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Congress has passed a small business jobs bill (the Small Business Jobs Act of 2010) that was signed into law on September 30, 2010, with valuable individual and business tax incentives. Many of the \$12 billion tax incentives are temporary so taxpayers have only a short window in which to take advantage of them. Others are permanent but require careful planning to maximize your tax benefits.

To help jumpstart business hiring and spending, Congress has passed the Hiring Incentives to Restore Employment (HIRE) Act (H.R. 2847) that was signed into law on March 18, 2010. The HIRE Act provides for payroll tax forgiveness and an employer tax credit of up to \$1,000 for qualified new hires.

This letter highlights some of the tax incentives and revenue raisers in the new laws. As always, please contact our office for more details. We can discuss how you can maximize your tax benefits from the new laws.

Small Business Jobs Act of 2010

General Business Provisions

Bonus depreciation. The new law extends a popular business tax incentive: bonus depreciation. An additional first-year depreciation deduction equal to 50 percent of the adjusted basis was available for qualified property placed in service in 2008 and 2009 (2009 and 2010 for certain longer-lived property and transportation property). The new law extends bonus depreciation for qualified property acquired and placed in service during 2010 (or placed in service during 2011 for certain longer-lived property and transportation property). The new law also includes a special long-term accounting rule for bonus depreciation.

Code Sec. 280F. The limitation under Code Sec. 280F on the amount of depreciation deductions allowed with respect to certain passenger automobiles is increased in the first year they are used in a business by \$8,000, for automobiles that qualify, and for which the taxpayer does not elect out of the additional first-year deduction. For 2010, therefore, maximum first-year depreciation for passenger automobiles is \$11,060.

Code Sec. 179 expensing. The new law increases the maximum amount a taxpayer may expense under Code Sec. 179 to \$500,000 and raises the phase-out threshold to \$2 million. Enhanced Code Sec. 179 expensing is available for tax years beginning in 2010 and 2011. The new law also allows taxpayers to expense qualified leasehold investment property, qualified restaurant property and qualified retail improvement property. The maximum amount with respect to real property that may be expensed, however, is limited to \$250,000.

Small Business Provisions

General business credit. The new law extends the carryback period for eligible small business credits from one to five years. Eligible small business credits are defined, for purposes of the new law, as the sum of the general business credits determined for the tax year with respect to an eligible small business. An eligible small business is a corporation whose stock is not publicly traded, a partnership or a sole proprietorship. Additionally, the average annual gross receipts of the corporation, partnership, or sole proprietorship, for the prior three tax year periods, cannot exceed \$50 million. The extended carryback provision is effective for credits determined in the taxpayer's first tax year beginning after December 31, 2009.

Provisions for Individuals

Retirement savings. The new law includes several provisions to encourage retirement savings. With many employees now saving for retirement using 401(k) plans, the new law provides a major Roth conversion option that can mean significantly more dollars available at retirement. Under the new law, if a Code Sec. 401(k), 403(b) or governmental 457(b) plan now sets up a qualified designated Roth contribution program, a distribution to an employee or surviving spouse from a non-designated Roth account, under a plan, may be rolled over to a designated Roth account within the same plan. If an amount is rolled over in 2010, the new law helps ease that tax liability by treating the taxable converted amount as included ratably in income in equal amounts for 2011 and 2012, unless the taxpayer elects otherwise. The designated Roth provisions in the new law are effective for distributions made after the date of enactment.

Self-employment. Individuals who are self-employed may claim a deduction for qualified health insurance costs for income tax purposes. For self-employment taxes, the self-employed individual cannot deduct any health insurance costs. The new law allows the deduction for the cost of health insurance in calculating net earnings from self-employment for purposes of self-employment (FICA) taxes. The provision is temporary and only applies to the self-employed taxpayer's first tax year beginning after December 31, 2009.

Additionally, the new law allows partial annuitization of a nonqualified annuity contract. Holders of nonqualified annuities (annuity contracts held outside of a tax-qualified retirement plan or IRA) may elect to receive a portion of the contract in the form of a stream of annuity contracts, leaving the remainder of the contract to accumulate income on a tax-deferred basis. Only a portion of an annuity, endowment or life insurance contract may be annuitized, while the balance is not annuitized. The annuitization period must be for 10 years or more, or for the lives of one or more individuals. The annuitization provision in the new law is effective for amounts received in tax years beginning after December 31, 2010. Annuitization requires careful planning; please contact our office for details.

Revenue Raisers

Rental property expense payments. Third-party reporting has been shown to increase tax compliance and in recent years Congress has passed a number of new information reporting requirements. The new law imposes information reporting requirements on certain recipients of rental income from real estate. Rental income recipients making payments of \$600 or more to a service provider will file an information return with the IRS and the service provider. The new law permits the IRS to exclude individuals for whom reporting would be a hardship and individuals who receive only minimal amounts of rental income from the requirement. Certain members of the military and intelligence services are also excluded. The reporting provision applies to payments made after December 31, 2010.

Information return penalties. The Tax Code provides penalties for failing to file information returns. The penalty is tiered and capped. The maximum amount of the penalty varies depending when the information return is filed and if the taxpayer is a qualified small business. The new law increases the penalty, generally across-the-board, and imposes new maximum penalty amounts. The new law also revises the penalty for failing to furnish a payee statement to provide tiers and caps, similar to the tiers and caps for failing to file the information return. The new penalty regime applies to information returns and payee statements required to be filed on or after January 1, 2011.

HIRE Act

Hiring incentives. The HIRE Act provides qualified employers with temporary payroll tax forgiveness of the employer's 6.2 percent share of Social Security payroll taxes on wages paid to new hires who had been previously unemployed. Payroll tax forgiveness is effective for qualified employees on wages earned for work after March 18, 2010 and on or before December 31, 2010. A qualified employee must begin work any

time after February 3, 2010 and before January 1, 2011. The employer generally must be a private sector for-profit or tax-exempt employer (with some limited exceptions).

The newly hired worker must not have been employed for more than 40 hours during the 60-day period ending on the date that the individual begins employment. Additionally, the newly hired employee cannot displace a worker who is currently on the employer's payroll unless the worker voluntarily separated from employment or was separated from employment for cause. Newly hired individuals who are related to the employer, or who own (directly or indirectly) more than 50 percent of the business are ineligible. A qualified individual may be hired for any number of hours, full-time or part-time, since the benefits to the employer are tied only to 6.2 percent of any salary paid.

The HIRE Act requires that individuals certify they have not been employed for more than 40 hours during the 60-day period ending on the date they begin employment. The IRS has issued a form for this requirement.

Keep in mind that the HIRE Act's payroll tax forgiveness applies only to the employer's share of Social Security taxes. Employers remain liable for Medicare payroll taxes. The worker also must pay his or her share of Social Security taxes, as well as federal income taxes.

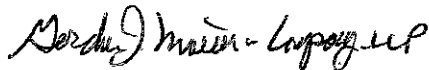
The HIRE Act also provides that the direct payroll tax holiday will not apply to wages paid during the first calendar quarter of 2010. Instead, whatever tax holiday amount would have been allowed for first quarter 2010 will instead be credited against the employer's general OASDI liability for the second quarter of 2010. Beginning for any new-hire wages paid starting April 1, an employer takes direct OASDI forgiveness into account in depositing payroll taxes under the regular deposit rule applicable to that employer.

Retained worker business credit. Under the HIRE Act, employers that hire new workers who qualify for payroll tax forgiveness, may also be eligible for a tax credit for each qualified employee. For the employer to be entitled to this new credit, the qualified employee must be retained on the employer's payroll for 52 consecutive weeks. The business credit under Code Sec. 38 will be increased, with respect to each qualified retained worker, by the lesser of \$1,000 or 6.2 percent of wages paid by the taxpayer to the qualified retained worker during the 52 week period.

A qualified retained worker must be paid an amount equal to at least 80 percent of his first 26 weeks of wages during the last 26 weeks of the 52-week qualifying period. The HIRE Act excludes wages earned by a domestic worker or an individual eligible for the foreign earned income exclusion. The HIRE Act also includes carryback rules for the credit.

If you have any questions regarding this information, please contact our office.

Sincerely yours,



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