

April 8, 2010

MEMORANDUM TO CLIENTS

RE: IRS Issues Needed Guidance on the HIRE Act - 2010 FICA Tax Exemption and 2011 Retention Credit

Yesterday, the Internal Revenue Service issued several important pieces of guidance on the FICA tax exemption (and the increased 2011 business tax credit, called the retention credit) for 2010 new hires under the Hiring Incentives to Restore Employment (HIRE) Act. This guidance is briefly summarized below:

- [Form W-11](#): Final IRS Form W-11 is now posted on IRS.gov. This form is a sample form that employers can use to have an employee certify (under penalties of perjury) they meet the requirements for a "qualified employee" for the FICA tax exemption and/or retention credit. This form is to be retained with the employer's payroll and income tax records and not filed with the IRS.
- [Form 941](#): The IRS has posted a draft Form 941 on IRS.gov, which will be released next month (May) in final form, along with the form's instructions. We anticipate few changes to this form. (We understand that the IRS is working on making similar changes to employers filing Form 944.)
- [Frequently-Asked Questions](#): The IRS posted nearly 20 Q&As that cover the FICA tax exemption and the new HIRE retention credit. These first-round of questions fall within the following categories:
 - **Who is an eligible employer?** Eligible employers include employers in U.S. possessions that are subject to FICA taxes (e.g., Puerto Rico, Northern Mariana Islands), public colleges and universities, tribal governments, start-up businesses, but not household employers or other Federal, State or local governmental employers. The employer does not need to have previously laid off workers for the exemption to apply.
 - **Who is a qualified employee?** A qualified employee includes: (1) an employee receiving COBRA premium assistance (with the employer taking the related credit) who is rehired, (2) new graduates (the 60-day period of unemployment (or less than 40 hours) must be continuous, can span 2009-2010, and can include periods of education), (3) an employee who was rehired by the same or related employer, (4) a new employee, who replaces a former worker who was previously laid off for lack of work, who is hired after the work picks up.
 - **How to claim the FICA exemption?** The FICA exemption is claimed on Form 941 (for employers who file quarterly returns), beginning with the second quarter of 2010.

We anticipate many more Q&As (including the treatment of seasonal workers, part-time workers, what are "for cause" terminations, which wages are eligible, etc.), along with a new code "CC" for box 12 of 2010 Form W-2 to report the HIRE Act exempt wages. Stay tuned.

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