THE HIRING INCENTIVES TO RESTORE EMPLOYMENT "HIRE" ACT

The Hiring Incentives to Restore Employment (HIRE) act, signed into law March 18, provides tax incentives for hiring and retaining workers and purchasing equipment and many other business assets.

HIGHLIGHTS

Employers' Payroll Tax Holiday and Exemption Credit - For the remainder of 2010, employers do not have to pay their share of OASDI or railroad retirement taxes for newly hired workers who were unemployed. Employers can also claim a credit of up to $1,000 for retaining new workers for at least one year.

Section 179 - Extension of Section 179 expensing at 2009 levels.

Foreign financial reporting - Additional reporting required for certain foreign financial assets in excess of an aggregate of $50,000.

PAYROLL TAX HOLIDAY

- **Payroll tax exemption** - Qualified employers are exempted from the 6.2% Social Security portion of the employer's FICA taxes on certain new hires through the end of the year for wages <u>paid</u> after March 18, 2010 and before December 31, 2010.

- **Qualified employees** must be hired after Feb. 3, 2010, and before Jan. 1, 2011, and must have been unemployed (defined as not having worked more than 40 hours) for the 60-day period ending on his or her start date. Household employees do not qualify for the credit.

  The employee must not have been hired to replace another employee who performed the same job unless the other employee voluntarily quit or was fired with cause.

- **Related parties** - The employee may not be related (except spouse) to the taxpayer or a greater than 50 percent owner of the company.

- **Employee portion** - Employers must still withhold and remit the employee's share of OASDI and RRTA taxes.

- **Interaction with other credits** - An employer may claim either the WOTC credit or the payroll tax exemption, but not both. A qualified employer that does not want to use the payroll tax holiday must elect out of the waiver.

- **Documentation** - The employee must sign an affidavit (Form W-11 or an equivalent form) to certify that they have not been employed for the 60 days prior to being hired. This form must be kept on file by the employer, but is not required to be submitted to the IRS.

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QUALIFIED EMPLOYEES FOR THE PAYROLL TAX EXEMPTION – ADDITIONAL REQUIREMENTS:

- ✓ **Unemployment period** - The 60 day unemployment period must be continuous.
- ✓ **Rehired workers** - An employer may apply the payroll tax exemption to wages paid to a rehired employee who is otherwise a qualified employee.
- ✓ **Recent Graduates** - The payroll tax exemption applies to an employee who is a student who recently graduated and who has been in school for part of the 60 day period if the employee is a qualified employee. It is not necessary that the individual was previously employed and has lost his or her job to be a qualified employee.
- ✓ **Temporary agencies** - The temporary agency can apply the exemption with respect to wages paid to a qualified employee of the temp agency. This is determined based on when the employee begins employment with the temporary agency, and not based on when the employee begins work at a client business of the temporary agency.
- ✓ **Self employment** – Self employment earnings are not considered "employment" for purposes of calculating the 60 day unemployment period.
- ✓ **Excluded related employees** - children or other descendants, siblings, parents or ancestors, uncles or aunts, nieces or nephews (or in-law relations of these types)
- ✓ **Affidavit** - The employer must have the signed affidavit by the time the employer files an employment tax return applying the payroll tax exemption.

  If the employer obtains the signed affidavit from the qualified employee after wages are paid to the employee, the employer can still apply the payroll tax exemption to determine its liability on these wages. In some cases this may require the filing of a corrected return for a prior quarter.
- ✓ **Cobra Premium Assistance Credit** – The Cobra credit and the payroll tax exemption may both be claimed for the same employee.
- ✓ **Retention credit and WOTC** – Employers that elected out of the payroll tax exemption may still claim the retention credit for employees for which the WOTC credit was claimed.
- ✓ **Electing out** – To elect out of the credit the employer simply pays the full payroll tax on Form 941.
- ✓ **Government Entities** – The Credit not applicable for government entities except public institutions of higher education.

KEY DATES:

02/03/2010 – Earliest hire date allowed

03/18/2010 – Wages qualify after this date

01/01/2011 – Worker must be hired in 2010

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RETENTION CREDIT

- **Credit amount** - For each qualified retained worker, a qualified employer's general business credit is increased by the lesser of: $1,000, or 6.2 percent of the retained worker's wages during a 52-week consecutive period.

- **Retained employees** - The Act defines a retained employee as one who:

  - ✓ Was a qualified employee as defined under the payroll tax exemption provisions;
  - ✓ Was employed by the qualified employer on any date during a tax year ending after March 18, 2010;
  - ✓ Continued in that employment for a period of at least 52 consecutive weeks and;
  - ✓ Earned wages during the last 26 weeks of that period equal to at least 80 percent of the wages for the first 26 weeks of the period.

- **Claiming the credit** - The credit will be claimed on the employer's 2011 income tax return.

- **Carry back limitation** - The credit applies for the first tax year in which the retained worker satisfies the 52-week test. It cannot be carried back to any tax year beginning before March 18, 2010.

SECTION 179 EXPENSING EXTENDED AT 2009 LEVELS

- The increase in the Code Sec. 179 expensing allowance (to a $250,000 dollar limitation and $800,000 investment limitation) that applies to tax years beginning in 2008 and 2009 is extended to tax years beginning in 2010.

HIRE ACT: OTHER PROVISIONS

- **COBRA premium assistance** - The eligibility period for the 65 percent COBRA premium assistance is extended through March 31, 2010, and eligibility for the subsidy is extended to certain individuals who lose their group health care coverage as a result of a reduction in hours of employment, followed by an involuntary termination of employment.

- **Credit for tax credit bond issuers** - Issuers of specified tax credit bonds can elect to claim a refundable tax credit in lieu of the credit that would ordinarily be allowed to the purchasers.

- **Qualified school construction bonds** - The allocation of a state's volume limitation is determined by the state education agency and any unused amounts allocated to large local education agencies by the IRS can be carried over.

- **Haiti contributions** - Calendar-year taxpayers can claim charitable contribution deductions on their 2009 returns for cash contributions made after January 11, 2010, and before March 1, 2010, for the benefit of victims of the 2010 earthquake in Haiti.

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HIRE ACT: OTHER PROVISIONS (CONTINUED)

- **Large corporations' estimated tax payments** - Corporations with $1 billion or more in assets must increase their estimated tax payments for July, August, and September of 2014, 2015, and 2019 to 156.25 percent, 121.50 percent, and 106.50 percent, respectively, of the amount otherwise due.

- **Elections to allocate interest on worldwide basis and expand the financial institution group delayed** - Implementation of the one-time election for worldwide affiliated groups to allocate interest expense on a worldwide basis is delayed for three years as is implementation of the one-time election to expand a financial institution group of a worldwide affiliated group.

HIRE ACT: NEW FOREIGN FINANCIAL REPORTING REQUIREMENTS

- **Filing requirement** - Individuals who hold any interest in specified foreign financial assets during the tax year must attach to their tax returns for the year certain information with respect to each asset if the aggregate value of all the assets exceeds $50,000

- **Assets required to be reported** - A foreign financial asset includes:
  - ✓ Any depository, custodial, or other financial account maintained by a foreign financial institution,
  - ✓ Any of the following assets that are not held in an account maintained by a financial institution:
    - any stock or security issued by a person other than a U.S. person,
    - any financial instrument or contract held for investment that has an issuer or counterparty other than a U.S. person, and
    - Any interest in a foreign entity.

- **Comparison to FBAR** - The HIRE Act broadens the reporting requirements and extends the rules to ownership of foreign assets, such as foreign stocks or securities and interests in foreign entities, not covered by the FBAR reporting regime. While the threshold reporting requirement amount—$50,000—exceeds the threshold relating to FBARs, the amount is low enough to affect many, if not most, taxpayers with foreign assets. Other significant differences exist. While the FBAR reporting regime covers those having signatory or other authority, the new reporting regime focuses on ownership.

- **Penalties** - An individual who fails to furnish the required information with respect to any tax year at the prescribed time and in the prescribed manner is subject to a penalty of $10,000

- **Effective date** - The provision applies to tax years beginning after March 18, 2010

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