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FOUR NEW TAX ACTS AFFECT HEALTH CARE, HIRING AND SMALL BUSINESSES

On March 30, President Obama signed the Health Care and Education Tax Credits Reconciliation Act of 2010 as a trailer Act to the Patient Protection and Affordable Care Act that he signed into law on March 23, 2010. This e-alert highlights the major impacts of these two Acts and other recent business legislation (the Hiring Incentives to Restore Employment Act of 2010 and the proposed Small Business and Infrastructure Jobs Tax Act of 2010). Any of Reinhart's tax attorneys are available to help you consider the implications of these Acts based on your particular situation.

Health Care Reform Legislation

The Patient Protection and Affordable Care Act (March 23, 2010) and the Health Care and Education Tax Credits Reconciliation Act of 2010 (March 30, 2010) contain sweeping health coverage and related tax changes that will affect all Americans. Some of the major provisions include:

- Almost everyone must obtain qualifying health coverage by 2014, or be subject to a penalty.
- After 2013, qualifying individuals can receive a refundable tax credit to subsidize the cost of health insurance purchased through a state insurance exchange. The credit is aimed at individuals who are unable to afford coverage. Low income individuals can also qualify for a cost-sharing subsidy or voucher to fund their coverage.
- By 2013, taxpayers whose income exceeds the applicable thresholds described below will pay higher Medicare taxes on earnings and on net investment income (*e.g.,* interest, dividends and capital gains). The employee portion of the Hospital Insurance tax rate is increased by 0.9 percent on earned income over the earnings threshold, which is $200,000 for individuals and $250,000 for families. The additional Medicare tax of 3.8 percent will apply to the lower of net investment income or the excess of modified AGI over the modified AGI threshold, which is also $200,000 for individuals and $250,000 for families. The threshold amounts are not indexed for inflation.
- Beginning in 2010, small businesses (generally 25 or fewer employees earning $50,000 or less in average annual wages) can earn a tax credit on the purchase of employee health insurance.
- By 2014, large employers (typically 50 or more workers) who fail to provide reasonable coverage for employees will potentially pay penalties. Penalties may apply if an employee enrolls in an insurance exchange program and receives credits or subsidies to fund the exchange insurance. Further, some employers will need to provide free choice vouchers for employees to purchase health plans through an insurance exchange.
- Most high premium health care plans will be taxed after 2017. Insurance companies will pay a 40 percent tax on plans costing more than $10,200 for individual plans and more than $27,500 for family plans in annual premiums (adjusted for inflation). Higher premium limits apply to high-risk jobs and some retirees. Insurers will likely fund this tax by increasing premiums.

- Many health-related industries (*e.g.,* pharmaceutical companies and health insurance providers) will pay annual nondeductible fees. The fees on these industries total billions of dollars beginning in 2011 for pharmaceuticals and 2014 for health care providers.
- An unrelated addition to the health care Acts changes the student loan system drastically. Government will now fund student loans directly instead of through commercial banks. Beginning in July 2014, student loan repayments of new borrowers eligible for income-based repayment will pay a lower percentage of their income towards repayment. Further, they may be eligible to have their loans forgiven in a shortened time frame.
- A variety of small changes also take effect within the next couple of years such as: a higher floor on the medical expense deduction (7.5% raised to 10% of AGI beginning after 2012); a more limited reimbursement of over-the-counter medications through HRAs, HSAs, FSAs and MSAs (only prescribed over-the-counter medicines may be reimbursed starting in 2011); higher penalties on HSA or Archer MSA nonqualified distributions starting in 2011; more limited contributions to FSAs after 2012 (capped at $2,500; indexed for inflation after 2013); and employer-provided health coverage gross income exclusion extended to cover dependants who are under age 27 (another provision mandates that plans cover dependents up to age 26).

Hiring Incentives to Restore Employment Act of 2010 (HIRE)

This Act has three main components relating to new employment and expensing rules.

- Employers may qualify for an exemption from social security taxes on wages paid between March 19 and December 31 to new hires who were previously unemployed. Although there are some restrictions as to who is eligible, the Act applies to both part-time and full-time employees hired after February 3, 2010.
- Employers may also qualify for a tax credit of up to $1,000 per worker for new workers that they employ for at least 52 weeks who do not receive a significantly lower salary in the second half of the 52 week period.
- Small businesses can use the same heightened federal expensing limit as they used in 2008 and 2009 when choosing to deduct machinery and equipment.

Proposed Small Business and Infrastructure Jobs Tax Act of 2010

This legislation has passed the House and is currently under consideration by the Senate. It contains small business and infrastructure incentives that might include: an exclusion of small business stock gain in certain situations; more limited penalties when a taxpayer fails to disclose information; new rules on treatment of small business administration loans; heightened deductions for start-up expenses; extending Build America Bonds; optional election for payments instead of Low-Income Housing Credits; and allowing New Markets Tax Credits to count against the AMT.

It also includes a variety of provisions intended to raise revenues, such as requiring a minimum term for certain trusts and increasing the penalties on information returns.