

PUBLICATION

Spotlight on Exempt Organizations: Don't Leave Incentives on the Table

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Tax exempt organizations may be leaving dollars on the table because they are unaware of the availability of incentives provided under two laws passed in 2010. The Hiring Incentives to Restore Employment (HIRE) Act, signed into law by President Obama on March 18, 2010, creates a payroll tax exemption. Further, the Patient Protection and Affordable Care Act (PPACA), signed by President Obama on March 23, 2010, creates a small business health care tax credit. Both tax incentives are available to tax exempt organizations.

HIRE Act

The HIRE Act was designed to encourage employers to hire unemployed workers. The key feature of the legislation is an exemption of the employer's share of the 6.2 percent social security payroll tax for wages paid to qualified employees. Qualified employees are generally employees who have worked no more than 40 hours in the 60 days before their date of hire and who were hired between February 4, 2010, and December 31, 2010. The exemption is available for wages paid between March 19, 2010 and December 31, 2010.

The legislation also provides a business tax credit for employers who retain a qualified employee for 52 weeks or more. The credit is equal to 6.2 percent of wages paid to the qualified employee over the 52-week period, up to a maximum of \$1,000. This credit may be used to reduce an exempt organization's unrelated business taxable income.

These incentives are available to tax exempt organizations as well as for-profit employers. Employers should be aware of the exact rules that define a qualified employee. For instance, it is not required that a qualified employee have received unemployment benefits at some time during the 60-day unemployment period. Also, a laid-off and rehired employee will qualify, provided he or she did not work more than 40 hours during the 60-day time period. Finally, it is not necessary that a new job be created for the qualifying employee. An employer may replace a current employee with a new employee as long as the employer does not fire a current employee solely to replace a new qualified employee for purposes of claiming HIRE Act tax incentives.

PPACA

The small business health care tax credit, found in PPACA, is available to small employers who pay for at least half the cost of single coverage to their employees' health care coverage. Through 2013, the maximum credit for tax exempt organizations is 25 percent of premiums paid, and this maximum credit is available for organizations that employ 10 or fewer full-time employees and pay average annual wages of \$25,000 or less. The credit begins to phase out as employees and wages increase, so that it is completely phased out if an employer has 25 or more full-time employees or average annual wages of \$50,000 or more. Part-time employees count only as a corresponding portion of a full-time employee, and thus an organization may employ more than 25 workers and still be eligible for the credit. Beginning in 2014, the maximum amount of the credit will jump to 35 percent of premiums paid for tax exempt organizations.

The IRS released guidance, IR-2010-117, on how tax exempt organizations may claim the credit. The credit is computed on IRS Form 8941. A tax exempt organization must then file IRS Form 990-T, typically used to report the tax on unrelated business income, in order to claim the credit. The 990-T has been revised for the

2011 filing session to enable tax exempt organizations, even those that owe no tax on unrelated business income, to claim the small business health care credit. Thus, the small business health care tax credit is especially attractive as it may be claimed in the form of a refund by a tax exempt organization.

Summary

Tax exempt organizations are often vulnerable to overlooking incentives that may be applicable because such incentives are generally considered as primarily benefitting the business community. HIRE and PPACA offer incentives that may financially assist tax exempt organizations and should be part of any such organizations' budgetary considerations.

If you have questions about how these incentives may apply to your tax exempt organization, please contact any attorney in the Firm's Tax Department.