May 21, 2010

HIRE Act & Health Care and Education Reconciliation Act

Earlier in March, President Obama signed two major bills into law - The Hiring Incentives to Restore Employment (HIRE) Act and The Health Care and Education Reconciliation Act. Below is a summary of the relevant tax provisions of these new laws.

Hiring Incentives to Restore Employment (HIRE) Act:

To help jumpstart business hiring and spending, the HIRE Act provides for payroll tax forgiveness and an employer tax credit of up to $1,000 for qualified new hires. The HIRE Act also extends the enhanced limitations on expensing small business equipment under Code Section 179.

- **Payroll tax holiday for 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 the Social Security payroll tax on that employee. This provision applies to wages paid to the qualified individual from March 19, 2010 through December 31, 2010. A qualified individual is any individual who:
  - begins work for a qualified employer on or after February 3, 2010, and before January 1, 2011;
  - certifies by a signed 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 employment begins;
  - is not employed to replace another employee of the employer unless such employee separated from employment voluntarily or for cause; and
  - is not a related party.
- **Business credit for retained workers.** For any tax year ending after March 18, 2010, an employer's general business credit is increased by 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 above with respect to the Payroll Tax Holiday who:
  - is employed by the employer on any date during the tax year;
  - continues to be employed by the employer for a period of not less than 52 consecutive weeks; and
  - receives wages for such employment during the last half of the 52-week period that are at least 80-percent of such wages during the first half of such period.

  Therefore, an employer will qualify for the full $1,000 credit for each new hire with a salary over the 52 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 employees are employed for 52 weeks.

- **Extension of enhanced limitations on expensing small business equipment (Section 179).** The new law extends the prior law limitation on expense deductions for new equipment placed in service during the tax year. More specifically, the HIRE Act extends the available expense deduction limitation under Code Section 179 of $250,000 and the phase-out amount starting at $800,000, through tax years beginning in 2010. Bonus depreciation is not extended by the HIRE Act.

Health Care and Education Reconciliation Act

From a tax perspective, we have identified the following provisions from the health care reform act that may impact you:

- **Additional Medicare payroll tax.** Beginning in 2013, the health care reform act broadens the Medicare tax base for higher-income individuals as follows:

  - **Earned income.** An additional Hospital Insurance (Medicare) tax rate of 0.9 percent will be imposed on earned income (wages and self-employment income) in excess of $200,000 for individuals and $250,000 for married couples filing jointly.

  - **Unearned income.** A 3.8 percent "unearned income Medicare contributions" tax will be imposed on net investment income of individuals with adjusted gross income (AGI) in excess of $200,000 ($250,000 for married couples filing jointly and $125,000 for married couples filing separate returns). Net investment income includes interest, dividends, royalties, rents, gain from disposing of property from a passive activity, and income earned from a trade or business that is a passive activity.

  - **Other forms of income.** Pensions, retirement plans, and Social Security benefits are exempt from the additional Medicare payroll tax.

  The 3.8 percent "unearned income Medicare contributions" tax is imposed on the lesser of:

  (i) Net investment income or

  (ii) The excess of modified adjusted gross income (MAGI) over the threshold amount ($200,000 for individuals; $250,000 for married couples filing jointly; and $125,000 for married couples filing separate returns).

- **Health insurance.**

  - Most individuals will be required to obtain health insurance or be subject to a penalty tax starting in 2014.

  - Employers with 50 or more employees generally will be required to provide a minimum level of health insurance for their employees or pay a penalty per employee, starting in 2014.

  - Eligible small employers are entitled to up to a 35 percent tax credit on the cost of providing health insurance for employees starting immediately in 2010. The credit is targeted to help small businesses that primarily employ low and moderate income workers. It is generally available to employers with no more than 25 full-time equivalent employees and whose employees have annual full-time equivalent wages that average no more than $50,000. The deduction for health insurance expense is reduced by the amount of this credit.

- **Itemized medical expense deduction floor raised.** The health care reform act raises the threshold for the itemized medical expense deduction from 7.5 percent of adjusted gross income (AGI) to 10 percent of AGI for regular income tax purposes starting in 2013. However, individuals who are age 65 and older (and their spouses) will be temporarily exempt from the increase (through 2016). Also, the AGI floor for alternative minimum tax (AMT) purposes has not been adjusted by this new law and will remain at 10 percent for now.

If you have any questions about how any of these developments apply to you or your business, please call us.

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