

## **HIRE Act**

Under the Hiring Incentives to Restore Employment (HIRE) Act, enacted March 18, 2010, two new tax benefits are available to employers who hire certain previously unemployed workers (“qualified employees”).

The first, referred to as the payroll tax exemption, provides employers with an exemption from the employer’s 6.2 percent share of social security tax on wages paid to qualifying employees, effective for wages paid from March 19, 2010 through December 31, 2010.

In addition, for each qualified employee retained for at least 52 consecutive weeks, businesses will also be eligible for a general business tax credit, referred to as the new hire retention credit, of 6.2 percent of wages paid to the qualified employee over the 52 week period, up to a maximum credit of \$1,000.

### **FAQs about the Payroll Tax Exemption and Qualified Employers**

QR1: What is the payroll tax exemption?

A-QR1: The payroll tax exemption is an exemption from the employer’s 6.2 percent share of social security tax on all wages paid to qualified employees from March 19, 2010 (the day after the date of enactment of the HIRE Act) through December 31, 2010. The employee’s 6.2 percent share of social security tax and the employer and employee’s shares of Medicare tax still apply to all wages.

QR2: Which employers qualify for the payroll tax exemption?

A-QR2: Taxable businesses and tax-exempt organizations qualify for the payroll tax exemption. Such employers in U.S. territories (i.e., American Samoa, Commonwealth of Northern Mariana Islands, Guam, the U.S. Virgin Islands and Puerto Rico) that are subject to federal social security tax also qualify for the payroll tax exemption. Federal, State or local government employers generally do not qualify for the payroll tax exemption. However, public colleges and universities can qualify for the exemption. Indian tribal governments also qualify for the exemption.

QR3: Does the payroll tax exemption apply to household employers?

A-QR3: No. The payroll tax exemption applies only to wages paid to a qualified employee performing services in the employer’s trade or business or in activities in furtherance of a tax-exempt organization’s exempt purpose.

QR4: If an employer starts a new business, does the payroll tax exemption apply to wages paid to employees hired for the new business?

A-QR4: Yes, if they are qualified employees.

QR5: If an employee laid off in 2009 has been receiving COBRA premium assistance, for which the employer has been taking the COBRA premium assistance credit, and the employer rehires the employee, can the employer take the payroll tax exemption under the HIRE Act for wages paid to the employee?

A-QR5: Yes, if the employee is a qualified employee.

### **FAQs About Qualified Employees**

QE1: Who are qualified employees?

A-QE1: Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, and who are not family members of or related in certain other ways to the employer.

QE2: Do the qualified employees need to do anything to make it possible for their employer to claim the payroll tax exemption?

A-QE2: Yes, qualified employees must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment. The IRS has issued form W-11 for this purpose.

QE3: Is the 60-day period continuous and can it span 2009-2010?

A-QE3: The 60-day period must be continuous and can span 2009-2010.

QE4: Does the payroll tax exemption apply to wages paid to a qualified employee hired to replace an existing worker whose employment terminated?

A-QE4: The payroll tax exemption does not apply to wages paid to an employee who is hired to replace an existing worker, unless the existing worker terminated employment voluntarily or was terminated for cause.

QE5: Does the payroll tax exemption apply to wages paid to an employee who was previously laid off and then rehired by the same or a related employer after a 60-day period?

A-QE5: Yes, an employer may apply the payroll tax exemption to wages paid to a rehired employee who is otherwise a qualified employee.

QE6: If an employer lays an employee off because of lack of work and later, when work picks up, hires a new employee, can the payroll tax exemption apply to wages paid to the new employee?

A-QE6: Yes, if the new employee is a qualified employee (i.e., was employed for less than 40 hours during the prior 60 days).

QE7: Does the payroll tax exemption apply only if the employer previously laid employees off?

A-QE7: No, the payroll tax exemption can apply to wages paid to any qualified employee.

QE8: If an employer hires a recent graduate who has been in school for some or all of the 60 days preceding the start of his employment, does the payroll tax exemption apply to wages paid to the employee?

A-QE8: Yes, 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.

### **FAQs About Claiming the Payroll Exemption**

PE1: How does the employer claim the payroll tax exemption for wages paid to qualified employees?

A-PE1: The payroll tax exemption is claimed on Form 941, Employer's QUARTERLY Federal Tax Return, beginning with the second quarter of 2010.

PE2: How does the employer claim the payroll tax exemption for wages paid to qualified employees during the period March 19 through March 31, 2010 (the first quarter of 2010)?

A-PE2: The payroll tax exemption for wages paid during this period will be claimed on the employer's Form 941 for the second quarter of 2010.

PE3: Can an employer claim the COBRA premium assistance credit and the payroll tax exemption for new hires on the same employment tax return?

A-PE3: Yes.

PE4: How does application of the payroll tax exemption to wages paid to a qualified employee affect the availability of the Work Opportunity Tax Credit with respect to that employee?

A-PE4: If an employer applies the payroll tax exemption to wages paid to a qualified employee, such wages paid to the employee during the one-year period beginning with the employee's hiring date may not be taken into account for purposes of the Work Opportunity Tax Credit. An employer that wishes to claim the Work Opportunity Tax Credit with respect to a qualified employee can elect out of the payroll tax exemption with respect to wages paid to that qualified employee.

### **Business Credit for Retention of Certain Newly Hired Individuals in 2010**

Q: What is the new hire retention credit and what does it apply to?

A: This is a general business credit to encourage retention of the new hires. The employer may claim the credit for each employee who is a qualified employee for purposes of the payroll tax exemption and who remains an employee for 52 consecutive weeks, provided that the employee's pay does not decrease significantly in the second half of the year. The amount of the credit is the lesser of \$1,000 or 6.2 percent of wages (as defined for income tax withholding purposes) paid by the employer to the retained qualified employee during the 52 consecutive week period. The credit cannot be carried back but may be carried forward.

Q: How will the new hire retention credit be claimed?

A: The new hire retention credit will be claimed on the employer's 2011 income tax return.

**SEE NEXT PAGE FOR W-11 FORM!!**

# Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit

▶ **Do not send this form to the IRS. Keep this form for your records.**

**To be completed by new employee. Affidavit is not valid unless employee signs it.**

I certify that I have been unemployed or have not worked for anyone for more than 40 hours during the 60-day period ending on the date I began employment with this employer.

Your name \_\_\_\_\_ Social security number ▶ \_\_\_\_\_

First date of employment \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Name of employer \_\_\_\_\_

Under penalties of perjury, I declare that I have examined this affidavit and, to the best of my knowledge and belief, it is true, correct, and complete.

Employee's signature ▶ \_\_\_\_\_ Date ▶ \_\_\_\_ / \_\_\_\_ / \_\_\_\_

## Instructions to the Employer

Section references are to the Internal Revenue Code.

### Purpose of Form

Use Form W-11 to confirm that an employee is a qualified employee under the HIRE Act. You can use another similar statement if it contains the information above and the employee signs it under penalties of perjury.

Only employees who meet all the requirements of a qualified employee may complete this affidavit or similar statement. You cannot claim the HIRE Act benefits, including the payroll tax exemption or the new hire retention credit, unless the employee completes and signs this affidavit or similar statement under penalties of perjury and is otherwise a qualified employee.

A "qualified employee" is an employee who:

- begins employment with you after February 3, 2010, and before January 1, 2011;
- certifies by signed affidavit, or similar statement 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 the employee begins employment with you;
- is not employed by you to replace another employee unless the other employee separated from employment voluntarily or for cause (including downsizing); and
- is not related to you. An employee is related to you if he or she is your child or a descendent of your child,

your sibling or stepsibling, your parent or an ancestor of your parent, your stepparent, your niece or nephew, your aunt or uncle, or your in-law. An employee also is related to you if he or she is related to anyone who owns more than 50% of your outstanding stock or capital and profits interest or is your dependent or a dependent of anyone who owns more than 50% of your outstanding stock or capital and profits interest.

If you are an estate or trust, see section 51(i)(1) and section 152(d)(2) for more details.



**Do not send this form to the IRS. Keep it with your other payroll and income tax records.**