



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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CHIEF COUNSEL

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The Honorable Paul Ryan
Member, U.S. House of Representatives
20 South Main Street, Suite 10
Janesville, WI 53545

UIL: 3111.00-00

Attention:

Dear Congressman Ryan:

I am responding to your inquiry of June 25, 2010, on behalf of your constituent . asked about the payroll tax exemption provision in the Hiring Incentives to Restore Employment (HIRE) Act of 2010. Specifically, he asked whether a short term or temporary interruption of an employee's employment would affect his or her eligibility for the exemption, so that the employee would have to be off for 60 days to requalify for application of the exemption under the HIRE Act. also included a detailed example in his letter. I cannot address his specific example, but I am happy to provide information about the payroll tax exemption.

The HIRE Act, enacted on March 18, 2010, provides a payroll tax exemption and a related tax credit for qualified employers hiring workers who were previously unemployed or only working part time (referred to as "qualified employees").

The payroll tax exemption applies to the employer's 6.2-percent share of social security tax on wages paid to a qualified employee from March 19, 2010, through December 31, 2010. A qualified employee is an individual who begins employment after February 3, 2010, and before January 1, 2011, and who certifies by signed affidavit under penalties of perjury that he or she has been employed for 40 hours or less during the 60-day period ending on the date such employment begins. The employee cannot be a family member of or related in certain other ways to the employer. The employer also cannot have hired the employee to replace another employee unless the other employee left voluntarily or the employer terminated him or her for cause.

An employer that hires and retains a qualified employee is also eligible for a general business credit if the qualified employee is employed for at least 52 consecutive weeks and the employee's wages, as defined for income tax withholding purposes, during the last 26 weeks of the 52-week period equal at least 80 percent of the wages for the first 26 weeks. The credit is the lesser of \$1,000 or 6.2 percent of the wages, as defined for income tax withholding purposes, paid to the retained worker during the 52 consecutive week period.

An individual who is already a qualified employee and who experiences a short term or temporary interruption in his or her performance of services continues to be a qualified employee unless the interruption constitutes a termination of employment. Whether a short term or temporary interruption of an employee's performance of services constitutes a termination of employment depends on the facts and circumstances. In the case of an individual who was previously employed as a qualified employee and whose employment is terminated, the employee will have to again meet the requirements for qualified employee status at the time the employment relationship is reestablished.

can find more information on both the payroll tax exemption and the related credit provisions of the HIRE Act on our website at www.irs.gov. I hope this information is helpful. If you have any questions, please contact me or _____ of my staff at

Sincerely,

Nancy J. Marks
Division Counsel/Associate Chief Counsel
(Tax Exempt & Government Entities)