

## The HIRE Act – Frequently Asked Questions

### I. TAX QUESTIONS:

#### **Do all wages paid in 2010 qualify for the exemption?**

*Generally, but there will be exceptions, notably two:*

- 1. For employees hired between February 4th and March 18<sup>th</sup>, only wages paid after March 19<sup>th</sup> are qualified for the exemption.*
- 2. Only wages paid up to the social security tax base of \$106,800 qualify for the exemption.*

#### **Is the exemption based on tax on wages paid or accrued?**

*Wages paid.*

#### **If I hire someone who is eventually certified for the Work Opportunity Tax Credit (WOTC) and is qualified for the HIRE Act Payroll exemption may I claim both?**

*No. You may elect to claim only one or the other for qualified first year wages.*

**This question has two parts:**

- 1. If I elect to claim the WOTC, can I claim the Hire Act Retention Tax Credit in 2011?**  
*Yes.*
- 2. Even if the qualified wages for the WOTC spill over into 2011?**  
*Yes.*

#### **Is the second year Retention Credit a general business credit with a one year carry-back and 20 year carry-forward provision?**

*Yes for carry-forward. No for carry-back.*

### II. ELIGIBILITY QUESTIONS:

#### **If I hired an unemployed person on February 3, 2010, can I claim the HIRE Act incentive?**

*No. The employee's hire date must be on or after February 4, 2010.*

**The statute states that a qualified HIRE Act employee may “...not be employed...to replace another individual unless such other employee separated from employment voluntarily of for cause...” Does this mean that employees recalled from layoff or who were part of a RIF are not qualified?**

*As long as the event causing such separation was prior to February 4, 2010, the employee will be qualified. This includes recalls from layoff and rehires. The intent of the language is to prohibit an*

*employer from currently terminating an employee without cause for the purpose of replacing them with a qualified HIRE Act employee.*

**I understand that you recently conducted a Webinar on the HIRE Act. I missed it. Will you be doing any others?**

*No additional sessions are scheduled at this time. However, you may access a recording of the webinar by [clicking this link](#). Alternatively, you may request a copy of the PowerPoint visuals used in the webinar by contacting Sheila VanderHorn: [Sheila.vanderhorn@ntlci.com](mailto:Sheila.vanderhorn@ntlci.com). If you have additional questions, you may also call her at (615) 767-0970.*

### **III. Process Questions**

**A Qualified Employee must sign an affidavit under penalties of perjury that they have not worked for more than 40 hours during the 60 day period prior to employment. Has the government come out with a standardized form?**

*The IRS has crafted a form, the W-11. For those companies using either NTCL or our sister company, Thomas & Thorngren to administer the HIRE Act, we have incorporated most of the form and all of the language content of the W-11, and added additional explanatory language to clarify the intent and instructions to new employees.*

**As the employer, am I required to use the W-11 as the HIRE Act affidavit?**

*No. You may use your own affidavit so long as it contains the legislative language in the bill and on the W-11 and so long as it is signed by the attesting employee. This form must also include the acknowledgement that it is signed under penalties of perjury.*

**Can the W-11 or facsimile described above be transmitted and signed electronically?**

*Yes. The W-11 or equivalent with identical language may be completed and signed electronically, provided that the perjury statement and instructions immediately precede the electronic signature. This electronic form must be able to be printed in hard copy at the request of the IRS during a review (audit).*