

# 2010 Small Business Owners' Summit

Where we are...  
and  
Can we change where we're going?

# Agenda

- Jeff Perry – Tort Reform Legislation
- Health Insurance – Bill Fields
  - State
  - Federal
  - What you can do
- New Tax Credits – Randy Hunt
- MA Legislative Agenda – Randy Hunt
- Q&A - All

# Tort Reform Legislation

- Jeff Perry
  - Former small business owner
  - Attorney
  - State Representative
  - Candidate for U.S. Congress
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# Tort Reform Legislation

- What is a tort?
- Impact on health care costs:
  - Verdicts
  - Malpractice insurance premiums
  - Defensive medicine
- State legislative efforts
- Federal perspective

# Health Insurance Mandates

- Bill Fields, Plan Consultant
  - Health Plan Solutions
  - [www.HealthPlanSolutions.us](http://www.HealthPlanSolutions.us)
  - 774-722-3388

# Health Insurance Mandate - State

- MA passed Chapter 58 (Health Insurance Mandate) in 2006
- What they said:
  - Applies to employers with 11 or more full-time employees (smaller companies exempt)
  - Employers to offer health insurance to their full-time employees, paying 33% of the individual cost
  - Or have 25% of their full-time staff insured
  - Or pay a small fine of \$295/year per full-time employee

# Health Insurance Mandate - State

- What they meant:
  - It is not 11 real people, it's 11 full-time equivalents (every 2,000 payroll hours is an employee)
  - You can't buy a group plan that will let you pay just 33% of the individual rate – carriers require you to pay 50% of the individual cost
  - And 33% of a family plan
  - The fine is your total payroll hours divided by 2,000 times \$295

# Health Insurance Mandate - State

## ■ The regulations

- Require you to count all employees
- 35 hours per week to be considered full-time, but they now require you to calculate this on a quarterly basis
- Require a Section 125 Plan with written evidence of the offer of insurance
- Auditors are checking compliance

# Health Insurance Mandate - Federal

- Federal law is MA law on steroids
- Employers with <50 FTEs exempted
- Full-time is defined as 30 hrs/week
- Fine is \$2,000 if you offer a plan your employees can afford; \$3,000 if they go on a federal plan
- Federal government has already spent \$70 billion on reform

# MA Health Care Connector In The News

- Editorial in Boston Globe by Pioneer Institute (included in materials)
- Connector is paid a commission on all health plans
- Connector is very profitable
- Small employers' health premiums are up 70% since reform was passed
- Insurance companies and the state are in court fighting over how much they can increase your premiums
- Head of Connector is leaving... may be going to Washington to head up the National Connector

# What you need to do

- Let your state representative know in writing what you're facing
- Vote for state reps and senators that listen to YOU
- Write to the Cape Cod Times and Boston newspapers
- Join organizations that work on your behalf
- **VOTE!!**

# Tax Credits & Legislation

- Randy Hunt, CPA
  - Small business owner
  - Former Sandwich selectman & finance committee member
  - Candidate for state representative
  - [www.ElectRandyHunt.com](http://www.ElectRandyHunt.com)
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# Small Business Health Care Credit

## ■ Eligibility

- 25 or fewer full-time equivalent (FTE) employees
- Average annual wage less than \$50,000 per FTE
- Company's subsidy of insurance premium 50% or more
- Nonprofits can qualify

# Small Business Health Care Credit

- How much is it?
  - For years 2010 through 2013, the maximum credit is 35% (25% for nonprofits) of the premiums subsidized by a business
  - The credit is reduced as FTEs approach 25 and the average wage approaches \$50,000
  - Max credit for 10 or fewer FTEs and average wage of \$25,000 or less

# Small Business Health Care Credit

- How do you claim the credit?
  - Handled as a general business credit, which is applied against tax liability when tax return is filed (for-profit)
  - General business credit carries back 1 year and forward 20 years
  - Handled as a refundable credit not to exceed amount of payroll income tax and Medicare tax withholding (nonprofit)

# Small Business Health Care Credit

- Example 1 – No adjustments
  - Total cost of health insurance = \$90K
  - Employer pays 80% of health insurance premium for employees (\$72K)
  - 9 FTEs
  - \$23,000 average wage
  - $\$72,000 \times 35\% = \$25,200$

# Small Business Health Care Credit

- Example 2 – With adjustments
  - Total cost of health insurance = \$120K
  - Employer pays 80% of health insurance premium for employees (\$96K)
  - 12 FTEs
  - \$30,000 average wage
  - $\$96,000 \times 35\% = \$33,600$
  - Reduction for FTEs =  $\$33,600 \times 2/15 = \$4,480$
  - Reduction for average wage =  $\$33,600 \times \$5,000/\$25,000 = \$6,720$
  - Credit =  $\$33,600 - \$4,480 - \$6,720 = \$22,400$

# Small Business Health Care Credit

- Some of the weeds
  - Businesses with more than 25 employees might qualify
    - With part-timers, FTEs can be below 25
    - Seasonal workers don't count (120 days or less)
  - Owners and families generally not considered employees for purposes of the credit

# Work Opportunity Tax Credit

- \$1,200 to \$9,000 credit, depending on targeted group
  - Unemployed veterans (new)
  - Disconnected youth (new)
  - Members of families receiving Temporary Assistance for Need Families (TANF)
  - People who received food stamps
  - People who received vocational rehabilitation
  - Ex-felons
  - Supplemental Security Income (SSI) recipients

# Work Opportunity Tax Credit

- But not
  - Relatives and dependents
  - Majority owners of the employer
  - Former employees

# HIRE Act

(Hiring Incentives to Restore Employment)

- For-profit and not-for-profit organizations subject to social security tax (FICA)
- Employees hired after February 3, 2010 and before January 1, 2011 who were unemployed more than 40 hours during the 60-day period ending on the date of employment

# HIRE Act

(Hiring Incentives to Restore Employment)

- Exemption is equal to the company-paid portion of FICA tax (6.2%) from March 19 through December 31, 2010
- Netted off of payments reported via Form 941
- Any first quarter offsets to be reported on the second quarter 941

# MA Legislative Agenda

- Adopt 50-FTE exemption from federal law immediately
- Scrap “one size fits all” concept of health insurance plans
- Coordinate with federal legislators to allow interstate competition among health insurance companies
- Support tort reform and electronic medical records efforts

# MA Legislative Agenda

- Remove \$456 "floor" from corporate excise tax
  - Currently assumes excisable assets of \$175,385
- Level the playing field between LLCs and corporations re: annual report fees
  - Corporate annual report: \$125
  - LLC annual report: \$500

# MA Legislative Agenda

- Implement \$500/employee credit on state income tax return for each employee hired (modeled after Work Opportunity Credit)
- Perform an actuarial analysis of employers' unemployment accounts and provide interest-free loans on excess funds used to hire new employees or to purchase capital

# MA Legislative Agenda

- Reset sales, use & meals tax to 5%
- Reduce personal income tax to 5%
- Reduce C corporation income tax to 5% for taxable income < \$1 million (currently 9.5%)
- Reduce 12% short-term capital gains tax by taxing ST gains at the ordinary income tax rate (same rule as federal)
- Make charitable contributions tax deductible

# MA Legislative Agenda

- Open public construction projects to all bidders, not just union shops
- Repeal Pacheco Law, which handcuffs the state's ability to privatize services, such as
  - Vehicle fleet management
  - State park maintenance
  - Building management and maintenance

# Q&A

## 2010 Small Business Owners' Summit

May 14, 2010, Slide 28



# Health care fails small businesses

By Jim Stergios and Amy Lischko | May 12, 2010

Not long after President Nixon took the unprecedented step of imposing peacetime wage and price controls, the American people learned a basic economic lesson: Artificial controls don't work unless underlying costs are controlled.

Four decades later, the Patrick administration is imposing controls on small business health insurance rates. The move will prove to be little more than an election-year reprise of Nixon's failed effort.

The Commonwealth's 2006 health care reform was supposed to help address rising health insurance costs for small businesses. It hasn't — and small businesses are paying the price.

The Commonwealth Connector, an independent authority meant to act as an insurance plan clearinghouse, was established to provide real choices and information needed to evaluate options. In theory, an informed and robust marketplace would bend the cost curve and get more of the working poor and lower middle class insured.

The theory is right, but the implementation has failed in two important ways.

First, the Connector focused all its energy on providing nearly free products to the indigent. In contrast, the Connector's board seemed almost uninterested in market-rate products for small business employees.

The Connector revenues come from selling plans, and selling nearly free products was the path of least resistance. Unsurprisingly, 90 percent of the Connector's operating revenue has come from the fee it earns for state-subsidized plans.

The lack of focus on small businesses is evident. The Connector took three years to make information about provider networks and participating primary care providers for small businesses available on its website. It took over two years to launch a small employer pilot program; in more than a year it attracted just 65 businesses and has now been replaced by a new program that offers only seven plans.

Implementation also fell short when the Connector chose to build a top-down bureaucracy rather than leverage the broker and private market community. The quasi-governmental Connector has a \$40 million annual budget and 45 employees earning annual salaries that average \$100,000. Its board is heavily weighted toward government officials and unions.

Paternalistic fears about "confusing" people have led the Connector to overregulate and minimize consumer choice. Instead of engaging the private market by providing unique products, it has rejected or failed to renew products, resulting in offerings that simply duplicate ones already privately available.

This bureaucratic setup cannot provide choices that contain costs to employees and owners of small businesses — nor help address today’s double-digit increases in small business rates. Utah, the only other state with a health care exchange, demonstrates that there was another path forward.

Utah’s Health Insurance Exchange was started with a \$600,000 appropriation and has no board and just two employees. The Exchange provides a technology backbone that enables private entities — brokers and businesses — to take advantage of consumer-based options. Consistent with the Exchange’s mission to promote small business growth, it is part of the Governor’s Office of Economic Development. Private sector partners provide a significant amount of unpaid policy advice on what businesses and employees need.

Fewer than 1,500 small business employees receive coverage through the Connector. In Utah, with a far smaller population, about 55,000 small business employees have purchased health insurance through the Exchange. It offers 66 plans from a number of carriers, including the largest ones in the state.

The focus on business growth and input from the private market has helped promote other reforms. In its first year, the Exchange developed a database that compares the cost of care across all providers; four years after its establishment, the Connector still hasn’t developed a similar tool. Unlike Massachusetts, Utah has also passed tort and medical malpractice reform.

We applaud the Connector’s success in insuring the indigent. But it has failed to provide small businesses with affordable, diverse choices.

Small business owners cannot afford 25 percent annual hikes to already astronomical health insurance premiums, especially in this economic climate. Price controls will do nothing to control underlying forces that drive health insurance premium increases. And unless Massachusetts does the hard work of getting costs under control, Patrick could be remembered as the guy who tried to prop up the levy as the floodwaters surged in.

*Jim Stergios is executive director and Amy Lischko is senior fellow on health care at Pioneer Institute.*

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### **Pioneer Institute Overview**

Pioneer Institute is a non-profit corporation whose central mission is to promote economic opportunity and effective government through market approaches to public policy. Its activities and products include rigorous research by leading scholars, editorials, media campaigns and educational sessions with legislators.

Acting through its five Centers and their programs, Pioneer carries out its commitment to keeping Massachusetts economically competitive and improving the quality of life for all of our citizens.

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# IRS FAQ Sheet on Small Business Health Care Tax Credit

The new health reform law gives a tax credit to certain small employers that provide health care coverage to their employees, effective with tax years beginning in 2010. The following questions and answers provide information on the credit as it applies for 2010-2013, including information on transition relief for 2010. An enhanced version of the credit will be effective beginning in 2014. The new law, the Patient Protection and Affordable Care Act, was passed by Congress and was signed by President Obama on March 23, 2010.

## Employers Eligible for the Credit

### 1. Which employers are eligible for the small employer health care tax credit?

A. Small employers that provide health care coverage to their employees and that meet certain requirements (“qualified employers”) generally are eligible for a federal income tax credit for health insurance premiums they pay for certain employees. In order to be a qualified employer, (1) the employer must have fewer than 25 full-time equivalent employees (“FTEs”) for the tax year, (2) the average annual wages of its employees for the year must be less than \$50,000 per FTE, and (3) the employer must pay the premiums under a “qualifying arrangement” described in Q/A-3. See Q/A-9 through 15 for further information on calculating FTEs and average annual wages and see Q/A-22 for information on anticipated transition relief for tax years beginning in 2010 with respect to the requirements for a qualifying arrangement.

### 2. Can a tax-exempt organization be a qualified employer?

A. Yes. The same definition of qualified employer applies to an organization described in Code section 501(c) that is exempt from tax under Code section 501(a). However, special rules apply in calculating the credit for a tax-exempt qualified employer. A governmental employer is not a qualified employer unless it is an organization described in Code section 501(c) that is exempt from tax under Code section 501(a). See Q/A-6.

## Calculation of the Credit

### 3. What expenses are counted in calculating the credit?

A. Only premiums paid by the employer under an arrangement meeting certain requirements (a “qualifying arrangement”) are counted in calculating the credit. Under a qualifying arrangement, the employer pays premiums for each employee enrolled in health care coverage offered by the employer in an amount equal to a uniform percentage (not less than 50 percent) of the premium cost of the coverage. See Q/A-22 for information on transition relief for tax years beginning in 2010 with respect to the requirements for a qualifying arrangement. If an employer pays only a portion of the premiums for the coverage provided to employees under the arrangement (with employees paying the rest), the amount of premiums counted in calculating the credit is only the portion paid by the employer. For example, if an employer pays 80 percent of the premiums for employees’ coverage (with employees paying the other 20 percent), the 80 percent premium amount paid by the employer counts in calculating the credit. For purposes of the credit (including the 50-percent requirement), any premium paid pursuant to a salary reduction arrangement under a section 125 cafeteria plan is not treated as paid by the employer.

# IRS FAQ Sheet on Small Business Health Care Tax Credit

In addition, the amount of an employer's premium payments that counts for purposes of the credit is capped by the premium payments the employer would have made under the same arrangement if the average premium for the small group market in the state (or an area within the state) in which the employer offers coverage were substituted for the actual premium. If the employer pays only a portion of the premium for the coverage provided to employees (for example, under the terms of the plan the employer pays 80 percent of the premiums and the employees pay the other 20 percent), the premium amount that counts for purposes of the credit is the same portion (80 percent in the example) of the premiums that would have been paid for the coverage if the average premium for the small group market in the state were substituted for the actual premium.

## **4. What is the average premium for the small group market in a state (or an area within the state)?**

A. The average premium for the small group market in a state (or an area within the state) is determined by the Department of Health and Human Services (HHS). [Revenue Ruling 2010-13](#) sets forth the average premium for the small group market in each state for the 2010 taxable year. For the 2010 taxable year, HHS may provide additional average premium rates for the small group market for areas within some states (sub-state rates). These additional sub-state rates will be published by the IRS and will not be lower than the applicable rate for each state that is set forth in RR-2010-13.

## **5. What is the maximum credit for a qualified employer (other than a tax-exempt employer)?**

A. For tax years beginning in 2010 through 2013, the maximum credit is 35 percent of the employer's premium expenses that count towards the credit, as described in Q/A-3.  
Example: For the 2010 tax year, a qualified employer has 9 FTEs with average annual wages of \$23,000 per FTE. The employer pays \$72,000 in health care premiums for those employees (which does not exceed the average premium for the small group market in the employer's state) and otherwise meets the requirements for the credit. The credit for 2010 equals \$25,200 (35% x \$72,000).

## **6. What is the maximum credit for a tax-exempt qualified employer?**

A. For tax years beginning in 2010 through 2013, the maximum credit for a tax-exempt qualified employer is 25 percent of the employer's premium expenses that count towards the credit, as described in Q/A-3. However, the amount of the credit cannot exceed the total amount of income and Medicare (i.e., hospital insurance) tax the employer is required to withhold from employees' wages for the year and the employer share of Medicare tax on employees' wages.  
Example: For the 2010 tax year, a qualified tax-exempt employer has 10 FTEs with average annual wages of \$21,000 per FTE. The employer pays \$80,000 in health care premiums for those employees (which does not exceed the average premium for the small group market in the employer's state) and otherwise meets the requirements for the credit. The total amount of the employer's income tax and Medicare tax withholding plus the employer's share of the Medicare tax equals \$30,000 in 2010.

# IRS FAQ Sheet on Small Business Health Care Tax Credit

The credit is calculated as follows:

- (1) Initial amount of credit determined before any reduction:  $(25\% \times \$80,000) = \$20,000$
- (2) Employer's withholding and Medicare taxes: \$30,000
- (3) Total 2010 tax credit is \$20,000 (the lesser of \$20,000 and \$30,000).

## **7. How is the credit reduced if the number of FTEs exceeds 10 or average annual wages exceed \$25,000?**

A. If the number of FTEs exceeds 10 or if average annual wages exceed \$25,000, the amount of the credit is reduced as follows (but not below zero). If the number of FTEs exceeds 10, the reduction is determined by multiplying the otherwise applicable credit amount by a fraction, the numerator of which is the number of FTEs in excess of 10 and the denominator of which is 15. If average annual wages exceed \$25,000, the reduction is determined by multiplying the otherwise applicable credit amount by a fraction, the numerator of which is the amount by which average annual wages exceed \$25,000 and the denominator of which is \$25,000. In both cases, the result of the calculation is subtracted from the otherwise applicable credit to determine the credit to which the employer is entitled. For an employer with both more than 10 FTEs and average annual wages exceeding \$25,000, the reduction is the sum of the amount of the two reductions. This sum may reduce the credit to zero for some employers with fewer than 25 FTEs and average annual wages of less than \$50,000.

Example: For the 2010 tax year, a qualified employer has 12 FTEs and average annual wages of \$30,000. The employer pays \$96,000 in health care premiums for those employees (which does not exceed the average premium for the small group market in the employer's state) and otherwise meets the requirements for the credit.

The credit is calculated as follows:

- (1) Initial amount of credit determined before any reduction:  $(35\% \times \$96,000) = \$33,600$
- (2) Credit reduction for FTEs in excess of 10:  $(\$33,600 \times 2/15) = \$4,480$
- (3) Credit reduction for average annual wages in excess of \$25,000:  $(\$33,600 \times \$5,000/\$25,000) = \$6,720$
- (4) Total credit reduction:  $(\$4,480 + \$6,720) = \$11,200$
- (5) Total 2010 tax credit:  $(\$33,600 - \$11,200) = \$22,400$ .

## **8. Can premiums paid by the employer in 2010, but before the new health reform legislation was enacted, be counted in calculating the credit?**

A. Yes. In computing the credit for a tax year beginning in 2010, employers may count all premiums described in Q/A-3 for that tax year.

## **Determining FTEs and Average Annual Wages**

### **9. How is the number of FTEs determined for purposes of the credit?**

A. The number of an employer's FTEs is determined by dividing (1) the total hours for which the employer pays wages to employees during the year (but not more than 2,080 hours for any employee) by (2) 2,080. The result, if not a whole number, is then rounded to the next lowest whole number. See Q/A-12 through 14 for information on which employees are not counted for purposes of determining FTEs.

Example: For the 2010 tax year, an employer pays 5 employees wages for 2,080 hours each, 3 employees wages for 1,040 hours each, and 1 employee wages for 2,300 hours.

# IRS FAQ Sheet on Small Business Health Care Tax Credit

The employer's FTEs would be calculated as follows:

(1) Total hours not exceeding 2,080 per employee is the sum of:

- a. 10,400 hours for the 5 employees paid for 2,080 hours each (5 x 2,080)
- b. 3,120 hours for the 3 employees paid for 1,040 hours each (3 x 1,040)
- c. 2,080 hours for the 1 employee paid for 2,300 hours (lesser of 2,300 and 2,080)

These add up to 15,600 hours

(2) FTEs: 7 (15,600 divided by 2,080 = 7.5, rounded to the next lowest whole number)

## **10. How is the amount of average annual wages determined?**

A. The amount of average annual wages is determined by first dividing (1) the total wages paid by the employer to employees during the employer's tax year by (2) the number of the employer's FTEs for the year. The result is then rounded down to the nearest \$1,000 (if not otherwise a multiple of \$1,000). For this purpose, wages means wages as defined for FICA purposes (without regard to the wage base limitation). See Q/A-12 through 14 for information on which employees are not counted as employees for purposes of determining the amount of average annual wages.

Example: For the 2010 tax year, an employer pays \$224,000 in wages and has 10 FTEs. The employer's average annual wages would be: \$22,000 (\$224,000 divided by 10 = \$22,400, rounded down to the nearest \$1,000)

## **11. Can an employer with 25 or more employees qualify for the credit if some of its employees are part-time?**

A. Yes. Because the limitation on the number of employees is based on FTEs, an employer with 25 or more employees could qualify for the credit if some of its employees work part-time. For example, an employer with 46 half-time employees (meaning they are paid wages for 1,040 hours) has 23 FTEs and therefore may qualify for the credit.

## **12. Are seasonal workers counted in determining the number of FTEs and the amount of average annual wages?**

A. Generally, no. Seasonal workers are disregarded in determining FTEs and average annual wages unless the seasonal worker works for the employer on more than 120 days during the tax year.

## **13. If an owner of a business also provides services to it, does the owner count as an employee?**

A. Generally, no. A sole proprietor, a partner in a partnership, a shareholder owning more than two percent of an S corporation, and any owner of more than five percent of other businesses are not considered employees for purposes of the credit. Thus, the wages or hours of these business owners and partners are not counted in determining either the number of FTEs or the amount of average annual wages, and premiums paid on their behalf are not counted in determining the amount of the credit.

## **14. Do family members of a business owner who work for the business count as employees?**

A. Generally, no. A family member of any of the business owners or partners listed in Q/A-

# IRS FAQ Sheet on Small Business Health Care Tax Credit

13, or a member of such a business owner's or partner's household, is not considered an employee for purposes of the credit. Thus, neither their wages nor their hours are counted in determining the number of FTEs or the amount of average annual wages, and premiums paid on their behalf are not counted in determining the amount of the credit. For this purpose, a family member is defined as a child (or descendant of a child); a sibling or step-sibling; a parent (or ancestor of a parent); a step-parent; a niece or nephew; an aunt or uncle; or a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law.

## **15. How is eligibility for the credit determined if the employer is a member of a controlled group or an affiliated service group?**

A. Members of a controlled group (e.g., businesses with the same owners) or an affiliated service group (e.g., related businesses of which one performs services for the other) are treated as a single employer for purposes of the credit. Thus, for example, all employees of the controlled group or affiliated service group, and all wages paid to employees by the controlled group or affiliated service group, are counted in determining whether any member of the controlled group or affiliated service group is a qualified employer. Rules for determining whether an employer is a member of a controlled group or an affiliated service group are provided under Code section 414(b), (c), (m), and (o).

## **How to Claim the Credit**

### **16. How does an employer claim the credit?**

A. The credit is claimed on the employer's annual income tax return. For a tax-exempt employer, the IRS will provide further information on how to claim the credit.

### **17. Can an employer (other than a tax-exempt employer) claim the credit if it has no taxable income for the year?**

A. Generally, no. Except in the case of a tax-exempt employer, the credit for a year offsets only an employer's actual income tax liability (or alternative minimum tax liability) for the year. However, as a general business credit, an unused credit amount can generally be carried back one year and carried forward 20 years. Because an unused credit amount cannot be carried back to a year before the effective date of the credit, though, an unused credit amount for 2010 can only be carried forward.

### **18. Can a tax-exempt employer claim the credit if it has no taxable income for the year?**

A. Yes. For a tax-exempt employer, the credit is a refundable credit, so that even if the employer has no taxable income, the employer may receive a refund (so long as it does not exceed the income tax withholding and Medicare tax liability, as discussed in Q/A-6).

### **19. Can the credit be reflected in determining estimated tax payments for a year?**

A. Yes. The credit can be reflected in determining estimated tax payments for the year to which the credit applies in accordance with regular estimated tax rules.

### **20. Does taking the credit affect an employer's deduction for health insurance premiums?**

A. Yes. In determining the employer's deduction for health insurance premiums, the amount

# IRS FAQ Sheet on Small Business Health Care Tax Credit

of premiums that can be deducted is reduced by the amount of the credit.

## **21. May an employer reduce employment tax payments (i.e., withheld income tax, social security tax, and Medicare tax) during the year in anticipation of the credit?**

A. No. The credit applies against income tax, not employment taxes.

## **Anticipated Transition Relief for Tax Years Beginning in 2010**

### **22. Is it expected that any transition relief will be provided for tax years beginning in 2010 to make it easier for taxpayers to meet the requirements for a qualifying arrangement?**

A. Yes. The IRS and Treasury intend to issue guidance that will provide that, for tax years beginning in 2010, the following transition relief applies with respect to the requirements for a qualifying arrangement described in Q/A-3:

(a) An employer that pays at least 50% of the premium for each employee enrolled in coverage offered to employees by the employer will not fail to maintain a qualifying arrangement merely because the employer does not pay a uniform percentage of the premium for each such employee. Accordingly, if the employer otherwise satisfies the requirements for the credit described above, it will qualify for the credit even though the percentage of the premium it pays is not uniform for all such employees.

(b) The requirement that the employer pay at least 50% of the premium for an employee applies to the premium for single (employee-only) coverage for the employee. Therefore, if the employee is receiving single coverage, the employer satisfies the 50% requirement with respect to the employee if it pays at least 50% of the premium for that coverage. If the employee is receiving coverage that is more expensive than single coverage (such as family or self-plus-one coverage), the employer satisfies the 50% requirement with respect to the employee if the employer pays an amount of the premium for such coverage that is no less than 50% of the premium for single coverage for that employee (even if it is less than 50% of the premium for the coverage the employee is actually receiving).

## Work Opportunity Tax Credit (WOTC)

For more information, please contact Jack Sprince at 617 626-5730 or Email at [JSprince@detma.org](mailto:JSprince@detma.org)

### How tax credits work

If you are a "for-profit" employer in Massachusetts, you may be eligible for a federal tax credit through the Work Opportunity Tax Credit program. There are nine targeted groups. Individuals must be identified as members of one of these targeted groups before a job offer is made.

The Work Opportunity Tax Credit (WOTC) program has two purposes:

- To help individuals who qualify as members of a target group to get a job, and
- To help employers who hire qualified individuals by giving them a credit on their federal taxes.

### Target Groups

- A member of a family that is receiving or has received Transitional Aid to Families with Dependent Children (TAFDC) benefits or Temporary Assistance to Needy Families (TANF) for any 9 months during the 18-month period that ends on the hiring date.
- A veteran who is a member of a family that is receiving or has recently received food stamps and certain qualified disabled veterans.
- A recently released ex-felon.
- An 18 to 39 year old resident of one of the 105 federally designated Empowerment Zone/Renewal Communities.
- A vocational rehabilitation referral who completed or is completing rehabilitative services from the Commonwealth of Massachusetts, an Employment Network, or the U.S. Department of Veterans Services.
- A 16 to 17 year old Empowerment Zone/Renewal Community resident hired between May 1 and September 15 as a Summer Youth Employee.
- An 18 to 39 year old member of a family that is receiving or has recently received food stamps.
- A recipient of Supplemental Security Income (SSI) benefits.
- A long term family assistance recipient.

### Amount of the credit

The WOTC credit can potentially be as much as:

- \$2,400 for each new adult hire;
- \$4,800 for each new disabled veteran hire;
- \$1,200 for each new summer youth hire; and
- \$9,000 for each new long-term family assistance recipient hired (this is claimed over a two-year retention period)

### Employment Duration

The person hired must be employed for at least 120 hours.

### Cooperating Agencies

If you want to hire a member of one of the targeted groups, you may want to contact one of these agencies:

- Department of Mental Health
- Department of Transitional Assistance
- Department of Mental Retardation
- Massachusetts Rehabilitation Commission
- Department of Corrections
- Commission for the Blind
- Commission for the Deaf and Hard of Hearing
- Department of Veterans Services
- Commonwealth of Massachusetts One-Stop Career Centers

# **IRS FAQ Sheet on HIRE (Hiring Incentives to Restore Employment) Act**

## **QR1: What is the payroll tax exemption?**

**A-QR1:** The payroll tax exemption is an exemption from the employer's 6.2 percent share of social security tax on all wages paid to qualified employees from March 19, 2010 (the day after the date of enactment of the HIRE Act) through December 31, 2010. The employee's 6.2 percent share of social security tax and the employer and employee's shares of Medicare tax still apply to all wages.

## **QR2: Which employers qualify for the payroll tax exemption?**

**A-QR2:** Taxable businesses and tax-exempt organizations qualify for the payroll tax exemption. Such employers in U.S. territories (i.e., American Samoa, Commonwealth of Northern Mariana Islands, Guam, the U.S. Virgin Islands and Puerto Rico) that are subject to federal social security tax also qualify for the payroll tax exemption. Federal, State or local government employers generally do not qualify for the payroll tax exemption. However, public colleges and universities can qualify for the exemption. Indian tribal governments also qualify for the exemption.

## **QR3: Does the payroll tax exemption apply to household employers?**

**A-QR3:** No. The payroll tax exemption applies only to wages paid to a qualified employee performing services in the employer's trade or business or in activities in furtherance of a tax-exempt organization's exempt purpose.

## **QR4: If an employer starts a new business, does the payroll tax exemption apply to wages paid to employees hired for the new business?**

**A-QR4:** Yes, if they are qualified employees.

## **QR5: If an employee laid off in 2009 has been receiving COBRA premium assistance, for which the employer has been taking the COBRA premium assistance credit, and the employer rehires the employee, can the employer take the payroll tax exemption under the HIRE Act for wages paid to the employee?**

**A-QR5:** Yes, if the employee is a qualified employee.

## **QR6: Can a qualified employer both apply the payroll tax exemption and claim the work opportunity tax credit (WOTC) for the same employee?**

**A-QR6:** No, an employer may either apply the payroll tax exemption or claim the WOTC for an employee, but not both. An employer that wishes to claim the WOTC for a qualified employee may not apply the payroll tax exemption with respect to any wages paid to that employee from March 19, 2010, through December 31, 2010.

## **QR7: If an employer applies the exemption to wages paid to a nonqualified employee, is the employer liable for the amount of employer social security tax on wages previously reported as exempt?**

**A-QR7:** Yes, the employer is liable for the amount of employer social security tax on wages it erroneously reported as exempt, because the exemption is only applicable to wages paid to qualified employees. The employer must file Form 941-X for each prior quarter for which the exemption was erroneously applied.

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### **QR8: How does application of the payroll tax exemption to wages paid to restaurant employees affect the 45B credit?**

**A-QR8:** Certain food and beverage establishments can claim a credit under section 45B of the Internal Revenue Code for social security and Medicare taxes paid or incurred by the employer on certain employee tips, referred to as the “45B credit.”

An employer could be eligible for both the payroll tax exemption **and** the 45B credit on certain tips if the employer has tipped employees who are also qualified employees under the HIRE Act. The payroll exemption is taken on the employer's Form 941 and the 45B credit is taken on the employer's income tax return.

The payroll tax exemption applies to all wages paid to a qualified employee unless the employer elects out of the payroll tax exemption with respect to the employee. An employer that applies the payroll tax exemption with respect to a qualified employee will be entitled to a smaller 45B credit because the employer will pay only Medicare tax (and not social security tax) on the employee's wages, including reported tips.

### **QE1: Who are qualified employees?**

**A-QE1:** Qualified employees are individuals who begin employment with a qualified employer after February 3, 2010, and before January 1, 2011, who have been unemployed or employed for less than 40 hours during the 60-day period ending on the date such employment begins, and who are not family members of or related in certain other ways to the employer.

### **QE2: Do the qualified employees need to do anything to make it possible for their employer to claim the payroll tax exemption?**

**A-QE2:** Yes, qualified employees must certify by a signed affidavit, under penalties of perjury, that they have not been employed for more than 40 hours during the 60-day period ending on the date they started employment. The IRS plans to issue a model affidavit that can be used for this purpose.

### **QE3: Is the 60-day period continuous, and can it span 2009-2010?**

**A-QE3:** The 60-day period must be continuous and can span 2009-2010.

### **QE4: Does the payroll tax exemption apply to wages paid to a qualified employee hired to replace an existing worker whose employment terminated?**

**A-QE4:** The payroll tax exemption does not apply to wages paid to an employee who is hired to replace an existing worker, unless the existing worker terminated employment voluntarily or was terminated for cause.

### **QE5: Does the payroll tax exemption apply to wages paid to an employee who was previously laid off and then rehired by the same or a related employer after a 60-day period?**

**A-QE5:** Yes, an employer may apply the payroll tax exemption to wages paid to a rehired employee who is otherwise a qualified employee.

### **QE6: If an employer lays an employee off because of lack of work and later, when work picks up, hires a new employee, can the payroll tax exemption apply to wages paid to the new employee?**

**A-QE6:** Yes, if the new employee is a qualified employee (i.e., was employed for less than 40 hours during the prior 60 days).

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**QE7: Does the payroll tax exemption apply only if the employer previously laid employees off?**

**A-QE7:** No, the payroll tax exemption can apply to wages paid to any qualified employee.

**QE8: If an employer hires a recent graduate who has been in school for some or all of the 60 days preceding the start of his employment, does the payroll tax exemption apply to wages paid to the employee?**

**A-QE8:** Yes, if the employee is a qualified employee. It is not necessary that the individual was previously employed and has lost his or her job to be a qualified employee.

**QE9: Does the qualified employee have to work a set period of time for the employer to be eligible for the exemption?**

**A-QE9:** No. Application of the payroll tax exemption does not require that a qualified employee be employed for a set number of hours or a set number of weeks.

**QE10: Is there a minimum age for qualified employees? Will high school summer hires and interns be considered eligible employees?**

**A-QE10:** There is no minimum age requirement to be a qualified employee.

**QE11: Some businesses use the services of workers who are employees of a temporary agency. Can the temporary agency claim the payroll tax exemption for its qualified employee working at a client business?**

**A-QE11:** The temporary agency can apply the exemption with respect to wages paid to a qualified employee of the temporary agency. This is determined based on when the employee begins employment with the temporary agency, and not based on when the employee begins work at a client business of the temporary agency.

**QE12: If a client business hires an employee who previously provided services to the business as an employee of a temporary agency, is the client business entitled to apply the payroll tax exemption?**

**A-QE12:** The client business can apply the exemption if the worker is a qualified employee when he or she begins employment with the client as its employee. That is, the worker must not have worked as an employee for any business (including the temporary agency) for more than 40 hours in the 60 days prior to beginning employment with the client business.

**QE13: Can employers create their own affidavit or must they use IRS Form W-11?**

**A-QE13:** Employers can use their own affidavit as long as it includes the same information as IRS Form W-11, Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, and is signed under penalties of perjury.

**QE14: Must the signed affidavit (e.g., Form W-11) be notarized?**

**A-QE14:** No

**QE15: Should employers send signed employee affidavits, such as Form W-11, to the IRS?**

**A-QE15:** No, the employer does not file or send signed employee affidavits to the IRS. The employer should retain these affidavits with other payroll and income tax records.

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**QE16: Can an employer apply the payroll tax exemption even if an employee fails to sign an employee affidavit, such as Form W-11?**

**A-QE16:** No. An employer can only apply the exemption on wages paid to a qualified employee. In order to be a qualified employee, among other requirements, the employee must sign an employee affidavit such as Form W-11.

**QE17: Is there a deadline for the employer to get the signed affidavit from the employee?**

**A-QE17:** Yes, the employer must have the signed affidavit by the time the employer files an employment tax return applying the payroll tax exemption. If the employer obtains the signed affidavit from the qualified employee after wages are paid to the employee, the employer can still apply the payroll tax exemption to determine its liability on these wages. In some cases this may require the filing of a corrected return for a prior quarter.

For example, an employer hires an otherwise qualified employee who begins employment on March 1, 2010 and is paid wages in March. The qualified employee does not provide the signed affidavit until April 15, 2010. The employer can claim the first quarter credit on the second quarter Form 941 for the amount of the exemption with respect to wages paid to the qualified employee from March 19, 2010 through March 31, 2010 and can apply the exemption to wages paid to the qualified employee starting April 1, 2010, despite the fact that the employee did not provide the signed affidavit until April 15, 2010.

In contrast, if the otherwise qualified employee does not provide the signed affidavit until August 1, 2010, the employer may not claim the first quarter credit on the second quarter Form 941 for wages paid to the qualified employee from March 19, 2010, through March 31, 2010, and cannot apply the exemption to wages paid in the second quarter because the employer did not obtain the signed affidavit by the time it filed its second quarter Form 941. Instead, the employer must file a Form 941-X to correct the second quarter of 2010 if it wants to claim the first quarter credit and apply the exemption to the second quarter wages paid to the qualified employee.

**QE18: May Form W-11 (or a similar form containing the same information as the Form W-11) be transmitted electronically and signed by way of electronic signature?**

**A-QE18:** Yes, employers may obtain signed Forms W-11 (or similar forms containing the same information) electronically. The electronic system generating the form must transmit the same information as the Form W-11, must ensure that the information transmitted and received is the information sent, and must document all occasions of user access that result in the transmission.

The electronic transmission must be signed by way of an electronic signature by the employee whose name is on the Form W-11 and the signature must be made under penalties of perjury. The perjury statement must contain the language that appears on the paper Form W-11. The electronic system must inform the employee whose name is on the Form W-11 that the employee must make the declaration contained in the perjury statement and that the declaration is made by signing the Form W-11. The instructions and the language of the perjury statement must immediately follow the employee's statements and immediately precede the employee's electronic signature. The electronic signature must be the final entry in the employee's Form W-11 submission.

The act of the electronic signature must be made by the employee whose name is on the electronic Form W-11, and the signature must also authenticate and verify the submission, by making reasonably certain that the person accessing the system and submitting the form is the employee identified on the Form W-11.

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Upon request by the Internal Revenue Service during an examination, the employer must supply a hard copy of the electronic Form W-11, and a statement that, to the best of the employer's knowledge, the electronic Form W-11 was made by the employee whose name is on the form. The hard copy of the electronic Form W-11 must provide exactly the same information as, but need not be a facsimile of, the paper Form W-11.

### **PE1: How does the employer claim the payroll tax exemption for wages paid to qualified employees?**

**A-PE1:** The payroll tax exemption is claimed on Form 941, Employer's QUARTERLY Federal Tax Return, beginning with the second quarter of 2010.

### **PE2: How does the employer claim the payroll tax exemption for wages paid to qualified employees during the period March 19 through March 31, 2010 (the first quarter of 2010)?**

**A-PE2:** The payroll tax exemption for wages paid during this period will be claimed on the employer's Form 941 for the second quarter of 2010.

### **PE3: Can an employer claim the COBRA premium assistance credit and the payroll tax exemption for new hires on the same employment tax return?**

**A-PE3:** Yes.

### **PE4: How does application of the payroll tax exemption to wages paid to a qualified employee affect the availability of the Work Opportunity Tax Credit with respect to that employee?**

**A-PE4:** If an employer applies the payroll tax exemption to wages paid to a qualified employee, such wages paid to the employee during the one-year period beginning with the employee's hiring date may not be taken into account for purposes of the Work Opportunity Tax Credit. An employer that wishes to claim the Work Opportunity Tax Credit with respect to a qualified employee can elect out of the payroll tax exemption with respect to wages paid to that qualified employee.

### **PE5: What is the significance of Feb. 3, 2010, and March 19, 2010, under the HIRE Act?**

**A-PE5:** An employee must begin employment after Feb. 3, 2010, and before Jan. 1, 2011 in order to be a qualified employee. The payroll tax exemption applies to wages paid to the qualified employee from March 19, 2010 (the day after the date of enactment) through December 31, 2010.

### **PE6: How does the social security wage base affect the payroll tax exemption?**

**A-PE6:** The exemption is applicable to wages that would otherwise be subject to the employer's share of social security tax (i.e., wages up to the social security wage base) that are paid to qualified employees from March 19, 2010, through December 31, 2010. The employer is still liable for the employer share of Medicare tax on all wages and for withholding both the qualified employee's share of social security tax on wages up to the social security wage base (\$106,800 for 2010) and Medicare tax on all wages.

### **PE7: Is the payroll tax exemption based on when wages are earned by a qualified employee or when they are paid to a qualified employee?**

**A-PE7:** The exemption is based on when wages are paid. Thus, only wages paid from March 19, 2010, through December 31, 2010, qualify for the exemption (regardless of when those wages are earned).

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**PE8: The HIRE Act allows qualified employers to elect out of the exemption. How is this done?**

**A-PE8:** To elect out of the payroll tax exemption, the employer simply reports and pays the employer share of social security tax on wages paid to qualified employees, along with the employee share of social security tax, Medicare taxes, and withheld income tax. In other words, an employer does not need to specifically state that it is electing out of the exemption.

**PE9: Does an employer have to choose to apply the payroll tax exemption with respect to all of its qualified employees?**

**A-PE9:** No, the employer can choose to apply the exemption with respect to none, some, or all of its qualified employees. However, if the employer applies the exemption with respect to any wages paid to a particular qualified employee, the exemption must be applied to all wages paid to that employee from March 19, 2010, through December 31, 2010.

**PE10: If an employer properly applies the payroll tax exemption on Form 941 for one or more prior quarters for a qualified employee who, as a certified member of a targeted group, also qualifies the employer for the work opportunity tax credit (WOTC), can the employer later elect out of the exemption, so it can instead claim the WOTC?**

**A-PE10:** Yes, if an employer applied the payroll tax exemption for a qualified employee on Form 941 for one or more prior quarters, the employer can later elect out of the exemption by filing Form 941-X for each affected prior quarter to correct its original return and pay the employer's share of social security tax for each such prior quarter. The employer is then eligible to claim the WOTC on its income tax return.

**PE11: If an employer chooses to claim the WOTC for a qualified employee, can the employer still claim the new hire retention credit for that qualified employee?**

**A-PE11:** Yes, an employer may claim the retention credit for a qualified employee even if the employer has also claimed the WOTC for the same employee.

The new hire retention credit can be claimed for any qualified employee, as defined for purposes of the payroll tax exemption, once the employee is employed for 52 consecutive weeks, so long as the employee's wages (as defined for income tax withholding purposes) for the last 26 weeks of employment equal at least 80% of the employee's wages for the first 26 weeks of employment.

**PE12: How will employers claim the payroll tax exemption for wages paid to qualified employees from March 19, 2010, through March 31, 2010?**

**A-PE12:** The payroll tax exemption that would be applicable to wages paid during the first quarter of 2010 cannot be applied on the first quarter Form 941. Instead, the amount by which the employer's social security tax would have been reduced as a result of applying the exemption to wages paid during the first quarter is treated as a payment for the second quarter. The credit for this payment may be claimed only on the second quarter Form 941 (lines 12c-12e) and may only be claimed with respect to wages paid to qualified employees from March 19, 2010 (the day after the date of enactment), through March 31, 2010. A seasonal employer that does not otherwise have to file Form 941 for the second quarter must file Form 941 for that quarter in order to claim credit for the amount of the exemption that would have applied to wages paid during the first quarter. The amount of the credit claimed on Form 941 for the second quarter will be refunded to the employer or may be applied against a liability for a later quarter.

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**PE13: How will the IRS treat the credit claimed for wages paid in the first quarter?**

**A-PE13:** The IRS will treat the credit as a deposit made on the first day of the second quarter for quarterly payroll tax return filers.

**PE14: What line on the revised Form 941 reflects qualified employees who begin employment in late March but are not paid until April? What line on Form 941 would reflect qualified employees paid wages and tips covered by the payroll tax exemption in March?**

**A-PE14:** If a qualified employee begins employment in late March, but the employer does not pay the employee until April, the employer will include the employee in the number reported on both lines 6a and 6b of the second quarter Form 941 and will include wages paid to the qualified employee in the second quarter on line 6c. If a qualified employee receives wages during the period of March 19 through March 31, the employer will include the qualified employee on line 12c of the second quarter Form 941 and will include the wages paid in such period on line 12d.

**PE15: If an employer does not apply the payroll tax exemption with respect to a qualified employee, is the employee still counted on lines 6a and 6b (or line 12c for 1st quarter) as a Qualified Employee?**

**A-PE15:** The employer reports on lines 6a and 6b (or line 12c for 1st quarter) only qualified employees with respect to whom the employer is applying the payroll tax exemption. Similarly, the employer reports only wages paid to qualified employees to whom the exemption is applied on line 6c (or line 12d for 1st quarter).

**PE16: Is the number reported on line 6b of the Form 941 cumulative for all qualifying employees?**

**A-PE16:** Yes, line 6b is cumulative for qualified employees with respect to whose wages the employer is applying the payroll tax exemption in that quarter. For example, if an employer hires 30 qualified employees in March, 30 in April, 30 in May, and 30 in June and applies the payroll tax exemption with respect to wages paid to all of the qualified employees in the second quarter, Line 6b would show 120 employees on the second quarter return.

**PE17: Must employers apply the payroll tax exemption on the return for the quarter they paid the related wages, or can they apply it on a return for a later or earlier quarter?**

**A-PE17:** Employers must apply the exemption on the return for the quarter in which they paid the related wages.

**PE18: If the Form 941 liability is below \$100,000 solely due to application of the payroll tax exemption, does the employer still need to make the deposit the next day?**

**A-PE18:** No, if application of the payroll tax exemption to wages paid to qualified employees results in the liability being below \$100,000, the employer will not have a next-day deposit requirement. Instead, the employer will deposit based on its regular deposit schedule.

**PE19: How will the employer report the payroll tax exemption on Schedule B? Does an employer reduce the liability reported and its deposits in the second, third, and fourth quarters of 2010 to account for the payroll tax exemption?**

**A-PE19:** The employer will not separately report the payroll tax exemption or the first quarter credit on Schedule B. An employer's report of its liability for the second, third and fourth quarters of 2010 on Schedule B will reflect the reduction in liability due to application of the payroll tax exemption to wages

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paid to qualified employees during those quarters. Since the payroll tax exemption reduces an employer's liability on wages paid to qualified employees, the employer is not required to deposit the employer's 6.2 percent share of social security tax on such wages. In addition, since the payroll tax exemption does not apply to the first quarter and the first quarter credit must be claimed on the second quarter return, an employer may reduce its deposits for the second quarter by the amount of the first quarter credit.

### **PE20: When will updated forms be available (e.g., Forms 941, 943, 944, 941-X)?**

**A-PE20:** The IRS has revised the Form 941 for the second quarter of 2010 and a draft of the revised form is available on IRS.gov. The IRS is in the process of updating Forms 943, 944 and 941-X.

### **PE21: When will the updated Form 94X Schema be available?**

**A-PE21:** The IRS development of the 94X Schema is pending the finalized Form 941. The IRS anticipates it will be available in May.

### **PE22: Will the IRS revise Form 941 again in the third and fourth quarters to remove lines 12 (c) and 12(d)?**

**A-PE22:** The IRS will not revise Form 941 for the third and fourth quarters of 2010. Employers will be directed by the form and the instructions to leave those lines blank on the returns they file for the 3rd and 4th quarters.

### **PE23: Since there will be changes to the electronic filing schemas for employment tax returns such as the Form 941, will electronic filers need to recertify for all applications with the IRS?**

**A-PE23:** No.

### **PE24: How will the payroll tax exemption affect the breakout amounts on EFTPS?**

**A-PE24:** There will be no changes to the EFTPS system as a result of the payroll tax exemption. When an employer makes EFTPS deposits, the employer should continue to enter amounts of Medicare tax, social security tax, and income tax withholding, taking into account the reduction in liability due to the payroll tax exemption and, for the second quarter, the credit for first quarter amounts.

### **PE25: Will employers have to indicate on the Form W-2 the qualified employees whose wages are exempt from the employers share of social security tax and/or separately report wages exempt from the employers share of social security tax?**

**A-PE25:** Yes, new Code CC has been created for box 12 of Form W-2 for employers to identify qualified employees and report the amount of wages and tips covered by the payroll tax exemption. In addition, new box 12b has been created on Form W-3 to report the aggregate of Code CC.