



The HIRE Act

Opportunities for Payroll Tax Reductions



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Tax Reductions

- Employer portion of FICA tax is waived
 - 6.2% of qualifying wages
 - No upper limit on amount of wages qualifying
 - Does not apply to Medicare tax portion (1.45%)
 - Must continue to withhold employee portion
 - Reduction of deposit requirement on Form 943 (or Form 941, as applicable)
 - Through December 31, 2010
- Opportunity for a \$1,000 tax credit in 2011

Employment Qualification

- Begin employment after February 3, 2010
 - trade or business (including farms and ranches)
 - For tax-exempt, but in furtherance of tax exempt function or purpose
 - Public institution of higher education
- Wages *paid* after March 18, 2010 through December 31, 2010

First Quarter

- Wages paid after March 18 (i.e., March 19 and later) qualify for the payroll tax holiday, but the benefit is claimed on the 2nd quarter Form 941 (or as a reduction in 2nd quarter deposits on Form 943)
 - The forms weren't ready for the change in the law

Employee Qualifications

- Employee wasn't employed for > 40 hours during the 60-day period ending on the date employee begins work for qualified employer
 - Certification required, Form W-11
- Employee not related to employer
- Isn't employed to replace another employee, unless other employee left voluntarily or for cause

Relatives

- Child or descendant of child
- Sibling or step-sibling
- Parents or ancestors of parents
- Step-parents
- Son or daughter of a brother or sister
- Brother or sister of the father or mother
- SIL, DIL, FIL, MIL, BIL, SIL
- If the taxpayer is a corporation, any of the above who are related to the deemed 50% shareholder
- Similar rules for partnerships

Employer Credit

- Up to \$1,000 business credit for 2011
- Applicable to retained worker with respect to which the payroll credit applied in 2010
- Lesser of:
 - \$1,000
 - 6.2% of wages paid to retained worker during the 52-consecutive-week-period
 - Claim credit in employer's tax year in which the 52-week period ends
 - Effectively a credit on the first \$16,129.03 of wages

Employer Credit (more...)

- Does not apply to ag employment paid other than in cash
 - Must be wages subject to payroll tax withholding
- No limit to the number of employees generating the maximum \$1,000 per employee credit
- Limited by AMT
 - Carryover is 20 years
 - Cannot be carried back to a tax year beginning before March 18, 2010

Retained Worker

- Employed at any date in the tax year
- Employed not less than 52 consecutive weeks
- Wages (for income tax withholding purposes) for the last 26 weeks equal or exceed 80% of the wages for the first 26 weeks

Question #1

- What are the effective dates?
 - Employment begins after February 3, 2010
 - For wages paid after March 18, 2010 through December 31, 2010

Question #2

- How much credit is available?
 - The maximum reduction is equal to the employer share of the FICA tax on the wages of the qualifying employee.
 - Multiply the FICA wages of the employee paid after March 18, 2010 through December 31, 2010
 - Credit could be as high as \$6,621.60, which is \$106,800 multiplied by 6.2%, for an employee first paid after March 18, 2010

Question #3

- Do you still have to withhold for the employee share of the FICA tax?
 - Yes

Question #4

- How do we know if the employee qualifies so we can claim the credit?
 - The employee must certify that s/he has not been employed for more than 40 hours in the 60 days ending on the date employment begins
 - Certification is on Form W-11
 - No payroll tax holiday is available without certification
 - Employee may certify a similar statement under penalties of perjury

Question #5

- How do I get the credit for a farm worker?
 - The 2010 Form 943 and instructions haven't been released, since it is an annual form
 - However, the same rules apply as for Form 941
 - Reduce the amount of the otherwise required deposit that you would make for your federal payroll tax liabilities
 - Make sure to report the *reduced* liability on Form 943 or 943-A (for semi-weekly depositors) for each pay day

Question #6

- How do I get the credit if we are a packer or food processor?
 - The payroll tax holiday applies for all employers. If you file Form 941 rather than Form 943, the reduced liability will be reflected on that form.
 - For Form 941 filers, the credit must be taken in the quarter in which the payroll is paid.

Question #7

- What if the employee doesn't want to fill out the Form W-11?
 - Certification is required, either on Form W-11 or a statement that contains the same information as on Form W-11, together with the “perjury language” that appears on Form W-11.
 - You can always choose to hire someone else

Question #8

- Where do I send the Form W-11?
 - Keep Form W-11 in your files. It is not sent to the IRS or any other place. The same rules apply as with Form W-4.

Question #9

- What are the record retention requirements for Form W-11?
 - Typically, Form W-4 can be destroyed four years after the employee has signed a new W-4, or four years after termination. Because Form W-11 also provides a tax credit against income tax, we recommend seven years after 2011 (December 31, 2018).
 - If no retained employee credit is claimed, the Form W-4 can be destroyed after four years (December 31, 2014)

Question #10

- What if the government audits my Forms W-11 and/or the tax credits I claimed?
 - The employer is not responsible for verifying the employee's lack of employment in the 60 days prior to employment
 - Have Forms W-11 available

Question #11

- Will ICE look at my Forms W-11 and do any kind of verification of the name or SS#?
 - I wouldn't expect so. ICE looks at Form I-9 and shouldn't have a need to look at Form W-11.

Question #12

- What if the worker is not properly documented? Will I lose the tax credits I claimed and have to pay the money back to the government?
 - You have no responsibility to verify the legal status of the employee beyond that required for obtaining a valid I-9. There is no provision in the law that denies the payroll tax holiday if the employee is later found to be illegal.

Question #13

- Before we add staff or procedures to handle this extra work, how can I estimate what my tax credits might be?
 - The tax reduction is equal to 6.2% of wages of any worker you hired who has not been employed for 40 hours in the prior 60 days.
 - It is likely that as the crop year progresses, fewer potential employees will qualify

Question #14

- Where can I get a W-11 form?
 - www.irs.gov
 - (If you're viewing this webinar, you must have internet access)

Question #15

- What is the best way to handle the credit in my payroll system?
 - Different computer systems track this differently; it appears that QuickBooks has modified its program to track and compute the FICA tax liability appropriately.
 - If your computer program has not been modified, you can manually track the payroll of those employees who qualify, and reduce the required deposit accordingly.

Question #16

- Do I have to show anything on the W-2 that shows the credit for an employee?
 - Employers will disclose a new Code CC for Box 12 of the Form W-2 to identify employees and wages covered by the payroll tax exemption.

Question #17

- What if I discover a mistake on how I claimed the credit?
 - If you under-deposit, make sure to deposit additional amounts as soon as possible.
 - Since Form 943 isn't due until after the end of the year, no correction needs to be made to a form
 - For Form 941 filers, Form 941-X is available.

Question #18

- How long does it take to handle this W-11 if I have a whole bunch of employees to hire in a very short amount of time?
 - This will be one more form for the employee to complete, in considerably less time as Form I-9.
 - You can weigh the benefits of the payroll tax holiday (6.2% of qualifying wages) against the hassle and administrative costs.

Question #19

- Can my staff fill out the form for the employee and then have the employee sign?
 - The form requires:
 - Name
 - SS#
 - First date of employment
 - Name of employer (you)
 - Employee's signature
 - Date
 - You can have a stack of W-11 forms completed with your (the employer) name and perhaps date of first employment completed, but I recommend that the employee complete the rest.

Question #20

- Should I keep track of all the credits by worker by payroll on a spreadsheet so I can complete the Form 941 or Form 943?
 - Some computer programs will handle this automatically.
 - Otherwise, a spreadsheet listing the qualifying employees, and tracking the payroll paid to that person per pay date, is probably the best way.
 - Total the qualifying employees and multiply by 6.2%



Question #21

- Do students coming out of college for the summer qualify?
 - Assuming that they otherwise meet the definition of a qualified employee, yes.



Question #22

- Is there a minimum amount of wage that needs to be paid in order to qualify for the credit?
 - No. Assuming that the wage is subject to payroll taxes and the employee is an eligible employee, the credit applies.



Coordination with Work Opportunity Credit

- Wages paid do not qualify for both the payroll tax holiday and the work opportunity credit.
 - Employer can elect on an employee-by-employee basis to not claim the payroll tax holiday.
 - Work opportunity credit is 40% of the qualified first year wages of up to \$6,000, for a maximum credit of \$2,400 per worker.
 - Employee must be certified by a state agency as a member of a targeted group



ObamaCare

- Tax provisions will be the topic of another webcast, to be held next Thursday, June 17.
- E.g., Forms 1099 will be required for payments aggregating \$600 in a calendar year for nearly every business purchase.
 - Effective for payments after 2011
 - Forms 1099 filed in 2013 for 2012

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