

Summary of Selected Tax Provisions in the “Hiring Incentives To Restore Employment Act”

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Overview

On March 18, 2010, the Hiring Incentives to Restore Employment Act (Act) became law.¹ It is estimated that the HIRE Act will cost approximately \$18 billion, and its cost is only partially offset by a tweak in the somewhat obscure foreign account tax compliance rules (i.e., offshore tax enforcement), acceleration in corporate estimated tax payments and various tax penalties. The intent of the law is to incentivize employment.²

Here’s a rundown of the major tax-related provisions of the Act.

- The Act contains two tax provisions for employers that previously unemployed workers or persons that were working less than full-time. The first provision specifies that, for “qualified employees” hired after February 3, 2010, and before January 1, 2011, the “qualified employer” can qualify for an exemption from the employer’s share of Social Security payroll tax (but not Medicare tax) on “wages” paid to such persons hired (and who begin working) after March 18, 2010, through December 31, 2010.³ The provision only applies to wages paid for from March 18, 2010, through the end of the calendar year. The reduced withholding is to not have any impact on the employee’s Social Security benefits. In addition, the employer must withhold the employee’s share (6.2 percent) of Social Security taxes in addition to income taxes

and Medicare taxes. Under this provision, a “qualified employee” is a person who has worked less than 40 hours in the 60 day period immediately preceding being hired.⁴ An employer does not qualify for the provision if they hire employees that merely replace other employees,⁵ or for employees that are related to 50 percent owners of the company.⁶ Under the second provision, an employer is eligible for a \$1,000 tax credit per employee for hiring qualified employees that remain employed for 52 consecutive weeks.⁷

- Under the provision, a “qualified employer” includes state colleges and universities, but no other governmental employers, and a “qualified employer” may elect to opt out of the payroll tax forgiveness provision.
- Mechanically, the exemption does not provide any relief for the qualified employer until April 1, 2010 (the beginning of the second quarter of 2010). The amount of any exemption applicable to the first quarter of 2010 is credited against the employer’s Social Security tax liability for the 2010 second quarter. But, a qualified employer is to account for any exemption amount when depositing payroll taxes with respect to covered wages paid beginning April 1, 2010.

- An employer must pay a “qualified employee” at least 80 percent of the employee’s wages for the first 26 weeks of employment during the last 26 weeks of the 52 consecutive weeks.
- The Act extends (for federal tax purposes - remember many states do not couple with federal tax provisions) the enhanced amount of expense method depreciation for 2010 at the \$250,000 amount.⁸ Also restored for 2010 is the \$800,000 beginning of the phase-out amount.⁹
 - For 2010, the Act specifies that off-the-shelf computer software qualifies as I.R.C. §179 property.
 - The provision is applicable to purchases of qualifying property that is purchased *in tax years* beginning after 2009 and before 2011.

Note: Remember, IRS has stated that taxpayers may make an I.R.C. §179 election on an amended return through 2010. See, *Rev. Proc. 2008-54, 2008-2 C.B. 722*; and our article at the following link: <http://www.calt.iastate.edu/elections.html>. In the *Rev. Proc.*, IRS stated that the Treasury intends to amend *Treas. Reg. §179-5(c)* to clarify that an I.R.C. §179 election can be made on an amended return through 2010. But, until the Regulation is amended, IRS stated in the *Rev. Proc.* that taxpayers may rely on the *Rev. Proc.* So, the issue is clearly a non-issue for the remainder of 2010. Any non-IRS information or statements to the contrary are to be rejected and ignored.

Other Tax Legislation

Other than the extension of the enhanced expense method depreciation amount for qualified property purchased in tax years beginning in 2010, the Act does not extend any other recently expired provisions. The Senate did approve an extenders bill on March 10,

2010, which largely mirrors the House version which passed on December 9, 2009. Those bills await reconciliation before a final bill can be considered for passage. Those bills contain numerous extenders for individuals, businesses and charities, as well as “alternative” and “renewable” energy, national disaster relief as well as some of the Midwestern Disaster Relief provisions and those applicable to the Kansas Disaster area.

The Act does not extend the federal estate tax for 2010 which the Congress allowed to expire at the end of 2009.

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¹ H.R. 2847, Pub.L.No. 111-147.

² However, the Act does not repeal recent legislative increases in the federal minimum wage law or the Davis-Bacon Act which requires above-market rates of pay for government contractors.

³ The provision also applies to Railroad Retirement Taxes, and the employee hired need not be hired as a full-time employee.

⁴ The employee must certify the lack of employment for the requisite timeframe. In addition, a former employee of the employer can be rehired by the same employer and qualify the employer for the exemption.

⁵ However, the proscription doesn’t apply if the replaced employee voluntarily ended the employment relationship or was terminated for cause.

⁶ Based on the way the exemption works and current tax rates, an employee hired at a wage rate of approximately \$50,000 would entitle the employer to a payroll tax exemption of slightly over \$260 per month during the applicable period.

⁷ The credit is added to any existing credit under I.R.C. §38(b), and is the lesser of \$1,000 or 6.2 percent of wages paid to the qualified employee. Thus, the full \$1,000 credit will not be available for part-time employment that is only minimal. In addition, because of the 52-week requirement, the credit will not be available for purposes of the employer’s 2010 tax return. Thus, an employer will not see any benefit from the credit until sometime in 2012, at the earliest. In addition, if the employee

voluntarily leaves employment at any time before the end of the 52-week period, the employer will not receive any portion of the credit.

⁸ Act, Sec. 201, *amending* I.R.C. §179(b).

⁹ The Act does not extend bonus depreciation for 2010.