

Tax Law Changes: Stay Current to Maximize Benefits

By Mark Patrick • CPA



While the core of the “Bush Era” tax cuts was extended for two more years, it’s just one of this year’s features on the tax-planning landscape.

The string of tax-related legislation that cleared Congress in 2010 included, among other things, the **Hiring Incentives to Restore Employment (HIRE) Act**, the **Health Care Act as Amended by the 2010 Health Care Reconciliation Act**, the **Small Business Jobs Act**, and

the **Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act**. Consequently, we have a matrix of new and old opportunities to weave together for the 2010 tax filing season.

To simplify the details of tax laws that currently apply, we’ll discuss the areas of highest interest for 2010-11:

Business Highlights

The highest profile business change is the reduction of the **FICA tax** for employees down 4.2% from 6.2% during 2011 only. Effective on 1/1/11, the change was implemented among businesses by 1/31/11. Any excess tax withheld due to delayed implementation must be refunded by 3/31/11.

Those needing to purchase new equipment ordinarily limited by a cap under Section 179, can take advantage of the option to expense new depreciable property under an uncapped **bonus depreciation** from September 8, 2010 through 2011. The 50% bonus will be extended into 2012, and, for some assets, through 2013. Leasehold improvements can also qualify but have a limit of \$250,000 for qualified restaurants and retail properties in 2010-11.

Startup expenses for new businesses must be over \$10,000 (up from \$5,000) before you have to capitalize them over 15 years. The previously-mentioned **HIRE Act** provided a credit of the employer payroll tax for most of 2010 for hiring the long-term unemployed. It has since expired, but there’s still time to apply for the credit by amending your Form 941/944.

More than 10 other credits were extended right before the end of the year, but the newest is the **Small Business Health Care Insurance Credit**. This credit can be a big boon for those businesses paying more than half of employee premiums; companies must have fewer than 25 employees with an average payroll under \$50,000 after 2009. **So, in fact, only a few small businesses will get much benefit from it.** This credit applies to non-profit groups as well.

Much more is coming on the health insurance front, so pay attention as the calendar moves toward 2014. Finally, **cell phones** are no longer listed property after 2009, meaning they will no longer require a usage log for business use.

W-2 & 1099 reporting has some new rules beginning in 2011. All brokers must provide the cost **basis of securities** purchased after 2010 (making the tax preparers very happy.) **Credit card processors** must report the amount of all payments made to merchants, beginning this year. The health care legislation requires businesses to **report the employer-paid health insurance** premiums on each W-2, but the IRS will waive penalties for non-compliance for one year. However, **1099 forms must be issued by all landlords**, incorporated or not, for all payments to subcontractors, incorporated or not, with accumulated payments of \$600 or more.

In addition, beginning in 2012, all businesses must **report payments for goods or services** to any individual or entity (other than tax exempt

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Tax Law Changes...

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corporations) totaling more than \$600, regardless of how paid. There's been considerable debate about limiting or repealing this onerous requirement, but no relief yet. Meanwhile, the forms industry is preparing for a banner sales year ahead.

Penalties for noncompliance have risen to \$30 for each form filed up to a month late, \$60 for being up to five months late, and \$100 after that. Accumulated penalties will have an annual cap of up to \$1.5 million. **The IRS is getting serious about income reporting.**

Estate Tax Renewal and Relief

While virtually the entire profession of tax advisors expected the 2009 estate rules to have been extended into 2010, our Congress allowed the estate tax to expire. Along with it, the comfortable stepped-up-basis rules were replaced with the much less favorable carryover-basis rules. **Just as surprising, the Tax Relief Act of 2010 included even more favorable rules than before 2010.** The new maximum tax rate is now 35% beginning after 2009, and the unified credit becomes the equivalent of \$5,000,000. Further, the exemption is portable, meaning that if one spouse does not need the full exemption upon death, the other spouse may add it to his/her own \$5,000,000 exemption.

The gift tax and generation-skipping rules are set to match these rates. The new provisions, and the restoration of the stepped-up-basis rules, are effective through 2012, and estates for 2010 have the choice of the old or the new law. **This window of opportunity may not last**, so those with estates who can benefit from this liberalization should begin planning their estate documents accordingly.

Individual Opportunities

Alternative minimum tax victims are given some relief with a higher 2010 exemption of \$47,450 for singles and \$72,450 for joint filers (half of that for married filing separately.) For 2011, we can look forward to exemptions of \$48,450 and \$74,450. **The maximum tax rate for long-term capital gains and qualified dividends is extended at 15% and for ordinary rates at 35% for two more years.** Of course, there are no guarantees for 2012 and beyond. Other extensions through 2012 include marriage penalty relief, the \$1,000 child credit, the sales tax deduction option and the elimination of the itemized deduction phase-outs.

The Residential Energy Tax expired in 2010, as did the \$400 Making Work Pay Credit (which was replaced with the FICA tax rate reduction from 6.2% to 4.2% for 2011 only.) The opportunity for an additional itemized deduction of up to \$1,000 of real estate tax payments also expired. **For 2010 only, the self-employed with health insurance may deduct those premiums from self-employment taxes.** Finally, Health Savings Accounts and the equivalents lost the privilege to pay for non-prescribed medications and supplies after 2010.

Looking Forward

Those with higher incomes should prepare for the Medicare surtax of 0.9% on earned income and 3.8% on unearned income, beginning in 2013. We can hope it'll get rolled back, but since



these two increases are earmarked for about half the funding support for the healthcare reform costs, it isn't likely to happen without a comprehensive change in direction on that issue.

If all of this seems confusing and irrational, such is the result of compromise among politicians. Don't develop confidence that all things in the tax world are settled, either. We've learned, from the barrage of new laws over the last decade, that we must constantly stay informed and have a multi-year vision in tax and financial planning as we meander through the next decade.

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Protect Business Assets with Enforceable Restrictive Covenants

By Mark Addington • Attorney



A large company is about to buy one of its major competitors. A scientist with critical knowledge pertaining to a cutting-edge technology unexpectedly turned in his two-week notice to leave the organization. The vice-president of business development is being laid off due to slower sales during the recent recession. These examples are but a few circumstances in which using restrictive covenants can help preserve business assets that an organization worked hard to develop.

State laws hold varying views on the enforceability of such restrictive covenants because of tension that could arise between the business' desire to protect its assets and the rights of individual employees to work and engage in a trade. As a result, many states take the perspective that restricting an individual's right to engage in trade is contrary to public policy. Other states, such as Florida, recognize valid reasons to the restriction exist, which is why it's critical to identify the law within a contract that will be used to interpret a contract containing restrictive covenants. The following are some tips to help ensure restrictive covenants are enforceable:

The covenants must be crafted narrowly to protect a "legitimate business interest" meaning:

- trade secrets.
- valuable confidential business or professional information other than trade secrets.
- relationships with specific prospective and existing customers, patients or clients.
- customer goodwill associated with a business or professional practice, geographic location, or specific marketing or trade area.
- extraordinary or specialized training.

Make sure the restrictions are limited to what's reasonably necessary to protect

the legitimate business interest or interests justifying the restriction. Many employers want to write these restrictions broadly to afford the most protection. But such a tactic may make the restriction unenforceable, if it can be effectively argued that the broad restriction is not reasonably necessary. Develop security measures within your business operation that support the

instance, failing to properly compensate an employee for hours worked may be held as a prior breach invalidating the agreement, thus making restrictive covenants unenforceable.

If properly drafted, incorporating restrictive covenants within business agreements are an effective method to protect valuable company assets

The covenants must be crafted narrowly to protect a "legitimate business interest"...

restrictions. If your business develops confidential and proprietary information, make sure procedures are in place to demonstrate the information is treated as confidential and proprietary. This process may include separate files with limited access on paper files or password access limiting employees' exposure to only the information necessary to perform their jobs effectively.

Ensure the business has not, in some way, breached other provisions of the agreement it seeks to enforce. If an employer materially breaches the agreement prior to the employee's poor conduct, the restrictions may be held unenforceable under Florida law. For

and interests. However, employers should remember that enforcement through litigation can be difficult and often expensive. Additional difficulties arise when the restrictive covenants are drafted unreasonably or other issues exist that create defenses to enforceability. Employers should obtain guidance on both the proper drafting of the restrictions and their systems for treating business assets appropriately within the organization.

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Website Resolutions - 2011 Internet Strategy

By Joe Lemire • Internet Consultant



The new year is the best time to rethink your marketing approach and commit to a dynamic internet strategy. Much has changed on the internet in the past 12 months; the only certainty going forward is things will continue to change. Consider making updates and upgrades to your web presence as you plan for growth in 2011:

1. Go mobile. The world is connecting to the internet with phones and PDAs. Make sure your website actually functions on a mobile device. Most smart phones have a special browser that can distort your website if it's not mobile-ready. Adding a mobile website is pretty straight forward: when a visitor uses a mobile device to access your website, new code in your main website redirects them to your mobile website. The mobile website is a smaller version of your main site and only contains the most relevant content, such as your phone number, location and a list of services.

2. Give your site a facelift. A complete website redesign is seldom required but

the beginning of the year is a great time to put your website on the forefront and refresh your look.

3. Update your content. Congratulations on another year of business! In competitive times such as these, your services are sure to grow, adjust, expand or even discontinue. Make sure your website reflects these changes! More importantly, Google will rank your website higher if you regularly update content with relevant information.

4. Add a blog. No better way exists to keep your website fresh and your clients updated! If you can't imagine having the time to post regularly, look into a custom blog strategy. It's not as hard as you may think and is well worth the benefits.

5. Be social. In 2010, Facebook surpassed Google in total searches. If you haven't already, now would be a good time to create a social media presence; it's fast and easy! Also consider your options to create more advanced and elaborate Facebook pages that can set you apart from the competition.

6. Optimize your search results. The internet is getting busier everyday and it takes a planned strategy to get noticed. A good search engine optimization

(SEO) plan involves being consistent with the basics of SEO over a long period of time—and you don't have to spend a lot of money to be successful.

7. Start an E-newsletter. Reach your client base on a monthly or quarterly basis. They'll appreciate the latest news and your effort to make sure they're informed.

Upgrading your website is a great way to show clients your business is making headway and building more of a following every day. Technology provides ever-increasing ways to reach clients and potential clients, so take advantage of these opportunities... and watch your business grow.

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