

Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010

Article By:

Abby Wool Landon

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 was recently signed by President Obama. While much wrangling and discussion accompanied this legislation, the Act extends many of the Bush administration income tax cuts established in 2001 and also addresses the Alternative Minimum Tax (AMT) and Estate, Gift and Generation-skipping Transfer taxes. It is critical to note that most of the tax cuts in the legislation expire December 31, 2012, and some even sooner. Individuals as well as owners of privately held businesses have a limited window in which to leverage the advantages of some of these historically favorable tax laws.

Income Tax Highlights:

- Top Marginal Income Tax Rate: 35%
- Long-Term Capital Gain Tax Rate: 15%
- Qualified Dividend Tax Rate: 15%

The Estate and Gift Tax Highlights:

- Five Million Dollar Exemption from Estate Tax (previously \$3.5 million in 2009 / estate tax was repealed in 2010).
- Five Million Dollar Exemption from Gift/GST Tax (previously \$1 million).
- Tax rate 35% (historically low rate).
- Portability Provision for Married Couples (note: this should not necessarily avoid the need for Credit Shelter Trusts).

ADDITIONAL HIGHLIGHTS OF THE TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION, AND JOB CREATION ACT OF 2010

The recently enacted "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" is a sweeping tax package that includes, among many other items, an extension of the Bush-era tax cuts for two years, estate tax relief, a two-year "patch" of the alternative minimum tax (AMT), a two-percentage-point cut in employee-paid payroll taxes and in self-employment tax for 2011, new incentives to invest in machinery and equipment, and a host of retroactively resuscitated and

extended tax breaks for individuals and businesses. Here's a look at the key elements of the package:

- The current, favorable income tax rates will be retained for two years (2011 and 2012), with a top tax of 35% on ordinary income and 15% on qualified dividends and long-term capital gains.
- Employees and self-employed workers get a reduction of two percentage points in Social Security tax in 2011, bringing the rate down from 6.2% to 4.2% for employees, and from 12.4% to 10.4% for the self-employed.
- A two-year AMT "patch" for 2010 and 2011 provides a modest increase in AMT exemption amounts and allows personal nonrefundable credits to offset AMT as well as regular tax.
- Key tax credits for working families that were enacted or expanded in the American Recovery and Reinvestment Act of 2009 are retained. For example, the new law extends for two years (a) the \$1,000 child tax credit (and maintains its expanded refundability), and (b) the American Opportunity tax credit for higher education, and its partial refundability.
- Two crackdowns on deductions for higher-income people have been deferred. For 2011 and 2012, higher-income individuals will not face a reduction in their itemized deductions or a phaseout of personal exemptions.
- Businesses can write off 100% of their new equipment and machinery purchases in the placed-in-service year, effective for property placed in service after September 8, 2010 and through December 31, 2011. For property placed in service in 2012, the new law provides for 50% additional first-year depreciation.
- Many of the popular tax breaks that went off the books at the end of 2009 have been retroactively reinstated for 2010 and extended through the end of 2011. Among many others, the retroactively reinstated and extended individual and business provisions include the election to take an itemized deduction for state and local general sales taxes instead of the itemized deduction for state and local income taxes; the \$250 above-the-line deduction for certain expenses of elementary and secondary school teachers; and the research credit. The credit for making energy-saving improvements for a home has been extended for one year, through 2011, but much tougher rules apply after 2010.
- After a one-year hiatus, the estate tax will be reinstated for 2011 and 2012, with a top rate of 35% and a step-up in basis. The exemption amount will be \$5 million per individual in 2011 and will be indexed to inflation in following years. Estates of people who died in 2010 can choose to follow either 2010's or 2011's rules.
- For gifts made after December 31, 2010, the gift tax and estate tax are now reunified and an overall \$5 million exemption applies. The increase in the gift tax exemption also applies to generation skipping transfers. Therefore, individuals may now make gifts of up to \$5 million dollars in a lifetime without paying either gift or generation skipping transfer tax.
- Any estate exemption that remains unused as of the death of a spouse who dies after December 31, 2010 and before January 1, 2013 will now be available for use by the surviving spouse in addition to his or her own \$5 million exemption for taxable transfers made during life or at death. This is the so called "portability provision."

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