# 2010 Federal Tax Update

A year of Change and Uncertainty

Presented by

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## Tax Legislation

- Hiring Incentives to Restore Employment (HIRE) Act of 2010 (3/18/10)
- 2010 Healthcare Reform Act (Patient Protection and Affordable Care Act (3/23/10)
- Small Business Jobs Act of 2010 (9/27/10)
- Expiring provisions

## HIRE Act of 2010 (3/18/10)

- Relief from 6.2% employer share FICA to max $6,622 for wages paid in 2010 to person who worked under 40 hrs in prior 60 days of being hired by you.
- If the person above is retained for 52 weeks, a tax credit can be claimed on the 2011 income tax return of up to $1,000 (or only 6.2% of up to $16,129 of wages paid).
- Section 179 increased for 2010 to $250,000 (later changed again for 2010)

## 2010 Healthcare Reform Act

- 2010 & 11:Adoption Credit Increased by $1k to $13,170 & is refundable; employer adoption assistance increased too, but credit phase out starts for AGI over $182,520.
- 2010 thru 2013: 35% tax credit for employer's share of non-elective health care plan contributions by small businesses if covering at least 50% of the premium cost.
- July 2010, a 10% excise tax started for indoor tanning services.
- 2011: Section 125 FSAs, HSAs, and MSAs can't pay for over the counter drugs without prescription.
- 2011 Form W-2 info reporting of employer insur cost (postponed by IR 2010-103)
- 2012: 1099 Forms will need to go to any vendor (even ATT for the business phone) by 1/31/13.

## 35%(25%) Employer Medical Premium Credit NOW

Qualifying Questions:

- Provided at least 50% of the "as if single person" coverage of medical Insurance for employees other than the owner or owner's relative?
- Is it possible after factoring part-time or part-year workers into full time equivalents (FTEs), there might be a max of 25.99 FTEs (if excluding the owner & relatives and capping full time at 2,080 hrs)?
- Is it possible that (if excluding the owner & relatives), the average FICA (unlimited) wage of the FTEs is not over $50,999?

If yes to all the above, you have a tax credit.

- Maximum credit is when there are less than 11 FTEs and under $26,000 wage avg (excluding owners & their relatives). Think $25k/2,080 = $12/hr
- FTEs and wages are rounded down to next rounded 1 or $1,000.
- DOL defined "Seasonal" workers of 120 days max are excluded from FTE.

## 35%(25%) Employer Medical Premium Credit NOW

- Credit Computation:
  - Lower (for each workers status) of actual or the HHS small group rating for Ohio: $4,667 single, $11,293 other.
  - 35% for for-profits. Premium deduction is reduced by the amount of the credit.
  - 25% for non-profits and limited to medicare 2.9% P/r tax and Fed income tax withholding (no FICA).
  - Works for AMT too.

## 2013 items of 2010 Healthcare Act

- FSA set aside contributions capped at $2,500
- 7.5% of AGI floor of medical deduction raises to needing to exceed 10% of AGI.
- Medicare 1.45% employee share increased by 0.9% to be 2.35% on the excess wages over $200K single or $250k joint. Think $900 tax on $100,000.
- SE tax of 2.9% similarly increases to 3.8% on similar excess.
- 3.8% Investment income Medicare tax: applied to investment income pushing AGI in excess of $200k single; $250k joint. Think $3,800 on $100,000. Ouch!
  - Investment income defined as: Interest, Dividends, Royalties, net rents, net passive trade or business income, & gain on such property.

## 2010 Healthcare Reform Act

2014 Provisions:

- Uninsured penalty tax of higher of $95 per year or 1% of household income over the tax return filing threshold. Will increase in 2015 to $325 and 2% of income; then 2016 & after is $695 and 2.5%.
- Tax credit for small businesses premium assistance.

## Small Business Jobs Act of 2010

- Fixed Asset Investments:
  - Section 179 1st year write off of new or used: $500,000 for 2010 and 2011. No phase out until $2M purchased.
  - For 2010 & 2011, within the $500k sec 179 can be up to $250k for real property that is "qualified" retail improvement, restaurant, or tenant improvement.
  - 2010 has the 50% Sec 168k "bonus" depr again for new items.
  - Cell phones no longer "listed property."
- Start up costs for 2010: expense up to $10k (phase out starts at $60k)

## Small Business Jobs Act of 2010

- Investment breaks:
  - C-corp conversions to S-corp Built-in gains (BIG) holding period is only 5 years for 12/31/05 conversions and prior. So those S-corps can sell assets 1/1/11 and have no BIG tax.
  - Buy stock of Qual Small Business (assets under $50 M) thru 12/31/10 then hold 5 years and will be 100% tax free for regular tax and for AMT.
- Small Business (3 yr avg gross receipts under $50 M) business tax credit help:
  - Credits now also allowed for AMT
  - The one year credit carryback period is now a 5 year carryback.

## Small Business Jobs Act of 2010

- SE income can be reduced by SE medical insurance cost in order to compute the 15.3% SE tax.
- Revenue raisers (at least short term)
  - On 1/1/11, Non Qual annuities can do split to partial annuitization and hold the rest.
  - 401k, 403b, and 457 plans can allow pre-tax balances to roll into Roth. If in 2010, can elect to pay tax over 2011 and 2012.
  - 2011 457 plans can include Roth feature.
  - 2011 1099 Misc forms need prepared by Realty rental lessors for payments they make to vendors. (obtain W-9 forms starting 1/1/11.)

## EGTRRA 2001 sunset provisions

**Non-EGTRRA sunsets as of 1/1/11:**

- No Qualified Dividends (all ordinary rates vs 15%).
- Long term capital gain 20% (18% if > 5yrs) vs 15%. Lowest bracket taxpayers have 10%.
- No NOL carrybacks to 3rd, 4th, or 5th prior years.
- No making work pay credit; No Amer Opport Educ credit

**EGTRRA sunsets as of 1/1/11:**

- AMT exemption lowered.
- Phase out of exemptions are back.
- Reduction of itemized deductions are back.
- Child tax credit reduced.

# EGTRRA 2001 sunset provisions

- Student loan interest deductions reduced.
- Dependent care credit/ employer assist reduced.
- Estate & Gift provisions:
  - $ 1 Million of value protected.
  - 55% max rate again.

# EGTRRA 2001 sunset provisions

| 2011 Tax Bracket | Married Filing Jointly | Single | 2010 MFJ Brackets |
|---|---|---|---|
| 10% Bracket | | | 10% to $16,750 |
| 15% Bracket | $0 – $70,040 | $0 – $35,020 | 15% over $16,750 |
| 28% Bracket | $70,040 – $141,419 | $35,020 – $84,872 | 25% over $68,000 |
| 31% Bracket | $141,419 – $215,528 | $84,872 – $177,006 | 28% over $137,300 |
| 36% Bracket | $215,528 – $384,860 | $177,006 – $384,860 | 33% over $209,250 |
| 39.6% Bracket | Over $384,860 | Over $384,860 | 35% over $373,650 |

# Inflation indexing

| | 2010 | 2011 |
|---|---|---|
| FICA/ SE tax non-medicare wage base | $106,800 | $106,800 |
| Elective deferrals [402(g)(1)] & gov't plans | 16,500 | 16,500 |
| Age 50 catch-up [non Simple 414(v)(2)(B)(i) | 5,500 | 5,500 |
| SIMPLE limit [408(p)(2)(A)] | 11,500 | 11,500 |
| Age 50 catch-up [Simple 414(v)(2)(B)(ii) | 2,500 | 2,500 |
| SEP mandatory participation | 550 | 550 |
| DC plan dollar limitation [415(c)(1)(A)] | 49,000 | 49,000 |
| Comp limit | 245,000 | 245,000 |
| Highly Comp defined | 110,000 | 110,000 |
| Standard mileage rate | 50.0 cents | Not released |
| Annual Gift exclusion | 13,000 | 13,000 |
| Personal exemption | 3,650 | 3,750 |
| MFJ standard deduction | 11,400 | 9,750 |

# Non legislative items

- IR-2010-104 10/21/10: final regs about 2011 security purchases basis tracking & 1099B broker reporting.
- Rev Proc 2010-13 requiring statement with returns if grouping passive activities.
- 750 Hours material participation as Realty prof'l not met by on-call time. (Moss 135TC 18).
- Street lights 7 yr MACRS (PPL Corp 135TC 8)

## What is certain

- Time to consider "reverse" tax planning:
  - Low time value of money factor & tax hikes later.
  - Start-ups already have plenty of losses. Sec 179 & bonus depr may not be a good play.
  - Record deficits means higher future tax rates will create higher depr tax benefit if postponed.
  - Roth conversion income deferral split to 2011-12 may not be so great.
  - 12/31/10 is last chance to have closely held corps pay out dividends cheap.
  - Finish installment sales by 12/31/12.
- Increased complexity due to niche items.
- No ability to have reasonable certainty for multi-year tax planning.

## Tax Problems we see

- Roths being distributed without knowing basis.
- Self created LLCs where owners have no idea about the tax consequences of entity type.
  - Unlimited SE tax as a partnership
  - "Partner's" paid W-2 wages
  - S-corp employee owners paid low or no wages
  - Comingling of personal and business cash
- Mortgage interest deduction is limited to FMV of home, so declining FMV could be a problem Sec 163(h)(c)(i)(I).

## Additional Planning Tactics

- Extend tax return filing to 9/15 & 10/15/11 to gain more certainty.
- Establishing Qual plans for later funding.
- Guard against new business owners tapping into taxable (excise tax too) IRA payouts by instead making S-election and set up 401k for one with a loan feature.
- AGI limit on Roth but not on conversion means: 1st go to non-ded traditional, then convert to Roth a day later.

## Q & As ???

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