

Fall Kickoff

As we turn the corner on the fall season, we enter the last month before the all important mid-term elections on November 2, 2010. Before recessing until after the elections, Congress was faced with the decision concerning whether to extend the Bush Tax Cuts for all Americans. Acting on this important piece of legislation before recessing would, at last, eliminate the uncertainty that has plagued both employers and consumers for the past several months. However, the Speaker of the House (Nancy Pelosi) rammed through a vote to adjourn without voting on the Bush Tax Cuts. While there are certainly numerous reasons for her decision to adjourn without voting on the legislation, the primary reason had to be that the Liberals did not have the votes to extend the Tax Cuts for only those making less than \$200,00 (\$250,000 jointly) and, therefore, raise taxes on the individuals (companies) who actually provide jobs to the majority of the American public.

Therefore, we are left, once more, with uncertainty as to what 2011 holds for us....This uncertainty extends the inability of business to accurately forecast their hiring needs for 2011 and therefore, extends the uncertainty that most consumers feel for the future.

Not only has this Congress failed to answer the question concerning extending the Bush Tax Cuts, but also, have not passed a budget for 2011. This is the first time in history that a Congress has recessed for Congressional elections without first passing a budget for the coming year!!!! This inaction by this Congress is unconscionable! How can a Congress with the largest majority in recent memory fail to even construct and pass a budget? The only answer can be is that they don't want the American people to see how they are going to waste more of our money before the mid-term elections.

In addition, remember the Charlie Rangel and Maxine Waters ethics violation trials that were supposed to occur in September? Well, seems that these trials have been quietly tabled till after the mid-term elections.

Let me see if I've got this right.....this Congress didn't vote on whether to extend the Bush Tax Cuts, didn't pass a budget for 2011, and also, did not hold the congressional ethics violation trials for Charlie Rangel and Maxine Waters before recessing for the mid-term elections. What exactly did they do in the period from the August recess and the recess for the mid-term elections?

The only thing they got enacted between the two recesses is a minimally effective Small Business Jobs Act of 2010.

While being hailed as the answer to the Small Business problem by this Administration, the truth is that this piece of legislation has little to do with helping small businesses. Most of the tax effects of this bill are geared toward larger businesses and do little to produce any incentive to go out and hire new employees. The details of this legislation are to follow:

Small Business Jobs Act of 2010

On September 27, 2010 President Obama signed into law a package of enhanced business tax incentives, as part of a larger Small Business Jobs Act of 2010. Some of the provisions of the law include:

1. 50% first year bonus depreciation extended until December 31, 2010.
2. Section 179 property deduction increased to \$500,000 for 2010 and 2011.
3. S Corp Built -In- Gain period shortened from 7 years to 5 years for 2011.
4. Eliminates cell phones from being classified as "listed property".
5. Extended Carryback period for eligible small business credits to five years.
6. 100% exclusion for the sale of qualified small business stock, effective January 1, 2011.
7. Start Up Expense Deduction increased to \$10,000 for 2010 only.

And while there are several other provisions to this bill, these are the most important. One interesting point concerning this legislation is that they have a limited life span.....most provisions are only effective for the current tax year, some are only effective in 2011, and a couple are effective for 2010 and 2011. None of the provisions of this tax legislation could be considered "job creators", which only will occur if the Bush Tax Cuts are extended for everyone and Corporate tax rates are reduced.

The last thing that I would like to cover in this month's newsletter is some misinformation that many of you have received (mostly in emails) concerning a supposed 3.8% sales tax to be imposed on real estate sales effective 2013. The following discussion will hopefully clear this up for you.

3.8% sales tax on home sales effective 2013

This is the tag line of emails that many of you have received in the past several weeks. I know because I have been forwarded several of these emails from you to determine the validity of this claim.

Rest easy.....no such law per se exists....

This exorbitant claim is being misrepresented to millions of unsuspecting taxpayers in this country. The basis from this claim is completely taken out of context from a portion of the Health Care Reform Act (Patient Protection and Affordable Care Act of 2010) passed earlier this year. Where the claim comes from is a portion of the law that increases Medicare taxes by 3.8% on unearned income for those taxpayers making over \$200,000 (\$250,000 jointly).

The following email excerpt from Alex Strong, Director, Government Affairs of the National Association of Home Builders is provided to help you better understand the effects of this law:

New Tax on Capital Income

Set to take effect in 2013, a tax increase on capital income — such as capital gain and rents — will affect some real estate investments. However, it should have a negligible impact on sellers of principal residences.

The new 3.8% Medicare tax on so-called unearned income will affect high-income taxpayers who report taxable income due to capital gains and other non-wage income. It will not affect income that is currently tax-exempt, including most capital gain due to the sale of a principal

residence (due to the \$250,000/\$500,000 gain exclusion rules). Taxpayers with less than \$250,000 in income will not see any increase in tax.

Under prior law, Social Security and Medicare benefits are financed by payroll taxes on wages. The tax is equal to 12.4% of covered wages up to a maximum amount (\$106,800 in 2010), with half paid by the employer and half paid by the employee; and 2.9% of covered wages uncapped, again with half paid by the employer and half paid by the employee. Self-employed individuals — including independent contractors — generally pay both the employee and employer parts of the tax. Unearned income (e.g. rents, dividends, interest and capital gains) were not subject to these taxes.

As a result of the Patient Protection and Affordable Care Act of 2010, this system is changing. Under revised law, the Medicare tax will increase for taxpayers earning more than \$250,000 (if married) or \$200,000 (if single). In particular, the individual's Medicare portion of the tax — which was previously 1.45% or half of the 2.9% — increases to 3.8%, but only for certain income amounts. The rate of 3.8% applies to the smaller of: (1) the amount of income above \$250,000/\$200,000 of modified adjusted gross income; or (2) net investment income. The tax also applies to self-employed individuals.

Net investment income is the sum of income from interest, dividends, annuities, royalties, rents and capital gain — except income derived from active participation in a trade or business, including sole proprietorships, partnerships and S Corporations).

As noted earlier, tax-exempt unearned income (excluded gain from the sale of a principal residence or interest income allocable to a tax-exempt bond) is not subject to this new tax.

Here are two examples:

§ Suppose a couple has wage income of \$260,000 and \$9,000 in capital gains. The extra 3.8% tax applies to the smaller of \$19,000 (the difference between \$269,000 and \$250,000) and \$9,000. \$9,000 is smaller, so the increased tax is equal to \$342 (\$9,000 times 3.8%).

§ Suppose a couple has wage income of \$50,000 and gains income of \$210,000. The extra 3.8% tax applies to the smaller of \$10,000 (the difference between \$260,000 and \$250,000) and \$210,000. \$10,000 is smaller, so the increased tax is equal to \$380 (\$10,000 times 3.8%).

Hopefully this will clear up any confusion that you may have had concerning the emails you have received.

Til next time,

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