



## The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 – What It Means for You

**A. Overview.** On December 17, 2010, President Obama signed the “Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010” into law. The 2010 Tax Act is the most far-reaching tax legislation in a decade. The bill carries a ten-year price tag of nearly \$900 billion. It broke a political impasse over the fate of the Bush-era income tax cuts, which were scheduled to expire at the end of 2010, and the federal estate and other “wealth transfer” taxes.

The 2010 Tax Act keeps the Bush-era income tax rates and breaks for all wage earners for two years, and provides protection through 2011 from the Alternative Minimum Tax for more than 20 million households. Itemized deductions and personal exemptions will not be phased out for any taxpayers during 2011 or 2012. The 2010 Tax Act also includes a new payroll-tax credit for almost all workers (including the self-employed), and a 13-month extension of benefits for the long-term unemployed. In addition, the legislation makes dramatic, and, in many cases, unexpected, changes to the wealth transfer taxes.

The temporary two-year extensions mean that the debate over income and wealth transfer tax rates and exemptions will continue through 2012 and into 2013, when the 3.8% health care surtax on investment income and the 0.9% hospital insurance surtax on wages will take effect.

**B. Some Specifics.** Here’s a summary of some of the key features of the 2010 Tax Act, with respect to income, estate, gift and generation-skipping taxes.

### Income Taxes

	2010	2011 and 2012	2013
Lowest income tax rate	10%	10%	15%
Highest income tax rate	35%	35%	39.6% <sup>1</sup>
Qualified dividends	15%	15%	39.6% <sup>1</sup>
Long-term capital gains	15%	15%	20% <sup>1</sup>
Decreased personal contribution to Social Security from 6.2% to 4.2% of earned income	No	2011 only	No

<sup>1</sup> Plus 3.8% Medicare surcharge on the “net investment income” of “high income” individual taxpayers.

	2010	2011 and 2012	2013
Alternative minimum tax relief	Yes	2011 only	No
Non-taxable IRA distributions to charity (up to \$100,000) <sup>2</sup>	Yes	2011 only	No
Deduction for state and local sales taxes	Yes	2011 only	No
Enhanced deductions for business capital investments and extension of research and development credits	No	Yes for 2011, limited for 2012	No

### **Estate, Gift and Generation-Skipping Taxes**

	2010	2011 and 2012	2013
Estate tax exemption	All assets exempt	\$5 million	\$1 million
Estate tax rate	N/A	35%	55%
Gift tax exemption	\$1 million	\$5 million	\$1 million
Gift tax rate	35%	35%	55%
Generation-skipping tax exemption	\$5 million	\$5 million	\$1 million
Generation-skipping tax rate	0%	35%	55%

Estates of decedents who died in 2010 may choose to be taxed either under current 2010 law, or under the provisions of the 2010 Tax Act. Current law does not impose any estate tax, but provides only a limited step-up in basis to assets included in the decedent's estate. The 2010 Tax Act imposes an estate tax, but provides a \$5 million exemption and taxes non-exempt assets at a rate of 35%. In general, estates that elect to be taxed under the 2010 Tax Act will receive a step-up in basis for all assets included in the estate. Executors of estates of individuals who died in 2010 will need to analyze which taxing regime is most beneficial for the estate, based on the nature and value of the estate's assets, as well as potential future appreciation.

The 2010 Tax Act includes provisions for the "portability" of the estate tax exemptions between spouses. This means, for example, that if a husband is survived by his wife and the husband's estate is valued at \$3 million, his surviving wife can use her husband's unused estate tax exemption on her later death. The wife will have \$7 million of exemption on her death – \$2 million from her predeceased husband, and \$5 million of her own. Portability will apply only if both spouses die in 2011 or 2012.

- C. Some Things to Remember and Steps to Take.** Now that the 2010 Tax Act has passed, you should keep in mind the following:

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<sup>2</sup> This applies only to taxpayers who are 70 ½ or older and subject to the required minimum distribution rules. Payments to charitable recipients made in January 2011 to be treated as if made on December 31, 2010, for income tax and required minimum distribution purposes.

- Generally, there is no tax incentive to sell assets before year end, since ordinary income and capital gains rates will remain the same, although non-tax investment decisions may dictate a different course of action.
- In general, it's better to complete a Roth IRA conversion in 2010 rather than in 2011, due to the deferral of income tax for 2010 conversions only. However, special circumstances might favor a 2011 conversion.
- Charitable gifts generally should be accelerated into 2010 to take advantage of their current tax benefit.
- Qualifying charitable gifts from IRAs can be made as late as January 31, 2011 and still be treated as having been made in 2010.
- It might be advisable to *defer* taxable non-charitable gifts to most family members until 2011, given the increase in the gift tax exemption and the continuation of the 35% gift tax rate. By deferring the gift a few weeks, there would be a corresponding year-long deferral of payment of any gift tax.
- It might be advisable to *accelerate* gifts to grandchildren or more remote descendants into 2010 (despite the loss of deferral benefits described above), since the new law exempts transfers to such individuals from the generation-skipping transfer (GST) tax.
- Transfers out of GST non-exempt trusts to grandchildren or more remote descendants should still be considered before year end.

The new law attempts to give some level of certainty to an ever-changing tax environment, although only for two years. We are committed to keeping you informed and stand ready to help you take advantage of changes as they affect your estate planning. Please give us a call if you'd like to discuss the 2010 Tax Act and how it affects your estate plan.

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