



CPE CREDIT - 1.0 Hour of Non-Interactive Self-Study
FIELD OF STUDY - Taxation
PROGRAM LEVEL - Basic
PREREQUISITE - None
ADVANCE PREPARATION REQUIRED - None



Course Summary

This course will outline the 2010 Tax Relief Act from the perspective of the tax preparer. After completing this course, the successful student will have a clear understanding of both prior and current law.

Your Instructor

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Course Content

The Practice Units are as follows:

Overview

Unit One - Individual Tax Provisions

Unit Two - Business Incentives

Unit Three - Energy Incentives

Unit Four - Disaster Incentives

Unit Five - Bonds

Unit Six - Charitable Incentives

Unit Seven - Federal Estate Tax

Learning Objective

This Course consists of multiple sections and one Quizzer. You must view the video portion in full prior to moving forward, and upon completion of the final section, will be tested on the materials discussed therein.

Obtaining Course Credit

At the end of the main presentation, after you will have completed the Course Material, you will be given an opportunity to take the Quizzer. If your score is less than 70%, you may retake the Quizzer as many times as you like until you answer at least 70% of the Questions correctly. In order to receive your Certificate of Completion and your Credit, you must complete the Quizzer and answer 70% of the Questions correctly.

The 2010 Tax Relief Act

I. OVERVIEW

This program will highlight the major provisions of the 2010 Tax Relief Act affecting

- Individual Tax Provisions
- Business Incentives
- Energy Incentives
- Disaster Incentives
- Bonds
- Charitable Incentives
- The Federal Estate Tax

II. INDIVIDUAL TAX PROVISIONS

A. Individual Tax Rates

1. Pre-Act Law

Under pre-Act law, for tax years beginning after Dec. 31, 2010, the rates were scheduled to rise to 15%, 28%, 31%, 36% and 39.6%; and the 15% tax bracket for joint filers and qualified surviving spouses was scheduled to drop to 167% of the 15% tax bracket for individual filers.

2. Tax Relief Act Change

a. Under Sec. 101 of the 2010 Tax Relief Act, the tax rate schedules for individuals will remain at 10%, 15%, 25%, 28%, 33% and 35% for two additional years, through 2012.

b. In addition, the size of the 15% tax bracket for joint filers and qualified surviving spouses will remain at 200% of the 15% tax bracket for individual filers through 2012.

c. Thus, the 2011 individual tax rates will be: (Committee Report)

FOR MARRIED INDIVIDUALS FILING JOINT RETURNS

AND SURVIVING SPOUSES, THE 2011 RATE BRACKETS WILL BE:

If taxable income is:

The tax will be:

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Not over \$17,000	10% of taxable income
Over \$17,000 but not over \$69,000	\$1,700.00 plus 15% of the excess over \$17,000
Over \$69,000 but not over \$139,350	\$9,500.00 plus 25% of the excess over \$69,000
Over \$139,350 but not over \$212,300	\$27,087.50 plus 28% of the excess over \$139,350
Over \$212,300 but not over \$379,150	\$47,513.50 plus 33% of the excess over \$212,300
Over \$379,150 excess over \$379,150	\$102,574.00 plus 35% of the

FOR SINGLE INDIVIDUALS (OTHER THAN HEADS OF HOUSEHOLDS AND
SURVIVING SPOUSES), THE 2011 RATE BRACKETS WILL BE:

If taxable income is:	The tax will be:
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Not over \$8,500	10% of taxable income
Over \$8,500 but not over \$34,500	\$850.00 plus 15% of the excess over \$8,500
Over \$34,500 but not over \$83,600	\$4,750.00 plus 25% of the excess over \$34,500
Over \$83,600 but not over \$174,400	\$17,025.00 plus 28% of the excess over \$83,600
Over \$174,400 but not over \$379,150	\$42,449.00 plus 33% of the excess over \$174,400
Over \$379,150 excess over \$379,150	\$110,016.50 plus 35% of the

FOR HEADS OF HOUSEHOLDS, THE 2011 RATE

BRACKETS WILL BE:

If taxable income is:	The tax will be:
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Not over \$12,150	10% of taxable income
Over \$12,150 but not over \$46,250	\$1,215.00 plus 15% of the excess over \$12,150
Over \$46,250 but not over \$119,400	\$6,330.00 plus 25% of the excess over \$46,250
Over \$119,400 but not over \$193,350	\$24,617.50 plus 28% of the excess over \$119,400
Over \$193,350 but not over \$379,150	\$45,323.50 plus 33% of the excess over \$193,350
Over \$379,150 excess over \$379,150	\$106,637.50 plus 35% of the excess over \$379,150

FOR MARRIEDS FILING SEPARATE RETURNS, THE 2011 RATE

BRACKETS WILL BE:

If taxable income is:	The tax will be:
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Not over \$8,500	10% of taxable income
Over \$8,500 but not over \$34,500	\$850.50 plus 15% of the excess over \$8,500
Over \$34,500 but not over \$69,675	\$4,750.00 plus 25% of the excess over \$34,500
Over \$69,675 but not over \$106,150	\$13,543.75 plus 28% of the excess over \$69,675

Over \$106,150 but not over \$189,575	\$23,756.75 plus 33% of the excess over \$106,150
Over \$189,575	\$51,287.00 plus 35% of the excess over \$189,575

FOR ESTATES AND TRUSTS, THE 2011 RATE

BRACKETS WILL BE:

If taxable income is: -----	The tax will be: -----
Not over \$2,300	15% of taxable income
Over \$2,300 but not over \$5,450	\$345.00 plus 25% of the excess over \$2,300
Over \$5,450 but not over \$8,300	\$1,132.50 plus 28% of the excess over \$5,450
Over \$8,300 but not over \$11,350	\$1,930.50 plus 33% of the excess over \$8,300
Over \$11,350	\$2,937.00 plus 35% of the excess over \$11,350

B. Withholding and Other Tax Rates Stay Unchanged

The following rates are tied in one way or another to the tax rates for individuals. Thus, although not expressly amended by the 2010 Tax Relief Act, they will remain unchanged for 2011-2012 because the Act extends current tax rates for individuals through 2012. The rates that follow will remain at current levels, instead of increasing under the EGTRRA sunset rule:

- *Accumulated earnings tax rate (Code Sec. 532).* This rate stays at 15% instead of rising to 39.6%.
- *Personal holding company tax rate (Code Sec. 541).* This rate stays at 15% instead of rising to 39.6%.
- *Minimum withholding rate on supplemental wages under flat rate method Code Sec. 3402).* This rate will stay at 25% instead of rising to 28%. (For supplemental

wage payments totaling more than \$1 million for a calendar year, the rate stays at 35% instead of rising to 39.6%).

- *Backup withholding rate on gambling winnings (Code Sec. 3402(q)).* This rate stays at 25% instead of rising to 28%.
- *Backup withholding rate on reportable payments (Code Sec. 3406).* This rate stays at 28% instead of rising to 31%.
- *Voluntary withholding rates on certain federal payments (e.g., Social Security benefits) (Code Sec. 3402).* These rates stay at 7%, 10%, 15%, or 25%, instead of rising to 7%, 15%, 28%, 31%.
- *Voluntary withholding rate on unemployment benefits (Code Sec. 3402).* This rate stays at 10% instead of rising to 15%.

C. Capital Gains/Dividends

1. Capital gain.

a. Pre-Act Law

(1) Under pre-Act law, for tax years beginning after Dec. 31, 2010, the maximum rate of tax on an individual's adjusted net capital gain was to be 20%.

(2) Any adjusted net capital gain which otherwise would be taxed at the 15% rate was to be taxed at a 10% rate.

(3) In addition, any gain from the sale or exchange of property held more than five years that would otherwise have been taxed at the 10% capital gain rate would be taxed at an 8% rate.

(4) Any gain from the sale or exchange of property acquired after 2000 and held for more than five years, that would otherwise have been taxed at a 20% rate was to be taxed at an 18% rate.

(5) Net capital gain attributable to collectibles gain and section 1202 gain was to continue to be taxed at a maximum rate of 28%.

b. Tax Relief Act Change

(1) For tax years beginning in 2010, for both regular tax and AMT purposes, the maximum rate of tax on the adjusted net capital gain of an individual is 15%.

(2) If the adjusted net capital gain would otherwise be taxed at a rate below 25% if it were ordinary income, it is taxed at a 0% rate.

(3) That part of net capital gain attributable to unrecaptured section 1250 gain is taxed at a maximum rate of 25%.

(4) Net capital gain attributable to collectibles gain and section 1202 gain is taxed at a maximum rate of 28%.

2. Qualified dividend income.

a. Pre-Act Law

Under pre-Act law, for tax years beginning after Dec. 31, 2010, dividends received by an individual were to be taxed at ordinary income tax rates

b. Tax Relief Act Change

(1) For tax years beginning in 2010, for both the regular tax and AMT purposes, an individual's qualified dividend income is taxed at the same rates that apply to net capital gain.

(2) Thus, an individual's qualified dividend income is taxed at a 15% and (for qualified dividend income which otherwise would be taxed at a 10% or 15% rate if the special rates did not apply) at a zero rate.

(3) Under Sec. 102 of the 2010 Tax Reform Act, adjusted net capital gain will be taxed at a maximum rate of 0/15% for two additional years, through 2012.

(4) A qualified dividend paid to individuals will be taxed at the same rates as adjusted net capital gain through 2012.

D. Increased Standard Deduction Amounts Extended for Two Years

1. Pre Act Law

a. The standard deduction for married taxpayers filing separately is one-half of the standard deduction for joint filers.

b. For tax years beginning in 2010, the basic standard deduction for a married couple filing a joint return is twice the basic standard deduction for an unmarried individual filing a single return.

c. Under pre-Act law, for tax years beginning after Dec. 31, 2010, the standard deduction for married taxpayers filing jointly (and qualified surviving spouses) was to be 167% of the standard deduction for single taxpayers.

2. Tax Relief Act Change

a. Under Sec. 101 of the 2010 Tax Relief Act, the standard deduction for married taxpayers filing jointly (and qualified surviving spouses)

remains at 200% of the standard deduction for single taxpayers for two additional years, through 2012.

b. Thus, under the 2010 Tax Relief Act, the basic standard deduction for 2011 (reflecting inflation adjustments) will be:

Joint return or surviving spouse	\$11,600 (up from \$11,400 for 2010)
Single (other than household or surviving spouse)	\$5,800 (up from \$5,700 for 2010)
Head of household	\$8,500 (up from 8,400 for 2010)
Married filing Separately	\$5,800 (up \$5,700 for 2010)

c. For 2011, the additional standard deduction for married taxpayers 65 or over or blind will be \$1,150 (up from \$1,100 for 2010). For a single taxpayer or head of household who is 65 or over or blind the additional standard deduction for 2011 will be \$1,450 (up from \$1,400 for 2010).

E. No 3%/80% Limitation on Itemized Deductions for 2011 and 2012.

1. Pre Act Law

a. Unless he elects to claim the standard deduction, a taxpayer is allowed to deduct his itemized deductions (generally those deductions which aren't allowed in computing adjusted gross income).

b. For tax years beginning in 2010, there was no overall limitation on itemized deductions based on the taxpayer's adjusted gross income (AGI), although separate limitations (floors) might apply to the particular deduction.

c. Under pre-Act law, for tax years beginning after Dec. 31, 2010, the total amount of itemized deductions was to be reduced (the "Pease limitation") by 3% of the amount by which the taxpayer's AGI exceeds a threshold amount (\$169,550 for 2011), with the reduction not to exceed 80% of the otherwise allowable itemized deductions.

2. Tax Relief Act Change

Under Sec. 101 of the 2010 Tax Relief Act, the itemized deductions of higher-income taxpayers are not reduced for two additional years, through 2012.

F. No Phase-Out of Personal Exemptions For 2011 and 2012

1. Pre Act Law

a. Personal exemptions generally are allowed for the taxpayer, his or her spouse, and any dependents. For tax years beginning in 2010, there was no overall reduction in the personal exemption amount based on the taxpayer's AGI.

b. Under pre-Act law, for tax years beginning after Dec. 31, 2010, the total amount of exemptions that could be claimed by a taxpayer was to be reduced (personal exemption phaseout (PEP)) by 2% for each \$2,500 (or portion thereof) by which the taxpayer's AGI exceeds the applicable threshold (in 2011, \$169,550 for unmarried individuals; \$254,350 for married couples filing joint returns; \$211,950 for heads of household.). The phase-out rate was to be 2% for each \$1,250 for married taxpayers filing separate returns.

2. Tax Relief Act Change

Under Sec. 101 of the 2010 Tax Relief Act, a higher-income taxpayer's personal exemptions are not phased out for two additional years (for 2011 and 2012) when AGI exceeds an inflation-adjusted threshold.

G. Expanded Child Tax Credit Extended for Two Years

1. Pre Act Law

a. For tax years beginning in 2010, individuals may claim a maximum \$1,000 child tax credit under Code Sec. 24 for each qualifying child under age 17 that the taxpayer can claim as a dependent.

b. The amount of the allowable credit is reduced (not below zero) by \$50 for each \$1,000 (or fraction thereof) of modified AGI above: \$110,000 for joint filers, \$75,000 for unmarried individuals, and \$55,000 for marrieds filing separately. The child tax credit can offset both the regular tax and AMT.

c. The child tax credit is refundable, but only to the extent of the greater of: (1) 15% of taxable earned income above \$3,000 (as adjusted for inflation), or (2) for a taxpayer with three or more qualifying children, the excess of his social security taxes for the tax year over his earned income credit for the year.

d. Under pre-Act law, for tax years beginning after Dec. 31, 2010, the maximum credit was to drop from \$1,000 to \$500, and the credit was not to be allowed against AMT. In addition, more restrictive rules were to apply to refundable child credit.

2. Tax Relief Act Change

a. Under Secs. 101 and 103 of the 2010 Tax Reform Act, the \$1,000 child tax credit is extended and allowed to be used against regular income tax and the AMT for two years, through 2012.

b. The formula for determining the refundable child credit, with the earned income threshold of \$3,000 (but not adjusted for inflation) is extended for two years, through 2012.

c. Also extended for two years is the treatment of the refundable portion of the child tax credit as not constituting income or a resource in determining the eligibility or amount of benefits or assistance under any Federal program or State or local program financed with Federal funds.

H. Expanded Earned Income Tax Credit Extended

1. Pre Act Law

a. An eligible individual is allowed an earned income tax credit (EITC) under Code Sec. 32 equal to the credit percentage of earned income (up to an "earned income amount") for the tax year.

b. The EITC for a tax year (determined under IRS tables) can't be more than the excess (if any) of (1) the credit percentage of the earned income amount, over (2) the phaseout percentage of AGI (or earned income, if greater) over a phaseout amount.

c. For tax years beginning in 2010, in making the EITC computation, various "simplification" provisions apply, including:

- *the definition of earned income includes only amounts that are includible in gross income for the tax year. So, the definition includes wages, salaries, tips and other employee compensation, if includible in gross income for the tax year, plus net earnings from self-employment;*
- *the reduction of the EITC for taxpayers subject to the AMT is eliminated;*
- *the EITC phaseout applies using AGI rather than modified AGI;*
- *the relationship test provides that a qualifying child (including a foster child) must reside with the taxpayer for more than six months; descendants of stepchildren are added to the eligible child category; and brothers, sisters, stepbrothers or stepsisters of the taxpayer are reclassified under the general eligible child category (but only if the taxpayer cared for them as his or her own); and*

- *a simplified tie-breaking rule applies if an individual would be a qualifying child with respect to more than one taxpayer, and more than one taxpayer claims the earned income credit for that child.*

d. For tax years beginning in 2010, a 45% credit percentage applies for a taxpayers with three or more qualifying children, and the joint return phaseout amount is \$5,010 (as adjusted for inflation) above the thresholds for singles, surviving spouses, and heads of household—i.e., \$12,490 for no qualifying children, and \$21,460 for one or more qualifying children. Thus, in 2010, taxpayers with three or more qualifying children could claim a credit of 45% of earnings up to \$12,590, resulting in a maximum credit of \$5,666.

e. Under pre-Act law, for tax years beginning after Dec. 31, 2010, the above “simplification” provisions and the 45% credit percentage for three or more qualifying children were not to apply; and the threshold phaseout amount for joint filers was to be the same as for other filers.

2. Tax Relief Act Change.

a. Secs. 101 and 103 of the 2010 Tax Reform Act extend for two years, through 2012, the following provisions: (1) the simplified definition of earned income; (2) the simplified relationship test; (3) use of AGI instead of modified AGI; (4) the simplified tie-breaking rule; (5) additional math error authority for IRS; (6) the repeal of the prior-law provision reducing an individual's EITC by the amount of his AMT liability; and (7) increases in the beginning and ending points of the credit phase-out for married taxpayers by \$5,000. (Committee Report)

b. The 2010 Tax Reform Act also extends for two years, through 2012, the 45% rate for taxpayers with three or more qualifying children and the higher phase-out thresholds for married couples filing joint returns. (Code Sec. 32(b)(3) , as amended by Act Sec. 103(c))

I. Expanded Adoption Credit and Employer-Provided Adoption Assistance Extended One Year

1. Pre Act Law

a. There is a maximum adoption credit of \$13,170 for 2010 (\$13,360 for 2011) per eligible child (both special needs and non-special needs adoptions) under Code Sec. 36C ; and for employer-provided adoption assistance a maximum exclusion of \$13,170 (\$13,360 for 2011) per eligible child (both special needs and non-special needs adoptions) under Code Sec. 137 .

b. These amounts are adjusted annually for inflation. The benefit is phased out for taxpayers with adjusted gross income specially computed (i.e.,

modified AGI) over \$182,520 in 2010 (\$185,210 in 2011), adjusted for inflation annually, and is fully eliminated when modified AGI reaches \$222,520 in 2010 (\$225,210 in 2011).

c. Under pre-Act law, for tax years beginning after Dec. 31, 2011, the adoption credit and employer-provided adoption assistance exclusion were to be available only to special needs adoptions and the maximum credit and exclusion was to be reduced to \$6,000. The phase-out range was to be reduced to between \$75,000 and \$115,000. The maximum credit, exclusion, and phase-out range were not indexed for inflation.

2. Tax Relief Act Change.

a. Under Sec. 101 of the 2010 Tax Reform Act, the expanded adoption credit and exclusion from income for employer-provided adoption assistance are extended for one year, through 2012, but the PPACA changes to the adoption credit for 2010 and 2011 (relating to the \$1,000 increase in the maximum credit and the refundability of the credit) aren't extended.

b. Thus, for 2012, the maximum benefit is \$12,170 (indexed for inflation after 2010), and is phased out ratably for taxpayers with modified AGI between \$182,520 and \$222,520 (indexed for inflation after 2010). (Act Sec.101(b), Committee Report)

J. Expanded Employer-Provided Child Care Tax Credit Extended Through 2012

1. Pre Act Law

a. A tax credit for employer-provided child care applies for 2010 under Code Sec. 45F. It is equal to the sum of the following expenses (up to \$150,000) for the tax year:

(1) 25% of qualified child care expenses, which are expenses to buy, build, rehabilitate, or expand property to be used as part of an employer's qualified child care facility, for which a deduction for depreciation (or amortization) is allowable, and which isn't part of the taxpayer's (or an employee's) principal residence. Qualifying child care expenses also include operating costs of a taxpayer's qualified child care facility (including costs related to employee training, scholarship programs, and to providing increased compensation to employees with higher levels of child care training), and amounts paid under a contract with a qualified child care facility to provide child care services to the taxpayer's employees; and

(2) 10% of qualified child care resource and referral expenses (i.e., amounts paid or incurred under a contract to provide child care resource and referral services to an employee).

b. Under pre-Act-law, for tax years beginning after December 31, 2010, the child care credit was to no longer apply.

2. Tax Relief Act Change.

Under Sec. 103 of the 2010 Tax Reform Act, the employer-provided child care tax credit is extended for two years, through 2012.

K. Expanded Dependent Care Tax Credit Extended Two Years

1. Pre Act Law

a. A Code Sec. 21 dependent care tax credit may be claimed in 2010 by an individual who has one or more qualifying individuals and incurs employment-related expenses enabling him to be gainfully employed.

(1) For 2010, the maximum dependent care tax credit is \$1,050 (35% of up to \$3,000 of eligible expenses) if there is one qualifying individual, and \$2,100 (35% of up to \$6,000 of eligible expenses) if there are two or more qualifying individuals. The 35% credit rate is reduced, but not below 20%, by one percentage point for each \$2,000 (or fraction of) AGI above \$15,000.

(2) Thus, the credit percentage is reduced to 20% for taxpayers with AGI over \$43,000.

b. Under pre-Act-law, for tax years beginning after December 31, 2010, the level of the credit was to be reduced: the maximum credit percentage was to drop from 35% to 30% and the AGI-based percentage reduction was to begin at \$10,000 instead of \$15,000. The creditable expense was to drop from \$3,000 to \$2,400 (for one qualifying individual) and from \$6,000 to \$4,800 (for two or more).

2. Tax Relief Act Change.

Under Sec. 101 of the 2010 Tax Reform Act, the expanded dependent care tax credit applies for two additional years, through 2012.

L. Numerous Education Incentives Extended Two Years

1. American Opportunity Tax Credit.

a. Pre Act Law

(1) Under pre-Act law, for tax years beginning after Dec. 31, 2010, instead of the AOTC an individual was to be able to claim a Hope credit equal to 100% of the first \$1,200 (as inflation adjusted) of qualified higher-education tuition and related expenses (not including course material), plus 50% of the next \$1,200 (as inflation-adjusted) of expenses paid for education furnished to an eligible student in an academic period—i.e., a total maximum Hope credit of \$1,800.

(2) For each eligible student, the Hope the credit would be allowed only for expenses paid for the first two years of the post-secondary education, and it phased out ratably for taxpayers with lower specified (inflation adjusted) modified AGI.

b. Tax Relief Act Change.

(1) For tax years beginning in 2010, individuals may claim an American opportunity tax credit (AOTC) under Code Sec. 25A equal to 100% of up to \$2,000 of qualified higher-education tuition and related expenses (including course material), plus 25% of the next \$2,000 of expenses paid for education furnished to an eligible student in an academic period—i.e., a maximum credit of \$2,500 a year for each eligible student. For 2010, the availability of the credit phases out ratably for taxpayers with modified AGI of \$80,000 to \$90,000 (\$160,000 to \$180,000 for joint filers).

(2) The AOTC (which expanded the credit available under the Hope Scholarship Credit) is allowed for each of the first four years of the student's post-secondary education in a degree or certificate program.

(3) The credit can be claimed against AMT liability; and 40% of the otherwise allowable AOTC is refundable (unless the taxpayer claiming the credit is a child under age 18 or a child under age 24 who is a student providing less than one-half of his support, who has at least one living parent, and doesn't file a joint return).

2. Exclusion for Scholarships.

a. Pre Act Law

Under pre-Act law, for tax years beginning after Dec. 31, 2010, an exception to the no payment for teaching, research, or other services rule for the National Health Service Corps (NHSC) Scholarship Program and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program (Armed Forces Scholarship Program) was to no longer apply.

b. Tax Relief Act Change.

For 2010, a qualified individual can exclude from income a qualified scholarship or qualified tuition reductions under Code Sec. 117 . These exclusions generally do not apply to any amounts received by a student that are payment for teaching, research, or other services as a condition for receiving the scholarship or tuition reduction.

3. Employer-provided Educational Assistance.

a. Pre Act Law

Under pre-Act law, for tax years beginning after Dec.31, 2010, the specific exclusion for employer-provided educational assistance was no longer to apply, so that educational assistance would be excludable from gross income only if it qualifies as a working condition fringe benefit (i.e., the expenses would have been deductible as business expenses if paid by the employee; such expense must be related to the employee's current job).

b. Tax Relief Act Change.

For 2010, an employee may exclude educational assistance provided under an employer's qualified educational assistance program, up to an annual maximum of \$5,250 under Code Sec. 127 . The education received need not be job-related.

4. Student Loan Interest Deduction.

a. Pre Act Law

Under pre-Act law, for tax years beginning after Dec. 31, 2010, the phaseout ranges were to revert to a base level of \$40,000 to \$55,000 (\$60,000 to \$75,000 for joint returns), adjusted for inflation occurring since 2002. In addition, the interest was not to be deductible beyond the first 60 months that interest payments are required.

b. Tax Relief Act Change.

Individuals can deduct a maximum of \$2,500 annually for interest paid on qualified higher education loans under Code Sec. 221. For 2010, the deduction phases out ratably for taxpayers with modified AGI between \$60,000 and \$75,000 (\$120,000 and \$150,000 for joint returns).

5. Coverdell Education Savings Accounts.

a. Pre Act Law

(1) Under pre-Act law, for tax years beginning after Dec. 31, 2010, the following were to apply: a \$500 contribution limit; a phaseout range of \$150,000 - \$160,000 for joint returns; elementary and secondary

education expenses excluded from qualified expenses; and no special age rules for special needs beneficiaries.

(2) In addition, provisions covering the following were to expire: clarification that corporations and other entities were permitted to make contributions, regardless of the income of the corporation or entity during the year of the contribution; certain rules on when contributions were deemed made and extending the time during which excess contributions could be returned without additional tax; certain rules on coordination with the Hope and Lifetime Learning credits; and certain rules on coordination with qualified tuition programs.

b. Tax Relief Act Change.

(1) Taxpayers can contribute up to \$2,000 per year to Coverdell Education Savings Accounts (CESAs) for beneficiaries under age 18 (and, special needs beneficiaries of any age). The account is exempt from income tax, and distributions of earnings from CESAs are tax-free if used for qualified education expenses. The contribution limit is phased out for contributors with modified AGI between \$95,000 and \$110,000 (\$190,000 and \$220,000 for joint returns).

(2) Under the 2010 Tax Relief Act, the AOTC, the NHSC Scholarship Program and the Armed Forces Scholarship Program exception, the exclusion for employer-provided educational assistance, the student loan interest deduction, and Coverdell education savings accounts rules are extended for two years, through 2012. (Act Sec.101, Act Sec. 103(a))

M. Boosted AMT Exemption Amounts for 2010 and 2011

1. Pre Act Law

a. The alternative minimum tax (AMT) is the excess, if any, of the tentative minimum tax for the year over the regular tax for the year.

b. In arriving at the tentative minimum tax, an individual begins with taxable income, modifies it with various adjustments and preferences, and then subtracts an exemption amount (which phases out at higher income levels).

c. The result is alternative minimum taxable income (AMTI), which is subject to an AMT rate of 26% or 28%.

d. Under pre-Act law, the AMT exemption amounts for tax years beginning after 2009 were: \$33,750 for unmarried individuals; \$45,000 for married couples filing jointly and surviving spouses; and \$22,500 for married individuals filing separately.

2. Tax Relief Act Change.

a. Overview

The 2010 Tax Reform Act patches the AMT exemption amounts for 2010 and 2011. (Code Sec. 55(d), as amended by Act Sec. 201). The AMT exemption amounts for 2010 are as follows:

- *Married individuals filing jointly and surviving spouses: \$72,450, less 25% of AMTI exceeding \$150,000 (zero exemption when AMTI is \$439,800);*
- *Unmarried individuals: \$47,450, less 25% of AMTI exceeding \$112,500 (zero exemption when AMTI is \$302,300); (Code Sec. 55(d)(1), as amended by Act Sec. 201) and*
- *Married individuals filing separately: \$36,225, less 25% of AMTI exceeding \$75,000 (zero exemption when AMTI is \$219,900). But AMTI is increased by the lesser of \$36,225 or 25% of the excess of AMTI (without the exemption reduction) over \$219,900.*

b. AMT Exemption of a Child Subject to the Kiddie Tax.

(1) For 2010, for a child subject to the kiddie tax (i.e., certain children with unearned income over \$1,900 for 2010), the AMT exemption amount can't exceed the sum of the child's earned income plus \$6,700.

(2) In addition, the kiddie tax AMT exemption can't be more than the child's regular AMT exemption (i.e., the unmarried individual's exemption amount, see above).

(3) Thus, under the 2010 Tax Reform Act, a child subject to the kiddie tax is entitled to a maximum AMT exemption of \$47,450 in 2010, but only if he has earned income of \$40,750 ($\$6,700 + \$40,750 = \$47,450$) or more before taking the phaseout for unmarried individuals into account.

(4) Under the 2010 Tax Reform Act, the AMT exemption amounts for 2011 will be as follows:

- *Married individuals filing jointly and surviving spouses: \$74,450, less 25% of AMTI exceeding \$150,000 (zero exemption when AMTI is \$447,800);*
- *Unmarried individuals: \$48,450, less 25% of AMTI exceeding \$112,500 (zero exemption when AMTI is \$306,300) (Code Sec. 55(d)(1) , as amended by Act Sec. 201); and*

- *Married individuals filing separately: \$37,225, less 25% of AMTI exceeding \$75,000 (zero exemption when AMTI is \$223,900). But AMTI is increased by the lesser of \$37,225 or 25% of the excess of AMTI (without the exemption reduction) over \$223,900.*

c. AMT Exemption of a Child Subject to the Kiddie Tax.

(1) For 2011, for a child subject to the kiddie tax (i.e., certain children with unearned income over \$1,900), the AMT exemption amount can't exceed the sum of the child's earned income plus \$6,800.

(2) In addition, the kiddie tax AMT exemption can't be more than the child's regular AMT exemption (i.e., the unmarried individual's exemption amount, see above).

(3) Thus, under the 2010 Tax Reform Act, a child subject to the kiddie tax is entitled to a maximum AMT exemption of \$48,450 in 2011, but only if he has earned income of \$41,650 ($\$6,800 + \$40,750 = \$48,450$) or more before taking the phaseout for unmarried individuals into account.

d. Personal Nonrefundable Credits May Offset AMT and Regular Tax for 2010 and 2011

(1) A number of personal credits are nonrefundable (i.e., the dependent care credit, the credit for the elderly and disabled, the child credit, the credit for interest on certain home mortgages, the Hope Scholarship and Lifetime Learning credits, the credit for savers, the credit for certain nonbusiness energy property, the credit for residential energy efficient property, the credit for certain plug-in electric vehicles, the credit for alternative motor vehicles, the credit for new qualified plug-in electric drive motor vehicles, and the D.C. first-time homebuyer credit).

(2) For taxable years beginning before 2010, the nonrefundable personal credits are allowed to the extent of the full amount of the individual's regular tax and alternative minimum tax. However, under pre-Act law, for tax years beginning after 2009, the nonrefundable personal credits (other than the child credit, the credit for savers, the credit for residential energy efficient property, the credit for certain plug-in electric drive motor vehicles, the credit for alternative motor vehicles, and the credit for new qualified plug-in electric drive motor vehicles) are allowed only to the extent that the individual's regular income tax liability exceeds the individual's tentative minimum tax, determined without regard to the minimum tax foreign tax credit.

(3) For tax years beginning during 2010 or 2011, the 2010 Tax Relief Act allows an individual to offset his entire regular tax liability and AMT liability by the nonrefundable personal credits. (Code Sec. 26(a)(2) , as amended by Act Sec. 202)

III. BUSINESS INCENTIVES

A. Expansion and Extension of Additional First-Year Depreciation.

1. Pre Act Law

Businesses are allowed to deduct the cost of capital expenditures over time according to depreciation schedules. In previous legislation, Congress allowed businesses to more rapidly deduct capital expenditures of most new tangible personal property, and certain other new property, placed in service in 2008, 2009, or 2010 (2011 for certain property), by permitting the first-year write-off of 50% of the cost.

2. Tax Relief Act Change.

a. The Tax Relief Act Change extends and temporarily increases this additional first-year depreciation provision for investment in new business equipment. For investments placed in service after September 8, 2010 and through December 31, 2011 (through December 31, 2012 for certain longer-lived and transportation property), the Tax Relief Act Change provides for 100% additional first-year depreciation.

b. In other words, the entire cost of qualifying property placed in service during that time frame can be written off, without limit. Note that even though the legislation did not take shape in Congress until mid-December of 2010, the effective date of this provision was made retroactive, to include qualifying property placed in service after September 8, 2010.

c. Fifty percent additional first-year depreciation will apply again in 2012.

d. The Act extends through 2012 the election to accelerate the AMT credit instead of claiming additional first-year depreciation.

e. The Tax Relief Act Change leaves in place the existing rules as to what kinds of property qualify for additional first-year depreciation. Generally, the property must be (1) depreciable property with a recovery period of 20 years or less; (2) water utility property; (3) computer software; or (4) qualified leasehold improvements. Also the original use of the property must commence with the taxpayer – used machinery doesn't qualify.

B. Enhanced Small Business Expensing (Section 179 expensing).

1. Pre Act Law

a. Generally, the cost of property placed in service in a trade or business can't be deducted in the year it's placed in service if the property will be useful beyond the year. Instead, the cost is "capitalized" and depreciation deductions are allowed for most property (other than land), but are spread out over a period of years. However, to help small businesses quickly recover the cost of capital outlays for qualifying personal property, small business taxpayers can elect to write off these expenditures in the year of acquisition instead of recovering the costs over time through depreciation.

b. The expense election is made available, on a tax year by tax year basis, under Section 179 of the Internal Revenue Code, and is often referred to as the "Section 179 election" or the "Code Section 179 election."

2. Tax Relief Act Change.

The Tax Relief Act Change makes three important changes to the Code Section 179 expense election.

a. First, the Tax Relief Act Change provides that for tax years beginning in 2012, a small business taxpayer will be allowed to write off up to \$125,000 (indexed for inflation) of capital expenditures subject to a phaseout (i.e., gradual reduction) once capital expenditures exceed \$500,000 (indexed for inflation).

b. The new maximum expensing amount and phaseout level for tax years beginning in 2012 is actually lower than the levels in effect for tax years beginning in 2010 or 2011 (maximum expensing amount of \$500,000, and a phaseout level of \$2,000,000). For tax years beginning after 2012, the maximum expensing amount will drop to \$25,000 and the phaseout level will drop to \$200,000.

c. Second, the rule which treats off-the-shelf computer software as qualifying property is extended through 2012.

d. Finally, the Tax Relief Act Change extends, through 2012, the provision permitting a taxpayer to amend or irrevocably revoke a Code Sec. 179 expense election for a tax year without IRS's consent.

IV. ENERGY INCENTIVES

A. Business Energy Incentives

1. Pre Act Law

The following business energy incentives were set to expire:

- a. Credits for biodiesel and renewable diesel fuel (two years)
- b. Credit for refined coal facilities (two years with modifications)
- c. New energy efficient home credit for qualified builders and manufacturers (homes purchased before January 1, 2012)
- d. Excise tax credits and outlay payments for alternative fuel and alternative fuel mixtures (two years)
- e. Sales of electric transmission property (sales before January 1, 2012)
- f. Percentage depletion for oil and gas from marginal wells (two years)
- g. Grants for certain energy property in lieu of tax credits (variable)
- h. Tax credits and outlay payments for ethanol and duties on imported ethanol (one year with modifications)
- i. Energy efficient appliance credit (one year with modifications)

2. Tax Relief Act Change.

- a. The 2010 Tax Relief Act temporarily extends these energy tax incentives for one or two years.
- b. Authority to provide grants in lieu of tax credits for certain energy property is extended for one year, through December 31, 2011. Generally, qualified property must be placed in service in calendar years 2009, 2010 or 2011 or construction of qualified property must begin in that period and be completed before 2013 for wind energy property (or 2014 or 2017 for other qualified property).
- c. An application for a grant must be made before October 11, 2011.

B. Individuals

1. Pre Act Law

The Code Sec. 25C credit is designed to reward individuals who make energy efficiency improvements to their residences with a tax benefit. Under current law, the credit amount is 30 percent of the sum of expenditures for qualified energy efficiency improvements and property, such as furnaces, water heaters, insulation materials, exterior windows and doors, and other items, for 2009 and 2010 property. The credit under current law is limited to a lifetime maximum credit of \$1,500 for 2009 and 2010 property.

2. Tax Relief Act Change

a. The 2010 Tax Relief Act extends the Code Sec. 25C credit through 2011. However, the new law returns the credit to its pre-2009 Recovery Act parameters.

b. The 2009 Recovery Act tripled what was a \$500 credit to a \$1,500 credit. The 2009 Recovery Act also provided that previous 10 percent credits and \$50, \$100 and \$150 sub-capped items would be eligible for the full 30 percent credit up to \$1,500. The 2010 Tax Relief Act does not renew these enhancements in the 2009 Recovery Act for 2011.

c. The Code Sec. 25C credit remains nonrefundable under the 2010 Tax Relief Act.

V. DISASTER INCENTIVES

The 2010 Tax Relief Act extends the following targeted disaster relief measures for one or two years:

- Tax-exempt bond financing for the New York City Liberty Zone (9-11 relief) (two years)
- Increased rehabilitation credit for historic structures in the Gulf Opportunity Zone (GO Zone) (two years)
- Placed-in service deadline for low income housing tax credits for GO Zone (one year)
- Tax-exempt bond financing for GO Zone (one year)
- Bonus depreciation for certain GO Zone property (generally one year)

VI. BONDS

A. The 2010 Tax Relief Act temporarily extends several bond programs. These include tax exempt private activity bonds for qualified education facilities and qualified zone academy bonds.

B. Notably absent from the list of bonds extended by the 2010 Tax Relief Act are Build America Bonds. Under the 2009 Recovery Act, Build America Bonds must be issued by state and local governments before January 1, 2011.

VII. CHARITABLE INCENTIVES

In addition to extending tax-free distributions from IRAs for charitable purposes, the 2010 Tax Relief Act also extends through 2011 (not an exhaustive list):

- A. Charitable deduction for contributions of food inventory
- B. Charitable deduction for contributions by C corporations of books to public schools
- C. Charitable deduction for corporate contributions of computer equipment for educational purposes
- D. Basis adjustment to stock of S corporations making charitable contributions of property

VIII. THE FEDERAL ESTATE TAX

A. Pre Act Law

1. The estates of wealthy individuals who died in 2010 didn't pay any federal estate tax, but that situation is about to change. Under the recently enacted "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010," the federal estate tax, which disappeared for 2010, springs back to life in 2011 and is imposed at the top rate of 35% of the estate's value after the first \$5 million. I am writing to provide a brief overview of the Tax Relief Act Change.

2. The modern estate tax dates back to 1916, when it was imposed at a rate of 10% on the portion of estates above \$50,000. Over the following years, the rates and exemption amounts have varied, reaching a high of 77% from 1941 to 1976 with a \$60,000 exemption amount.

3. In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the first of the two large legislative packages that contain most of what are now commonly referred to as the "Bush tax cuts."

4. EGTRRA gradually lowered the maximum estate tax rate and substantially raised the applicable exclusion amount over the years 2002 through 2009. The maximum tax rate fell from 60% under prior law in 2001 (a 55% marginal rate on taxable estate values over \$3 million plus a 5% surtax from \$10 million to \$17 million) to 45% in 2007-2009.

5. EGTRRA repealed the estate tax completely for decedents dying in 2010. That led to several well-publicized instances in which famous people died in 2010 leaving multibillion-dollar estates that will pass to their heirs without paying so much as a penny in federal estate tax.

6. However, all of those provisions were scheduled to sunset on December 31, 2010, meaning that if Congress had not acted, starting January 1, 2011, the estate tax would have sprung back at a level that no one seemed to want. Where the exclusion was \$3.5 million (\$7 million for couples) in 2009 – a level at which it affected relatively

few households – it would have been \$1 million (\$2 million for couples) in 2011 .The tax rate would also have risen, from a top rate of 45% in 2009, to a top rate of 55% in 2011.

B. Tax Relief Act Change.

1. The Tax Relief Act Change brings back the estate tax, for 2011 and 2012 anyway.

a. During 2011 and 2012, the top rate will be 35%. For 2011, the exemption amount will be \$5 million per individual (indexed for inflation after 2011). At those levels, the vast majority of estates (all but an estimated 3,500 nationwide in 2011) will not be subject to any federal estate tax, and the tax will raise about \$11.4 billion for the government.

b. By way of comparison, the 55% tax with a \$1 million exemption would have resulted in about 43,540 taxable estates in 2011, and raised about \$34.4 billion.

c. Tax historians would also note that except for the temporary repeal of the estate tax in 2010, the estate tax rate has not been less than 45% since 1931.

2. The Tax Relief Act Change also gives heirs of decedents dying in 2010 a choice of which estate-tax rules to apply – 2010's or 2011's.

a. That's important because although there is no estate tax in 2010, some inherited assets are subject to higher capital gains tax under the 2010 rules, a situation that actually raises the tax burden for some heirs.

b. Inherited assets under the 2010 rules have a tax basis equal to the price when they were purchased (referred to in tax parlance as “carryover basis”) rather than the price at death. That could lead to a significant tax burden for heirs who sell assets such as stocks that had been held for many years and have greatly appreciated in value.

c. Under the 2011 rules, by contrast, heirs will be allowed to inherit assets with a “stepped-up basis.” While most heirs would choose the 2011 regime (\$5 million exemption from both estate and generation-skipping tax and an unlimited step-up in the basis of assets to their current market value), the heirs of super-rich decedents could find it more advantageous to elect the 2010 law (limited step-up in the basis of assets and no estate tax).

d. If the executor makes the election to have the 2010 rules apply, the estate tax return's due date will not be earlier than the date that's nine months after the Tax Relief Act Change's enactment date.

3. For gifts made after December 31, 2010, the gift tax will be reunified with the estate tax.

a. Under the Tax Relief Act Change, the estate and gift tax exemptions will be reunified starting in 2011, which means that the \$5 million estate tax exemption will also be available for gifts.

b. The law in effect prior to 2010 provided a \$3.5 million lifetime exemption for estates, but only \$1 million for gifts. The gift tax rate, starting in 2011, will be 35%.

c. The exemption from the generation-skipping tax (GST) – the additional tax on gifts and bequests to grandchildren when their parents are still alive – will also rise to \$5 million from the \$1 million it would have been without the Tax Relief Act Change.

d. The GST tax rate for transfers made in 2011 and 2012 will be 35%.

4. From a planning standpoint, a nice feature of the Tax Relief Act Change is that it makes it easier to transfer the \$5 million exemption to a surviving spouse, so married couples can shield \$10 million of their assets from taxes. In the language of tax professionals, the estate tax exemption will be “portable.”

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