



TAX ALERT

FEDERAL TAX INCENTIVES TO SPUR JOB GROWTH: CONGRESS ENACTS THE HIRE ACT

By Peter J. Kulick

With a battle that was recently ragin' in the halls of Congress over health care, the senators and congressmen were prodded to take a detour to enact legislation aimed to encourage job growth. The job growth bill, known popularly by the moniker the HIRE Act (Hiring Incentives to Restore Employment Act of 2010) (P.L. 111-147), will usher in several new tax law rules.

The HIRE Act primarily contains tax incentives to encourage businesses to hire unemployed workers. The incentives, as summarized below, include a payroll tax holiday and modest tax credits for retaining employees. The HIRE Act also expands the availability to expense the costs of certain assets and the expansion of popular public finance bond programs.

Many businesses may be able to benefit from the tax incentives of the HIRE Act. The key tax incentives of the HIRE Act are summarized.

Business-centric Tax Incentives of the HIRE Act

On March 10, 2010, one day after Congress enacted the HIRE Act, President Barack Obama signed the act into law. The HIRE Act, among other matters, offers new tax incentives directed at encouraging businesses to hire and, ultimately, retain unemployed workers. The tax incentives span three different categories which may bring some tax benefits to businesses:

1. creation of an employer "payroll tax holiday";
2. a modest tax credit for employers that retain new hires for at least one year; and
3. increasing the availability to expense certain assets under Section 179 of the Internal Revenue Code of 1986, as amended ("IRC").

Payroll Tax Holiday

Those that have spent time in Manhattan or northern New Jersey are well familiar with the concept of "tax holidays." The general notion is that a state or other local taxing unit will designate specific days of a year when, for example, sales tax will not be imposed on purchases of consumer merchandise, such as clothing. The underlying purpose of a tax holiday

is to encourage consumers to purchase merchandise and, correspondingly, help local businesses attract customers who otherwise would head to a mega-mall across the river. While many businesses would prefer permanently reduced tax rates to spur economic activity, the HIRE Act does provide a gift that should not be entirely discounted.

Turning directly to the first tax incentive of the HIRE Act, the payroll tax holiday provides some relief for Federal Insurance Contribution Act ("FICA") taxes imposed on employers. For background purposes, FICA consists of two separate taxes: (1) the Old Age, Survivors and Disability Insurance ("OASDI") tax; and (2) the Medicare Hospital Insurance ("HI") tax. The FICA taxes are imposed separately on employers and employees. Self-employed individuals pay an alternative tax which is essentially equal to both the employer and employee portion of the FICA taxes. Employers pay FICA taxes on wages paid in connection with employment, while employees pay FICA taxes on wages received. The employer portion of the OASDI tax is currently equal to 6.2% of the wage base. The wage base for 2010 is capped at \$106,800. The HI tax rate is presently equal to 1.45% on wages paid and is not subject to a wage cap.

The HIRE Act payroll holiday grants certain employers, referred to as "qualified employers," relief from their share of OASDI in 2010 for wages paid to "qualified individuals." The tax holiday lasts for the period between March 19, 2010 through December 31, 2010. A "qualified individual" must perform services (1) in the trade or business of a qualified employer, or (2) in furtherance of an exempt purpose of a qualifying tax-exempt organization. For purposes of the payroll tax holiday, a "qualified employer" is defined as any business other than a governmental unit. A "qualified individual" is any person who:

1. begins employment after February 3, 2010 and before January 1, 2011;
2. certifies, under penalties of perjury, that the person has not been employed for more than 40 hours during the 60 day period ending on the date he or she begins employment;
3. is not employed to replace another employee, unless such employee voluntarily separated from employment or was terminated for cause; and
4. is not a "related person" to the employer.

The maximum credit available under the payroll holiday is \$6,621.60, which is calculated by multiplying 6.2% by the 2010 wage base cap of \$106,800. The credit is not available for the payroll tax installment payment paid in the first quarter of 2010; however, employers will receive a credit equal to what the employer would otherwise have received for the first quarter against the second quarter installments. An employer can affirmatively elect out of the payroll holiday. The election out of the payroll tax holiday would allow the employer to remain eligible for the Work Opportunity Tax Credit.

A Modest \$1,000 Credit for Retained Workers

The second credit for employers created by the HIRE Act increases the general business credit under IRC § 38 by up to \$1,000 for each "retained worker." A "retained worker" is a person (1) employed by the business on any date during the tax year, (2) was employed for a period of not less than 52 consecutive weeks, and (3) whose wages during the last 26 weeks equal at least 80% of the wages paid during the first 26 weeks. From a planning perspective, employers will need to implement record-keeping procedures to track hired employees in order to establish which employees a business claims a credit for satisfy the definition of "retained worker."

Increased Section 179 Expensing

Under the HIRE Act, a business may elect to expense the cost of qualifying property under IRC § 179. Property eligible for IRC § 179 expensing includes tangible personal property used in an active trade or business and certain computer software placed in service prior to 2011. Such property would otherwise be subject to depreciation or amortization. Under prior law, a business could expense under IRC § 179 a maximum of \$134,000 in eligible property, with this limitation being reduced dollar-for-dollar for the cost of eligible property that exceeded \$540,000. The HIRE Act increases the IRC § 179 limitation to \$250,000, which is reduced dollar-for-dollar for the cost of eligible property that exceeds \$800,000.

Conclusion

While the tax incentives created by the HIRE Act appear modest, on an aggregate employee-by-employee basis, the incentives may be amplified for businesses that anticipate expanding work forces in 2010. In addition to the employment related tax incentives, the expansion of IRC § 179 expensing offers an inducement for businesses to make capital purchases that have

otherwise been delayed due to the current economic climate. Now may be an opportune time for businesses to examine their current federal tax positions and consult with tax advisors to determine whether it is advantageous to utilize any of the tax incentives of the HIRE Act.

FOR MORE INFORMATION, CONTACT:



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