

Update: October 2010

Tax Intelligence

IRS Continues to Provide HIRE Act Clarification

Situation

As we approach the seventh month of the HIRE Act payroll tax exemption, TALX continues to identify unique situations that require additional clarification from the IRS. The IRS continues to update the HIRE Act frequently asked questions section on their webpage relating to the HIRE Act payroll tax exemption and the new hire retention credit.

Solution

The most updated IRS FAQs address a number of topics, which are listed below.

When does an individual “begin employment” for purpose of the HIRE Act?

The updated guidance provides that under general principals, an individual begins employment on the date when, based on the facts and circumstances of the particular situation, the employer-employee relationship is first established. For most individuals this will be the hire date. In a case where an individual who was previously employed by the employer and the employment was terminated, the individual begins employment on the date when the employer-employee relationship is reestablished.

Can an employee who has been on furlough, standby status or temporary layoff be a qualified employee when the individual returns?

The guidance provided states that the individual can only be treated as a qualified employee if the furlough, standby status or temporary layoff constitutes a termination of employment and, upon reestablishment of the employment relationship; the HIRE Act requirements to be a qualified employee are satisfied.

Will the payroll tax exemption apply to individuals replacing terminated employees?

The updated guidance clarifies that an employee can be a qualified employee even if the individual is hired to replace an employee who voluntarily terminated employment, terminated due to gross negligence, terminated for poor performance or terminated in a reduction in force due to lack of work.

Does work performed as a self-employed individual count in determining whether an individual has been employed for 40 hours or less during the 60-day period ending on the date the individual begins employment for purposes of qualified employee status?

The guidance provided states that only work performed as an employee counts in determining whether an individual has been employed for 40 hours or less during the 60 day period. The employer must review and determine whether or not the individual has been classified as an employee or a self-employed/independent contractor to determine whether or not the individual qualifies.

Can an employer claim both the HIRE Act retention credit and WOTC?

The guidance clarifies that an employer may claim the retention credit for a qualified employee, even if the employer also claimed the WOTC for the same employee.

Can an employer use the HIRE Act retention credit to offset AMT?

The guidance clarifies that the retention credit cannot offset the business AMT.

Can a minor sign Form W-11?

The updated guidance clarifies that a minor can sign an employee affidavit, Form W-11.

If an employer has a reporting agent, do they need to provide copies of Form W-11?

The guidance clarifies that employers using reporting agents are not required to provide copies of the Form W-11 to the reporting agents.

Value

TALX will continue to monitor new IRS guidance and updates for the HIRE Act program. If your company is interested in receiving more information on the HIRE Act program, please visit our corporate blog at <http://blog.talx.com/> or contact Pete Krieshok at 314-214-7325, or by e-mail at pkrieshok@talx.com.