

tax IMPACT

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Get ready, get set, hire!

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Dunbar, Breitweiser
& COMPANY, LLP

**CERTIFIED PUBLIC
ACCOUNTANTS**

202 North Center Street
Bloomington, Illinois 61701-3995
Phone 309-827-0348
Fax 309-827-7858
www.dbc-llp.com

Get ready, get set, hire!

Jobs bill offers tax incentives for hiring (and keeping) the unemployed

Back in March, health care reform grabbed most of the headlines, but it wasn't the only legislation enacted that month. About a week earlier, President Obama signed the Hiring Incentives to Restore Employment (HIRE) Act.

The act offers payroll tax breaks for employers that hire unemployed workers, plus additional credits for qualified workers they retain for at least 52 consecutive weeks. It also extends the enhanced Section 179 expensing allowance and makes several other tax changes. (See "Tax Tips" on page 7.)

Who's eligible?

Businesses and nonprofit organizations of all types and sizes are eligible for the hiring and retention breaks. But these breaks aren't available to federal, state or local governments, except for state colleges and universities.

An employee qualifies for payroll tax breaks if he or she:

- ⊙ Starts work after Feb. 3, 2010, and before Jan. 1, 2011,
- ⊙ Wasn't employed for more than 40 hours during the 60-day period before the start date (and signs an affidavit to that effect),
- ⊙ Doesn't replace an existing employee (except one who quits voluntarily or is fired for cause), and
- ⊙ Isn't related to the employer or to an individual who owns more than 50% of the employer.

Qualified employees include previously laid-off workers that you rehire, provided they meet the above requirements. Employment can be full-time or part-time, but the more hours a qualified employee works, the greater the benefits.



What are the benefits?

If you hire qualified employees, you're exempt from the 6.2% Social Security portion of Federal Insurance Contributions Act (FICA) taxes on wages you pay them for work performed after the HIRE act was enacted (March 18, 2010) through the end of the year. Based on the current Social Security taxable wage base of \$106,800, the maximum tax benefit is \$6,622 per qualified employee.

What about the retention break?

For each employee qualifying for the payroll tax break whom you keep on the payroll for at least 52 consecutive weeks, you're entitled to a tax credit of up to \$1,000 on your 2011 income tax return. To qualify for the credit, an employee's wages for the second half of the 52-week period must be at least 80% of his or her wages for the first half of the period. Even if a new hire leaves *voluntarily* before 52 consecutive weeks, no retention credit is received for that hire.

To prevent employers from claiming the full \$1,000 credit for employees who do minimal part-time work, the amount of the credit is the *lesser* of \$1,000 or 6.2% of a qualified employee's wages during the 52-week period. Put another way, new hires who earn more than \$16,129 during that period qualify for the full \$1,000 credit.

Retained worker credits are claimed as part of the general business credit under Internal Revenue Code Sec. 38(b). Under the HIRE act, however, no portion of an employer's unused Sec. 38(b) credit that is attributable to retained worker credits may be carried back to tax years beginning before the HIRE act's enactment date.

Act sooner rather than later

If you're thinking about adding to your workforce, keep in mind that the HIRE act's payroll tax incentives are available for wages paid through the end of 2010, so the sooner you act, the greater the benefits. And the retained worker credit is limited to employees hired this year, so you must hire employees by Dec. 31 to benefit. Also, be sure to compare the HIRE act's payroll tax break to the Work Opportunity Tax Credit (WOTC), because you can't claim both for the same employee. (See "Payroll tax exemption vs. WOTC: How to choose" at right.) ©

Payroll tax exemption vs. WOTC: How to choose

Wages you pay to a worker who qualifies for the Hiring Incentives to Restore Employment (HIRE) Act's payroll tax exemption (see main article) don't qualify for the Work Opportunity Tax Credit (WOTC) unless you elect not to claim the payroll tax exemption. So it's important to select the tax break that provides the greater benefit.

The WOTC is a dollar-for-dollar reduction in federal tax liability for companies that hire people from certain disadvantaged groups. Generally, the maximum credit is 40% of first-year wages up to \$6,000, or \$2,400 (though credits may be higher or lower for certain groups).

For some new employees, the WOTC will provide a greater benefit than the HIRE act's payroll tax exemption. Suppose, for example, that you hire a new employee on July 1, 2010, at an annual salary of \$50,000, and the employee qualifies for both tax breaks. The payroll tax exemption would provide tax savings of $\$25,000 \times 6.2\%$, or \$1,550. In this case, you'd be better off opting out and claiming the \$2,400 WOTC.

Planning necessary to bequeath a retirement plan

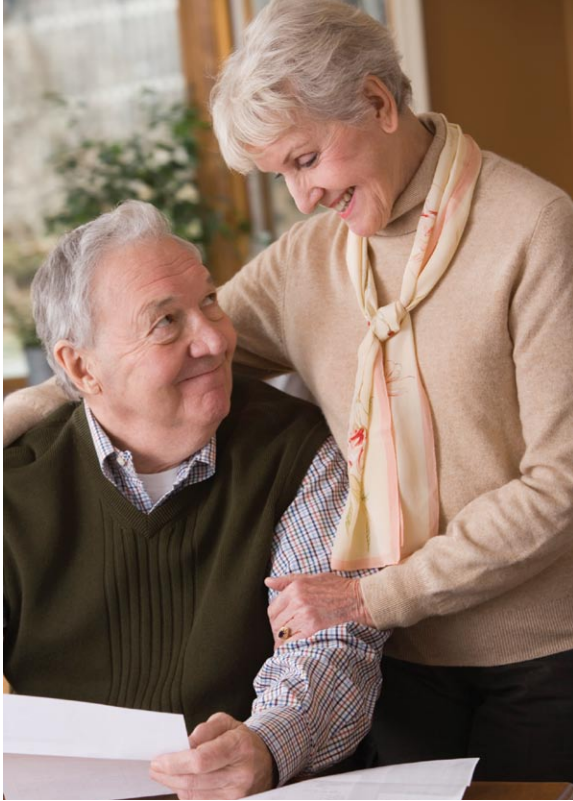
Planning the execution of your estate may not be the most pleasant task, what with having to consider your death and how loose ends of your affairs will be tied up.

If you've had the good fortune to leave your retirement funds untouched, there's at least one upside to estate planning: the fact that you can share your considerable tax-deferred wealth with family members. But who should be the beneficiary? Before you make a decision, consider the income and estate tax implications of your choice.

Tax-deferred retirement plans and heirs' income tax

IRAs and employer-sponsored "qualified" plans, such as 401(k)s, can effectively build wealth for your family because no taxes are due until funds are withdrawn, which allows you to take advantage of tax-deferred compounding. (In the case of Roth accounts, no taxes are *ever* due on growth — as long as all distributions are qualified.)

When it comes to estate planning, though, tax-deferred retirement plans are a double-edged



sword. Most inherited assets, such as stocks and real estate, receive a step-up in basis on the death of the owner of the assets, which means that heirs will owe income tax only on income or capital gains generated *after* they inherit the asset.

(Note that, as of this writing, an estate tax repeal is in effect for 2010 and during the repeal the step-up in basis is limited. However, the estate tax is scheduled to return in 2011, and the generally unlimited step-up in basis is set to return with it. Plus the repeal, along with the step-up in basis limits, may be repealed. Check with your tax advisor for the latest information.)

But, for family members who inherit funds from your traditional 401(k) plan, traditional IRA or most other qualified plans, no step-up in basis is available (regardless of whether the estate tax repeal and its accompanying step-up in basis limits are in effect). So the beneficiaries will have to pay income tax on 100% of the distributions they receive, except to the extent that you used nondeductible contributions to fund the account.

3 factors affecting income tax liability

To minimize the income tax bite — and maximize the wealth-building power of a tax-deferred retirement plan — consider three factors that will affect your beneficiary's income tax liability: 1) how long the beneficiary will be able to defer distributions, 2) how large any required minimum distributions (RMDs) will be and 3) the beneficiary's likely tax bracket.

Generally, for inherited retirement plans, annual RMDs must begin immediately. The size of the RMDs will depend on the size of the account and the age of the beneficiary — the younger he or she is, the smaller the RMDs will be. Because the account will be depleted more slowly with smaller RMDs, there's a greater opportunity for tax-deferred growth. Plus, a younger beneficiary may well be in a lower tax bracket, at least for the early years of RMDs.

IRAs and employer-sponsored "qualified" plans can effectively build wealth for your family because no taxes are due until funds are withdrawn, which allows you to take advantage of tax-deferred compounding.

However, there also may be deferral benefits to naming your spouse as beneficiary. Your spouse has more flexibility in deferring distributions because he or she can treat your IRA as his or her own and delay any distributions until age 70½. Although this rule doesn't generally apply to other retirement plans, your spouse can roll the plan into an IRA for him- or herself and then take advantage of this deferral.

Designating your estate as beneficiary is likely a bad idea because the retirement plan will have to be distributed within five years after you die.

Estate tax consequences

From an estate tax perspective, naming your spouse as the beneficiary may or may not make sense. The advantage (when the estate tax is in effect) is that you'll avoid any estate tax liability on the retirement plan assets at your death because transfers to your spouse (provided he or she is a U.S. citizen) are free of estate tax. However, the IRA will increase the size of your spouse's estate, which may result in increased estate tax at his or her death.

If you name a beneficiary other than your spouse, the retirement plan generally will be included in your estate. Whether it will cause

any estate tax liability will depend on a variety of factors, such as the size of the plan, the size of your estate, and the estate tax exemption available for the year of your death. (Of course, if the estate tax repeal is in effect, there will be no federal estate tax liability, though there could be state estate tax liability.)

Educate yourself before making a choice

Choosing who should be the beneficiary of your retirement plan shouldn't be taken lightly. It's important to consider the income and estate tax consequences your bequest may trigger. Your tax advisor can help you with all of the details. ☺

Refinancing? Know the tax rules

Have you recently refinanced a mortgage or are you considering doing so? If you answered "yes," it's worth your while to familiarize yourself with the rules for deducting mortgage interest.

General rules

The mortgage interest deduction is available for interest on loans secured by your principal home or a second home. A "home" includes a house, condo or co-op, as well as a mobile home, trailer or boat with sleeping, cooking and toilet facilities.

The tax code allows you to deduct interest on up to \$1 million in "acquisition indebtedness" — that is, debt used to buy, build or substantially renovate a home — plus interest on up to \$100,000 in home equity debt used for any



purpose. These limits apply to the combined principal of all loans secured by your principal and second homes. If you're married filing separately, the limits are cut in half to \$500,000 and \$50,000, respectively.

Recently, the IRS clarified that homeowners with more than \$1 million in acquisition indebtedness may deduct interest on the excess as home equity debt (subject to the \$100,000 limit).

Refinancing rules

When you refinance a mortgage, the tax treatment of interest on the new loan depends on whether you do a straight replacement loan or a cash-out refinancing. With a replacement loan, you borrow an amount equal to the outstanding balance on the old mortgage. Interest on the new mortgage is fully deductible, provided your total acquisition indebtedness is no more than \$1 million.

With a cash-out refinancing, in which you borrow more than you need to cover your outstanding mortgage balance, the tax treatment depends on how you use the excess cash. If you use it for home improvements, it's considered acquisition indebtedness, and the interest is deductible (subject to the \$1 million limit). If you use it for another purpose, such as buying a car or paying tuition, it's considered home equity debt subject to the \$100,000 limit.



Deducting points

When you buy a home, prepaid interest — or “points” — is deductible immediately. When you refinance, however, points are amortized and deducted ratably over the life of the loan. For example, let's say you refinance a \$500,000 mortgage with a new, 30-year loan, paying two points (\$10,000). Even though you pay the points up front, you must deduct them over 30 years at a rate of \$333 per year. (First and last year deductions, however, will be less.)

When you refinance a mortgage, the tax treatment of interest on the new loan depends on whether you do a straight replacement loan or a cash-out refinancing.

If you're already amortizing points — from a previous refinancing, for example — and you refinance with a *new* lender, you can deduct the unamortized balance in the year you refinance. But if you refinance with the *same* lender, you must add the unamortized points from the old loan to any points you pay on the new loan and deduct the total over the life of the new loan.

There's an exception for certain cash-out refinancings. You can immediately deduct points attributable to the portion of the new loan used to improve your principal residence. In the previous example, if you use \$100,000 of the \$500,000 loan for home improvements, you can deduct one-fifth of the points, or \$2,000, up front.

Maximize your tax benefits

A basic understanding of these rules can help you make the most of interest deductions and avoid tax surprises. If you're unsure of the proper tax treatment of a refinancing, consult your tax advisor. ©

tax TIPS

Keep an eye on Congress

The HIRE act didn't extend the 50% bonus depreciation that expired at the end of 2009, nor did it address several other individual and business tax incentives that expired last year. But keep an eye on Congress, which is considering legislation that would revive some of these tax breaks. Among other things, as of this writing bills pending in Congress would extend:

- ⊙ The deduction for state and local sales taxes,
- ⊙ The additional standard deduction for real estate taxes,
- ⊙ Tax-free IRA distributions to charities,
- ⊙ The research tax credit,
- ⊙ Deductions for qualified leasehold improvements and qualified restaurant property, and
- ⊙ Several energy tax incentives.

Check with your tax advisor for the latest information. ⊙

Will your taxes be higher in 2011?

Unless lawmakers take action, in 2011 the top capital gains tax rate will jump from 15% to 20% and the 25%, 28%, 33% and 35% individual income tax rates will increase to 28%, 31%, 36% and 39.6%, respectively. Additionally, the top rate on qualified dividends will jump from 15% to 39.6%.

Talk to your tax advisor about how these and other potential tax increases affect your tax planning for the remainder of 2010 — or to find out if the 2010 rates have been extended since this writing. ⊙

Health care help for small businesses

Many of the Patient Protection and Affordable Care Act's provisions don't kick in until 2013 or later, but one important change takes effect

immediately: This year, eligible small businesses are entitled to a maximum 35% tax credit for purchasing group health coverage. Contact your tax advisor for details. ⊙

Expense it!

The Section 179 expensing election is one way for small-business owners to boost cash flow. It allows you to deduct immediately the entire cost of qualifying business equipment and other depreciable property rather than spreading depreciation deductions over several years. In 2008 and 2009, an enhanced Sec. 179 election allowed you to expense up to \$250,000, with the benefits phased out on a dollar-for-dollar basis after your total investment in qualifying property tops \$800,000.

These limits were set to drop down to their previous levels — \$134,000 and \$530,000, respectively — but the Hiring Incentives to Restore Employment (HIRE) Act extended the enhanced election for one more year. The \$250,000 limit applies to new and used property (including off-the-shelf computer software) that you purchase through the end of your tax year *beginning* in 2010. So, if you're on a fiscal year, you can take advantage of the enhanced expensing election well into 2011. ⊙

Dealing with Health Care Reform's New Tax Laws: The Health Care and Education Reconciliation Act of 2010

Now that Congress has passed the landmark health care reform package, much work needs to be done in dealing with new requirements. While the end result of the legislative process is necessarily health care related, the tax law plays a major role in its implementation. From the tax credits and subsidies used to expand health coverage, to the many penalties, fees and surtaxes designed to pay for it, the Tax Code is front and center.

Two new laws

Health care reform is actually made up of two new laws: the Patient Protection and Affordable Care Act of 2010 and the Health Care and Education Reconciliation Act of 2010. The Patient Protection Act was crafted largely in the Senate and sets out the general framework of health care reform. The Reconciliation Act was prepared in the House to modify the Patient Protection Act, especially in the areas of tax credits and cost sharing for individuals to help make coverage more affordable. Common features to both laws are delayed effective dates for many of the provisions, which make strategic planning all that more important.

New taxes and penalties

Viewing the historic health care reform package from the context of the Tax Code, many new taxes and penalties stand out immediately above the rest. Initially, we would advise taking particular note of the following highlights:

- Individuals who earn more than \$200,000 for the year (\$250,000 for married couples) will be paying an additional 0.9 percent in Hospital Insurance (Medicare) tax, starting in 2013;
- Individuals whose adjusted gross income for the year exceeds \$200,000 (\$250,000 for joint filers), whether from wages or otherwise, will also be paying an additional 3.8 percent Medicare tax on net investment income, starting in 2013;
- 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;
- Small employers with no more than 25 employees are entitled to up to a 35 percent tax credit on the cost of providing health insurance for employees, starting immediately in 2010;
- Most individuals will be required to obtain health insurance or be subject to a penalty tax starting in 2014;
- Tax credits to subsidize the cost of health insurance premiums will be available to individuals earning up to 400 percent of the poverty level, starting in 2014;

- Health flexible savings arrangement (FSA) dollars will be limited to prescription medications with some exceptions after 2010, along with placing a \$2,500 annual cap on expenses covered under health FSAs, starting in 2013;
- A 40 percent excise tax will be imposed on high-cost, "Cadillac" employer-sponsored health coverage, starting in 2018;
- Fees will be imposed on the pharmaceutical industry and health insurance providers, starting in 2011 and 2014, respectively;
- An excise tax will be imposed on medical device manufacturers after 2012; and
- Limits on tax-subsidized medical expenses will be imposed by raising the itemized medical expense deduction floor for regular tax purposes from 7.5 percent to 10 percent, generally starting in 2013.

Tax incentives

Among a handful of tax incentives provided under the new health care reform package, two are particularly notable at this time: (1) the ability of parents to cover adult children up to age 27 under their tax-qualified employer-provided health plans, starting after March 23, 2010; and (2) the unveiling of a simplified cafeteria plan specifically tailored to small businesses, starting in 2011.

Exchanges

The health care reform package requires each state to establish an exchange by 2014 to help individuals and qualified employers obtain coverage. Coverage will be offered at various levels. Qualified individuals may be eligible for premium assistance tax credits, cost-sharing or vouchers to help pay for coverage through an insurance exchange. An individual's income whether or not coverage is provided by his or her employer will all be taken into account when determining if the individual qualifies for a premium assistance tax credit, cost-sharing or voucher.

IRS guidance

The IRS and other federal agencies will be filling in details on how to comply with all the provisions under the massive health care reform package. Our Firm will be staying on top of all developments, with an eye toward how to best maximize results under the new law for our clients. We are prepared to advise our clients on all compliance rules and tax-reduction opportunities that undoubtedly will arise. In the meantime, if you have any questions about the new law, please do not hesitate to call.