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## **IRS Releases Form 8846 With New Instructions on HIRE Act Exemption From Employer Social Security Tax**

The instructions for Form 8846, *Credit for Employer Social Security and Medicare Taxes Paid on Certain Tips*, have been revised in light of the Hiring Incentives to Restore Employment (HIRE) Act (Pub. L. No. 111-147), which affects the restaurant FICA tax credit on unreported tips.

The form, which was last revised in 2009, has been re-released unchanged ([www.irs.gov/pub/irs-pdf/f8846.pdf](http://www.irs.gov/pub/irs-pdf/f8846.pdf), 6-8-10) with the following new instruction:

“Section 101 of the [HIRE] Act of 2010 allows employers a tax exemption from social security taxes for wages paid after March 18, 2010, and before January 1, 2011, to employees who begin work with the employer after February 3, 2010.

“If any tipped employee’s wages are exempt from social security taxes, check the box on line 4 and attach a separate computation showing the amount of tips subject to only the Medicare tax rate of 1.45%. Subtract these tips from the line 3 tips, and multiply the difference by .0765. Then, multiply the tips subject only to the Medicare tax by .0145. Enter the sum of these amounts on line 4.”

**FORM 8846 AND THE BUSINESS TAX CREDIT FOR EMPLOYER FICA TAXES PAID ON TIPS** – Businesses providing, delivering, or serving food or beverages for consumption can take a business tax credit (taken on the employer’s corporate income tax return) for the employer’s share of social security and Medicare taxes paid on employees’ tips treated as paid by the employer under IRC §3121(q). The credit, which is taken on Form 8846, is available only for taxes paid on tips in excess of those that make up any difference between the cash wages paid by the employer (minimum of \$2.13 per hour for tipped employees) and \$5.15 per hour (the minimum wage in effect before the first step of the recent three-step increase in the minimum wage took effect in 2007).

Note that the credit is available whether or not the tips were reported by the employee to the employer. Note also that the credit is available in the year when the IRS serves the notice and demand for payment of the FICA taxes on the deemed tips, not in the year when the tips are deemed to have been paid to the employee (see *The Payroll Source*®, p. 3-95).

### **No double-dipping under the HIRE Act**

A restaurant employer that takes the HIRE Act relief from employer social security tax on the excess tips may not claim the business tax credit for the employer social security tax on those same tips on Form 8846, because it never paid that tax in the first place. However, it may still take the business tax credit for the employer share of Medicare tax on those tips as well as the HIRE Act tax relief on the tips that make up the difference between \$2.13 and \$5.15 per hour and the cash wages it pays these employees.