

Tax Advice & Controversy Client Service Group

To: Our Clients and Friends

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“HIRE Act” Offers Tax Incentives to Hire and Retain Unemployed Workers

The “Hiring Incentives to Restore Employment Act of 2010” (the “HIRE Act”), signed into law by the President on March 18, 2010, provides several tax incentives to businesses to hire and retain unemployed workers. The HIRE Act also includes a one-year extension of the enhanced small business expensing option under section 179 and provides a direct payment option to issuers of certain tax credit bonds.

Payroll Tax Holiday

To stimulate hiring unemployed workers, the HIRE Act exempts private sector businesses, not-for-profit companies and institutions of higher education that hire “qualified individuals” from paying the employer’s 6.2% share of Social Security payroll tax. The exemption applies to wages paid to the qualified individual with respect to employment during the period from March 19, 2010 through December 31, 2010. A qualified individual is anyone who:

- Begins employment on or after February 3, 2010 and before January 1, 2011;
- Certifies by 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 the individual begins employment;
- Is not employed to replace another employee unless that other employee separated from employment voluntarily or for cause; and
- Is not related to the employer in a way that would disqualify him or her for the Work Opportunity Tax Credit under Internal Revenue Code Section 51(i)(1).

The Payroll Tax Holiday does not apply with respect to wages paid during the first calendar quarter of 2010, but the amount by which the Social Security payroll tax would have been reduced under the Payroll Tax Holiday during the first calendar quarter is applied against the tax imposed on the employer for the second calendar quarter of 2010.

Tax Credit for Retained Workers

For any tax year ending after March 18, 2010, the HIRE Act also provides up to a one-time \$1,000 credit for each "retained worker." A retained worker is any "qualified individual," as defined above with respect to the Payroll Tax Holiday:

- Who was employed by the taxpayer on any date during the tax year;
- Who was so employed for a period of not less than 52 consecutive weeks; and
- Whose wages for such employment during the last 26 weeks of the period equaled at least 80% of the wages for the first 26 weeks of the period.

Under the HIRE Act, the current year business credit under Internal Revenue Code Section 38(b) for the tax year is increased for each retained worker with respect to which the 52-week requirement above is first satisfied during the tax year by the lesser of either (i) \$1000 or (ii) 6.2% of the wages paid by the taxpayer to the retained worker during the consecutive 52-week period.

Extension of the Section 179 Expensing Rules

Section 179 allows qualifying businesses the option to currently deduct the cost of business machinery and equipment instead of recovering it through depreciation deductions over several years. For tax years beginning in 2010, the maximum amount that a business may expense is \$250,000, and the expensing election begins to phase out when a business buys more than \$800,000 of expensing-eligible assets. These dollar limits are the same as those that were in effect for 2008 and 2009.

Direct Payment Option for Certain Tax Credit Bonds

For bonds originally issued after March 18, 2010, the HIRE Act allows an issuer of certain "specified tax credit bonds" to make an irrevocable election on or before the issue date of the bonds in order to receive a direct payment in lieu of providing a tax credit to the holder of the bonds. Specified tax credit bonds include new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds.

To discuss this issue further, please speak to your Bryan Cave contact, or to:

Anthony R. Boggs, Partner
(404) 572-6847
Anthony.boggs@bryancave.com

Erika S. Labelle, Associate
(314) 259-2454
Erika.labelle@bryancave.com