

2010 HIRE Act and Health Care Reform Act

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2010 Hiring Incentives to Restore Employment (HIRE) Act

Summary of 2010 HIRE Act

Hiring / Retention Tax Incentives

Code Sec. 179 Expensing for 2010

Revenue Offsets

Hiring / Retention Tax Incentives: Two Incentives for Employers

- Payroll Tax Holiday
 - Relief from 6.2% OASDI (employer's share) for a "qualified employee" (QE) defined as:
 - Starts work after 2/3/2010 and before 1/1/2011
 - Less than 40 hrs. worked in the 60 days prior to hire
 - Cannot displace a current employee unless that employee quit or was fired for cause
 - Employees previously laid off can be QE's if rehired
 - Relief does NOT apply to Medicare tax (1.45%)
 - Work Opportunity Tax Credit (WOTC) not awarded for QE's unless employer waives OASDI incentive

Hiring / Retention Tax Incentives: Two Incentives for Employers

- Retained Worker Business Credit
 - Qualified employee is kept on payroll for 52 consecutive weeks
 - Credit is the lesser of:
 - \$1,000 or
 - 6.2% of the wages paid to the QE
 - The QE's wages for the last 26 weeks must be at least 80% of the wages paid for the first 26 weeks

Code §179 Expensing

- Just like 2009:
 - Maximum deduction remains at \$250,000
 - Phaseout begins at \$800,000
 - Off-the-shelf software continues to qualify
- Note: Bonus Depreciation NOT extended

Revenue Offsets: Foreign Account Tax Compliance

- Target: Foreign Financial Institutions
 - Foreign financial institution must agree to report information for specified U.S. persons, including name, address, TIN, account number, account balance, gross deposits, gross withdrawals
 - Otherwise, 30% withholding tax is imposed on any “withholdable payment” made to the financial institution (basically, any U.S. source income)
 - Applies irrespective of tax treaty of financial institution’s country
 - Exempt: Small accounts held by individuals; accounts owned by publicly traded corps., exempt orgs., government entities

Revenue Offsets: Disclosure of Foreign Financial Assets

- Qualified individuals holding foreign financial assets must disclose information about the assets on the T/R
 - Information required is similar to, but not the same as, report required under the Bank Secrecy Act (FBAR)
 - FBAR reporting requirements must still be satisfied
- No disclosure requirement if aggregate financial assets do not exceed \$50,000
- Penalties for noncompliance: Minimum \$10,000; maximum \$50,000. Additional penalty of 40% of any underpayment attributable to an undisclosed asset. Six year statute of limitations if 25% understatement of income OR \$5,000 in income attributable to undisclosed asset.

Revenue Offsets: Corporate Estimated Tax Payments

- For corporations with assets of \$1B or more
 - Payment in July, August, or September 2015 must be 121.5% of what would otherwise be due
 - Payment in July, August, or September 2019 must be 106.5% of what would otherwise be due
 - Next required installment in either case would be reduced accordingly
 - Also accelerates large corporate estimated payments in 2014

Health Care Reform:

Patient Protection and Affordable Care Act

Health Care and Education Tax Credits Reconciliation Act of 2010

Health Care Reform Summary

Individual Responsibility

Employer Responsibilities: Carrot and Stick

Additional Medicare Payroll Tax

Tax on High-Cost Insurance

Market Sector Fees

Health Care Reform Summary (continued)

Other Health-Related Provisions

FSA's, HSA's

Medical Expense Deduction/Exclusion

Medicare Part D Subsidy

Other Revenue Raisers

Individual Responsibility

- Individuals must maintain minimum essential coverage beginning in 2013
- Otherwise, a penalty is assessed
 - Flat dollar amount per person (depends on year: 2013 \$95, 2014 \$325, 2015 \$695) up to 3 times this amount per family
 - Or, percentage of MAGI (0.5% to 2.5%) if greater
- Individuals under 18 also subject, but ½ the penalty
- Individuals who currently have coverage can keep it and be grandfathered in

Individual Responsibility (continued)

- Individuals with Medicare, Medicaid, VA, or other government sponsored care will be deemed covered
- Premium assistance credits subsidize the purchase of insurance through an exchange, up to 400% of the Federal poverty level
- Exceptions for:
 - Religious conscience
 - Undocumented aliens
 - Native Americans
 - Certain hardship cases
 - Incarcerated persons
 - Certain dependents

Employer Responsibilities: Carrot and Stick

- Employers are not mandated to cover but:
 - Large employers (50+ FTE) failing to provide coverage must pay an additional tax
 - Up to \$2,000 per full-time employee
 - First 30 employees not subject to additional tax
 - Small employers (up to 25 FTE, average wage <\$50,000)
 - Credits up to 35% offered to encourage coverage (**effective 2010**)
 - Cafeteria plan use encouraged, discrimination rule safe harbor for small employers

Additional Medicare Payroll Tax

- For individuals with AGI > \$200K or joint AGI > \$250K (these numbers are *not* inflation indexed)
- 0.9% Medicare tax (employee portion only) on earned income in excess of above levels
- 3.8% Medicare tax on unearned income
 - Interest, dividends, royalties, rents, gains, passive activity income
 - Does not include distributions from pension plans
- Effective in 2013

Tax on High-Cost Insurance

- 40% nonrefundable excise tax on insurers effective 2018 if:
 - Individual > \$10,200 annual premium
 - Family > \$27,500
- Inflation-adjusted amounts
- Retirees age 55+, employees in high-risk professions would use higher threshold
 - Individual > \$11,850
 - Family > \$30,950
- Dental and vision plans not counted toward threshold
- Employers must disclose value of employer-provided insurance on Form W-2
- Employer who contributes to a HSA or Archer MSA is considered an insurer, and would be subject to the excise tax itself

Market Sector Fees

- Annual nondeductible fees on health-related industries such as medical device manufacturers and importers, insurers
- New excise tax on medical devices such as X-ray machines and pacemakers (certain routine devices like glasses and hearing aids exempt)
- Act specifies aggregate dollar amounts for user fees, which will be assessed to individual companies according to market share

Other Health-Related Provisions

- Executive pay for insurers: compensation deduction capped at \$500K unless >75% of premiums meet minimum essential coverage requirements
- New 10% tax on indoor tanning services, effective July 1, 2010
- Credit to encourage investments in new therapies for 2009 and 2010 tax years

FSA's and HSA's

- Effective 2011, OTC drugs not prescribed by a health care professional no longer qualify
- FSA contributions capped at \$2,500/yr. after 2012 (inflation indexed)
 - No limit now, but “use it or lose it”
- Tax on nonqualified distributions from HSA's increased from 10% to 20%; from Archer MSA's from 15% to 20%

Medical Expense Deduction

- For regular tax, floor on medical expense itemized deductions increases from 7.5% AGI to 10%, effective 2013
 - Seniors 65+ would be exempt until 2016
 - For AMT purposes, floor remains at 10%
- Gross income exclusion for employer provided health coverage is extended for adult dependent children up to age 26
- Adoption credit is made refundable, increased to \$13,170 and extended through 2011, enhanced for adopting special needs children

Medicare Part D Subsidy

- If an employer subsidizes drug coverage for retirees eligible for Medicare Part D, the employer gets a federal subsidy called the Retiree Drug Subsidy (RDS)
- Under prior law the RDS was nontaxable; under this act it reduces the employer's deduction for health care expenses, effectively making it taxable
- Effective in 2013
- Fixes to companies' tax accruals under ASC 740 (f/k/a FAS 109) may be required.

Revenue Raisers

- Economic Substance Doctrine codified: if no substance, *strict liability* penalties at 40% (undisclosed item) or 20% (disclosed item) of tax deficiency attributed to item
 - Reasonable basis, More Likely than Not opinion, etc., are *not* sufficient to beat the penalty
 - **Effective Now** (transactions entered into after Mar. 30, 2010)
- For all businesses, Form 1099 must be filed for payments of \$600+ to providers of property and services *even if the provider is a corporation*
 - Payments to tax-exempt corporations still don't have to be reported
 - Effective Jan. 1, 2012
- Corporate estimated tax payments for large corporations (assets >\$1 B) increased for July, August, September 2014 by 14.5 percentage points

Questions?

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