

FAQs About the Payroll Tax Exemption and Qualified Employers

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.

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.