

# CCH Tax Briefing: 2010 HIRING INCENTIVES TO RESTORE EMPLOYMENT ACT SPECIAL REPORT

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## *President Signs HIRE Act; New Law Provides Hiring Incentives, Expensing Extension and More*

March 18, 2010 - The \$18 billion job creation package, the Hiring Incentives to Restore Employment (HIRE) Act (H.R. 2847), is now law. President Obama signed this first major tax bill of 2010 on March 18. The Senate approved the HIRE Act on March 17, 2010, by a bi-partisan 68-29 vote, following House passage on March 4, 2010, by 217 to 201. The new law provides incentives for hiring and retaining workers, along with a one-year extension of enhanced Code Sec. 179 expensing and changes to Build America Bonds. The HIRE Act is partially offset by a package of new foreign account tax compliance rules and a further delay in the worldwide interest allocation rules. Certain corporate estimated tax payments are also accelerated to help offset the cost of the tax incentives.

**IMPACT** The HIRE Act creates an immediate incentive for businesses to hire unemployed individuals by providing payroll tax forgiveness with an additional \$1,000 credit for each qualified retained worker. The longer a business has a qualified new worker on its payroll, the greater the tax benefit. Small businesses also get an immediate tax benefit of nearly \$1 billion from the extension of enhanced Code Sec. 179 expensing. Finally, Congress hopes that the HIRE Act's enhanced tax credit bonds will help pump over \$4.5 billion into local economies.

**COMMENT** Passage of the HIRE Act appears to signal only the beginning of tax legislation that will come out of the 111th Congress this year. On March 10, the Senate approved 62 to 36 the American Workers, State and Business Relief Act of 2010 (H.R. 4213), which includes a package of over 50 extenders, an extension of the COBRA premium assistance subsidy and more. The bill is now in the process of being reconciled with an earlier House extenders bill. Also on the near horizon is legislation to extend the 2009 estate tax into 2010, create a "cash for caulkers" program, provide a critical alternative minimum tax (AMT) "patch" for 2010, grant additional targeted small business tax relief, and address the soon-to-expire individual marginal tax rate cuts and marriage penalty relief enacted in 2001. Overall tax reform, especially directed toward international competitiveness, is also on Congress's "to-do" list.

### **HIRING/RETENTION TAX INCENTIVES**

The centerpiece of the HIRE Act is \$13 billion in tax breaks for private sector businesses to boost hiring of unemployed workers 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.

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 forgiven for wages paid on previously unemployed new hires for any 2010 period starting after March 18, 2010 through December 31, 2010. A "qualified employee" must start work anytime after February 3, 2010 and before January 1, 2011, and generally must have been unemployed for at least 60 days before his or her start date.

**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 new hires from the date of enactment through the end of 2010. Based on the FICA wage cap of \$106,800, the maximum value of the incentive is \$6,621 for any "qualified employee."

**EXAMPLE** ABC Co. hires qualified employees Barbara, Catherine and David who start working on June 1, 2010, and continue their employment

with ABC Co. 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 that otherwise must be paid for Barbara, Catherine and David for the period 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 four 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 does not apply to the employer's Medicare tax.

**COMMENT** Since payroll taxes are deductible as an ordinary and necessary business expense, employers will have a correspondingly smaller business returns.

**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 the payroll tax forgiveness provision. 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 individual's hiring date unless the qualifying employer makes an election not to have payroll tax forgiveness apply. 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 that employee was 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.

**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 ends employment or is fired for cause. Employment law issues are certain to arise over this requirement. 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 since prior unemployment must be shown. 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.

**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 a year later or a second shift is reinstated.

#### **Payout Mechanics**

Although the 6.2 percent OASDI tax forgiveness relates to salaries paid for work performed after March 18, 2010, an employer will not see cash savings on this forgiveness until the beginning of the second calendar quarter of 2010. To allow payroll departments and the IRS a few weeks to get direct OASDI forgiveness up and running, Congress provided that the payroll tax holiday will not apply to wages paid during the first calendar quarter of 2010. Instead, whatever tax holiday amount would have been allowed for the first quarter of 2010 will be credited against the employer's general OASDI liability for the second quarter of 2010. Beginning for any new-hire wages paid on or after April 1, an employer takes direct OASDI forgiveness into account when depositing payroll taxes under the regular deposit rule applicable to that employer.

**COMMENT** This provision was added as concern grew over the immediate implementation of payroll forgiveness. The first quarter credit for the 6.2 percent OASDI tax paid on new hires can offset the employer's OASDI liability in the second quarter due on all employee wages

**COMMENT** Payroll tax forgiveness also applies to Railroad Retirement Taxes.

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.

### *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. This new retention incentive is provided by way of the current year's Code Sec. 38(b) business tax credit, which is increased, with respect to each 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 "6.2 percent of wages paid by the taxpayer" language was added to the HIRE Act 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 consecutive-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 consecutive-week qualifying period. The law also excludes wages earned by a domestic worker or an individual eligible for the foreign earned income exclusion.

**IMPACT** The retained worker business credit generally would be taken on the employer's 2011 income tax return because of the 52 consecutive-week 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.

**COMMENT** The new hire must stay on the job for at least the 52 consecutive-week period to entitle his or her employer to the retained worker business credit. For example, if the new hire voluntarily leaves after 50 consecutive weeks for a better job, the employer is not entitled to any portion of the credit for that employee.

### **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, thus giving some fiscal year small businesses well into 2011 to take advantage of the HIRE Act's one-year expensing extension.

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

### **TAX CREDIT 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. Encouraged by the initial success of the Build America Bonds program, Congress now will enhance that

program by providing under the HIRE Act an election for issuers of qualified tax credit bonds to receive a direct payment from the federal government equal to the amount of the federal tax credit otherwise provided for these 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.

## 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.

### *Reporting on Certain Foreign Accounts*

For payments made after 2012, 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 "passthrough" 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 is any person 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 a U.S. interest or dividend producing property. A withholdable payment or other payment attributable to a withholdable payment is a passthrough payment.

Foreign financial institutions agreeing to the new reporting rules are 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 a qualified intermediary for purposes of Code Sec. 1441, the HIRE Act requirements are in addition to the qualified intermediary rules.

**COMMENT** The HIRE Act defines an "account" as any depository 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.

It appears that the extended 6-year statute of limitations applies not only when a taxpayer must file the new 6038D statement and omits \$5,000 or more of income from an account listed on the 6038D, but also applies even if the taxpayer has only one stock or account generating \$5,000 of income and, therefore, doesn't ever have to file a 6038D because the total foreign assets are less than \$50,000.

### *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 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 could 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 delayed it through 2017. 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 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 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 The HIRE Act also accelerates large corporate estimated tax payments in 2014, previously accelerated by the Corporate Estimated Tax Shift Act of 2009.

## EXTENDERS

The HIRE Act does not include any extenders except for enhanced Code Sec. 179 expensing. The Senate's extenders bill, the American Workers, State and Business Relief Act of 2010 (approved March 10 by a 62-36 vote) includes nearly all the same extenders as the House extenders bill, the Tax Extenders Act of 2009 (approved 241-181 on December 9, 2009). However, some important differences remain to be reconciled in

negotiations now underway between House and Senate tax writers.

### *Individual Extenders*

Both the House and Senate extenders 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 The Senate extenders bill also allows rollovers from elective deferral plans to Roth designated accounts and allows participants in governmental 457 plans to treat elective deferrals as Roth contributions. The House extenders bill does not include similar provisions.

### *Business Extenders*

The House and Senate extenders 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 to Activate
- Military Reservists;
- 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 Treatment.

COMMENT The Senate extenders bill allows business taxpayers to elect to apply 10 percent of unused alternative minimum tax (AMT) credits towards making qualified investments in domestic manufacturing facilities and equipment in 2010. The House extenders bill does not include a similar provision.

### *Earthquake Relief*

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

## MORE BUSINESS EXTENDERS

The House and Senate extenders 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 Deduction for Puerto Rico; 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 clarifies the low-income housing credits that are eligible for low-income housing elections. The Senate extenders bill also allows taxpayers to claim the mine rescue training credit and bonus depreciation allowance against alternative minimum tax (AMT). The House extenders bill does not include similar provisions.

### *Charitable Extenders*

The House and Senate extenders bills extend a number of tax incentives to encourage contributions to charitable organizations by individuals and businesses through December 31, 2010. The charity-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 House and Senate extenders bills extend a number of energy tax incentives through December 31, 2010.

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;
- Extends the placed-in-service date for refined coal and steel industry fuel;
- Extends the credit for production of low sulfur fuel;
- Enhances the credit for electricity produced at qualified open-loop biomass facilities;
- Extends the placed-in-service date for eligibility for a tax credit for the production of coke or coke gas;
- Extends the new energy efficient home credit;
- Extends incentives for alternative fuel and alternative fuel mixtures;
- 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.
- Provides grants for energy efficient appliances in lieu of tax credits; and
- Modifies the requirements for exterior windows, doors, and skylights to be eligible for the credit for nonbusiness energy property.

### *National Disaster Relief*

The National Disaster Relief Act of 2008 provided for a variety of temporary provisions to assist taxpayers nationwide who are recovering from a qualified disaster. The House and Senate extenders bills generally extend the national disaster relief provisions through December 31, 2010 as well as disaster relief provisions for the New York Liberty Zone, the Gulf Opportunity (GO) Zone and the Midwestern Disaster Relief Area. The Senate extenders bill also provides for modifications of certain incentives targeted to the Gulf Opportunity (GO) Zone, the Midwestern Disaster Area, and the Kansas Disaster Area.

### *Pension Funding Relief*

The Senate extenders bill generally allows qualified sponsors of defined benefit pension plans to spread out funding their shortfalls. The first option provides for seven years to repay pension shortfalls but the seven year period would be delayed two years, during which time the sponsor would owe only interest on the shortfall. The second option provides for a 15-year period to repay pension shortfalls. The House extenders bill does not include similar pension funding relief.

### *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.

### *Revenue Raisers*

The House extenders bill and the Senate extenders bill are partially offset by different revenue raisers.

### *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. The House bill imposes a 40-percent penalty on underpayments from violations. The Senate extenders bill does not include a similar provision.

### *Foreign Account Tax Compliance*

The House extenders bill originally included a package of new reporting and disclosure rules for foreign financial institutions and their U.S. account holders. The Senate extenders bill does not include similar provisions. Since this revenue raiser has been used for the most part by the HIRE Act, this offset has been removed from consideration in the extenders bill.

### *Economic Substance Doctrine*

The Senate extenders bill would codify the economic substance doctrine. The Senate bill also imposes a 40 percent strict liability penalty on underpayments attributable to a transaction lacking economic substance (reduced to 20 percent if the transaction was disclosed). The House extenders bill does not include a similar provision.

### *Black Liquor*

Under the Senate extenders bill, the cellulosic biofuel producer credit would exclude fuels with certain amounts of water, sediment or ash, including black liquor. The Senate bill also disallows the alternative fuel credit and alternative fuel mixture credit for black liquor. The House extenders bill does not include similar provisions.

### *More Offsets*

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

- Increases information return penalties;
- Clarifies that the bad check penalty applies to electronic checks and other payments;
- Allows the IRS to implement 100 percent levy on all vendor payments;
- Allows the IRS to reduce government payments owed to a contractor prior to a collection due process (CDP) hearing for unpaid employment tax liabilities; and
- Requires information reporting for rental property expense payments.

**COMMENT** The Senate extenders bill treats the provisions related to 457 plans and designated Roth accounts described above as offsets.

### *Cobra Premium Assistance*

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. The Senate extenders bill extends eligibility for COBRA premium assistance through December 31, 2010 and makes other enhancements. The House extenders bill does not include a similar provision.

**COMMENT** On March 2, 2010, President Obama signed the Temporary Extension Act of 2010 (H.R. 4691), which extends eligibility for COBRA premium assistance through March 31, 2010.

### *Homebuyer Credit*

The Worker, Homeownership and Business Assistance Act of 2009 imposed documentation requirements for taxpayers claiming the first-time homebuyer credit. The Senate extenders bill clarifies the documentation requirements for the homebuyer credit.

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