



TO: Our Clients
FROM: Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
DATE: May 2010
RE: Employer Tax Benefits for Newly-Hired Employees

MEMORANDUM

In March 2010, President Obama signed the Hiring Incentives to Restore Employment Act (the “**HIRE Act**”). Most significantly for employers now hiring, the HIRE Act provides employers (a) a Social Security payroll tax exemption for hiring unemployed workers, and (b) an additional tax credit for retaining the new hires for at least one year.

Social Security Tax Exemption for Newly-Hired Workers

The HIRE Act provides employers with an exemption from paying their portion of the 6.2% Social Security payroll tax for each worker hired in 2010¹ who has been unemployed for at least 60 days. To qualify for the Social Security payroll tax exemption, an employer must:

- hire a new employee from February 4, 2010 through December 31, 2010; and
- obtain a signed affidavit from the newly-hired employee on Form W-11 certifying, under penalty of perjury, that the new employee worked fewer than 40 hours during the 60-day period ending on the first day of employment.²

The Social Security payroll tax exemption is effective from March 19, 2010 through December 31, 2010.³ Eligible employers will claim the payroll tax exemption on a Form 941.⁴

¹ The 6.2% Social Security payroll tax is imposed on both employers and employees. The employer and employee each pay 6.2% of the first \$106,800 of the employee’s income in 2010 as Social Security payroll tax. As a result, the HIRE Act exemption for the employer portion of Social Security payroll tax can save employers up to \$6,621.60 per newly-hired employee in 2010.

² Although Form W-11 (HIRE Act Employee Affidavit) does not get filed with the IRS, it must be retained with other payroll and income tax records. It is available here: <http://www.irs.gov/pub/irs-pdf/fw11.pdf>.

³ Note that employers must continue to withhold the employee’s portion of the 6.2% Social Security payroll tax as well as other applicable employment and income taxes. The Social Security tax exemption has no effect on the employee’s Social Security payroll tax obligations for 2010, or his or her future Social Security benefits.

⁴ The IRS has released a revised Form 941 (Employer’s Quarterly Federal Tax Return) to reflect the HIRE Act that is available here: <http://www.irs.gov/pub/irs-pdf/f941.pdf>. The instructions for newly revised Form 941 are available here: <http://www.irs.gov/pub/irs-pdf/i941.pdf>.

Additional Tax Credit for Employers Retaining New Hires

The HIRE Act also provides employers with an income tax credit for each qualifying worker hired from February 4, 2010 through December 31, 2010 and employed for at least 52 consecutive weeks thereafter. The amount of the credit is the lesser of (a) \$1,000, or (b) 6.2% of wages paid to the qualifying worker. Qualifying workers must receive wages during the second 26 weeks of employment that are at least 80% of the wages received during the first 26 weeks of employment. Employers can claim this credit when they file their 2011 income tax returns.

Limitations and Suggestions

Note that neither tax benefit under the HIRE Act is available if an employer replaces an existing employee with a newly-hired worker, unless the existing employee terminates voluntarily or was terminated for cause. Finally, neither tax benefit is available to an employer hiring family members and specified relatives, including family members of anyone who owns more than 50% of the equity interests of the employer.

Employers should implement procedures to ensure that all eligibility (including the new hire's certification of prior unemployment on Form W-11) and wage information is documented and maintained properly.

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For additional information regarding the matters addressed in the memorandum, please contact a member of the Gunderson Dettmer team with whom you regularly work.

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