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Alabama: Helpful Q&As Issued on New Hiring Incentives Legislation

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During its Spring 2010 regular session, the Alabama legislature passed only a handful of tax bills with statewide impact, perhaps the most notable being the Reemployment Act of 2010 (H.B. 260, 4/22/10; Act No. 2010-557). The Act provides an incentive to create jobs by allowing employers who hire certain unemployed persons to claim an additional income tax deduction for a portion of the wages paid.

In order to expedite guidance to employers in the state, the Alabama Department of Revenue (ADOR), through Ann Winborne, Manager of the Administrative and Support Unit of ADOR's Individual and Corporate Tax Division, notified the authors and others that a list of helpful Q&As has been posted on the Department's website, www.ador.state.al.us/incometax/reemploymentfaqs.html.

The Q&A guidance.

Ms. Winborne stated to the authors that "the Reemployment Act of 2010 offers employers a valuable income tax deduction for hiring unemployed Alabamians, and the Alabama Department of Revenue is in the process of issuing regulations to explain the provisions of Act 2010-557. Since it will be several months before the regulations can become effective, ADOR wanted to address some of the questions that taxpayers and tax preparers have been asking about the new law. These Q&As can be used and relied upon until such time as the new regulations go into effect."

Testing period. Perhaps the most time-critical guidance given by the Department relates to when the 12-month testing period begins. Under Act 2010-557, an employer may claim an additional income tax deduction for up to 50% of the gross wages paid to an unemployed person hired by the employer, but only after the newly hired worker has been employed for 12 months. The Act did not specify *when* the 12-month testing period begins. The ADOR clarified that the 12-month period begins on the date the worker is hired, as long as that date is after the date on which the governor signed the Act into law, i.e., 4/22/10. The Q&As caution, however, that the employee must be *continuously* employed for that 12-month period before the special deduction can be claimed.

Qualified workers. To qualify, at the time a new employee is hired the employee either must be receiving state unemployment compensation benefits or had benefits that expired by the hire date. The employer must obtain certification of the employee's unemployment status from the Department of Industrial Relations before the deduction can be claimed on the employer's Alabama income tax return. While such certification need not be attached to the return when filed, the employer must retain the certification with its tax records so that it is available if requested by ADOR on audit.

The Q&As also confirm that, in contrast to most other tax incentives offered by the state, this new hiring incentive can apply to an employee who was laid-off and then rehired by the same employer, "if sufficient time has elapsed between the date that the employee was laid off and the date that the employee was rehired." The Q&A points out, however, that the Act does not specify how much time is "sufficient." Thus, the ADOR cautions that "in order to avoid abusive or fraudulent deductions, ADOR will look unfavorably on a rehire situation where the employee had been laid off for less than six months."

When to claim the deduction. Another ambiguity in the Act is also addressed by the Q&As. The Act states that it is effective for "tax years 2011 and 2012" and that "[t]he deduction may be claimed in only one tax year," but it does not make clear just when the deduction may be claimed. For example, may the employer take the deduction in the first year in which the employee qualifies, or perhaps delay the deduction until 2012 even if the employee qualifies by the end of 2011? As clarified in the Q&As: "After an employee has been continuously employed for 12 months, the employer will be allowed to claim the deduction, one time per employee, on *either* the employer's 2011 or ... 2012 return (for an employee hired during 2010 or 2011)." (Emphasis added.)

Additionally, the ADOR has confirmed that all wages paid to the qualifying employee during either 2011 or 2012 are eligible for the special deduction. For example, if an unemployed individual was hired on 7/1/10 and remains employed through the end of 2012, the employer could deduct up to 150% of the wages paid to the qualifying employee during either 2011 or 2012 in computing its Alabama income tax for the respective period.

Deduction percentage based on hourly wage. Although the special hiring deduction can be an additional amount equal to 50% of the gross wages paid to the formerly unemployed worker, that percentage requires a base hourly wage of at least $14. The Q&As confirm that the deduction is limited to 40% of the gross wages if the hourly wage is between $12 and $14, and 35% for hourly wages between $10 and $12. No deduction is available if the formerly unemployed worker is paid less than $10 per hour. Nor can the job be "part time," which is defined for this purpose as less than 37.5 hours per week.

Pass-through available but no refunds. Other helpful Q&As clarify that the special hiring deduction is neither refundable nor transferable. The deduction is available "on a pro rata basis" to the owners of pass-through-entity employers such as S corporations, partnerships, and limited liability companies (LLCs) taxed as partnerships.

Finally, to the ADOR's credit, Ms. Winborne confirmed that taxpayers and tax advisors may rely on these Q&As until implementing regulations, now in process, are finalized. **[]**

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