

New Tax Incentives for Hiring and Retaining Employees

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The Hiring Incentives to Restore Employment (HIRE) Act provides new cost-saving measures for employers that hire and retain new employees and also extends the increased Section 179 expensing.

OASDI Tax Exemption

Employers that hire new employees will be exempt from their share of the Old Age, Survivors and Disability Insurance (OASDI) tax, which is a 6.2% tax on wages up to \$106,800 for 2010. The exemption will apply from March 19, 2010 to the end of 2010. Employers that may take advantage of the OASDI exemption include taxable businesses, tax-exempt organizations and public colleges and universities.

Employers may claim an OASDI exemption for new employees, who:

- Begin employment between February 3, 2010 and the end of the year;
- Certify by signed affidavit that they have not been employed for more than 40 hours during the previous 60-day period;
- Do not replace another employee, unless the other employee left voluntarily or for cause; and
- Are not related to the employer and do not own, directly or indirectly, more than a 50% interest in the employer.

For purposes of the OASDI exemption, new employees may include people who were previously laid off and rehired, and recent graduates who meet the above requirements.

To assist employers with obtaining the signed affidavit, the IRS has developed Form W-11, which is now available [here](#). Employers should claim the OASDI exemption on Form 941 beginning with the second quarter of 2010. The IRS also is revising Form 941 to account for the OASDI exemption. The revised form should be available soon.

WOTC Tax Credit

Employers that claim the OASDI exemption may not also claim the Work Opportunity Tax Credit (WOTC) on wages paid during the new employee's first year of employment. Employers that would prefer to claim the WOTC for a new employee's wages may elect out of the OASDI exemption.

Employers may prefer to claim the WOTC in the case of low-wage employees because the WOTC generally provides a credit equal to 40% of "qualified first-year wages," up to \$6,000, with higher wage limits for employees from certain "target groups." This means that an employer could claim a WOTC of \$2,400 for a new employee making \$20,000 a year, versus an OASDI exemption of only \$1,240.

Business Credit for Retaining Employees

For tax years ending after March 18, 2010, the HIRE Act also allows employers to claim an additional one-time business credit of up to \$1,000 for retaining new employees hired in 2010. These "retained workers" are employees who:

- Were employed on any date during the taxable year;
- Were employed for at least 52 consecutive weeks; and
- Had wages during the last 26 weeks of the period equal to at least 80% of the wages received for the first 26 weeks of the period.

The available credit is the lesser of \$1,000 or 6.2% of the wages paid during the 52-week period. An employer may carry forward the credit, but may not carry it back.

Section 179 Expensing

The Economic Stimulus Act of 2008 increased the amount of Section 179 expensing of the cost of depreciable property for 2008 to \$250,000, and increased the threshold for reducing the deduction to \$800,000. The American Recovery and Reinvestment Act of 2009 extended these increases for 2009. The HIRE Act extends the increased amounts to 2010. Section 179 expensing is available for new and used property. However, the \$800,000 ceiling effectively limits Section 179 expensing to small businesses.

Offsetting Revenue Provisions

The HIRE Act also imposes new foreign account tax compliance requirements that are intended to raise revenue to offset the tax benefits for hiring and retaining new employees. Examples of these new requirements include a 30% tax on "withholdable payments" that, in general, are made after December

31, 2012 to either foreign financial institutions or non-financial foreign entities not meeting certain requirements.

Additionally for tax years beginning after March 18, 2010, individuals holding an interest in specified foreign financial assets exceeding \$50,000 must disclose certain information on their tax returns or they will be subject to penalties of \$10,000 to \$50,000, depending on when disclosure is finally made. Also for tax years beginning after March 18, 2010, a 40% accuracy-related penalty will apply to an undisclosed foreign financial asset understatement.

More Information

For more information related to the HIRE Act, contact Scott Hancock (shancock@wnj.com or 616.752.2713), Jay Kennedy (jkennedy@wnj.com or 248.784.5180) or any member of Warner Norcross & Judd's Tax Law Group.