

Hiring Incentives to Restore Employment Act

H.R. 2847

On March 18, 2010, President Obama signed P.L. 111-147, the *Hiring Incentives to Restore Employment Act* (HIRE) into law. While the legislation contains tax breaks to encourage employers to hire unemployed workers, there are only a handful of provisions that directly affect the average tax return. Those provisions are discussed in detail in this summary. In general, the HIRE Act provides the following key changes:

- Payroll tax forgiveness. Employers are exempt from paying the employer's share of social security taxes on certain wages paid in 2010 to newly-hired, qualified unemployed workers.
- Tax credit for employers who retain qualified unemployed workers.
- Increase in Section 179 expense deduction.
- Changes to the estimated tax payments of large corporations in future tax years.
- New rules to reduce offshore noncompliance.

Payroll Tax Forgiveness

Qualified employers who hire unemployed workers after February 3, 2010, and before January 1, 2011, may qualify for a 6.2% payroll tax incentive, in effect exempting them from their share of social security taxes or railroad retirement tax (Tier I) on wages paid to these workers after March 18, 2010 and before January 1, 2011. This reduced tax withholding will have no effect on the employee's future social security benefits, and employers would still need to withhold the employee's 6.2% share of social security taxes, as well as income taxes. The employer and employee's share of Medicare taxes would also still apply to these wages.

A qualified employer is any employer other than the United States, any state, or any local government. However, a qualified employer includes public higher education institutions. The waiver of the social security tax, or the railroad retirement tax applies automatically unless the employer elects out. The IRS has not yet issued guidance on how the employer would elect out of this provision.

Qualified employees are individuals who:

1. Begin employment with the employer after February 3, 2010, and before January 1, 2011;
2. Certifies by signed affidavit under penalties of perjury, that he or she has not been employed for more than 40 hours during the 60-day period ending on the date employment began;
3. Is not hired to replace other employees of the employer unless the employee quits or was terminated for cause;
4. Is not related to the employer in a way that would make the employer ineligible for the work opportunity credit. Such relationships are defined under §3111(d)(3) and appears to not include a spouse of the employer.

New Form W-11, *Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit*, is used by employees to confirm that they are a qualified employee under the *HIRE Act*.

Employment Tax Credit

Employers may claim a general business credit for a portion of the wages paid to qualified retained employees. Qualified employees have the same definition for purposes of this credit as for the payroll tax forgiveness provision. The workers must be employed by the employer for a period of not less than 52 consecutive weeks, and their wages for such employment during the last 26 weeks of the period must equal at least 80% of the wages for the first 26 weeks of the period. The credit equals the lesser of 6.2% of the wages paid during the 52-week period, or \$1,000. The credit cannot be carried back but may be carried forward.

Section 179 Expensing

The increased §179 expensing dollar limitation of \$250,000 and the \$800,000 purchase limitation has been extended to tax years beginning in 2010. In addition, the provision in the law that these limitations be indexed for inflation has been eliminated. This means that absent any further legislation, the dollar and purchase limitations will be reduced to \$25,000 and \$200,000 respectively for tax years beginning in 2011 and will not be indexed for inflation in future years.

Corporate Estimated Tax Payments

The estimated tax payments due in July, August, and September of 2014, 2015, and 2019 for corporations with assets of \$1 billion or more have increased substantially.

- 157.75% of the amount otherwise due on July, August, or September 2014;
- 121.5% of the amount otherwise due on July, August, or September 2015;
- 106.5% of the amount otherwise due on July, August, or September 2019.

Off-Shore Compliance

The *HIRE Act* makes some changes to the law with regard to the reporting requirements for off-shore assets and financial accounts and withholding of tax on certain payments.

Withholdable Payments

In general, payments of fixed or determinable annual or periodic payments (FDAP) made to a foreign person from U.S. sources is subject to a 30% withholding tax unless the foreign person qualifies for an exemption or reduced rate under a treaty.

Generally effective for payments made after December 31, 2012, a withholding agent must deduct and withhold tax equal to 30% of any withholdable payment made to a foreign financial institution that fails to meet certain requirements. A withholdable payment is non-effectively connected income that is:

1. U.S. source FDAP income;
2. U.S. source gross proceeds from the sale of property that produces interest and dividend income; and
3. Interest on deposits with foreign branches of domestic commercial banks.

A foreign financial institution can avoid the 30% withholding by entering into an agreement (Sec. 1471(b) agreement) with the IRS that satisfies the following requirements:

1. Obtain information regarding each holder of an account maintained by the institution to determine which accounts are U.S. accounts;
2. Comply with verification and due diligence procedures prescribed by IRS to identify U.S. accounts;
3. Report annually for any U.S. account, identifying information as to the specified account holder (i.e., any U.S. person other than a corporation whose stock is regularly traded on an established market, or certain affiliates, or certain exempt or special corporations or entities) and any substantial owner of a U.S. owned foreign entity;
4. Deduct and withhold 30% from certain pass-through payments made to a noncompliant account holder or certain other foreign financial institutions;
5. Comply with IRS requests for additional information for any U.S. account maintained by the institution; and
6. Attempt to obtain a waiver where a foreign law would (but for a waiver) prevent the reporting of information required by these rules for any U.S. account maintained by the institution, and, if a waiver is not obtained, to close the account.

Foreign Asset Disclosure

For tax years beginning after March 18, 2010, individuals with an interest in a "specified foreign financial asset" during the tax year must attach a disclosure statement to their income tax return for any year in which the aggregate value of all such assets is greater than \$50,000.

"Specified foreign financial assets" are:

1. Depository or custodial accounts at foreign financial institutions, and
2. To the extent not held in an account at a financial institution,
 - (a) Stocks or securities issued by foreign persons,
 - (b) Any other financial instrument or contract held for investment that is issued by or has a counterparty that is not a U.S. person, and

(c) Any interest in a foreign entity.

Individuals who fail to make the required disclosures are subject to a penalty of \$10,000 for the tax year. An additional \$10,000 penalty per each 30 days of failure to disclose (or fraction of such 30-day period) applies if the failure to disclose continues for more than 90 days after IRS notifies an individual by mail of his failure to disclose, up to a \$50,000 maximum penalty. No penalty is imposed where an individual can establish that the failure was due to reasonable cause and not willful neglect. A foreign law prohibition against disclosure of the required information doesn't constitute reasonable cause.

Penalty for Understatement of Foreign Financial Assets

For tax years beginning after March 18, 2010, a 40% accuracy-related penalty is imposed on any understatement attributable to an undisclosed foreign financial asset [§6662(b)(7)]. The term "undisclosed foreign financial asset" includes all assets subject to information reporting requirements under §6038, §6038B, §6038D, §6046A, or §6048.

Statute of Limitations

For returns filed after March 18, 2010, and for any other return for which the §6501 assessment period has not yet expired as of March 18, 2010, a new 6-year limitations period applies for assessment of tax on understatements of income attributable to foreign financial assets [§6501(e)(1)(A)]. This limitations period applies if there is an omission of gross income in excess of \$5,000, and the omitted gross income is attributable to an asset for which information reports are required under Code Sec. 6038D.

Foreign Trusts

Effective on March 18, 2010, in determining whether a foreign trust has a U.S. beneficiary under §679, an amount is treated as accumulated for the benefit of a U.S. person even if the U.S. person's interest in the trust is contingent on a future event. If any person has the discretion to make a distribution from the trust to, or for the benefit of, any person, the trust is treated as having a U.S. beneficiary unless:

1. The trust terms specifically identify the class of persons to whom the distributions may be made; and
2. None of those persons is a U.S. person during the tax year [§679(c)(4)].

For tax years beginning after March 18, 2010, a U.S. person who is treated as an owner of any portion of a foreign trust must provide information as IRS may require with respect to the trust, in addition to ensuring that the trust complies with its reporting obligations [§6048(b)(1)].