



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

CHIEF COUNSEL

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The Honorable Vernon J. Ehlers
U.S. House of Representatives
Washington, DC 20515

UIL: 3111.00-00

Dear Mr. Ehlers:

I am responding to your letter of March 29, 2010, on behalf of your constituent, . asked about the payroll tax exemption provision in the Hiring Incentives to Restore Employment (HIRE) Act of 2010. Specifically, asked whether an employer that receives services from a staffing company is eligible for the payroll tax exemption on wages paid to employees hired to replace the workers that the staffing company provided.

I cannot address specific situation, but I am happy to provide information about the exemption.

Under the HIRE Act that the Congress enacted on March 18, 2010, qualified employers are exempt from paying the employer's 6.2 percent share of social security tax on wages paid to qualified employees from March 19, 2010, through December 31, 2010. The employee's 6.2 percent share of social security tax, the employer and employee's shares of Medicare tax, and federal income tax withholding still apply to all wages. Qualified employers are businesses, tax-exempt organizations, Indian tribal governments, and public colleges and universities. Federal, state or local government employers other than public colleges and universities do not qualify for the payroll tax exemption.

Under the HIRE Act, a qualified employee is an individual who begins employment with a qualified employer after February 3, 2010, and before January 1, 2011. The employee must certify by signed affidavit under penalties of perjury that he or she has been 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 of or related in certain other ways to the employer and cannot have been hired by the employer to replace

another employee, unless the employee left voluntarily or the employer terminated him or her for cause. An employer who terminates the employment of an employee to qualify for the exemption and rehires the same or another employee is not eligible for the exemption. Whether an employer terminated the employment of an employee to qualify for the exemption depends on the facts and circumstances.

can find more information on the payroll tax exemption provision of the HIRE Act on our website at www.irs.gov. I hope this information is helpful. If you have any questions, please contact me or of my staff at .

Sincerely,

Janine Cook
Branch Chief, Employment Tax Branch 1
(Exempt Organizations/Employment
Tax/Government Entities)
(Tax Exempt & Government Entities)