

TAX RELIEF – JOB CREATION ACT OF 2010

From CCH Tax Briefing¹: The president just signed a two-year extension of the Bush-Era tax cuts, payroll tax relief, and estate tax compromises. The following is a summary of key segments of the 2010 Tax Relief Act as it pertains to individuals, businesses, and estates.

INDIVIDUALS:

Individual Tax Rates. The 2010 Tax Relief Act extends all individual rates at 10, 15, 25, 28, 33, and 35 percent for two years, through December 31, 2012. This extension of the reduced individual income tax rates along with the payroll tax cut are the most immediate impact of the new law for individuals. The income tax rate schedule used by estate and non-grantor trusts (15, 25, 28, 33 and 35 percent) also has been extended for two years. The 10 percent bracket established under EGTRRA for individuals has never applied to estates and trusts.



Capital Gains/ Dividends. Qualified capital gains and dividends currently are taxed at a maximum rate of 15 percent (zero percent for taxpayers in the 10 and 15 percent income tax brackets) for 2010. The 2010 Tax Relief Act continues this treatment for two years, through December 31, 2012. Qualified dividends will continue to be eligible for the reduced tax rates. While the extension of the maximum capital gains tax rate is receiving the most press attention, continuation of the zero percent rate will be equally as important to many taxpayers, from graduate students to retirees to those who live on their portfolio savings. To the extent that capital gains and dividends, when added to other taxable income, do not exceed the top of the 15 percent income tax bracket (\$34,500 for single individuals or \$69,000 for joint filers in 2011), those capital gains and dividends are effectively tax-free, subject to the zero percent rate. Gifts of appreciated securities to taxpayers in that rate bracket might also continue to be a worthwhile technique to maximize the value of such gifts. The current 28 and 25 percent capital gains rates for collectibles and recaptured 1250 gains, respectively, would continue unchanged.



Child Credit and Dependent Care Credit. The 2010 Tax Relief Act extends the \$1,000 child tax credit for two years, through December 31, 2012. A taxpayer who incurs expenses to care for a child under age 14 or for an incapacitated dependent or spouse to enable him or her to work or look for work can claim a dependent care credit. EGTRRA temporarily increased the maximum amount of eligible expenses for the dependent care credit from \$2,400 to \$3,000 (from \$4,800 to \$6,000 for more than one qualifying individual). EGTRRA also raised the maximum credit from 30 to 35 percent of qualifying expenses and provided for a reduction in the credit, but not below 20 percent, by one percentage point for each \$2,000, or fraction thereof, of AGI above a \$15,000 threshold amount. The 2010 Tax Relief Act extends the enhanced dependent care credit for two years, through December 31, 2012.

¹ (December 17, 2010). Tax Relief/Job Creation Act of 2010. CCH Tax Briefing, Special Report. Retrieved from <http://www.journalofaccountancy.com/Web/20103240.htm>

Coverdell Education Savings Accounts. EGTRRA increased the maximum contribution amount to a Coverdell Education Savings Account (ESA) from \$500 to \$2,000 and, among other things, made elementary and secondary school expenses, qualified expenses. These enhancements were scheduled to sunset after 2010. The 2010 Tax Relief Act extends them for two years, through December 31, 2010.

Individual Tax Extenders. State and local sales tax deduction, teacher’s classroom expense deduction, and charitable contributions of IRA proceeds are a few of the Individual incentives extended by the 2010 Tax Relief Act.

Alternative Minimum Tax (AMT). The 2010 Tax Relief Act provides an AMT “patch” intended to prevent the AMT from encroaching on middle income taxpayers by providing higher exemption amounts and other targeted relief for 2010 and 2011. The Act also increases the exemption amounts for 2010 to \$47,450 for individual taxpayers, \$72,450 for married taxpayers filing jointly and surviving spouses, and \$36,255 for married couples filing separately.

AMT PATCH

Exemption amount for 2010 and 2011 with/ and without a patch:

	2010	2011
Single Individuals/ not surviving spouse:	\$47,450/ \$33,750	\$48,450/ \$33,750
Married couples filing jointly/ surviving spouse:	\$72,450/ \$45,000	\$74,450/ \$45,000
Married couples filing separately	\$36,225/ \$22,500	\$37,225/ \$22,500

Payroll Tax Cuts. The 2010 Tax Relief Act reduces the employee-share of the OASDI portion of Social Security taxes from 6.2 percent to 4.2 percent for wages earned in calendar year 2011 up to the taxable wage based of \$106,800. Self-employed individuals would pay 10.4 percent on self-employment income up to the threshold. Individuals who do not pay into Social Security, for example, some public employees, will not benefit from the payroll tax cut. These individuals did benefit from the Making Work Pay credit.

EXTENSION EFFECTIVE DATES FOR EXPIRING & EXPIRED PROVISIONS			
	2010		2011
Individual Tax Rates			01/01/11 – 12/31/12
Individual Extenders	01/01/10 – 12/31/11		
AMT Relief	01/01/10 – 12/31/11		
100% Bonus Depreciation			9/9/10 – 12/31/11

BUSINESSES:

100 Percent Bonus Depreciation. The 2010 Tax Relief Act boosts 50-percent bonus depreciation to 100-percent for qualified investments made after September 8, 2010 and before January 1, 2012. The Act also makes 50-percent bonus depreciation available for qualified property placed in service after December 31, 2011 and before January 1, 2013. This provision is one of the most expansive for businesses. Unlike Code Sec. 179 expensing, it is not limited to use by smaller businesses or capped at a certain dollar level. Under the 2009 Recovery Act, a corporation otherwise eligible for additional first year depreciation may elect to claim additional research or minimum tax credits in lieu of claiming depreciation for qualified property placed in service after March 31, 2008 and before December 31, 2008. The 2010 Tax Relief Act generally extends similar treatment for two years, through December 31, 2012.

Congress has repeatedly increased the dollar and investment limits under Code Sec. 179 to encourage business spending. The 2010 Small Business Jobs Acts increased the Code Sec. 179 dollar and investment limits to \$500,000 and \$2 million, respectively, for tax years beginning in 2010 and 2011. The Act provides for a \$125,000 dollar limit (indexed for inflation) and a \$500,000 investment limit (indexed for inflation) for tax years beginning in 2012 (and sunsetting after December 31, 2012). The 2010 Tax Relief Act also extends the treatment of off-the-shelf computer software as qualifying property if placed in service before 2013.

Research Tax Credit. The Code Sec. 41 research tax credit expired at the end of 2009. The 2010 Tax Relief Act renews the credit for 2 years. Through December 31, 2011 and is effective for amounts paid or incurred after December 31, 2009.

Business Tax Extenders. 15-year recovery period for qualified leasehold improvements, restaurant building and improvements, and retail improvements is one of the many business tax incentives extended by the 2010 Tax Relief Act.

ESTATES:

Estate Tax Compromise. The maximum estate tax rate is 35 percent with an applicable exclusion amount of \$5 million. This new estate tax regime, however, is itself temporary and is scheduled to sunset on December 31, 2012. Together with the revival of the estate tax, the 2010 Tax Relief Act eliminates the modified carryover basis rules and replaces them with the stepped up basis rules that had applied in 2010. Under a modified carryover basis that EGTRRA had put into place for 2010, the executor may increase the basis of estate property only by a total of \$1.3 million, with other estate property taking a carryover basis equal to the lesser of the decedent's basis or the fair market value of the property on the decedent's death. An executor may increase the basis of assets passing to a surviving spouse by an additional \$3 million (for a total of \$4.3 million).



Option for 2010. The 2010 Tax Relief Act gives estates of decedents dying after December 31, 2009 and before January 1, 2011, the option to elect not to come under the revived estate tax. The new law gives those estates the option to elect to apply (1) the estate tax based on the new 35 percent top rate and \$5 million applicable exclusion amount, with stepped-up basis or (2) no estate tax and modified carryover basis rules under EGTRRA. Any election would be revocable only with the consent of the IRS.

Portability. The 2010 Tax Relief Act provides for "portability" between spouses of the state tax applicable exclusion amount of his or her predeceased spouse, thereby providing the surviving spouse with a larger exclusion amount. A "deceased spousal unused exclusion amount" would be available to the surviving spouse only if an election is made on a timely filed estate tax return. Portability would be available to the estates of decedents dying after December 31, 2010. Under the Tax Relief Act of 2010, the portability election will sunset on January 1, 2013.

Gift Taxes. For gifts made after 2010, the gift tax is reunified with the estate tax with a top gift tax rate of 35 percent and an applicable exclusion of \$5 million.

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