



Payroll Tax Forgiveness and Tax Credit Seminar

Hiring Incentives to Restore Employment (HIRE) Act and Small Business Health Care Tax Credit

April 22, 2010

Presented by:
Ryan Arsenault
Len Leader, CPA
Joe Malzone

The analysis provided is not intended as or written for use by any taxpayer to avoid penalties. The analysis is not intended as legal advice.
Taxpayers should seek advice based on their own particular circumstances from an independent tax advisor.

HIRE Act



Hiring Incentives to Restore Employment Act

What does it give you?



- Payroll Tax Forgiveness for Hiring Unemployed Workers

- **Old age, survivors, and disability insurance tax** paid by **qualified employers** on wages paid to **qualified employees** in **covered employment** is forgiven during the **qualifying period**.

Old Age, Survivors, and Disability Insurance Tax



- Commonly called social security tax
- Rate is 6.2% of covered wages
- Wage Limit for 2010 is \$106,800
- Maximum tax withheld is \$6,621.60 ($\$106,800 \times 6.2\%$)

Tax Savings by Employee



Covered Wages	\$30,000	\$60,000	\$106,800.00
Employer Paid Social Security Tax	\$ 1,860	\$ 3,720	\$ 6,621.60

Qualified Employer



- Any employer other than governmental agencies
 - Public colleges are eligible

Qualified Employee



- Begins employment after 2/3/10 and before 1/1/11
- Has not worked more than 40 hours the 60 days prior to employment
 - Must sign an affidavit or similar statement under penalties of perjury to certify this
- Is not employed to replace another employee
 - Unless the previous employee separated voluntarily or for cause (including downsizing)
 - Cannot fire to hire the same employee

Qualified Employee



- Is not related to the employer
 - Including: children and descendants, siblings and stepsiblings, parents or ancestors of parents, stepparents, nieces, nephews, aunts, uncles, and in-laws
 - An employee is related to you if he or she:
 - is your dependent,
 - is related to, or is a dependent of, anyone who owns more than 50% of your outstanding stock or capital and profits interest

Qualified Employee



- The 60 day period must be continuous and may start in 2009
- A qualified employee may include employees who previously were laid off by the same employer
 - Cannot “fire to hire”
- Workers who were not employed and not unemployed qualify (students)

Covered Employment



- Covered employment is limited to service provided by a qualified individual
 - In a trade or business
 - Related to the tax-exempt purpose or function of non-profit employers
 - Does not include household employers
 - New businesses qualify as long as it meets other standards

Qualifying Period



- “Shall not apply to wages paid...with respect to employment during the period beginning [March 19, 2010]...and ending on December 31, 2010.”
 - Does not talk about when wages are paid
 - Important for wages paid in January 2011 (or later) for work in December 2010 (or earlier)
 - Most employers pay “a week back” meaning their pay in January 2011 will be for the last week(s) in December 2010
 - The FAQs on the IRS website state it is for only for wages paid in 2010
 - Joint Committee on Taxation ignores it entirely

Qualifying Period



- It is unclear whether a technical correction is coming
- Qualifying period for tax forgiveness is different than the eligibility period
 - Employee may start after February 3 but credit cannot be claimed until work after March 19

Employee Affidavit



- IRS released Form W-11
 - Employers can use similar statement if it contains the same information and the employee signs it under penalty of perjury
 - Must retain Form W-11 with other payroll files
- Employer checklist is recommended
 - After determining if the employee is eligible, determine if this employee was hired to replace another
 - If so, was the previous employee terminated for cause or left voluntarily
 - Make sure this employee was not hired to replace a worker who was not terminated for cause

Employer Opt Out



- A qualified employer may elect not to have the HIRE Act apply and not take the payroll credit
- IRS is authorized to establish the manner and timing of such an election

Work Opportunity Tax Credit



- Claimed on Form 5884
- Applies to “targeted employees” and provides an income tax credit as a percentage of wages
- Employers may not claim the credit during the one year period beginning on the hire date of such individual

Work Opportunity Tax Credit



- Employers may want to do an analysis of which would provide the greater benefit and opt out of the HIRE Act payroll tax relief
- The closer to the end of the year that the employee is hired, the greater benefits would shift to the WOTC
- However, the WOTC will require a longer period of waiting for the credit than the HIRE Act (which is immediately after the employee is hired)

Revisions to Form 941



- No changes to Q1 2010 941
- Changes to Q2 941:
 - Taxable social security wages before the reduction
 - Taxable social security tips before the reduction
 - # of qualified employees first paid exempt wages/tips that quarter
 - # of qualified employees paid exempt wages/tips that quarter
 - Exempt wages/tips paid to qualified employees in that quarter
 - # of qualified employees paid exempt wages/tips 3/19/10-3/31/10
 - Exempt wages/tips paid 3/19/10 -3/31/10
- The payroll tax forgiveness for 3/19/10-3/31/10 is only available in the second quarter

Effect on Employees



- All social security taxes must still be withheld
- No impact on earnings or taxes in individual's social security records
- A new code has been added to the W-2 for Box 12
 - The code CC will include wages and tips paid to the qualified employee from April 1, 2010 through December 31, 2010 plus wages and tips paid to the qualified employee from March 19, 2010 through March 31, 2010

HIRE Act



Business Credit for Retention of
Certain Newly Hired Individuals in 2010

What does it give you?



- A general business credit against corporate or individual income tax for retaining newly hired workers

Qualified Individual



- Is a qualified employee for purposes of the payroll tax forgiveness, and
- Is employed by the employer on any day during the taxable year, and
- Continues to be employed for 52 consecutive weeks, and
- Receives wages during the last 26 weeks that are at least 80% of wages earned during the first 26 weeks

Credit Calculation



- Maximum of \$1,000 per employee
- Credit cannot exceed 6.2% of the wages

Hours/week	20	40
Weeks Worked	52	52
Hourly Wage	\$ 8.00	\$ 8.00
52 week earnings	\$8,320.00	\$16,640.00
6.2% of 52 week earnings	\$ 515.84	\$ 1,031.68
Credit allowed	\$ 515.84	\$ 1,000.00

Credit Calculation



- No provision to start this credit before March 18, 2010
- Credit must be claimed for period starting March 19, 2010
- Credit must not be claimed until the tax year in which the employee reaches 52 weeks worked

Other Provisions



- Increase in Expensing of Certain Depreciable Business Assets
- Refundable Credit for Certain Qualified Tax Credit Bonds
- Revenue Provisions Relating to the Highway Trust Fund
- Multiple Issues Related to Foreign Accounts and Foreign Tax Compliance
- Corporate Estimated Tax Payments
- Charitable Contributions for Earthquake Relief



Questions?

Patient Protection and Affordable Care Act



Small Employer Health Insurance Credit

What does it give you?



- Provides an **Income Tax Credit** to **Qualified Small Employers** that Make **Nonelective Contributions** to Purchase Health Insurance for Their Employees

Qualified Small Business Employer



- Must have 25 or fewer full time equivalent employees (FTEs) during the taxable years
 - Exclude: sole-proprietors, partners, 2% S corporation shareholders, 5% owners in corporations, family members or dependents of the previous groups, domestic employees of sole-proprietors, seasonal workers
 - A seasonal worker who works less than 120 days during the taxable year. A seasonal worker is defined by the Secretary of Labor as a worker who is seasonal or is a retail worker employed exclusively during the holiday season
- Any time worked on a calendar day is one day of work

Qualified Small Business Employer



- 25 FTEs (cont.)

- Leased employees are considered employee of the “service recipient”
- Limit any single employee to 2080
- Divide total hours worked by 2080 and round down to nearest whole number to determine number of FTEs

Total Hours Worked	37,440
Hours Excluded	10,400
Hours for Calculation	27,040
Divide by 2080	13 FTEs

Qualified Small Business Employer



- Must pay FTEs average wages of \$50,000 or less (indexed for inflation for future years)
 - Wages are FICA taxable wages without wage limit
 - Calculate average wage by dividing total wages paid to employees (using the same exclusion factors as before) by number of FTEs and rounding down to nearest \$1,000

Total Wages Paid	\$534,000
Wages Excluded	\$105,000
Wages for Calculation	\$429,000
Divide by 13 FTEs	\$ 33,000

Qualified Small Business Employer



- Aggregation rules apply
 - Groups of businesses under common control will be treated as a single employer for this purpose

Nonelective Contributions



- Must be made through an “arrangement” that requires the employer to make a “nonelective” contribution for each employee
- Must be a uniform percentage of the premium cost
- Must be at least 50%
- Health insurance must be “qualified”
 - Through 2013, “qualified” is any coverage purchased from an insurance company licensed under State law
 - After 2013, only insurance purchased through a State exchange qualifies

State Exchange



- Each state must create American Health Benefit Exchanges and Small Business Health Options Program (SHOP) Exchanges
 - Must be administered by a government agency or non-profit organization
 - Initially will be open to individuals and businesses with fewer than 100 employees
 - Will allow these individuals and businesses to purchase qualified health insurance coverage

Income Tax Credit



- Claimed on employer's income tax return, not Form 941
- May only offset actual liability
- It is a general business credit that may be carried back one year and forward twenty years
- May offset alternative minimum tax liability

Income Tax Credit



- Available in any tax year from 2010-2013
- After 2013, there will be a maximum of two consecutive tax years for which the credit may be claimed
 - Any year before 2014 does not count toward the two years
 - Any credit claimed by a predecessor company after 2013 will count toward the two years

Calculation of Credit



- Do not include employee contributions, even if under a Section 125 plan
- Lesser of two amounts, multiplied by the applicable percentage
 - 1) amount of contributions by the employer during the taxable year for health insurance for the benefit of the employees, or
 - 2) amount of contributions that the employer would have made during the taxable year if each employee had enrolled in coverage with a small business benchmark premium

Small Business Benchmark Premium



- Determined by the Secretary of Health and Human Services
- Equal to the average premium for the small group market in the rating area in which the **employee** enrolls for coverage
- The rating area will be a state or smaller area
- The premium will be assigned for four types of coverage
 - Single
 - Adult with child
 - Family
 - Two adults

Applicable Percentage



- For most small business employers, the credit from 2010-2013 starts at 35%
 - For non-profits, it starts at 25%
- For most small business employers, the credit after 2013 starts at 50%
 - For non-profits, it starts at 35%
- Some employers must also calculate the reduction of this percentage for excess employees and wages



- Employers with more than ten FTEs must reduce the credit based on the number of FTEs
 - For each FTE more than ten, reduce the credit by 6.667%
 - Employers with twenty-five or more FTEs receive no credit



- Employers with average wages greater than \$25,000 must reduce the credit based on the average wages
 - For each \$1,000 of average wages above \$25,000, reduce the credit by 4%
 - Employers with average wages of \$50,000 or more receive no credit

Reduction of Applicable Percentage for
Excess Employees and Excess Average Wages



- Employers with more than ten FTEs and average wages greater than \$25,000 must reduce the credit based on the sum of the amounts of the two reductions
 - Calculate each reduction separately and then reduce the credit by the FTE reduction and the average wage reduction
 - Do not reduce the credit below zero

Examples of Credits



Premiums paid	\$50,000	\$50,000	\$50,000	\$50,000
FTEs	5	13	5	13
Average wages	\$24,000	\$24,000	\$33,000	\$33,000
Applicable Percentage	35%	35%	35%	35%
Initial Credit	\$17,500	\$17,500	\$17,500	\$17,500
Reduction for FTEs	0%	20%	0%	20%
Reduction for wages	0%	0%	32%	32%
Reduction against credit (IC x sum of reduction %s)	\$0	\$ 3,500	\$ 5,600	\$ 9,100
Income Tax Credit	\$17,500	\$14,000	\$11,900	\$ 8,400

Reduction of Tax Return Deduction



- Employers are generally allowed a deduction for the cost of health insurance
- The deduction must be reduced by the credit
- If the employer pays \$100,000 for health insurance and receives a \$35,000 credit, the deduction on the tax return is limited to \$65,000.

Tax Exempt Organizations



- The credit percentages are lower for these organizations
- The credit is generally calculated the same way but is received differently
- The credit is limited to the sum of:
 - Federal income tax withheld
 - Medicare tax withheld
 - Medicare tax paid
- There is no carryforward or carryback available for tax exempt organizations



- Unlike interpretive regulations, these regulations carry the weight of law since Congress specifically authorizes the IRS to prescribe the regulations
- Topics awaiting clarification
 - Preventing taxpayers from using successor entities to avoid the two-year limit on the credit after 2013
 - Preventing taxpayers from using multiple entities to avoid the excess FTE limit
 - Preventing taxpayers from using multiple entities to avoid the excess wage limit
 - Coordinating with the Department of Labor to determine the number of hours per employee for use in the FTE calculation, including hours for employees not compensated on an hourly basis



www.visionpayroll.com

info@visionpayroll.com

978-840-1635