



December 29, 2010

TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION, AND JOB CREATION ACT OF 2010

Congress passed and the President signed into law on December 17, 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. (TRUIRJCA)

Surprisingly, it does *not* include a repeal of the Form 1099 requirement.

The new law includes dozens of temporary renewals of expired and expiring credits and deductions. The following are the ones of most interest to small business.

Temporarily extend the 35 percent bracket. Under prior law, the temporary 35 percent individual income tax bracket was set to expire at the end of 2010. Upon expiration, the rate would have become 39.6 percent. The new law extends the 35 percent individual income tax bracket for an additional two years, through 2012.

Temporarily extend the capital gains and dividend rates. Under prior law, the capital gains and dividend rates for taxpayers below the 25 percent bracket is equal to zero percent. For those in the 25 percent bracket and above, the capital gains and dividend rates were 15 percent. These rates were set to expire at the end of 2010. Upon expiration, the rates for capital gains would have become 10 percent and 20 percent, respectively, and dividends are subject to the ordinary income rates. The new law extends the temporary capital gains and dividends rates for all taxpayers for an additional two years, through 2012.

Two-year Alternative Minimum Tax (AMT) patch. Under prior law, taxpayer would have received an exemption of \$33,750 (individuals) and \$45,000 (married filing jointly) under the AMT for 2010. The new law increases the exemption amounts for 2010 to \$47,450 (individuals) and \$72,450 (married filing jointly) and for 2011 to \$48,450 (individuals) and \$74,450 (married filing jointly).

Deduction of State and local general sales taxes. TRUIRJCA extends for two years (through 2011) the election to take an itemized deduction for State and local general sales taxes in lieu of the itemized deduction permitted for State and local income taxes.

Temporary estate, gift and generation skipping transfer tax relief. *There is a two-year extension of estate tax relief, and it comes with a couple of positive twists. But it is not permanent! On January 1, 2013, the state of the law reverts to the pre-2001 structure with a 55 percent top marginal rate and an individual exemption of \$1 million – not inflation indexed.*

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) phased-out the estate and generation-skipping transfer taxes so that they were fully repealed in 2010, and lowered the gift tax rate to 35 percent and increased the gift tax exemption to \$1 million for 2010. The new law sets the exemption at \$5 million per person and \$10 million per couple and a top tax rate of 35 percent for the estate, gift, and generation skipping transfer taxes for two years, through 2012. The exemption amount is indexed beginning in 2012. (*As a practical matter, given the new expiration date, this amounts to token inflation indexing, but the theory is having it in place might make it easier to secure as part of a permanent solution.*) The new law is effective January 1, 2010, but allows an election to choose no estate tax and modified carryover basis for estates arising on or after January 1, 2010 and before January 1, 2011. The new law sets a \$5 million generation-skipping transfer tax exemption and zero percent rate for the 2010 year.

Portability of unused exemption. Under prior law, couples had to do complicated estate planning to claim the value of their combined entire exemption. The new law allows the executor of a deceased spouse's estate to transfer any unused exemption to the surviving spouse without such planning. The new law is effective for estates of decedents dying after December 31, 2010. It is set to expire at the end of 2012.

Reunification. Prior to EGTRRA, the estate and gift taxes were unified, creating a single graduated rate schedule for both. That single lifetime exemption could be used for gifts and/or bequests. EGTRRA decoupled these systems. The new law reunifies the estate and gift taxes. The new law is effective for gifts made after December 31, 2010. This reunification will also expire at the end of 2012 unless Congress takes action before then. ***The Republicans are certain that the old law (\$1 million exemption and 55% estate tax rate) will never be resurrected. Let's hope they're correct.***

Extension of bonus depreciation. Under prior law, businesses were allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress allowed businesses, beginning January 1, 2008 through December 31, 2009, to take an additional depreciation deduction allowance equal to 50 percent of the cost of the depreciable property placed in service in those years. Under the Small Business Jobs Act of 2010, this temporary increase in the depreciation deduction allowance was extended through December 31, 2010. TRUIRJCA extends and temporarily increases this bonus depreciation provision for investments in new business equipment. For investments placed in service after September 8, 2010 and through December 31, 2011, TRUIRJCA provides for 100 percent bonus depreciation. For investments placed in service after December 31, 2011 and through December 31, 2012, TRUIRJCA provides for 50 percent bonus depreciation. The provision also allows taxpayers to elect to accelerate some AMT credits in lieu of bonus depreciation for taxable years 2011 and 2012.

Temporarily extend increase in the maximum amount and phase-out threshold under section 179.

Under prior law, a taxpayer with a sufficiently small amount of annual investment may elect to deduct the cost of certain property placed in service for the year rather than depreciate those costs over time. The 2003 tax cuts temporarily increased the maximum dollar amount that may be deducted from \$25,000 to \$100,000. The tax cuts also increased the phase-out amount from \$200,000 to \$400,000. In 2007, tax cuts temporarily increased these thresholds to \$125,000 and \$500,000 respectively, indexed for inflation. These amounts have been further increased and extended several times on a temporary basis, including most recently as part of the Small Business Jobs Act which increased the thresholds to \$500,000 and \$2,000,000 for the taxable years beginning in 2010 and 2011. The new law extends the 2007 maximum amount and phase-out thresholds for taxable years beginning in 2012, at \$125,000 and \$500,000 respectively, indexed for inflation. (*Given the new expiration date, this amounts to one year of inflation indexing.*)The law is effective for taxable years beginning after December 31, 2011.

In 2013, the state of the law reverts to the original \$25,000 allowance and \$200,000 investment cap – not indexed.

Temporary reduction in employee-paid payroll taxes. Under prior law, employees pay a 6.2 percent Social Security tax on all wages earned up to \$106,800 (in 2011) and self-employed individuals pay a 12.4 percent Social Security self-employment taxes of on all their self-employment income up to the same threshold. TRUIRJCA provides a payroll/self-employment tax holiday during 2011 of two percentage points. This means employees will pay only 4.2 percent on wages and self-employment individuals will pay only 10.4 percent on self-employment income up to the threshold.

R&D credit. Technically, there had been no R&D credit for 2010. It expired at the end of 2009. TRUIRJCA reinstates it for two years (for 2010 and 2011) credit.

Exclusion of small business capital gains. The new law extends the 100 percent exclusion of the gain from the sale of qualifying small business stock that is acquired before January 1, 2012 and held for more than five years. The provision covers a very narrow category of stock that meet some very specific conditions.

Tax benefits for certain retail improvements. TRUIRJCA extends for two years (through 2011) the special 15-year cost recovery period for certain leasehold improvements, restaurant buildings and improvements, and retail improvements.

Alternative fuels credit. TRUIRJCA extends through 2011 the \$0.50 per gallon alternative fuel tax credit.

Energy-efficient new homes credit. TRUIRJCA extends through 2011 the credit for manufacturers of energy-efficient residential homes.

Energy-efficient existing homes. TRUIRJCA extends through 2011 the credit under Section 25C of the Code for energy-efficient improvements to existing homes, reinstating the credit as it existed before passage of the American Recovery and Reinvestment Act.

SMALL BUSINESS LEGISLATIVE COUNCIL'S 2011 PRIORITIES

The Small Business Legislative Council (SBLC) has set its priority agenda for 2011 and the principal goal is to convince the 112th Congress and the President to act early on unresolved small business concerns. You may recall that the SBCA is a long time member of the SBLC which is a powerful non-profit association comprised entirely of trade associations that represent small businesses. This year I have had the privilege of serving as the Chair of the SBLC. Each year, the SBLC Board has a weekend retreat where the priorities for the upcoming year are selected. I thought you would be interested in seeing what we came up with -

" It is hard to believe the 111th Congress did not repeal the expansion of the tax information reporting requirement enacted last year. While there was nearly universal agreement that Congress did not fully comprehend the magnitude of the burden they were imposing on small businesses when they expanded the requirements for issuing IRS Forms 1099, Congress failed to rise above health care reform politics to repeal the expansion. SBLC calls on Congress to make repeal the first order of tax policy business. Passage would send a message that the 112th Congress is willing to do more than talk about small business. (For SBLC, our goal is make our voice heard. We were telling Congress as early as the spring of 2009, the Form 1099 expansion was a nightmare waiting to happen.)

Our next priority is for Congress to pass permanent estate tax relief. While the 111th Congress extended relief for two more years, we would hope the 112th Congress has learned a lesson from the last decade. Do not wait until the eleventh hour to deal with the permanency issue. It is time folks understood that it is as much about the stupid and wasteful estate planning things small business owners do to avoid having their heirs close or sell the business in order to pay the estate tax as it is about how many pay the tax. If Congress had done what SBLC had advocated they do six years ago, which was essentially pass the relief just recently enacted but made permanent, we could have saved small businesses countless hours and millions of dollars in unnecessary estate tax planning. To the 112th Congress our message is make the \$5 million exemption (indexed), lower top rate, and the portable spousal exemption permanent and do it now.

SBLC renews its long-standing call for meaningful investment in our nation's infrastructure. Our nation's small businesses both build that infrastructure and rely on that infrastructure to provide their goods and services. Within that general goal, we continue to support adequate funding for the Highway Trust Fund with the proceeds used solely for the purposes of the Fund on an annual basis.

As health care reform regulations continue to unfold, SBLC's goal is to work to identify potential problems for small business and pursue mitigating policies.

As Congress explores the potential for tax reform, SBLC will endeavor to make certain that the consequences for small business are clearly identified and understood. Our experience during the 1986 tax reform debate was that small business bore an unfair share of the base-broadening and was not a beneficiary of the corporate rate reductions. It is important to understand which "tax expenditures" are more directly tied to small businesses' effective tax rates to strike the correct balance in sound public policy.

Finally, if new regulatory initiatives of any kind are unveiled, SBLC will continue to work with the Chief Counsel for Advocacy for Small Business to identify ways to mitigate the impact on small business.

The Small Business Legislative Council is a permanent, independent coalition of over 50 trade and professional associations that share a common commitment to the future of small business. Our members represent the interests

of small businesses in such diverse economic sectors as manufacturing, retailing, distribution, professional and technical services, construction, transportation, and agriculture. Our policies are developed through a consensus among our membership. Individual associations may express their own views.