

## MEMORANDUM TO CLIENTS

**RE: Employer Payroll Changes for HIRE Act Relief**

On March 18, 2010, the President signed the Hiring Incentives to Restore Employment Act (HIRE Act), and once again payroll becomes center stage for tax relief. The HIRE Act provides two new tax benefits for certain 2010 new hires. First, employers may qualify for exemption from the employer's share of Social Security tax for most 2010 wages for certain new employees hired after February 3, 2010 (a similar exemption applies to Railroad Retirement Taxes). Second, an employer may claim an additional general business tax credit of up to \$1,000 per qualified worker. As the IRS works out the details on the applicable wages and how to take advantage of the relief, a summary of the relief is set forth below.

**I. 2010 Payroll Tax Forgiveness for Hiring Unemployed Workers**

**Relief:** Wages paid by a "qualified employer" during the period beginning March 19, 2010 through December 31, 2010 to a "qualified individual" for services performed in a trade or business of such qualified employer (or in furtherance of the activities related to the tax-exempt purpose for 501(a) tax-exempt employer) is exempt from the employer's share of Social Security tax (6.2%, up to the \$106,800 Social Security Wage Base).

- **Qualified Employer** means any employer other than the United States, any State, or any political subdivision thereof, or any instrumentality of the foregoing. However, it does include a public institution of higher education (as defined in section 101(b) of the Higher Education Act of 1965).
- **Qualified Individual** means any individual who (1) begins employment with a qualified employer on or after February 4, 2010 through December 31, 2010, (2) certifies by signed affidavit, under penalties of perjury, that such individual has not been employed for more than 40 hours during the 60-day period ending on the date such individual begins such employment, (3) is not employed by the qualified employer to replace another employee of such employer unless such other employee separated from employment voluntarily or "for cause" (layoff, reduction in hours), and (4) is not a related individual described in Code section 51(i)(1). This includes part-time and full-time employees.

**Employer Election:** This relief is elective (unclear if employer or employee level election out) and the credit is obtained on Form 941/944 (and deposits can be reduced). For the first quarter relief, the credit is taken on the second quarter return (as the form is currently being revised). Note, if the relief is elected, for purposes of the Work Opportunity Credit, the term "wages" does not include any amount paid or incurred to a qualified individual during the one-year period beginning on the date of hire.

**Action Steps:** Employers should check with their payroll providers to claim the available credit, and take the following steps: (1) ensure that you are a qualified employer, (2) identify qualified individuals and track wages actually paid on or after March 19<sup>th</sup> (even if attributable for services prior to such date), (3) if a tax-exempt employer, verify that the services are in furtherance of its tax-exempt purpose, (4) obtain certifications from employees and retain in files, and (5) confirm that this relief is more valuable than the Work Opportunity Credit, which will not be available for such wages for a one-year period.

## II. Increased Business Credit for 2011

The HIRE Act also provides for an increased general business credit of up to \$1,000 for each qualified individual for the first year the following provisions are satisfied: (1) was employed by the employer on any date during the taxable year, (2) employed by the taxpayer for a period of not less than 52 consecutive weeks, and (3) whose wages for such employment during the last 26 weeks of such period equaled at least 80% of such wages for the first 26 weeks of such period. This credit is not eligible for carryback before 2010. Again, the payroll processor will need to track qualified individuals and their wages.

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