

Schenck Tax Central

Timely Updates from Schenck SC

The Hiring Incentives to Restore Employment (HIRE) Act

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On March 18, President Obama signed into law the Hiring Incentives to Restore Employment (HIRE) Act. The HIRE Act creates a limited social security tax exemption for the employer share of social security tax on wages paid to previously unemployed new hires, and a separate business tax credit of up to \$1,000 if an employee is retained for at least 52 weeks.

Social Security Tax Exemption

Under the HIRE Act, a qualified employer is exempted from the 6.2% OASDI/social security tax exemption on wages paid to previously unemployed new hires from March 19, 2010 through December 31, 2010. For qualified individuals whose social security wages reach the cap of \$106,800, the tax exemption stops when the cap is reached. The exemption does not apply to the employer's Medicare tax (1.45% of taxable wages).

Any for-profit and not-for-profit employer is considered a "qualified employer." The United States government, and any state or political subdivision thereof, or any instrumentality of the U.S., except for state colleges and universities, are not qualified employers for purposes of the social security tax exemptions. Household employers cannot claim this tax benefit.

The Act defines "qualified individuals" as those who:

- begin employment with a qualified employer after February 3, 2010, and before January 1, 2011,
- certify in a signed affidavit (i.e. statement), under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the day the individual begins work for the qualified employer,
- are not employed by the qualified employer to replace another employee unless the other employee left employment voluntarily or was terminated for cause, and
- are not related to the qualified employer or to anyone owning 50% or more of the stock or other capital of the employer (under IRC 51(i)).

The IRS is developing a model affidavit form that employers can use to certify qualified individuals (or, you may develop your own). The IRS will be issuing guidance on many of the tax depositing and reporting issues created by the Act. As this guidance is released, we will issue further Tax Central alerts or publish articles in our newsletters to keep you informed.

The Act does not address employers who rehire their past employees. Employees hired as replacement workers for laid off employees might not qualify for the social security tax exemption. These rehired employees are replacing employees who were involuntarily terminated (unless terminated for cause) and thus are not “qualified” individuals under the HIRE Act, even if they meet the other criteria. Schenck is waiting for the IRS’s definition of “terminated for cause.” For the COBRA premium subsidy eligibility, enacted about a year ago, the definitions were slightly different than the normal employment definitions.

Some additional points:

- Any credit due employers for wages paid to qualified individuals between March 19 and March 31 can be used to reduce the second quarter federal tax payment. Employers will need to deposit their first quarter tax liability in full and report any credit due on Form 941, Employer’s Quarterly Federal Tax Return.
- The social security tax relief provided by the HIRE Act also applies to the employer share of the equivalent Railroad Retirement Tax Act tax.
- The social security tax exemption only applies to the employer’s share of this tax. The employee’s share will still need to be withheld and deposited.
- No “double-dipping” with the work opportunity tax credit (WOTC) is allowed. A qualified employer may not receive the WOTC on any wages paid to a qualified individual during the individual’s first year of employment if those wages qualify the employer for the social security tax exemption, unless the employer elects not to have the social security tax relief apply. The IRS will provide guidance for how to make such an election.

New Hire Tax Credit

A separate provision of the HIRE Act gives an employer a maximum \$1,000 credit against its business income taxes for each qualified worker who is employed for at least 52 consecutive weeks and receives wages during the second 26 weeks of this period that are at least 80% of the wages received during the first 26 weeks. The new hire tax credit will be taken on the qualified employer’s 2011 business tax return. The credit can be carried forward, if necessary, but cannot be carried back any portion of the unused credit attributable to the provision for retained workers.

The amount of the credit is the lesser of \$1,000 or 6.2% of the wages paid to the qualified individual during the year. Therefore, if the employer pays the employee \$16,129 or more in wages during the 52-week period, the business tax credit is \$1,000. The business tax credit and the social security tax relief are separate, and employers can claim both of them for the same employees.

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