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EBEC (Employee Benefits / Executive Compensation) Law Update

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**Temporary Payroll and Benefit Relief Under the Tax Relief,
Unemployment Insurance Reauthorization and Job Creation Act of 2010**

On December 17, 2010 President Obama signed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, H.R. 4853 (the “Act”). It extends unemployment benefits by 13 months, extends the EGTRRA 2001 Bush reduced tax rates for two more years through 2012, has an AMT patch for 2010 and 2011, provides a temporary modification of estate and gift tax with a 35% top rate and a \$5 million exemption through 2012 (\$10 million if married), and extends tax-extenders through 2011. The Act also has a temporary 2% social security (FICA & SECA) tax reduction for 2011, extends transit and van-pooling benefit of \$230 a month through 2011, and contains several other benefit extensions through 2012 as detailed below.

1. **One Year Temporary Employee Payroll Tax Cut.** Currently, FICA tax on wages is assessed on both the employee and the employer at 6.2% Social Security tax each (up to the taxable wage base of \$106,800) and 1.45% Medicare tax each under IRC § 3101 (not capped by taxable wage base). SECA tax on self-employment income is assessed on the individual at 12.4% Social Security tax (up to the taxable wage base) and 2.9% Medicare tax under IRC § 1401. Section 601 of the Act gives a temporary 2% tax cut for 2011 on the Social Security tax of employees (FICA) and self-employed individuals (SECA). Thus, for 2011, FICA Social Security tax on wages on the employee will be reduced to 4.2% and SECA Social Security tax on self-employment income will be reduced to 10.4%. See chart that follows:

	FICA SS Tax for Employees (up to Taxable Wage Base)	FICA SS Tax for Employers (up to the Taxable Wage Base)	FICA Medicare Tax for Employers and Employees	SECA SS Tax for Self-Employed (up to Taxable Wage Base)	SECA Medicare Tax for Self-Employed
Regular Rate	6.2%	6.2%	1.45%	12.4%	2.9%
Reduced Rate for 2011	4.2% (2% reduction)	6.2% (unchanged)	1.45% (unchanged)	10.4% (2% reduction)	2.9% (unchanged)

2. Transit Passes and Van Pooling Remains at \$230 for One More Year. Qualified transportation benefits under Code § 132(f) had been \$230 for qualified parking benefits and \$120 for transit passes and van pooling. The American Recovery and Reinvestment Act of 2009 provided for temporary parity between public transit/van-pooling and parking, so that the monthly limitation for transit passes and van pooling was the same as for qualified parking benefits - \$230 – through December 31, 2010. The Act § 727 extends this increased \$230 limit for transit passes and van pooling through December 31, 2011. The \$230 dollar amount is presumably unchanged by cost-of-living for 2011.

3. Extended Benefits-Related Tax Relief. The Act extends various tax benefits that were to expire. For example,

- (i) An adoption credit under EGTRRA is extended through 2012;
- (ii) Child care credit is extended through 2012;
- (iii) EGTRRA employer provided education assistance exclusion is extended through 2012;
- (iv) Coverdell Educational IRAs continue the EGTRRA \$2000 maximum and the availability of for elementary and secondary school expenses through 2012;
- (v) Tax-free distributions from IRAs for charity are extended through 2011; etc.

If you have any questions regarding the above or any other matter, please contact me at the number listed above.

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