

# William E. Hesch CPAs, LLC

Certified Public Accountants



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Dear Client and Friends:

On March 18, 2010, President Obama signed into law the year's first major tax legislation-the Hiring Incentives to Restore Employment Act(HIRE Act). The new law is intended to stimulate employment, employee retention and capital investment. Under the HIRE Act, a qualified employer's 6.2 percent share of OASDI Social Security tax liability is forgiven for new hires, and a general business credit is allowed for each retained worker that satisfies a minimum employment period.

**Payroll Tax Forgiveness for Hiring Unemployed Workers.** The HIRE Act provides relief from the employer share of OASDI(social security) taxes on wages paid by a qualified employer with respect to certain covered employment. Covered employment is limited to service performed by a qualified individual in a trade or business of a qualified employer, or in the furtherance of the activities related to the purpose or function constituting the basis of the employer's exemption under Code Sec. 501. This provision applies to wages paid beginning March 19, 2010 and ending on December 31, 2010.

A qualified employer is an employer other than the United States, any State, any local government, or any instrumentality thereof. A qualified employer may include a public higher education institution.

A qualified individual is any individual who:

1. begins work for a qualified employer after February 3, 2010, and before January 1, 2011;
2. certifies by signed affidavit New form W-11(under penalties of perjury) that he or she was employed for a total of 40 hours or less during the 60-day period ending on the date such employment begins;
3. is not employed to replace another employee of the employer unless such employee separated from employment voluntarily or for cause; and
4. is not a related party.

A qualified employee need not be someone collecting unemployment compensation or who has lost a job. It could, for example, be a student hired upon graduation provided they have not worked more than 40 hours in the 60 days prior to the start of employment.

The maximum exemption is \$6,621.60 per qualified employee. This limit would only be reached if the qualified employee is paid at least the 2010 OASDI wage limit of \$106,800 during the applicable pay period.

The exemption applies to both full-time and part-time employees.

Employers who qualify for the OASDI forgiveness in the first quarter of 2010 will receive the benefit through a credit toward general second quarter 2010 OASDI liability on Form 941; they can't simply stop paying the 6.2 percent OASDI tax immediately on wages paid to new hires. After the first quarter, however, the employer does not pay the 6.2 percent tax as wages are paid.

Claiming the OASDI tax exemption causes the wages paid to the worker during his first year to not be

usable in computing the Work Opportunity Tax Credit. If the employer prefers to claim the WOTC, it should elect not to claim the OASDI tax exemption. The JCT explanation of HIRE implies that the election can be made per qualified employee. Thus, employers who hire workers eligible for both the WOTC and the OASDI tax exemption, must determine which provision is more beneficial.

While the verification that a new worker is a "qualified employee" falls upon the worker, employers would be wise to ask basic questions to be sure an employee is not improperly providing an affidavit. HIRE provides no penalty for individuals who provide a false affidavit yet it appears that the employer would lose the exemption if the worker is not qualified.

A qualified employer may not receive the work opportunity tax credit on wages paid to an individual during the one-year period beginning on the hire date for the same wages used to qualify for the forgiveness of payroll tax. However, an employer may elect to not have payroll tax forgiveness apply.

**Business Credit for Retention of Certain Newly Hired Individuals.** In addition under the HIRE Act, an employer may claim a general business income tax credit equal to the lesser of \$1,000 or 6.2 percent of salary for each retained worker that satisfies a minimum employment period. Generally, a retained worker is an individual who is a qualified individual as defined for purposes of the provision for payroll tax forgiveness. However, the credit is available only with respect to such individual, if the individual:

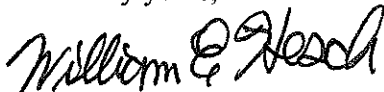
1. is employed by the employer on any date during the tax year;
2. continues to be employed by the employer for a period of not less than 52 consecutive weeks; and
3. receives wages for such employment during the last 26 weeks of such period that are at least 80-percent of such wages during the first 26 weeks of such period.

Therefore, an employer will qualify for the full \$1,000 credit for each new hire with a salary over the 52 week retention period of at least \$16,129. An employer that hires some part-time new employees, in addition to full-time employees, is entitled to the full \$1,000 credit, if, of course, the part-time or full-time employee decides to stay for 52 weeks.

Because payroll taxes are deductible as an ordinary and necessary business expense, employers may have a correspondingly smaller business expense deduction on their 2010 tax returns. By combining the benefit of the business credit for new hires with the forgiveness incentive, employers in the 35% tax brackets will realize a net tax benefit of just over four percent of wages paid to qualified new employees, up to the \$106,800 social security maximum wage base. Therefore, for the maximum \$6,621.60 tax forgiveness for a new hire, a net benefit of approximately \$4,304 would be realized.

If you have any questions regarding the hiring incentives under the HIRE Act, please call our office at your earliest convenience.

Sincerely yours,



William E. Hesch

Certified Public Accountant



Form to Claim Payroll Tax Exemption for Hiring New Workers Now Available

IR-2010-54, May 18, 2010

WASHINGTON — The Internal Revenue Service has issued the newly revised payroll tax form that most eligible employers can use to claim the special payroll tax exemption that applies to many new workers hired during 2010.

Designed to encourage employers to hire and retain new workers, the payroll tax exemption and the related new hire retention credit were created by the Hiring Incentives to Restore Employment (HIRE) Act signed by President Obama on March 18.

Employers who hire unemployed workers this year (after Feb. 3, 2010, and before Jan. 1, 2011) may qualify for a 6.2-percent payroll tax incentive, in effect exempting them from the employer's share of Social Security tax on wages paid to these workers after March 18. This reduction will have no effect on the employee's future Social Security benefits. 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.

In addition, for each qualified employee retained for at least a year whose wages did not significantly decrease in the second half of the year, businesses may claim a new hire retention credit of up to \$1,000 per worker on their income tax return. Further details on both the tax credit and the payroll tax exemption can be found in a recently-expanded list of answers to [frequently-asked questions](#) about the new law now.

How to Claim the Payroll Tax Exemption

Form 941, Employer's QUARTERLY Federal Tax Return, revised for use beginning with the second calendar quarter of 2010, will be filed by most employers claiming the payroll tax exemption for wages paid to qualified employees. The HIRE Act does not allow employers to claim the exemption for wages paid in the first quarter but provides for a credit in the second quarter. The [instructions](#) for the new Form 941 explain how this credit for wages paid from March 18 through March 31 can be claimed on the second quarter return.

The HIRE Act requires that employers get a signed statement from each eligible new hire, certifying under penalties of perjury, that he or she was not employed for more than 40 hours during the 60 days before beginning employment with that employer. Employers can use new [Form W-11](#), Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, released last month, to meet this requirement. Though employers need this certification to claim both the payroll tax exemption and the new hire retention credit, they do not file these statements with the IRS. Instead, they must retain them along with other payroll and income tax records.

These two tax benefits are especially helpful to employers who are adding positions to their payrolls. New hires filling existing positions also qualify as long as they are replacing workers who left voluntarily or who were terminated for cause and otherwise are qualified employees. Family members and other relatives do not qualify for either of these tax benefits.

Businesses, agricultural employers, tax-exempt organizations, tribal governments and public colleges and universities all qualify to claim the payroll tax exemption for eligible newly-hired employees. Household employers and federal, state and local government employers, other than public colleges and universities, are not eligible.

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Page Last Reviewed or Updated: May 18, 2010

## 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.*