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2010 HIRING INCENTIVES TO RESTORE EMPLOYMENT ACT

Special Report

HIGHLIGHTS:

- ✔ *Hiring/Retention Tax Incentives*
- ✔ *Code Sec. 179 Expensing For 2010*
- ✔ *Build America Bonds*
- ✔ *New Foreign Account Tax Compliance Rules*
- ✔ *Extenders And More Delayed*

Inside

Senate Passes Extenders/COBRA Bill Conference Likely; HIRE Bill Next

The Senate approved a nearly $140 billion "tax extenders" package on March 10 by a vote of 62 to 36. The American Workers, State and Business Relief Act of 2010 (H.R. 4213) extends a host of popular but temporary individual, business, charitable, and energy tax incentives through December 31, 2010. The Senate bill also extends eligibility for COBRA premium assistance through December 31, 2010, provides for pension funding relief, allows workers over age 59½ to convert 401(k) distributions to Roth 401(k) plans, and adds a technical modification to the popular first-time homebuyer tax credit, among its list of changes. The Senate extenders bill is partially paid for by codification of the economic substance doctrine and reform of the cellulosic biofuel producer credit.

Impact *The extenders bill is the second of what are being called "jobs bills" by their supporters in the Senate. The Senate passed the first jobs bill the "Hiring Incentives to Restore Employment (HIRE) Act (H.R. 2847)" in February. Because of certain amendments made subsequently by the House on March 4, however, the Senate must vote again on the HIRE Act before it can be sent to President Obama.*

Also on both the Senate and House agendas is health care reform along with proposals to extend the 2009 estate tax into 2010, a "cash for caulkers" program endorsed by the White House, an alternative minimum tax (AMT) "patch" for 2010, targeted small business tax relief, and the soon-to-expire individual marginal rate cuts and marriage penalty relief enacted in 2001.

Sander Levin, D-Mich., Acting Chair of the House Ways and Means Committee, indicated shortly after Senate passage that a conference maybe needed to reconcile the House extenders bill and the Senate extenders bill. Although the two bills include many of the same extenders, their revenue offsets are different. The House extenders bill, the Tax Extenders Act of 2009 (H.R. 4213), approved last December, is paid for in part by taxing carried interest as ordinary income. That revenue raiser remains highly controversial.

Relief for earthquake victims in Chile. The House on March 10 approved by unanimous consent H.R. 4783, a bill that would allow 2009 itemized deductions for charitable contributions to victims of the earthquake in Chile made prior to April 15, 2010. The bill also extends from February 28 to April 15 the deadline for treating contributions to assist victims in Haiti as itemized 2009 deductions.

HIRING/RETENTION TAX INCENTIVES

The centerpiece of the HIRE Act is $13 billion in tax breaks for private sector businesses to boost hiring in 2010. The "Hire Now Tax Cut" combines payroll forgiveness for Social Security taxes paid on qualified new hires, along with a tax credit for then keeping them on the payroll for at least 52 consecutive weeks.

Comment This hiring incentive represents a less expensive alternative to President Obama's FY 2011 budget proposal of a $5,000 tax credit for every net new employee hired by a small business in 2010, capped at $500,000 for any one employer. The president also proposed reimbursing small businesses on Social Security taxes paid on any wage increases for moderate income employees.

Payroll Tax Forgiveness

Under the HIRE Act, a qualified employer's 6.2 percent OASDI Social Security tax liability is lifted for wages paid for any 2010 period starting anytime after the date the bill is enacted through December 31, 2010, with respect to qualified new employees who start employment a qualified employer anytime after February 3, 2010 and before January 1, 2011.

Impact *The bill's payroll tax forgiveness measure effectively exempts employers from paying the 6.2 percent Social Security tax on wages paid to qualified individuals from the date of enactment through the end of 2010.*

The House amendment provides a special rule for the first calendar quarter of 2010 that will help payroll departments put the new tax break into place in an orderly manner. Payroll tax forgiveness would not apply directly with respect to wages paid during the first calendar quarter of 2010. Instead, the House amendment provides for crediting of the first quarter payroll tax exemption against the employer's OASDI liability for the second quarter of 2010. The amount by which payroll taxes would have been reduced in the first quarter of 2010 would be treated as a payment against tax for the second quarter of 2010.

Comment This provision was not part of the HIRE Act as passed by the Senate on February 24, 2010. The first-quarter credit for the 6.2 OASDI tax paid on new hires, therefore, can offset the employer's OASDI liability in the second quarter due on all employee wages (other than the new hires, who continue to qualify the employer for the OASDI exemption).

The House amendment extends payroll tax forgiveness to Railroad Retirement Taxes and also provides for payroll tax forgiveness and the worker retention credit for businesses in U.S. territories and possessions.

Comment Since payroll taxes are deductible as an ordinary and necessary business expense, employers will have a correspondingly smaller business expense deduction on their 2010 tax returns.

Example *ABC Co. hires Barbara, Catherine and David who start working on June 1, 2010, and continue in their employment through December 31, 2010. Their respective salaries are all below the Social Security wage cap of $106,800 for 2010. ABC Co. does not have to pay the 6.2 percent Social Security tax otherwise to be paid for Barbara, Catherine and David for the period of time they are employed by ABC for 2010.*

Impact *The Congressional Budget Office recently studied the impact of a payroll tax credit and reported that employers will likely respond in one of fours ways: (1) some firms will react to lower employment costs by reducing their prices to sell more goods or services; (2) some firms will pass the tax savings on to their employees in the form of higher wages; (3) some firms will retain the tax savings as profits; and (4) other firms will employ more workers during the time it is temporarily less expensive.*

Impact *The HIRE Act's payroll tax forgiveness only relates to the employer portion of OASDI. Employers remain liable for the Hospital Insurance for the Medicare (HI) portion.*

Comment According to the Joint Committee on Taxation, an employer may qualify for the incentive by rehiring workers who had previously been laid off. For example, an employer may qualify for the incentive with respect to wages paid when a closed factory reopens.

So as not to shortchange Social Security funding, the HIRE Act transfers to the Federal Old-Age and Survivors Trust Fund and Federal Disability Insurance Survivors Trust Fund amounts equal to the revenue reduction to the Treasury because of temporary payroll tax forgiveness.

Qualified employers. The U.S., any state or political subdivision thereof, or any instrumentality of the U.S., state or political subdivision thereof, except for state colleges and universities, are *not* qualified employers for purposes of payroll tax forgiveness. Qualified employers may elect to opt out of payroll tax forgiveness.

Comment The provision for payroll tax forgiveness is coordinated with the Work Opportunity Tax Credit (WOTC). The term "wages" for purposes of the WOTC does not include any amount paid or incurred to a qualified individual during the one-year period beginning on the hiring date of the individual by a qualified employer unless the employer makes an election not to have payroll tax forgiveness applies. This either/or employer benefit should not be confused with the Making Work Pay Credit for employees.

Qualified employees. A qualified individual must begin employment with the qualified employer after February 3, 2010 and before January 1, 2011. The qualified individual must not have been employed for more than 40 hours during the 60-day period ending on the date the individual begins employment. The qualified individual cannot displace a current employee unless the other employee separated from employment voluntarily or for cause. Additionally, employees who are related to the employer or who directly or indirectly own more than 50 percent of the business are not eligible.

Comment 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. No minimum or maximum number of hours is required, although some coordination with employees with multiple jobs is required. The qualified individual must certify that he or she was not employed for more than 40 hours during the prior 60-day period and, therefore, satisfies the criteria in the HIRE Act.

Impact *Two potential flash points immediately surface from the statutory requirements for claiming payroll tax forgiveness. First, only payments to employees qualify. Thus, misclassifying workers as independent contractors, as well as "converting" independent contractors into "new employees," are issues that will be tested. Second, a qualifying new employee may only replace an existing employee who voluntarily terminates or is fired for cause. Employment law issues are certain to arise over this requirement.*

"The centerpiece of the HIRE Act is $13 billion in incentives for private sector businesses to boost hiring in 2010."

Retained Worker Business Credit

Employers that hire new workers who qualify for payroll tax forgiveness and keep them on the payroll for at least 52 consecutive weeks may be eligible for a tax credit for each of those qualifying employees. Under the House amendment, the current year Code Sec. 38(b) business tax credit would be increased, with respect to a 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 a 52-consecutive week period.

Impact *The version of the HIRE Act passed by the Senate on February 24, 2010 does not include the "6.2 percent of wages paid by the taxpayer" language, above. The limitation was added by the House to prevent qualification for the full $1,000 credit for only minimal part-time work. Based upon the 6.2 percent cap, any newly-hired employee who earns more than $16,129 during the 52 week period would qualify his or her employer for the full $1,000 retained worker credit.*

To prevent further manipulation of the credit, 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.

Impact *The retained worker business credit generally would be taken on the employer's 2011 income tax return because of the 52-week minimum employment period prerequisite. To prevent any retroactive benefit, the HIRE Act disallows carrying back any portion of the unused Code Sec. 38 business credit attributable to the provisions for retained workers.*

CODE SEC. 179 EXPENSING

For 2009, the maximum Code Sec. 179 deduction was $250,000 and the phase-out limit for qualifying property purchased during the year began at $800,000. First introduced in 2008, enhanced Code Sec. 179 expensing expired on December 31, 2009. Without legislation, Code Sec. 179 expensing for 2010 is limited to $125,000, with a $500,000 cap (both adjusted for inflation). The HIRE Act extends enhanced Code Sec. 179 expensing, at the $250,000/$800,000 threshold levels, through December 31, 2010.

Planning Tip *Under the HIRE Act, off-the-shelf computer software continues to be Code Sec. 179 property for one more year.*

Impact *Unlike bonus depreciation, Code Sec. 179 expensing is available on both new and used property. Also unlike bonus depreciation, the $800,000 qualifying property ceiling for Code Sec. 179 property effectively limits expensing to small businesses. Finally, Code Sec. 179 is keyed to the business's tax year rather than the 2010 calendar. The extension under the bill applies to purchases made in tax years beginning after December 31, 2009 and before January 1, 2011.*

Caution *The HIRE Act does* **not** *extend bonus depreciation.*

BUILD AMERICA BONDS

The American Recovery and Reinvestment Act of 2009 (2009 Recovery Act) authorized state and local governments to issue two types of Build America Bonds. The first type of Build America Bond provides a subsidy through federal tax credits to the bonds' investors. The second type of Build America Bond provides a subsidy through a refundable tax credit paid to state or local governmental issuers. The HIRE Act allows taxpayers to elect to convert qualified tax credit bonds to Build America Bonds.

Comment Tax credit bonds for purposes of this provision include new renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds. The issuer of the tax-exempt bond must make an irrevocable election for treatment as a Build America Bond.

Comment The Obama administration has proposed to make permanent the Build America Bond program.

FOREIGN ACCOUNT TAX COMPLIANCE

The HIRE Act is partially paid for by new measures heightening disclosure and reporting requirements for foreign accounts.

Comment The Obama administration recommended passage of the foreign account proposals in its FY 2011 federal budget. The administration also asked Congress to overhaul the international taxation rules. The HIRE Act does not include the administration's proposed changes to the international taxation rules, such as reforming the foreign tax credit, limiting the shifting of income through intangible property transfers and repealing the 80/20 company rules. *For more details on the administration's international tax reform proposals, see CCH's special Tax Briefing: FY 2011 Federal Budget – Tax Proposals, on CCH Intelliconnect and on the CCH Tax Research Network.*

Reporting on Certain Foreign Accounts

The HIRE Act generally requires withholding agents to withhold 30 percent of any "withholdable payment" to a foreign financial institution that does not agree to comply with the new reporting requirements. To avoid this withholding requirement, the foreign financial institution must agree, among other things, to comply with verification and due diligence procedures with respect to accounts held by U.S. persons or U.S. owned foreign entities, deduct and withhold 30 percent on certain "pass-thru" payments to recalcitrant account holders and others, and either obtain from the account holder a waiver to any foreign secrecy laws or close the account if the waiver cannot be obtained within a reasonable time.

Impact *The HIRE Act takes an expansive view of a withholding agent. A withholding agent includes all persons, in whatever capacity, acting, having the control, receipt, custody, disposal, or payment of any "withholdable payment."*

Comment Generally, a "withholdable payment" is any payment of interest (including any original issue discount), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, and other fixed or determinable annual or periodical gains, profits and income if the payment is from sources within the U.S. A withholdable payment also includes any gross proceeds from the sale of U.S. interest or dividend producing property. A withholdable payment or other payment attributable to a withholdable payment is a pass-thru payment.

Foreign financial institutions agreeing to the new reporting rules would be required to report the name, address and taxpayer identification number (TIN) of each account holder who is a specified U.S. person. In the case of any account holder that is a U.S. owned foreign entity, the institution would be required to report the name, address and TIN of each substantial (generally 10 percent or more) U.S. owner of the foreign entity. Additionally, the foreign institution would be required to report the account number, account balance or value, and the gross receipts and gross withdrawals or payments from the account.

Impact *If the foreign financial institution is treated as a qualified intermediary for purposes of Code Sec. 1441, the HIRE Act requirements would be in addition to the qualified intermediary rules.*

Comment The HIRE Act defines an "account" as any depositary or custodial account maintained by the foreign financial institution, as well as any equity or debt interest in the institution other than equity or debt interests that are traded on an established securities market.

Small Accounts

The HIRE Act provides a reporting exception for certain accounts held by individuals. The aggregate value of all accounts held by the individual and maintained by the same financial institution cannot exceed $50,000 for the exception to apply.

Corporations, Exempt Organizations, Government Entities

The HIRE Act excludes publicly-traded corporations and exempt organizations from the heightened reporting and disclosure requirements for U.S. persons holding accounts in foreign financial institutions. The U.S. and federal agencies, along with state and local governments, are also exempt.

Disclosure of Foreign Financial Assets

The HIRE Act requires qualified individuals holding any interest in a specified foreign financial asset to attach to his or her return certain information about the asset. Under the HIRE Act, a specified foreign financial asset is, among other things, any account maintained by a foreign financial institution. The account holder must provide the account number and the name of the financial institution maintaining the account and the maximum value of the asset during the tax year. In the case of any stock or security, the holder must provide the name and address of the issuer and the maximum value of the asset during the tax year.

Impact *Individuals who fail to make the requisite disclosure will be subject to a minimum $10,000 penalty and a maximum $50,000 penalty. The IRS may abate the penalty for reasonable cause.*

Comment The aggregate value of all such specified foreign financial assets must exceed $50,000 for the disclosure requirements to kick-in.

Impact *If an individual fails to provide sufficient information to demonstrate the value of the asset, the aggregate value of the assets will be presumed to be in excess of $50,000.*

Comment A 40 percent penalty shall apply to the portion of any underpayment attributable to an undisclosed foreign financial asset.

Passive Foreign Investment Companies

The HIRE Act also requires a shareholder of a passive foreign investment company to file an annual report with the IRS. The IRS will develop the parameters for the report.

Foreign Trusts

The HIRE Act clarifies which foreign trusts are treated as having a U.S. beneficiary, provides a special rule in case of discretion to identify beneficiaries, and a presumption in certain cases that a foreign trust has a U.S. beneficiary. U.S. owners of foreign trusts will be subject to new reporting requirements and penalties for failing to report.

Statute of Limitations

The HIRE Act modifies the statute of limitations for a significant omission of income in connection with foreign assets. If a taxpayer omits from gross income an amount that exceeds 25 percent of the income properly includable therein, the statute of limitations is extended to six years. A six-year limitations period also applies to understatements when the excluded amount is attributable to one or more reportable foreign assets and exceeds $5,000.

Substitute Dividends/Dividend Equivalent Payments

The HIRE Act generally treats substitute dividends and dividend equivalent payments received by foreign persons as dividends from sources within the U.S. A dividend equivalent is any payment

*REVENUE IMPACT**

Incentives for Hiring and Retaining Unemployed Workers:

- 2010: -$4.2 billion
- 2011: -$5.6 billion
- 2010-2020: -$12.96 billion

Section 179 Expensing:

- 2010: -$556 million
- 2011: -$368 million
- 2010-2020: -$35 million

Offset Provisions: Foreign Accounts/Delay in Worldwide Interest Allocation

- 2010: $343 million
- 2011: $448 million
- 2010-2020: $16.67 billion

Based on the Congressional Budget Office (CBO) and the Joint Committee on Taxation (JCT) forecast on the estimated revenue effects for the Hiring Incentives to Restore Employment Act, as introduced in the Senate on 2/11/10 made under a securities lending or a sale-repurchase transaction contingent on or determined by reference to a dividend payment from sources within the U.S., any payment under a notional principal contract contingent on or determined by reference to a dividend payment from sources within the U.S., and any other payment substantially similar to the prior two.

WORLDWIDE INTEREST

The American Jobs Creation Act of 2004 provided that a worldwide affiliated group would be able to make a one-time election to determine the foreign source taxable income of the group by allocating and apportioning the domestic members' interest expense on a worldwide basis as if all members of the group were a single corporation. Before this provision with its delayed effective date of 2009 kicked in, Congress discovered that delaying this tax break could help on the revenue side of pending legislation. Consequently, the Housing and Economic Recovery Act of 2008 delayed the worldwide interest allocation rules through December 31, 2010, and the Worker, Homeownership, and Business Assistance Act of 2009 extended it through 2017. The House amendment to the HIRE Act postpones this tax break further through 2020.

CORPORATE ESTIMATED TAX PAYMENTS

Generally, a corporation is required to make quarterly estimated payments of income tax during its tax year. The House amendment to the HIRE Act increases the estimated payment required to be made by corporations with assets of $1 billion or more in July, August or September of 2015 to 121.5 percent of the payment otherwise due. The next required installment due in October, November or December 2015 would be proportionately reduced to reflect the increase. Additionally, the House amendment to the HIRE Act increases the estimated payment required to be made by corporations with assets of $1 billion or more in July, August or September of 2019 to 106.5 percent of the payment otherwise due. The next required installment due in October, November or December 2019 would be proportionately reduced to reflect the increase.

Comment Congress has used the one-time acceleration of estimate tax payments from large corporate taxpayers before as a source of revenue in tax legislation. Most recently, the Worker, Homeownership, and Business Assistance Act of 2009 had raised third-quarter 2014 estimated tax payments to 133.25 percent and reduced proportionately estimated tax payments falling due in the fourth calendar quarter 2014.

EXTENDERS

The HIRE Act does not include any extenders except for the enhanced Code Sec. 179 expensing. However, the American Workers, State and Business Relief Act of 2010 includes nearly all the same extenders as the House-passed extenders bill, the Tax Extenders Act of 2009, but with some important differences. Among the amendments added to the Senate extenders bill immediately before passage are provisions that would give companies additional time to repay pension plan losses; modify the Code Sec. 45 credit for refined coal from steel industry fuel; allow workers over age 59½ to convert 401(k) distributions to Roth 401(k) plans; extend GO Zone low-income housing tax credits; expand areas eligible for the low-income housing credit; expand the standards for property qualifying for the $1,500 tax credit for the installation of energy-efficient windows, doors and skylights; and allow appliance manufacturers to convert unusable credits for energy-efficient appliances to cash.

INDIVIDUAL EXTENDERS

The House and Senate bills extend a handful of temporary individual tax incentives, which expired after December 31, 2009, through tax years ending on December 31, 2010. The individual extenders include:

- Teacher's Classroom Expense Deduction;
- Additional Standard Deduction For Real Property Taxes;
- State and Local Sales Tax Deduction; and
- Higher Education Tuition Deduction.

Comment Before 2010, an individual could convert a traditional IRA (or eligible rollover distribution) to a Roth IRA only if the taxpayer had modified AGI of $100,000 or less. Married taxpayers filing separate returns were also prohibited from making a conversion. Effective January 1, 2010, the income and filing restrictions were eliminated. The Senate extenders bill allows a 401(k) plan to provide for Roth conversions within the 401(k) plan. The House extenders bill does not include a similar provision.

BUSINESS EXTENDERS

The House and Senate bills extend many temporary business tax incentives, which expired after December 31, 2009, through tax years ending on December 31, 2010. The business extenders include:

- Research Tax Credit;
- Differential Wage Payments;
- Qualified Leasehold Improvements;
- Qualified Restaurant Property;
- Retail Improvement Property;
- Indian Employment Credit;
- Film and Television Production Costs;
- Environmental Remediation;
- Regulated Investment Companies; and
- Active Financing Income/Look-Through.

Comment The Senate extenders bill, but not the House extenders bill, allows business taxpayers to apply 10 percent of unused alternative minimum tax (AMT) credits to make qualified investments in manufacturing facilities and equipment in 2010.

MORE EXTENDERS

The House and Senate bills also extend through December 31, 2010, the following incentives:

- New Markets Tax Credit;
- Five-year write-off of farm machinery/equipment;
- Mine rescue training credit and bonus depreciation allowance;
- Railroad track maintenance credit;
- Motorsports entertainment complex accelerated recovery;
- Tax incentives for empowerment zones;
- Tax incentives for the District of Columbia;
- Renewal community tax incentives;
- Modification of tax treatment of certain payments to controlling exempt organizations;
- Code Sec. 199 domestic production activities deduction for qualified activities in Puerto Rico;
- Temporary increase in the limit on cover over of rum excise taxes to Puerto Rico and the U.S. Virgin Islands; and
- American Samoa Economic Development Credit.

Comment The Senate extenders bill would allow taxpayers to claim the mine rescue training credit and bonus depreciation allowance against alternative minimum tax (AMT). The House extenders bill does not include a similar provision.

CHARITABLE EXTENDERS

The House and Senate bills extend a number of tax incentives to encourage contributions to charitable organizations by individuals and businesses. The charitable-related extenders include:

- Tax-free Distributions from IRAs for Charity;
- Contributions of Real Property Made for Conservation Purposes;
- Contributions of Food Inventory;
- Corporate Contributions of Books to Public Schools;
- Corporate Contributions of Computer Inventory; and
- S Corps' Charitable Contributions.

ENERGY EXTENDERS

The HIRE Act does not include any energy tax incentives. The energy extenders in the House bill include:

- Alternative Motor Vehicle Credit for Heavy Hybrids;
- Credits for Biodiesel and Renewable Diesel Fuel; and
- Sales of Electric Transmission Property.

The Senate extenders bill, but not the House extenders bill, also:

- Extends the Code Sec. 45 renewable electricity production tax credit to a refined coal production facility producing steel industry fuel;
- Enhances the credit for electricity produced at qualified open-loop biomass facilities;
- Extends the credit for the production of low sulfur diesel fuel;
- Producing fuel from coke or coke gas may claim a tax credit;
- Extends the new energy efficient home credit;
- Extends the alternative fuel and alternative fuel mixture excise credits;
- Extends special rules for sales or dispositions to implement Federal Energy Regulatory Commission (FERC) or state electric restructuring policy for qualified electric utilities; and
- Suspends the 100 percent of net income limitation for tax years beginning before January 1, 2011 for oil and gas from qualified marginal wells.

NATIONAL DISASTER RELIEF

Traditionally, disaster relief has been enacted on a disaster-by-disaster basis. In 2008, Congress passed the National Disaster Relief Act (2008 Disaster Relief Act). The 2008 Disaster Relief Act provided for a variety of temporary provisions to assist taxpayers recovering from a qualified disaster nationwide. The House extenders bill and the Senate extenders bill extend the national disaster relief provisions through December 31, 2010.

Comment The Senate extenders bill, but not the House extenders bill, extends special rules for use of retirement funds and an exclusion of cancellation of mortgage indebtedness in the Midwestern Disaster Area.

COBRA PREMIUM ASSISTANCE

COBRA allows qualified individuals to extend employer-provided group health coverage, if they would otherwise lose the coverage because of job loss or other qualifying events. The American Recovery and Reinvestment Act of 2009 (2009 Recovery Act) and the FY 2010 Defense Appropriations Act temporarily provided premium assistance for COBRA or comparable state continuation coverage for assistance eligible individuals.

Estate Tax Reinstatement

The Senate HIRE Act does not extend the 2009 federal estate tax regime to 2010. However, lawmakers may be preparing to move a separate estate tax bill in the Senate. It is unclear if the Senate will extend the 2009 estate tax regime for one year (to December 31, 2010) or for a longer period. Lawmakers also must decide whether to make any extension of the 2009 estate tax regime retroactive to January 1, 2010.

Comment An assistance eligible individual is a COBRA qualified beneficiary who has a qualifying event for continuation coverage between September 1, 2008 and February 28, 2010 and who timely elects continuation coverage.

The House jobs bill (H.R. 2847) extends eligibility for COBRA premium assistance through June 30, 2010. The Senate's American Workers, State and Business Relief Act extends eligibility for COBRA premium assistance through December 31, 2010. The Senate extenders bill also allows assistance eligible individuals to pay premiums retroactively and maintain coverage if the individual's qualifying event is after April 1, 2010 and before the date of enactment of the Senate extenders bill. The HIRE Act does not include an extension of eligibility for COBRA premium assistance.

Comment The Temporary Extension Act of 2010 (H.R. 4691), signed into law by President Obama on March 2, extended eligibility for COBRA premium assistance through March 31, 2010.

HOMEBUYER CREDIT

The Worker, Homeownership and Business Assistance Act of 2009 (2009 Worker Act) imposed documentation requirements for taxpayers claiming the first-time homebuyer credit. Taxpayers claiming the credit on their 2009 and later returns must file Form 5405, First-Time Homebuyer Credit and Repayment of the Credit, and include a copy of the settlement statement showing all parties' names and signatures, property address, sales price, and date of purchase. For a newly constructed home where a settlement statement is not available, a copy of the certificate of occupancy showing the owner's name, property address and date of the certificate must be provided.

Long-time residents have additional documentation requirements. They must show that they lived in their old homes for a five-consecutive-year period during the eight-year period ending on the purchase date of the new home. The IRS has recommended that long-time residents should attach documentation covering the five-consecutive-year period, such as Form 1098, Mortgage Interest Statement, or substitute mortgage interest statements, property tax records or homeowner's insurance records.

The American Workers, State and Business Relief Act would clarify the documentation requirements for the homebuyer credit. The documentation requirements for long-time residents would specifically include property tax bills or other documentation as required by the IRS. The Senate extenders bill also clarifies the documentation requirements for qualified taxpayers who purchase a home after April 30, 2010 and before July 1, 2010 if they entered into a binding contract by April 30, 2010 to close on the purchase of the property before July 1, 2010. The Senate extenders bill further clarifies that the changes made by the 2009 Worker Act apply to purchases on or after the date of enactment of the 2009 Worker Act.

Comment First-time buyers may qualify for a maximum refundable credit of $8,000. Qualified long-time residents may be eligible for a maximum refundable credit of $6,500.

PENSION FUNDING RELIEF

The Senate extenders bill generally allows sponsors and employers to choose from two options to spread out their pension obligations. The first option provides for seven years for employers to repay their pension shortfalls. The second option provides for a 15-year period for employers to repay their pension shortfalls. The House extenders bill does not include a similar provision.

Impact *The measures are intended to help sponsors maintain their plans and avoid turning them over to the Pension Benefit Guaranty Corporation, the federal agency that funds pensions when sponsors terminate their plans.*

REVENUE RAISERS

The House extenders bill and the Senate extenders bill are partially offset by different revenue raisers. The House extenders bill would tax carried interest at ordinary tax rates. The Senate extenders bill would codify the economic substance doctrine and eliminate a tax credit for so-called black liquor.

Comment The House extenders bill also includes a package of foreign account tax compliance provisions, which are also found in the HIRE Act.

Carried Interest

The House extenders bill requires that investment fund managers be taxed at ordinary income rates on income from a partnership interest received for services provided to the partnership. Under current law, this income is taxed at capital gains rates. Under the House bill, amounts paid on this "carried interest" would be ordinary income to the extent the income does not reflect a reasonable return on invested capital. The House bill imposes a 40-percent penalty on underpayments from violations. The ordinary income would be subject to self-employment tax.

Impact *The House bill generally applies to tax years ending after December 31, 2009. Ordinary income treatment would be prorated for a partnership's first fiscal year ending after December 31, 2009.*

Economic Substance Doctrine

The Senate extenders bill, but not the House extenders bill, would codify the economic substance doctrine. The doctrine is used by the courts and the IRS to disallow tax benefits from certain transactions.

Under the Senate extenders bill, a transaction would be treated as having economic substance only if the transaction changes in a meaningful way (apart from federal income tax effects) the taxpayer's economic position and the taxpayer has a substantial purpose (apart from federal income tax effects) for entering into the transaction.

The potential for profit of a transaction would be taken into account only if the present value of the reasonably expected pre-tax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction is respected. The Senate extenders bill includes an exception for qualified personal transactions of individuals.

Impact *Codification of the economic substance doctrine would be effective for transactions entered into after the date of enactment of the bill.*

Impact *The Senate extenders bill also imposes a 40 percent strict liability penalty on underpayments attributable to a transaction lacking economic substance. The penalty would be reduced to 20 percent if the transaction was disclosed.*

Black Liquor

Under the Senate extenders bill, the $1.01 per gallon cellulosic biofuel producer credit would exclude fuels with certain amounts of water, sediment or ash, including black liquor. The modification of the cellulosic biofuel producer credit would be effective for qualified fuel sold or used after the date of enactment of the bill. The House extenders bill does not include a similar provision.