

## Tax Incentives for Businesses

### “Hiring Incentives to Restore Employment Act” Enacted

On March 18, 2010, the President signed into law H.R. 2847 as the “Hiring Incentives to Restore Employment Act” (the “Act”). The Act contains hiring and business stimulus provisions that are intended to encourage businesses to hire and retain unemployed workers. This Client Alert summarizes three of those provisions: (1) a payroll tax holiday; (2) a tax credit for retained workers; and (3) increased Code Section 179 expense limits.

#### Payroll Tax Holiday

The Act creates a “payroll tax holiday” for hiring unemployed workers in 2010. Specifically, the Act temporarily exempts “qualified employers” from paying the employer’s share of the Social Security tax assessed with respect to wages paid to “qualified individuals” performing services for a “qualified employer” in the employer’s trade or business (or in the case of a nonprofit organization, in furtherance of the purpose or function that qualified the employer as a nonprofit organization) between March 18, 2010 and December 31, 2010.<sup>1</sup>

This represents a savings to the employer of 6.2% of the newly-hired employee’s wages (limited to \$6,622 per employee, which is 6.2% of the 2010 Social Security wage base). The employer is still required to pay the Medicare tax equal to 1.45% of the employee’s wages, and withhold the employee’s share of Social Security and Medicare, together equaling 7.65%.

A “qualified employer” includes any employer other than a state or a political subdivision of a state (e.g., local government or an instrumentality). However, a public institution of higher education is a qualified employer even if it would otherwise constitute an instrumentality. Thus, the payroll tax holiday extends to any for profit or nonprofit employer other than those in the public sector, and to public colleges and universities.

A “qualified individual” is one who:

- Begins employment with a qualified employer after February 3, 2010 and before January 1, 2011;
- Certifies by signed affidavit, under penalties of perjury, that the individual has not been employed for more than 40 hours during the 60-day period ending on the date employment begins with the qualified employer;
- Is not employed to replace another employee of the qualified employer, unless the other employee separated from employment voluntarily or for cause; and
- Is not related to the qualified employer (e.g., child, child’s descendant, stepchild, sibling, stepbrother or stepsister, parent or stepparent, niece or nephew, uncle or aunt, or in-laws).

Qualified employers may elect out of the payroll tax holiday in the manner to be required by the Internal Revenue Service on an employee-by-employee basis so as to preserve the employer’s eligibility for the

---

<sup>1</sup> However, payroll taxes attributable to the first calendar quarter of 2010 will be required to be paid but will be credited against other payroll taxes the employer must pay in the second quarter.

Work Opportunity Tax Credit (WOTC). WOTC may be of greater value to employers of low-wage employees.

#### **Tax Credit for Retained Workers**

The Act provides a one-time business credit to employers of up to \$1,000 for each retained worker. A “retained worker” is defined as any qualified individual (as described above) who was:

- Employed by the taxpayer on any date during the tax year;
- Employed by the taxpayer for a period of at least 52 consecutive weeks; and
- Paid wages for that employment during the last 26 weeks of the 52-week period that equaled at least 80% of the wages for the first 26 weeks of the 52-week period.

This business credit will be equal to the lesser of \$1,000 or 6.2% of the wages paid by such employer to a “retained worker” during a 52-consecutive week period that the worker is employed, and can be taken in the taxable year in which an employee first qualifies as a retained worker. The credit may not be carried back by taxpayers to tax years beginning before March 18, 2010. The Act contains special rules governing the application of this credit to possessions of the United States and their residents.

#### **Increased Section 179 Expense Limits**

The Act increases both the Section 179 deduction (which permits taxpayers to expense certain business assets that would otherwise be treated as depreciable property) and the “investment limitation” (after which the Section 179 deduction begins to phase out) vis-à-vis taxable year 2010. The base level of the Section 179 deduction is \$25,000, and the base level of the “investment limitation” is \$200,000. However, the Small Business and Work Opportunity Act of 2007 temporarily increased the Section 179 deduction to \$125,000 (indexed for inflation during the relevant years) and the “investment limitation” to \$500,000 (also indexed for inflation), for taxable years beginning between 2007 and 2010. Subsequent economic stimulus legislation increased the maximum Section 179 deduction to \$250,000 and the “investment limitation” to \$800,000 for taxable years beginning in 2008 and 2009. Under the Act, the Section 179 deduction will remain at \$250,000, and the “investment limitation” will remain at \$800,000 for taxable years beginning in 2010. Thereafter, absent other legislation, the maximum Section 179 deduction will revert to \$25,000, and the “investment limitation” will return to \$200,000.

The full use of the Section 179 deduction and the “investment limitation” can result in a savings of \$87,500 of federal income tax for a taxpayer in the 35% income tax bracket.

If you have questions regarding this Alert, please contact [Robert Heroux](#) of Moses & Singer's [Income Tax](#) practice at [heroux@mosessinger.com](mailto:heroux@mosessinger.com) or 212.554.7844.

---

## MOSES & SINGER LLP

---

Moses & Singer's [Income Tax](#) practice extends to all principal areas of tax law, at the state, federal and international levels. The tax group handles matters for large and small corporations, partnerships, limited liability companies, and individuals. Our lawyers work closely with the firm's other practice groups to provide tax planning and advice as well as represent clients in tax controversies at the administrative and judicial levels.

Since 1919, Moses & Singer has provided legal services to diverse businesses and to prominent individuals and their families. Among the firm's broad array of U.S. and international clients are leaders in banking and finance, entertainment, media, real estate, healthcare, advertising, and the hotel and hospitality industries. We provide cost-effective and result-focused legal services in the following primary areas:

- Advertising
- Asset Protection
- Banking and Finance
- Business Reorganization, Bankruptcy and Creditors' Rights
- Corporate, Securities and M & A
- Employment and Labor
- Entertainment
- Healthcare
- Hotel and Hospitality
- Income Tax
- Intellectual Property
- International Trade
- Internet/Technology
- Legal Ethics & Law Firm Practice
- Litigation
- Matrimonial and Family Law
- Privacy
- Private Funds
- Promotions
- Real Estate
- Trusts and Estates

---

The Chrysler Building  
405 Lexington Avenue  
New York, NY 10174-1299  
Tel: 212.554.7800 Fax: 212.554.7700

2200 Fletcher Avenue  
Fort Lee, NJ 07024  
Tel: 201.363.1210 Fax: 201.363.9210  
Abraham Y. Skoff, Esq.  
Managing Attorney for New Jersey

---

**Circular 230 Disclosure**

The following disclosure is provided in accordance with the Internal Revenue Service's Circular 230 (21 CFR Part 10). Any tax advice contained in this letter is intended to be preliminary, for discussion purposes only, and not final. Any such advice is not intended to be used for marketing, promoting or recommending any transaction, or for the use of any person in connection with the preparation of any tax return. Accordingly, this advice is not intended or written to be used, and it cannot be used, by any person for the purpose of avoiding tax penalties that may be imposed on such person.

**Disclaimer**

Viewing this alert or contacting Moses & Singer LLP does not create an attorney-client relationship.

This alert is intended as a general comment on certain legal issues. It does not contain a complete legal analysis or constitute an opinion of Moses & Singer LLP or any member of the firm on the legal issues herein described. This alert contains timely information that may eventually be modified or rendered incorrect by future legislative or judicial developments. It is recommended that readers not rely on this general guide in structuring or analyzing individual transactions but that professional advice be sought in connection with any such transaction. To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

**Attorney Advertising**

It is possible that under the laws, rules or regulations of certain jurisdictions, this document may be construed as an advertisement or solicitation.

Copyright © 2010 Moses & Singer LLP  
All Rights Reserved