



April 2010

In this Issue:

1

*Hiring Incentives to
Restore Employment
(HIRE) Act*

2

*Incentives for
Employers*

*Social Security Tax
Exemption*

3

Retention Tax Credit

Other Benefits

*Increased Section
179 Thresholds*

*Tax Credit Bonds
Subsidies*

The Tax and Business Planning practice group provides these e-Alerts periodically to keep our clients, taxpayers and businesses updated on recently adopted legislation and key changes in tax laws.

HIRING INCENTIVES TO RESTORE EMPLOYMENT (HIRE) ACT



The Hiring Incentives to Restore Employment (HIRE) Act (the Act), a jobs bill designed to encourage businesses to help put Americans back to work, was signed into law by President Barack Obama on March 18, 2010. The Act has several provisions that impact employers, including payroll tax

exemptions, and up to \$1,000 in tax credits for newly hired employees that meet certain eligibility requirements.

INCENTIVES FOR EMPLOYERS

Social Security Tax Exemption:

Some news organizations have estimated that over 8.2 million jobs have been lost since December, 2007. The Act is designed to encourage businesses to replace these jobs and hire previously unemployed workers by providing \$17.5 billion in tax cuts. The key component of the Act is an exemption of the 6.2 percent employer portion of Social Security. The Act immediately boosts “qualified employers” cash flow by permitting such employers to retain the employer portion of the Social Security tax ordinarily remitted. The Social Security tax exemption applies to 2010 wages paid after March 18, 2010, and before January 1, 2011, to certain “qualified individuals.” The Act defines “qualified employers” generally to include businesses, agricultural employers, tax-exempt organizations and public colleges and universities. Household employers cannot claim this new tax benefit.



The Act generally defines “qualified individuals” as those newly hired after February 3, 2010 and before January 1, 2011, who have been without full-time employment for at least 60 days preceding the hire date. The Act requires employers to get a statement from each eligible new hire certifying that they have met this requirement. (The IRS recently released Form W-11 to confirm that an employee is a qualified employee under the HIRE Act.) Family members of the business and persons who directly or indirectly own more than 50 percent of the business do not qualify.

In order to prevent businesses from displacing workers just to get the tax cut, the qualified individual cannot replace a current employee unless that employee was separated from employment voluntarily or for cause. A qualified individual may be hired for full-time or part-time employment since the benefits to the employer are tied only to 6.2 percent of any salary paid. This exemption has no cap or limit as to the total amount of tax benefits that can be claimed by an employer; however, the maximum tax break an employer could gain per employee under this provision would be \$6,621, or 6.2 percent of total wages paid in 2010 up to the \$106,800 FICA wage cap.

Employers may claim the payroll tax benefit on the federal employment tax return they file with the IRS beginning with the second quarter of 2010 (in order to give the IRS time to issue forms and guidance, the exemption benefit cannot be claimed for the first quarter of 2010, instead, for employees hired during first quarter of 2010, a credit will be allowed for the exemption on the second quarter of 2010 forms). Employers still need to withhold the employee’s 6.2 percent share of Social Security taxes, as well as income taxes. The employer and employee’s shares of Medicare taxes would also still apply to these wages. We expect the IRS to issue revised forms and further details shortly.

It is important to note that since payroll taxes are generally a deductible business expense, employers will have a correspondingly smaller business expense deduction on their 2010 tax returns. ■

Retention Tax Credit:

In addition to the Social Security Tax Exemption, employers who hire individuals who qualify for exemption noted above and keep them on the payroll for at least 52 consecutive weeks may be eligible for a tax credit for each of those qualifying employees. The tax credit will be equal to the lesser of:

- \$1,000 for each qualifying worker hired after February 3, 2010 and before January 1, 2011, and employed for at least 52 consecutive weeks, or
- 6.2 percent of wages paid to the qualifying worker over the 52-week period.



Based upon the 6.2 percent cap, any newly-hired employee who earns more than \$16,129 during the 52 consecutive-week period would qualify his or her employer for the full \$1,000 retained worker credit. The Act requires that wages during the last 26 weeks must be at least 80 percent of wages paid for the first 26 weeks. Due to the 52-week requirement, the credit will not be able to be obtained until the business files its 2011 income tax returns. ■

OTHER BENEFITS

Increased Section 179 Thresholds

As we reported in our December 2009 e-Alert, the increased Section 179 expense threshold that allows businesses to expense (instead of depreciating over several years) equipment expired at the end of 2009. The Act extends to 2010 the enhanced 2008 and 2009 Section 179 expensing thresholds so that taxpayers can elect to write-off up to \$250,000 of certain capital expenditures. [Click [here](#) to view our December 2009 e-Alert.] ■

Tax Credit Bonds Subsidies

In addition, the Act allows qualifying issuers of tax credit bonds the option of issuing tax credit bonds under current law, or receiving a direct payment similar to the Build America Bond program for bonds established under the American Recovery and Reinvestment Act of 2009. ■

* Stay tuned for other e-Alerts coming soon including summaries of the key tax provisions of health care reform in the Patient Protection and Affordable Care Act (the Patient Protection Act) and the Health Care and Education Reconciliation Act of 2010 (the Health Care Act) and legislation that will retroactively reinstate and extend through 2010 of a number of key tax provisions that expired at the end of 2009. ■

Tax and Business Planning Attorneys

William J. Sanders,
Chair
Kansas City
816.360.4240
wsanders@polsinelli.com

David N. Zimmerman,
Vice-Chair
Overland Park
913.234.7529
dzimmerman@polsinelli.com

Christopher S. Abrams
Kansas City
816.395.0602
cabrams@polsinelli.com

J. Michael Cornett
St. Louis / Washington, D.C.
314.889.7031
mccornett@polsinelli.com

John F. Crawford
Kansas City
816.572.4476
jcrawford@polsinelli.com

Carl R. Desenberg
St. Louis
314.552.6887
cdesenberg@polsinelli.com

Erik R. Edwards
Kansas City
316.360.4128
eedwards@polsinelli.com

Virginia C. Gross
Kansas City
816.360.4109
vgross@polsinelli.com

Brian T. Howes
Kansas City
816.395.0632
bhowes@polsinelli.com

D. Scott Lindstrom
Overland Park
913.234.7509
slindstrom@polsinelli.com

S. Patrick O'Bryan
Kansas City
816.360.4237
pobryan@polsinelli.com

William B. Prugh
Kansas City
816.374.0570
wprugh@polsinelli.com

Thomas J. Schenkelberg
Kansas City
816.360.4124
tschenkelberg@polsinelli.com

J. Harlan Stamper
Kansas City
816.374.0544
hstamper@polsinelli.com

Tommy W. Taylor
Kansas City
816.374.0541
ttaylor@polsinelli.com

About Polsinelli Shughart's Tax and Business Planning Group

The Tax and Business Planning practice group provides these e-Alerts periodically to keep our clients, taxpayers and businesses updated on recently adopted legislation and key changes in tax laws. We intend to provide these alerts to you as new developments warrant. This Tax Alert focuses on a variety of issues impacting businesses and individuals at the federal and state level. If you have questions about any of the information contained in this e-Alert, please contact your legal or tax advisor or a member of the Polsinelli Shughart PC Tax & Business Planning practice group at 1-800-473-6014.

All companies, organizations and individuals can expect to encounter issues in the tax arena. The Tax Group of Polsinelli Shughart PC provides creative solutions and legal guidance on international, federal, state and local tax laws to entities in all major industries and tax status classifications. Our attorneys partner with our clients to develop business solutions for both short-term and long-term planning. The Tax Group's strong reputation is built on its skills in sound and effective planning, in-depth analysis and favorable resolutions and outcomes, particularly in complex tax matters involving diverse businesses. Our attorneys pride themselves on innovative thinking and expertise in structuring business formation, combinations, reorganizations, mergers and acquisitions, and liquidations in the most tax-advantageous manner. To learn more about our services, visit us online at www.polsinelli.com.

If you know of anyone who you believe would like to receive our e-mail updates, or if you would like to be removed from our e-distribution list, please contact Therese O'Shea via e-mail at toshea@polsinelli.com.

Polsinelli Shughart PC provides this material for informational purposes only. The material provided herein is general and is not intended to be legal advice. Nothing herein should be relied upon or used without consulting a lawyer to consider your specific circumstances, possible changes to applicable laws, rules and regulations and other legal issues. Receipt of this material does not establish an attorney-client relationship.

The following legend is affixed pursuant to U.S. Treasury Regulations governing tax practice. Any U.S. Federal tax advice contained in this communication (whether distributed by mail, e-mail, fax, or other means) is not intended or written to be used, and cannot be used, by any person for the purposes of (1) avoiding U.S. Federal tax penalties that may be imposed on the taxpayer under the Internal Revenue Code of 1986, as amended, or (2) promoting, marketing or recommending to another party any tax-related matter addressed herein, whether an entity, investment plan or other transaction.

Polsinelli Shughart is very proud of the results we obtain for our clients, but you should know that past results do not guarantee future results; that every case is different and must be judged on its own merits; and that the choice of a lawyer is an important decision and should not be based solely upon advertisements.

Polsinelli Shughart® is a registered trademark of Polsinelli Shughart PC.

About Polsinelli Shughart PC



With more than 490 attorneys, Polsinelli Shughart PC is a national law firm that is a recognized leader in the areas of business litigation, financial services, bankruptcy, real estate, business law, labor and employment, construction, life sciences and health care. Serving corporate, institutional and individual clients regionally, nationally and worldwide, Polsinelli Shughart is known for successfully applying forward-thinking strategies for both straightforward and complex legal matters. The firm can be found online at www.polsinelli.com.