HIRE Act — Incentives and Ground Rules

By: David Carroll. ***This was posted Wednesday, April 21st, 2010***

This article is the second of two by John Vandenhoff on the newly enacted HIRE Act. John is a tax specialist at Sands Anderson and in this article John describes some of tax incentives as well as the rules that apply when taking advantage of the HIRE Act's provisions. David

John Vandenhoff

In the last post, we cited the two main provisions of the recently signed "Hiring Incentives to Restore Employment Act of 2010" (the HIRE Act, P.L. 111-147). Some additional features of the new payroll tax hiring incentive include:

• The tax benefit of the new incentive is immediate. It puts money into a business' cash flow immediately, since the tax is simply not collected in the first place.

• The tax benefit generally applies only to private-sector employment, including nonprofit organizations—public sector jobs are generally not eligible for either benefit. However, employment by a public higher education institution qualifies.

• There is no minimum weekly number of hours that the new employee must work for the employer to be eligible, and there is no limit on the dollar amount of payroll taxes per employer that may be forgiven.

• For workers that would otherwise be eligible for the Work Opportunity Tax Credit (i.e., another type of employment tax credit), the employer must select one benefit or the other for 2010. There is no double dipping.

• An employer can't claim the new tax breaks for hiring family members.

• A worker who replaces another employee who performed the same job for the employer isn't eligible for the benefit, unless the prior employee left the job voluntarily or for cause.

• For the hiring to qualify, the new hire must sign an affidavit, under penalties of perjury, stating that he or she hasn't been employed for more than 40 hours during the 60-day period ending on the date the employment begins.

• The incentive isn't biased towards either low-wage or high-wage workers. Under the measure, a business saves 6.2% on both a $40,000 worker and a $90,000 worker.

• The payroll tax holiday doesn't apply with respect to wages paid during the first calendar quarter of 2010, but the amount by which the Social Security payroll tax would have been reduced under the payroll tax holiday provision during the fist calendar quarter is applied against the tax imposed on the employer for the second calendar quarter of 2010.

• The Act creates a similar new set of rules allowing a payroll tax holiday for railroad retirement tax purposes.

The credit for retaining qualifying new hires is the lesser of $1,000 or 6.2% of the wages paid by the taxpayer to the retained worker during the 52-consecutive-week period. Thus, the credit for a retained worker will be $1,000 if, disregarding rounding, the retained worker's wages during the 52-consecutive-week period exceed $16,129.03. However, the credit isn't available for pay not treated as wages under the Code (e.g., remuneration paid to domestic workers).