retaining unemployed workers, extends the enhanced business equipment deduction that was available last year, and reinforces the "Build America Bond" program.

**The following is a brief overview of four key tax matters contained in the HIRE Act:**

**Employer Payroll Tax Exemption for New Hires.** Normally, an employer is required to pay its share of Social Security taxes on wages earned by employees. For 2010, the portion of the tax is 6.2 percent on the first \$106,800 of wages.

Under the HIRE Act, an employer is effectively exempted from paying its share of the 6.2 percent tax on wages received by "qualified employees." This exemption applies to wages paid after the date of enactment through the end of 2010. The maximum value for each qualified employee is \$6,621.

**Example:** If a qualified employee is hired in April and receives \$50,000 in wages in 2010, the employer saves \$3,100 (6.2 percent of \$50,000) in Social Security tax.

The new law defines a qualified individual as someone who meets all of these criteria:

- Begins work after February 3, 2010 and before January 1, 2011.
- Has not been employed for more than 40 hours during the previous 60 days (ending on the start date).
- Was not hired to replace another employee unless the former employee separated from employment voluntarily or for cause.
- Is not related to the employer and does not own more than 50 percent of the business, either directly or indirectly.

**Notes:** A qualified employee may be either a full-time employee or a part-time employee. There is no minimum requirement for the hours worked. The payroll tax exemption does not apply to the 1.45 percent Medicare portion of payroll tax. And household employers (for example, hiring nannies) cannot claim the new tax benefit.

The exemption officially begins with wages paid on or after March 18, 2010 and through December 31, 2010. The portion of the FICA credit that applies to wages paid from March 18, 2010 and through March 31, 2010 is treated as a credit against the liabilities incurred in the second calendar quarter for 2010.

**Employer Income Tax Credit.** In addition to the payroll tax exemption, an employer can claim a tax credit if it retains a "qualified employee" for a minimum of 52 consecutive weeks. The credit is equal to the lesser of: \$1,000 or 6.2 percent of the employee's wages paid during the 52-week period. For purposes of the tax credit, a qualified individual is the same as defined in the Employee Payroll tax exemption for new hires who:

- Was employed by the employer on any date during the tax year;
- Was employed by the employer for not less than 52 consecutive weeks; and
- Received during the second 26 weeks of their employment at least 80% of the wages paid in the first 26 weeks.

A qualified employer can claim the tax credit on employees who begin employment after February 3, 2010.

***Immediate action:*** To qualify for the payroll tax exemption and the income tax credit, employers need to incorporate certain steps into their recruiting and hiring process:

- Survey new applicants and hires
- Document eligibility
- Track qualified wages
- Reduce the FICA liability or submit 941-X reimbursement forms
- Track retention

The employer should certify that the employee has satisfied the "has not been employed for more than 40 hours during the previous 60 days ending on their start date." Each qualified hire should sign an affidavit, under the penalty of perjury, attesting they satisfied these requirements.

Consult with your tax adviser to determine if these tax breaks make it advantageous for your business to hire new employees now and to ensure you comply with the documentation rules to qualify.

**Current Deduction for Purchasing Business Equipment Has Been Extended.** Sections 179 of the Internal Revenue Code allows an employer to "expense," or currently deduct qualified business assets placed in service during the year, up to a specified maximum. So instead of depreciating equipment over several years, you can write off the entire cost in one year if you qualify and make this election. The maximum deduction is phased out on a dollar-for-dollar basis for the cost of assets exceeding a threshold amount.

Under an earlier stimulus law, the maximum Section 179 deduction allowed for 2009 was \$250,000, while the phase-out threshold was set at \$800,000. Without an extension, the Section 179 deduction for 2010 had reverted to \$134,000 and the phase-out threshold was \$530,000. Now the new law preserves the higher limits for qualified assets placed in service in tax years beginning in 2010.

**Notes:** The HIRE Act does not extend the "bonus depreciation" tax break that was also available for business equipment purchases in 2009. However, it does continue to allow businesses to currently deduct the cost of off-the-shelf software placed in service in 2010.

**Tax Credit Bonds Are Made More Attractive.** Under the American Recovery and Reinvestment Act of 2009, state and local governments were authorized to issue "Build America Bonds." These bonds have proven to be popular among institutional investors, such as municipal bond funds. To increase participation in this program, the HIRE Act allows issuers of qualified tax credit bonds to elect to receive direct payment from the federal government in an amount equal to the allowable tax credit. The tax credit bonds include new renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds and qualified school construction bonds.

**What is NOT included in the Legislation?** The HIRE Act does not include a number of tax breaks that people are waiting for and Congress continues to discuss. We are likely to see new legislation this year that covers the extension of several tax breaks that technically expired after 2009, such as the Research Tax Credit, the higher education tuition deduction, the state and local sales tax write-off and a variety of other business and individual tax breaks.

Similarly, the law did not provide alternative minimum tax (AMT) relief or any revision of the estate and gift tax laws. However, these issues are addressed in other legislative proposals that are currently working their way through Congress.