

# CBIZ MHM Tax Alert



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## HIRE Act Includes Expanded Expensing Election and Hiring Incentives

The Senate voted 68-29 to approve the Hiring Incentives to Restore Employment (HIRE) Act (H.R. 2847). The legislation now goes to the President for signature. Intended as a first step to boost a stagnant economy, the HIRE Act primarily provides incentives for businesses to hire new employees and invest in property and equipment.

### Expanded Expensing Election Extended

The increased expensing limit for depreciable property that expired at the end of 2009 has been extended through 2010. This provision allows businesses with active trade or business income to immediately expense up to \$250,000 of tangible personal property placed into service during the year. The maximum amount of the deduction begins to phase out when total eligible purchases exceeds \$800,000. Without this provision, the expensing limit had dropped to \$134,000 in 2010.

**Tax Trap:** Many states do not conform to the federal rules with respect to the enhanced expensing election. As you should with any federal tax incentives, do not assume that you will enjoy the benefits on your state income tax returns.

The HIRE Act does not contain an extension of either the 50% bonus depreciation provision or the 15 year recovery period for qualified leasehold improvements and restaurant property. The 15 year recovery period is under consideration as part of a separate "extenders" bill currently working its way through Congress.

### Hiring Incentives

The HIRE Act contains two new temporary incentives for employers to expand their workforce.

#### FICA Exemption

Employers will be exempt from paying their share of Social Security taxes on wages paid to qualified unemployed workers after the date of enactment and before January 1, 2011. This exemption does not apply to Medicare taxes, nor does it exempt the employee from having to pay Social Security taxes on those same wages.

A qualified employee is defined as one who:

- Begins employment with the employer after February 3, 2010 and before January 1, 2011,
- Certifies by signed affidavit, under penalties of perjury, that he has not been employed for more than 40 hours during the 60-day period ending on the date he begins employment

- with the employer,
- Is not employed by the employer to replace another employee of the employer unless the other employee separated from employment voluntarily or for cause, and
- Is not related to a greater-than-fifty percent owner of the employer.

An employer may not claim the Work Opportunity Credit on a qualified individual for one year after his hire date. However, an employer can elect out of the payroll tax holiday.

The legislation does not address how the employer would establish that the new hire was not to replace another employee or that the termination of the other employee was voluntary or for cause.

Realizing that payroll service providers need time to incorporate the payroll tax holiday into their software systems, the waiver does not apply during the first quarter of 2010 even though wages paid after the date of enactment are eligible. Instead, the portion of any first quarter tax payments attributable to qualifying wages will be treated as a payment of the employer's second quarter taxes.

### Retention Tax Credit

To provide incentive to retain these newly hired employees, employers will receive a general business credit of \$1,000 for each qualifying employee that satisfies a minimum employment period. A qualifying employee is based on the same definition used for the FICA exemption discussed above. In addition, the employee must:

- Be employed by the employer on any date during the taxable year,
- Be employed continuously by the employer for at least 52 weeks from the hire date, and
- Receive compensation during the last 26 weeks of the period that is at least 80 percent of the compensation paid during the first 26 weeks of the period.

Essentially, a calendar year employer will receive the tax credit in 2011 if the qualifying employee is retained for at least one year from date of hire and if the compensation is fairly stable during the first year. The 80 percent rule was put in place presumably to prevent employers from front loading wages into 2010 when they would be eligible for the payroll tax holiday.

### Example of FICA Exemption and Retention Credit in Concert

ABC Company, a calendar year taxpayer, hires John Doe, a qualifying employee, on July 1, 2010. John is still employed with ABC Company on June 30, 2011 (assume this constitutes 52 weeks). John receives a salary of \$30,000 per year. ABC Company would be exempt from paying FICA on wages paid to John between July 1, 2010 and December 31, 2010. Assuming the salary was paid evenly during the 12 months, ABC Company would receive a pre-income-tax benefit of \$930 from the FICA exemption (\$15,000 x 6.2%) in 2010 and a \$1,000 general business credit in 2011.

### Other Incentives

In addition to the above incentives, Congress also made a change with respect to qualified tax credit bonds, such as qualified school construction bonds and qualified energy conservation bonds. Currently, holders of these bonds receive a federal tax credit in lieu of an interest payment by the issuer. For qualifying bonds issued after the date of enactment, the issuer can make an election to receive a refundable tax credit in lieu of the credit going directly to the bond holder. This

change will make these types of bonds more similar to the Build America Bonds that were created in February of 2009.

### **Foreign Compliance Provisions**

To help pay for these incentives, Congress has instituted a broad range of new reporting and withholding requirements on taxpayers with foreign assets or foreign ownership, including:

- A 30% withholding tax on certain income from U.S. assets held by a foreign financial institution unless the institution agrees to extensive reporting and disclosure requirements,
- A 30% withholding tax on certain payments made to foreign entities with significant ownership by U.S. individuals unless the entity agrees to disclose that information to the withholding agent,
- A requirement for individuals to report information about certain foreign accounts and assets worth more than \$50,000 in aggregate with their annual tax returns, subject to a \$10,000 penalty for noncompliance,
- A 40% penalty on any understatement of tax attributable to undisclosed foreign assets, and
- A requirement for each shareholder of a passive foreign investment company (PFIC) to file an annual report even if no triggering events have occurred.

Look for a future **CBIZ MHM Tax Alert** for a comprehensive analysis of these new foreign compliance provisions.

It is unclear as to what impact these incentives actually will make on the economy. After all, employers are not going to expand their businesses if sales are not growing. Democratic leaders in Congress have stated that this bill is just the beginning of a series of bills intended to boost the economy and give relief to working families. Congress has also started work on another extenders bill and has even indicated that it is time to take up the estate tax issue again. CBIZ MHM will keep you posted on all significant developments on Capitol Hill as they happen. If you have any questions about the HIRE Act, please contact your local [CBIZ MHM advisor](#).

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