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The Tax Relief, Unemployment Insurance Reauthorization & Job Creation Act of 2010

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Introduction

In a deal between Republican and Democratic leaders, on December 17, 2010, the President signed "The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010". It is important to all business people and many individuals. The new law is a compromise between two powerful political forces. One side called for the extension of unemployment benefits, the other side called for extension of the dividend and capital gains tax cuts enacted during the Bush administration. In the spirit of our democracy, the two desired outcomes were reached together with some new tax benefits.

Unemployment

Economists have predicted that in 2011, the unemployment rate will hover above 9%. With unemployment above 9% for 20 straight months and 42% of the unemployed being unemployed for 6 months or longer, Congress and the President realized the need for extended unemployment benefits. Without the extension, 2 million people would have had their unemployment benefits run out by the end of December. Now, unemployment benefits have been extended until December 31, 2011.

The Bush Tax Cuts

A lot of attention has been focused lately on the Bush era tax cuts, which were set to expire at the end of 2010. Before the Bush Tax cuts were enacted, dividends from C corporations were taxed at the ordinary individual income tax rate. Capital Gains made by individuals selling appreciated property for at least the next two years were taxed, generally at 20%. Under the Bush tax cuts, dividends and capital gains are taxed lightly at 15%. This rate is set to continue.

The Estate Tax

As of 2010, the estate tax had been repealed. Anyone passing away in 2010, including the late owner of the New York Yankees, George Steinbrenner, was fully exempt from the estate tax. In 2011, the estate tax has been reenacted. Estates

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A CASE STUDY

The Tax Court has found that a taxpayer participating in tournament sport fishing was doing so for recreational purposes, not for making a profit. The Court came to this conclusion because the tournaments entered into by the taxpayer took place on weekends and he only participated in them four months out of the year. The taxpayer also made no effort to minimize substantial losses he had incurred. Because of the recreational nature of fishing and the time and effort required to make a profit from tournament fishing, the Court found that there was no intent on the part of the taxpayer to make a profit. As a result, the taxpayer was not allowed to deduct his losses.

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Cover Story

valued at $5 million or less will be completely estate tax free. The highest estate tax rate continues to be 35%. In addition, martial and bypass trusts used to be required to take advantage of a spouse's exemption in the estate tax. It is no longer required to have a valid marital bypass trust anymore. The law allows you to automatically use a deceased spouse's exemption to reduce your estate taxes when you die. These spouses have a total of $10 million potential between them.

Employment Taxes

In an attempt to stem unemployment, withholding taxes were lowered 2% from 6.2% to 4.2 % for employees for one year. Employers still pay 6.2%.

Other Business Cuts

Bonus depreciation has also been reenacted for purchased equipment placed in service between September 8, 2010 and before January 1, 2012. Equipment placed into service carries a 100% deduction instead of the 50% deduction. The Section 179 deduction was also expanded for 2011. The new limit is $500,000, the phase-out period being between $2,000,000 and $2,500,000. These companies can purchase up to $500,000 of equipment and get an immediate write-off on their tax returns.

Conclusion

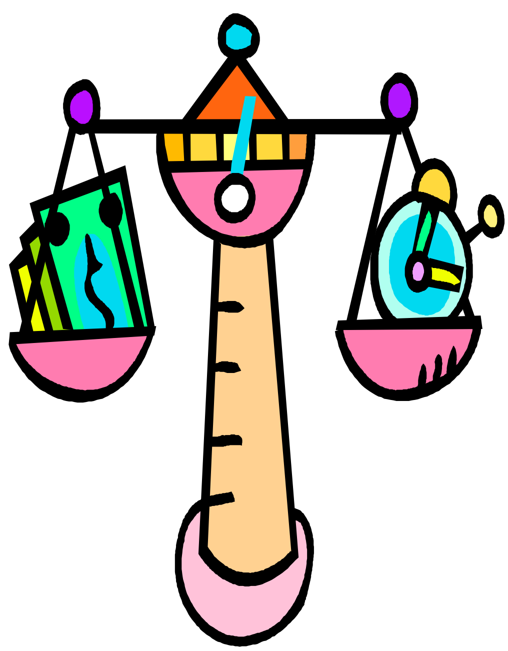
The lawmakers of the United States have taken the high road in their tax legislation. Instead of allowing the tax laws to fall into default that would not have benefitted anyone, the Legislature and President have reworked the laws and created a relatively favorable environment for the taxpayers and businesses for the next two years.

While the tax utility of trusts may have been diminished under the new tax laws, it is also remarkable that legal utility remains in estate planning with the use of trusts. Some of the benefits are still present with trusts, i.e., who gets to manage the property and who gets the property from there. Without effective estate and business succession planning, many businesses still are in need to succeed to the next generation.

Dr. Bart A. Basi is an attorney, CPA, and the Senior Advisor of The Center for Financial, Legal & Tax Planning, Inc, a full service company specializing in financial, legal & tax matters. Basi is a nationally recognized author, lecturer, and advisor on how to structure deals to minimize taxes. Tax structure makes the difference between getting the deal done and watching the deal fall apart. Many of you may be familiar with Basi and the topics he covers in the Financial, Legal & Tax Advisory which may be read in various industry-specific trade publications.

A CASE STUDY CONTINUED:

Editor's Comment: This case demonstrates a tactic tried by many taxpayers. However, as seen in this case, in order for an activity to be viewed as "for profit" by the IRS, a taxpayer must participate in it consistently and for more than mere recreation purposes. Also, attempts to minimize any losses sustained and the amount of time and effort put into the activity is evidence that a taxpayer is trying to use the activity to make a profit. It is important to observe these formalities in order to be guaranteed the tax benefits that accompany the activities.



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Points of Interest

- **The new law is a compromise between two powerful political forces.**
- **With unemployment above 9% for 20 straight months and 42% of the unemployed being unemployed for 6 months or longer, Congress and the President realized the need for extended unemployment benefits.**
- **The Section 179 deduction was also expanded for 2011. The new limit is $500,000, the phase-out period being between $2,000,000 and $2,500,000.**

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Avoid These Business Sale Myths – Part 1

Mike Ertel, CBI/ M&AMI/ CM&AA

The typical business owner will only sell a business once. Understanding the complex process involved will help produce the best results. But don't fall prey to the myths that can derail or seriously affect a potential sale.

Myth #1 – I Can Sell It Myself - Many owners believe they're qualified to sell their business without professional assistance. Many owners are entrepreneurs and the key salesperson for the company. But selling a business is not like selling a product or service.

If you're looking to sell on your own, confidentiality is lost. If word of a potential sale gets out, there are definite risks of losing clients, employees and favorable credit terms.

Do you really have the time to run your business and compile marketing materials, advertise, screen buyers, give tours and facilitate due diligence?

When you're looking to sell you want to put even greater emphasis on running your business, boosting your sales and not taking on new challenges.

Myth #2 – I'll Sell When I'm Ready - Certainly, an owner wants to be sure he or she is mentally and emotionally prepared to sell. But personal readiness is just one factor. Economic factors can have a significant impact on the sale of a business.

Sale prices can be affected by industry consolidation, interest rates, unemployment and many other economic measures. Talk with a professional and aim to sell when your personal goals and market conditions align.

If you know of a business owner who's thinking of selling or buying a business and who might benefit from a free, confidential, consultation with us, have them contact me at: mertel@legacyadvisorsgroup.com

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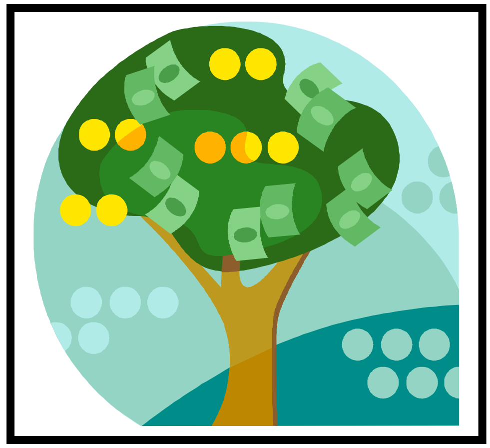

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Frequently Asked Questions…

Q: How long do I have to rollover a retirement distribution?

A: You have 60 days to rollover a retirement distribution from the day that you receive the distribution. Otherwise, the distribution, taken before the statutory distribution age, can be taxed and subject to a 10% penalty.

Q: What is the difference between a living will and healthcare power of attorney?

A: For all practical purposes a healthcare power of attorney gives the power to a proxy to make health care decisions in the event of your incapacity. The living will is an effective document once you are permanently comatose or death is imminent. Therefore, the health care power of attorney is a directive when normal life is possible beyond treatment. The living will, on the other hand, becomes effective once normal, healthy life is impossible after treatment.

Q: Where is the best place to store estate plan documents?

A: The best place to store estate plan documents is in a location where others a) know of, b) can get into when the time arises, and c) is secure. Storing the documents in a safe deposit box that a friend knows of can be a good place as long as that friend knows where to get the keys at. The location would be known, able to be opened, and secure. Hiding documents in a book or in a safe that nobody knows of or does not have the combination renders the documents useless to both you and those that are trying to help you.