

MAY 24, 2010 www.mcvpr.com**TAX ALERT*****IRS Issues Revised Form 941-PR for Employers to Claim Social Security Tax Exemption Under HIRE Act***

The Internal Revenue Service (IRS) recently issued a revised Form 941-PR, Puerto Rico Employer's Quarterly Federal Tax Return, for employers to claim the employer's Social Security tax exemption available under the Hiring Incentives to Restore Employment (HIRE) Act. The revised Form 941-PR may be downloaded from the IRS website at: <http://www.irs.gov/pub/irs-pdf/f941pr.pdf>.

As discussed in our Tax Alert of March 23, 2010, the HIRE Act provides a payroll tax holiday on the employer's 6.2% Social Security tax with respect to wages paid to "Qualified Individuals" from March 19, 2010 to December 31, 2010.

A Qualified Individual is an employee: (i) who is hired after February 3, 2010 and before January 1, 2011; (ii) who has not been employed for more than 40 hours within the last 60 days before the date of hire (the new hire must sign a statement under penalties of perjury); (iii) who is not replacing a current employee (except in cases of voluntary termination or termination with cause); and (iv) who must not own more than a 50% of the employer (or be related or affiliated to any person or entity who owns more than 50% of the employer).

The exemption does not apply to the employee's portion of the 6.2% Social Security tax of the Qualified Individuals. Further, both the employer's and employee's portions of the 1.45% Medicare tax continues to apply with respect to wages paid to Qualified Individuals.

In the revised Form 941-PR, employers could also claim a credit for the 6.2% Social Security tax exemption with respect the Social Security tax paid on Qualified Individuals' wages paid from March 19 to March 31, 2010.

As discussed in our Tax Alert of April 14, 2010, the IRS issued Form W-11, Hiring Incentives to Restore Employment (HIRE) Act Employee Affidavit, for a Qualified Individual under the HIRE Act to certify under penalties of perjury that he/she had not been employed for more than 40 hours within the last 60 days before the date of hire. Form W-11 may be downloaded from the IRS website at: <http://www.irs.gov/pub/irs-pdf/fw11.pdf>.

The HIRE Act also provides for an income tax credit of up to \$1,000 for each Qualified Individual who is employed for at least 52 consecutive weeks. It appears that an employer in Puerto Rico will be able to claim this income tax credit on its Puerto Rico income tax return. However, as of the date of this Alert, the Puerto Rico Treasury Department has not issued guidance as to when and how the credit would be claimed.

For updates on this matter, you may contact any of the attorneys listed below, all members of our Tax Practice Group.

Juan Luis Alonso
Carlos E. Serrano

787-250-5655
787-250-5698

jla@mcvpr.com
ces@mcvpr.com

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