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THE HIRING INCENTIVES TO RESTORE EMPLOYMENT ACT

The Hiring Incentives to Restore Employment Act (P.L. 111-147), which was signed into law on March 18, 2010, is intended to stimulate employment by providing temporary tax incentives to companies that hire unemployed individuals. The new law contains the following two tax incentives based upon hiring of unemployed individuals:

1. Social Security Tax Exemption

If a "qualified employer" employs a "qualified individual" between February 3, 2010 and December 31, 2010, the employer will not have to pay the Social Security tax on the qualified employee's wages during that time period (until December 31, 2010).

A "qualified employer" is a non-public employer (meaning an employer other than the United States, a state, or any political subdivision thereof, or any instrumentality of the foregoing). A "qualified employer" includes non-profit organizations and public institutions of higher education.

A "qualified employee" is one that:

- begins employment after February 3, 2010 and before January 1, 2011
- has not been employed more than 40 hours in the previous 60-day period (and signs an affidavit to that effect), and
- is not employed by such employer to replace another employee unless such other employee voluntarily leaves the employment or is terminated for cause.

A relative of the employer, or an individual that owns more than 50% of the employer corporation's stock, is not a "qualified employee".

The employer can begin to exempt the Social Security tax in the second calendar quarter of 2010. This exemption is not available during the first quarter.

This exemption cannot be taken simultaneously with the Work Opportunity Credit. Therefore, if the employer is taking a Work Opportunity Credit regarding the employee, the employer cannot also take the Social Security Tax Exemption. The employer must elect not to the take Social Security Tax Exemption if they choose to take the Work Opportunity Credit.

2. Business Credit for Retention

As a result of this new Act, the general business credit, presently available under §38(b) of the Tax Code, can be increased for each qualified individual (as defined above) who stays employed with the employer for 52 consecutive weeks. The employee can have been hired at any time during the taxable year. The business credit is increased by the lesser of $1,000 or 6.2% of the employee's wages. For the employer to claim the increased business credit, the employee's wages during the last 26 weeks of the period must equal at least 80% of the wages during the first 26 weeks of the period.

The Hiring Incentives to Restore Employment Act also contains provisions regarding additional income tax provisions and transportation programs, but those provisions are not employment related, and thus, not summarized herein.

If you have questions regarding this information, please contact one of the following attorneys:

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