

The **HIRING INCENTIVES TO RESTORE EMPLOYMENT ACT**, which became P.L. 111-147. We in TFP are on a developmental cycle that runs anywhere from 12 months to up to 18 months. When legislation enters the picture, we generally begin our analysis once the President signs.

However, with the immediate turnaround of what would be required with regard to the payroll tax exemption, we began our analysis more than a month in advance of the actual enactment.

We recognized two areas of emphasis with the HIRE Act:

**PAYROLL TAX EXEMPTION:**

- Payroll tax forgiveness.
- Available for individual not related to employer who is hired **AFTER** February 3, 2010, and **BEFORE** January 1, 2011.
- Individuals must certify under penalties of perjury that he or she was not employed for more than 40 hours in the 60-day period ending on the day the employee begins employment.
- Amount of forgiveness for the first quarter 2010 treated as credit against second quarter taxes due.
- No other credits for same wages.

Under Act section 101, employers who hire unemployed workers this year (after Feb. 3, 2010, and before Jan. 1, 2011) may qualify for a 6.2-percent payroll tax incentive, in effect exempting them from the employer's share of Social Security tax on wages paid to these workers after March 18.

In addition, under Act section 102, for each qualified employee retained for at least a year (52 weeks) whose wages did not significantly decrease in the second half of the year, businesses may claim a new hire retention credit (new Form 5884-B) of up to \$1,000 per worker on their income tax return.

These tax benefits are especially helpful to employers who are adding positions to their payrolls. New hires filling existing positions also qualify but only if the workers they are replacing left voluntarily or for cause. Family members and other relatives generally do not qualify.

Employers must get a signed statement from each eligible new hire, certifying under penalties of perjury, that he or she was not employed for more than 40 hours during the 60 days before beginning employment with that employer. The new IRS Form W-11, which was can be used to meet this requirement.

### **How to Claim the Payroll Tax Exemption**

Form 941, Employer's QUARTERLY Federal Tax Return, revised for use beginning with the second calendar quarter of 2010, will be filed by most employers claiming the payroll tax exemption for wages paid to qualified employees. The HIRE Act does not allow employers to claim the exemption for wages paid in the first quarter but provides for a credit in the second quarter. The instructions for the new Form 941 explain how this credit for wages paid from March 19 through March 31 can be claimed on the second quarter return.

The HIRE Act requires that employers get a signed statement from each eligible new hire, certifying under penalties of perjury, that he or she was not employed for more than 40 hours during the 60 days before beginning employment with that employer. Employers can use new Form W-11, Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, released last month, to meet this requirement. Though employers need this certification to claim both the payroll tax exemption and the new hire retention credit, they do not file these statements with the IRS. Instead, they must retain them along with other payroll and income tax records.

These two tax benefits are especially helpful to employers who are adding positions to their payrolls. New hires filling existing positions also qualify as long as they are replacing workers who left voluntarily or who were terminated for

cause and otherwise are qualified employees. Family members and other relatives do not qualify for either of these tax benefits.

Businesses, agricultural employers, tax-exempt organizations, tribal governments and public colleges and universities all qualify to claim the payroll tax exemption for eligible newly-hired employees. Household employers and federal, state and local government employers, other than public colleges and universities, are not eligible.

#### **FORGIEN REPORTING Act sections 501—541.:**

- New reporting for individual with certain foreign financial assets—This will be reflected instructionally in our products for Instructions for (for section 501(a)) 990-PF, 990-T, 1042S, 1065, 1065-B, 1120 series. And for section 501(b) regarding the grace period in the Instructions for the 1040NR, 1040NR-EZ1120F, 1120FSC, 1120PC, 1120L.
- Total value of specified foreign financial assets must exceed \$50,000.
- Penalty of \$10,000 for failure to file report, increased for failures for more than 90 days after notified of failure.
- With regard to foreign grantor trusts, the U.S. beneficiary is presumed unless certain information is provided to the IRS; Distribution is presumed for certain loans from, or use of property of, trust for no compensation; New reporting for U.S. owners. Instructions for Form 3520
- New reporting for U.S. shareholder of passive foreign investment companies. We are still evaluating how to implement this but we'd probably have some type of reporting on the Form 1065, 1065-B, and 1066.
- Substitute dividends and dividend equivalent payments received by foreign persons treated as dividends. Instructions in the 1040NC, 1042S, 1120F, and Pub. 515.

Qualified Tax Credit bonds, ACT SECTION 301:

**Form 8038-CP** will be revised to take into account payment of refundable credits on direct pay Build America bonds (BAB) created by HIRE. The form now requires governmental issuers to submit additional data on BAB-financed projects, including issue type, beginning and ending date, and costs.

For **Form 8038-T**, the HIRE Act provides that issuers of qualified school construction bonds, qualified zone academy bonds and new clean renewable energy bonds may elect to receive refundable credit in lieu of tax credit under section 54A.