

HEALTH CARE REFORM

AND TRACKING THE PULSE OF REFORM AND WHAT YOU NEED TO KNOW TODAY

THE HIRE ACT



By Christopher DeMayo, CPA, MBA

The United States and world marketplace is indeed in a state of flux. At home, the 2008 financial collapse, in conjunction with a significant “changing of the guard” in Washington has resulted in a flurry of tax credits, policy changes and fundamental shifts in the path our Country is taking in regards to health care and establishing fiscal stability. Business owners and advisors are doing their best to try to keep up with the impact these changes have on their Company. While many of the changes put in place are still a “work in progress”, it is imperative that executives be proactive in identifying opportunities and changes that have a defined impact on your Company today or in the near future. Below is a list of five changes that your Company should be evaluating as you plan for the next three years.

HIRING INCENTIVES TO RESTORE EMPLOYMENT ACT (HIRE ACT) PASSED MARCH 17, 2010

CREDIT FOR HIRING QUALIFYING INDIVIDUALS

A credit has been put in place to encourage employers to hire unemployed workers and expand their workforce. This credit exempts employers from paying their 6.2% share of Social Security taxes on wages paid in 2010 on newly hired qualified individuals. A “Qualified Individual” is someone who:

- Began employment with a qualified employer after February 3, 2010 and before January 1, 2011.
- Was employed for a total of 40 hours or less during the 60 day period ending on the date employment begins. The

employee will be required to complete a Form W-11, which is the HIRE Act Employee Affidavit, to meet this requirement.

- Is not related to the employer.
- Did not replace another employee unless that employee left voluntarily or for cause.

It is important to note that payroll tax relief applies only for wages paid with respect to employment from March 19, 2010 through December 31, 2010. Any “qualifying hire” should be communicated to your payroll administrator.

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CREDIT FOR *RETAINING* QUALIFYING NEW HIRES

The HIRE Act provides employers with an opportunity for an additional tax credit for wages paid to “retained workers”. These are employees who are qualified individuals (as previously defined) that:

- Are employed by the employer on any date during the tax year,
- Continue to be employed by the employer for a minimum of 52 consecutive weeks, and
- Receive wages for such employment during the last 26 weeks of the period that are equal to at least 80 percent of the wages received during the first 26 weeks of the period.

The credit for retained workers is the lesser of \$1,000 or 6.2% of wages paid for each individual that is retained for 52 consecutive weeks. This credit is in addition to the payroll tax exemption for hiring qualified individuals. A full credit is achieved when the employee reaches wages of \$16,129. The credit will be captured on the 2011 income tax return of the Company.

EXTENSION OF THE SECTION 179 EXPENSING RULES

Internal Revenue Code Section 179 allows taxpayers, subject to limitations, to elect to deduct the entire cost of qualifying property in the year acquired. Hence, a taxpayer can forgo the depreciation deduction to be spread over several years, and instead elect to fully expense tangible property in the year it is purchased (through cash or financing). This election has provided taxpayers with excellent tax planning strategies for years. The election to deduct up to \$250,000 was in place only through 2009; however the HIRE act has extended the provision through 2010. The maximum amount that a business may expense is \$250,000, and the expensing election begins to phase out when a business buys more than \$800,000 of expensing-eligible assets.

PATIENT PROTECTION AND AFFORDABLE CARE ACT PASSED DECEMBER 24, 2009

SMALL BUSINESS HEALTHCARE TAX CREDIT

The Patient Protection and Affordable Care Act (more commonly known as the Healthcare Reform Bill) contains a provision that allows eligible small employers to receive a tax credit. An eligible employer is one that (1) has less than 25 full-time equivalent employees for the taxable year with average annual wages of less than \$50,000 per full-time equivalent and (2) purchases health insurance for the full-time equivalent employees in accordance with a “qualifying arrangement”. A qualifying arrangement is one wherein the employer pays at least 50% of the premiums for each of its employees enrolled in its health insurance plan.

For 2010 through 2013, employers can receive a maximum credit of up to 35 percent of employer paid health insurance premiums. Please note that the maximum credit for a tax-exempt eligible small employer during those years is 25%. The credit, which is claimed on the Company’s annual income tax filing, increases to a 50% subsidy during 2014. [Lewis D. Bivona, CPA’s article “Healthcare Reform: The Devil is in the details”](#) which is featured with WithumSmith+Brown’s summer issue of *The Journal* provides an in-depth view of the content of the Health Care reform act and is highly recommended for any business who is evaluating the full impact of the legislation.

EXPANSION OF 1099 REPORTING

Typically, individuals, partnerships and limited liability companies that act as a contractor, provide services to a Company, and receive compensation in excess of \$600 during a calendar tax year must be provided a 1099 at the end of the year for said services. The Internal Revenue Service has historically exempt corporations from the process (of receiving a 1099), in addition, companies have not been required to provide 1099's for transactions involving property (which can include goods and materials). These exclusions were purposeful in order to reduce the compliance burden for businesses. One virtually unnoticed section of the new healthcare legislation which received very little press was the change to the IRS code relating to 1099 reporting requirements. The change expands reporting requirements to include amounts paid to corporations in addition to including amounts paid for property. This legislation, which is in effect for tax years beginning after December 31, 2011, can potentially result in a massive and unprecedented administrative reporting requirement for business owners. Many have interpreted the legislation to mean that virtually all purchases made by a company during the year to a vendor which (in the aggregate) exceed \$600 will be reportable. This could imply that business owners will now be required to issue 1099's for purchases made to companies like Staples for office supplies, Home Depot for materials, or even Dunkin' Donuts! Some lawmakers have indicated that the intent was to "close the gap" on unreported income in order to raise funds to pay for other health care measures. While these reporting requirements are not yet in effect, it is important to monitor the issue as the law could change in the future as a result of public backlash. If changes are not made, business owners should consult with their tax advisors in order to prepare for the potential future compliance requirements and its impact on their bottom line.



HEALTH INSURANCE: REQUIREMENTS TO BE COVERED AND PROVIDE COVERAGE

Penalty for remaining uninsured. A profound and highly publicized provision of the Healthcare Reform Bill is the new "requirement" to be covered. Effective for tax years beginning after Dec. 31, 2013, all US citizens will be required to maintain minimum essential health coverage either purchased privately or provided by an employer. Failure to maintain minimum essential coverage will result in penalties levied by the Internal Revenue Service. For 2014 the penalty is the greater of \$95 or 1% of a taxpayer's income over the threshold amount of income required for income tax filing. The penalty increases to \$325 or 2% and \$695 or 2.5% for years 2015 and 2016; respectively. Uninsured minors (those who have not attained the age of 18) will also be subject to penalties which would equal one-half of the fee for an adult. Household penalties are limited to a maximum of 300% of the per adult penalty or \$2,085. There are certain exceptions to this penalty including, but not limited to, those individuals who do not maintain minimum essential coverage for a period of less than three months. This change will require individuals who are not provided insurance from employers to evaluate the cost of health insurance versus the cost of penalties in order to determine if purchasing insurance makes fiscal sense. It is

important to remember that the detail provided is “broad stroke”, and employers and individuals should consult their tax advisor to obtain additional information.

Employer responsibilities. For tax years beginning on or after January 1, 2014, “large employers” will be required to offer some form of health insurance to their employees. A “large employer” is generally defined as a one with at least 50 full-time employees that doesn’t offer health care coverage for all of its full-time employees, offers minimum essential coverage that is unaffordable (coverage wherein the premium required to be paid by the employee is more than 9.5% of the employee’s household income) or offers minimum essential coverage that consists of a plan under which the plan’s share of the total allowed cost of benefits is less than 60%. Failure to offer at least minimum essential coverage that is affordable will result in non-deductible penalties proposed by the IRS. The penalty for any month will be equal to the number of full-time employees over 30 multiplied by 1/12 of \$2,000. The computation is unaffected

by how many employees are actually receiving a premium tax credit or cost-sharing reduction as long as one full-time employee is receiving a credit or reduction. Maximum penalties will be \$2,000 per year per the number of uninsured employees in excess of the threshold of 30. This change will require businesses to evaluate the ever increasing cost of coverage versus the potential penalty associated with non-compliance. Again, as this is a condensed and simplified explanation, it is important to consult with your tax advisor regarding the details of the penalty calculations, potential exceptions, and specific definitions relating to levels of coverage required.



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If you have any questions or would like a complete analysis of the impact of these changes on your business please feel free to contact WithumSmith+Brown.

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