

HIRE Act - Exemption for Certain Payroll Taxes

Last month Congress passed the Hiring Incentives to Restore Employment Act (the HIRE Act). Under that legislation, qualified employers are exempt from paying the 6.2% OASDI portion of Social Security tax for qualified new employees from March 19, 2010 through December 31, 2010.

To be a qualified new employee, the following items must apply:

- The new employee must begin work after February 3, 2010.
- The new employee must have been previously unemployed and must provide a signed affidavit that he or she has not been employed more than 40 hours during the 60-day period ending on the date the individual begins employment.
- The new employee does not replace other employees unless those employees left voluntarily or for cause.
- The new employee is not related to the employer under certain rules explained on Form W-11.

The IRS has released [Form W-11](#), which is the affidavit that the employee must sign concerning his or her employment status prior to beginning work. The employer does not need to submit the affidavit to the IRS. It is maintained with payroll records.

The IRS is currently updating the second quarter Form 941. On that form, the employer will be able to receive credit for the first quarter OASDI taxes already paid that were eligible for the exemption and will also claim its exemption for the appropriate second quarter payroll tax exemption.

Form W-2 and Form W-3 will also be updated for 2010 to include a new code to indicate wages that qualified for the payroll tax exemption.

The IRS has released a set of frequently asked questions and posted them on its web site (www.irs.gov) concerning what taxes are exempted, which employees qualify for the exemption and how to claim the exemption. It also addresses the fact that wages for which the payroll tax exemption is claimed may not also count towards a Work Opportunity Tax Credit.

In addition to an exemption for the employer's share of OASDI taxes for 2010, the employer may qualify to receive a tax credit for the qualified employee if the new employee is retained for at least 52 consecutive weeks and certain parameters are met. The credit is the lesser of 6.2% of the wages paid for the qualified new employee during the 52 week period, or \$1,000. For businesses with a calendar year-end, this credit will be claimed on the 2011 tax return.

Planning is necessary in order to ensure that you track which new employees qualify for the payroll tax exemption and later the tax credit. Also, planning should take into consideration whether their wages would be eligible for the Work Opportunity Tax Credit and, if so, which is a better alternative.

For more information, contact Joyce Waterbury at 919.301.6715.

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