



Tax Breaks, Incentives Offered in HIRE Act

It is important for taxpayers to act quickly in order to receive the benefits offered by the Hiring Incentives to Restore Employment (HIRE) Act. Signed by President Obama in March, the act is aimed at boosting job creation. The two most important provisions are a tax credit and a limited “payroll tax holiday”, both of which encourage companies to hire unemployed workers in 2010. Even though some of the benefits may not be available until your next taxable year, gathering information now will help you easily qualify next year. Detailed information is outlined below.

Credit for retaining qualifying new hires

The HIRE Act provides employers with a tax credit for wages paid to retained workers (for tax years ending after the date of passage) who are qualified individuals that:

- are employed by the employer on any date during the tax year;
- continue to be employed by the employer for a period of not less than 52 consecutive weeks; and,
- receive wages for such employment during the last 26 weeks of the period that are equal to at least 80 percent of the wages received during the first 26 weeks of the period.

Qualified individuals are defined as individuals who:

- begin work for a qualified employer after Feb. 3, 2010 and before Jan. 1, 2011;
- certify by signed affidavit (under penalties of perjury) that they were employed for a total of 40 hours or less during the 60-day period ending on the date the employment begins;
- were not employed to replace another employee of the employer unless that former employee separated from employment voluntarily or for cause; and,
- are not related to the employer.

A qualified employer is any employer other than a federal, state or local employer (or government instrumentality). Public higher education institutions, however, do qualify as qualified employers.

The credit for retained workers is included by increasing the amount of the sec. 38(b) business credit. The amount of increase is equal to the lesser of:

- \$1,000 or 6.2% of the wages paid to the retained worker during the 52 consecutive week period.

The HIRE Act also provides qualified employers with relief from the employer-portion of Social Security's Old-Age, Survivors, and Disability Insurance (OASDI) taxes with respect to qualified individuals. The underlying wages must be paid in the last three quarters of 2010. And, these wages must be paid with respect to services performed in a trade or business of a qualified employer or paid in furtherance of the activities constituting the basis of the employer's exemption under section 501. The amount that would have been relieved if the holiday had been in place during the first quarter of 2010 will be treated as an OASDI tax payment made by the employer during the second quarter of 2010.

Build America Bonds

The HIRE Act extends the Build America Bond Program to include issuers of:

- Section 54 Clean Renewable Energy Bonds;
- Section 54B Qualified Forestry Conservation Bonds;
- Section 54E Qualified Zone Academy Bonds; and,
- Section 54F Qualified School Construction Bonds.

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Build American Bonds were added to the Code as section 54A by the American Recovery and Reinvestment Tax Act of 2009. In general, section 54A provides a credit to issuers or holders of Build America Bonds equal to 35 percent of the interest payable on the bond in 2010. The credit can be claimed against the alternative minimum tax and unused credits can be carried over. A Build America Bond is any state or local obligation (other than a private activity bond) with interest payments that are otherwise tax-exempt under section 103. These bonds must be issued before 2011 and the issuer must elect to have such bonds treated as Build America Bonds.

Other changes

The HIRE Act also:

- extends the American Reinvestment and Recovery Act of 2009 provision that doubles the amount small businesses can immediately write off on their tax return for capital investments and purchases of new equipment made in 2010 from \$125,000 to \$250,000.
- provides the Highway Trust Fund \$19.5 billion so it can meet its financial obligations through 2011 while providing that not less than 10% of the expenditures in related highway programs be awarded to small business concerns owned or controlled by socially and economically disadvantaged individuals.
- increases the transportation funding baseline from which future legislation is written and shifts estimated tax payments of large corporations (those with at least \$1 billion in assets) for July, August, or September of 2015 and 2019 so that a greater amount is due for those payments and a correspondingly lower amount is due for the subsequent payment in order to comply with Congress's "pay as you go" budgetary rules.

The HIRE Act is largely paid for by the inclusion of the Foreign Account Tax Compliance Act of 2009 (FATCA), which increases disclosure and withholding requirements for offshore financial institutions. Provisions include:

- imposing a 30 percent tax withholding on payments to either: foreign banks and trusts that fail to identify U.S. accounts and their owners and assets to the IRS; or, foreign corporations that do not supply the name, address, and tax identification number of any U.S. individual with at least 10 percent ownership in the firm;
- extending bearer-bond tax penalties to any such bonds marketed to offshore investors, and prevent the U.S. government from issuing bearer bonds;
- imposing penalties as high as \$50,000 on U.S. taxpayers who own at least \$50,000 in offshore accounts or assets but fail to report the accounts on their annual income tax return;
- levying a 40 percent penalty on the amount of any understatement attributed to undisclosed foreign assets;
- extending to six years the statute of limitations for "substantial" omissions exceeding \$5,000 and 25 percent of reported income derived from offshore assets;
- requiring shareholders in passive foreign investment companies to file annual returns;
- mandating that financial firms file electronic returns with respect to withholding taxes, even if they file fewer than 250 returns annually;
- codifying Treasury regulations that treat foreign trusts as having U.S. beneficiaries if any current, future, or contingent beneficiary as a U.S. person;
- allowing the Treasury Department to presume that a foreign trust has U.S. beneficiaries if a U.S. person directly or indirectly transfers property to the trust;
- establishing a \$10,000 minimum failure-to-file penalty for certain foreign-trust related information returns; and,

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- Subjecting dividend equivalent payments included in notional principal contracts and paid to overseas corporations to the same 30 percent withholding tax.

An additional \$10 billion would come from a three-year delay, until 2021, of the worldwide interest allocation.

Act now

Taxpayers have limited time to act on some benefits of this legislation. In order to qualify for the tax credit, retained workers must begin work before the end of 2010 and remain employed for 52 weeks. Because the credit is only available for workers that were employed for 52 weeks, the increased credit will not be available until the return for the tax year that includes the 52nd week is filed. Also, only the OADSI taxes due during 2010 are eligible for relief. Issuers of Build America Bonds must also act quickly because only the interest payable in 2010 is eligible for a credit.

Contact us

If you have any further questions, please contact your Elliott Davis tax advisor.

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