

TAX TALK

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• Katrina Kamantauskas-Holder, *Chair* •

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FROM THE CHAIR

By Katrina Kamantauskas-Holder

Late winter is a perfect time to take stock of what we have achieved and what we still hope to accomplish, as we take advantage of that little shot of adrenaline that comes with the lengthening days. For many in the Tax Section, late winter also means the start of the new Maryland legislative session, which carries us from the cold of January to those first, lovely warm days of April. Your Tax Section Council, steered by its State Legislation & Regulatory Proposals Committee, already is hard at work evaluating various legislative proposals to determine whether the Tax Section should support or oppose the legislation. For example, the Tax Section supports a bill to reduce the interest rate on Maryland tax deficiencies to something closer to the federal rate, but is planning to oppose a bill to deny driver's licenses and vehicle registrations to those who fail to pay their taxes.

May is the month for the Tax Section's annual Shulbank Memorial Dinner, held in honor of Irving Shulbank, a tax attorney, CPA, lecturer, author, and past Chair of the Section who died in 1974. Since 2002, the Shulbank Dinner also has been the setting for the Tax Section's presentation of the annual Tax Excellence Award. This award, which celebrates life-long achievement, is given to a member of the tax community who exemplifies professional, academic, or public service excellence, integrity, compassion, and commitment in the areas of practicing, teaching, or developing tax law or tax policy. The very first Tax Excellence Award was presented to The Honorable L. Paige Marvel, and we are delighted that Judge Marvel has agreed to be the keynote speaker at this year's Shulbank Dinner.

In 2006, the Tax Section began presenting a second award at the Shulbank Dinner, one which honors and commemorates

the life of J. Ronald Shiff, a distinguished tax attorney and past Chair of the Section, who died suddenly in 2004 at age 45. The J. Ronald Shiff Memorial Pro Bono Award recognizes an attorney's or law firm's dedication and commitment to providing legal services to low-income taxpayers. I find it appropriate that this award is given in the Spring, as the countless hours that our past award recipients have spent on pro bono matters must elicit in their clients the same kind of relief and hope that one feels upon realizing that winter is finally behind you.

And finally we arrive at June, and the MSBA Annual Meeting in Ocean City, a fitting end to the Tax Section's year as the heat of summer rolls in. This year we are partnering with the Business Law Section to bring you an interesting and informative presentation on Law Firm Partnerships – Genesis to Armageddon, which may answer questions you may have about your own law firm practice. I hope you will make plans to attend – and reserve a little time to walk on the beach.

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2010 Tax Relief Act: What it Means for Taxpayers

By Jennifer A. Pratt

The "Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010" ("2010 Tax Relief Act" or "Act") was signed into law on December 17 by President Obama and provides guidance and temporary certainty after nearly a year of uncertainty for taxpayers. Unfortunately, the Act only provides an extension of the "Bush tax cuts" for a period of two years, ending on December 31, 2012. The Act has an impact on nearly every American taxpayer, both individuals and businesses. The highlights of the Act are summarized below.

Estate, Gift and Generation-Skipping Transfer Tax Provisions

The 2010 Tax Relief Act provides for the following:

- beginning in 2011, there will be an estate, gift and generation-skipping transfer tax exemption of \$5 million per person and \$10 million per couple, indexing these amounts for inflation beginning in 2012;
- the top tax rate of 35% for estate, gift, and generation-skipping transfer taxes will continue for an additional two years, through December 31, 2012;
- a special election is available for decedents dying in 2010, which allows an executor to choose between no estate taxes and a modified carryover basis or a 35% estate tax and a stepped-up basis; and
- for calendar year 2010, there is a \$5 million generation-skipping transfer tax exemption and a zero percent rate.

Portability of Spouse's Unused Estate Tax Exemption Amounts

- The executor of a deceased spouse's estate has the ability to transfer any unused estate tax exemption to the surviving spouse.
- The proposal would be effective for estates of decedents dying after December 31, 2010.
- Although portability may simplify planning for married couples, the portability does not apply to the generation-

skipping transfer tax exemption. Additionally, a couple's estate planning documents should be reviewed to deal with the generation-skipping transfer tax planning, basis issues, and future appreciation, which may still make planning for a couple very complicated.

- The portability applies to the unused exemption of one's last deceased spouse so remarriage complicates planning as well.
- An estate tax return must be filed on the first death, and an irrevocable election to allocate the unused exemption to the surviving spouse must be made on such return by the executor.

Reunification of Gift and Estate Tax Exemption Amounts

The 2010 Tax Relief Act reunifies the estate, gift and generation-skipping transfer tax exemptions for the first time since 2001. As stated above, beginning on January 1, 2011, each person will have one exemption for gift and estate taxes of \$5 million, as well as a \$5 million exemption from generation-skipping transfer taxes, and as described above, married couples would have a total of \$10 million. The \$5 million exemption will be effective for gifts made after December 31, 2010.

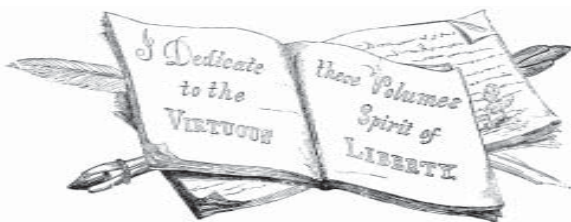
Income Tax Rates

The Act extends the Bush tax cuts, which are set to expire at the end of 2010, for all taxpayers, including individuals with incomes above \$200,000 (\$250,000 for married couples). The 2010 Tax Relief Act provides the following:

- income tax rates for individuals will stay at 10%, 15%, 25%, 28%, 33% and 35% through December 31, 2012;
- the 2010 repeal of the phase-outs of personal exemptions and itemized deductions is extended through 2012;
- the top capital gain and qualified dividends rate at 15% is extended through 2012;
- marriage penalty relief is maintained for two more years through 2012; and
- it continues the \$1,000 child tax credit.

Employee Payroll Tax Cut

The Act provides for a reduction of the employee share of



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TAX RELIEF ACT: TAXPAYERS...

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FICA taxes from 6.2% to 4.2% for 2011. It does not affect the employer share of FICA taxes. This provision is meant to replace the Making Work Pay Credit that was in effect for 2009 and 2010. Unlike the Making Work Pay Credit, however, there is no phase-out for high-income taxpayers. Thus, to a taxpayer with wages at or above the \$106,800 cap, this reduction will be worth \$2,136. To provide parity, a similar reduction in self-employment ("SECA") taxes will be provided for self-employed individuals.

Expensing

The 2010 Tax Relief Act provides for relief to business and provides benefits for certain expensing items as follows:

- there will be full expensing of investments that currently qualify for bonus depreciation and are placed in service through the end of 2011. This will allow businesses to expense the full cost of equipment and other qualifying property placed in service in 2011. Additionally, bonus depreciation at the current level (i.e., 50% expensing followed by regular depreciation) will be available for such investments in 2012;
- section 179 expensing limits are currently \$500,000 and investment limits are \$2 million, pursuant to the Small Business Jobs Act of 2010. The 2010 Tax Relief Act provides for the levels to remain constant for 2010 and 2011 and provides for \$125,000 with a \$500,000 investment limit in 2012; and
- section 181 election to deduct the cost of any qualifying film and television production in the year the expenditure is incurred in lieu of capitalizing the cost and recovering it through depreciation allowances is extended for a two-year period to include 2010 and 2011. The Act provides this provision to be effective for film and television pro-

ductions commencing after December 31, 2009 and prior to January 1, 2012.

AMT Patch

The Act includes a two-year AMT patch for tax years 2010 and 2011. The patch will prevent the AMT exemption from dropping in 2010, thus causing the AMT to apply to many taxpayers who would otherwise be exempt.

Other Provisions

The Act also extends numerous other expiring tax provisions that have benefited both individuals and businesses, such as the tax cuts enacted by the stimulus bill of 2009 and many of the tax provisions commonly referred to as "extenders." These provisions include things such as:

- American Opportunity Credit;
- earned income tax credit enhancements;
- child credit enhancements;
- research credit; and
- itemized deductions for state and local sales taxes.

In summary, the 2010 Tax Relief Act provides for the extension of many favorable tax cuts, which may provide individuals and businesses with unique planning opportunities for the next two years. Please be aware that there are nuances and differences regarding the effective dates for these various extensions; therefore, these provisions and the new law should be reviewed closely to determine the benefits to each taxpayer's specific situation. Additionally, the estate tax provisions provide a two year window of enhanced gifting and estate planning for clients. Please contact us to discuss the advantages of these estate planning opportunities before the window closes.

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Comments, contributions, and suggestions are greatly appreciated. Please direct them to the Editor.

Items contained in Tax Talk reflect the views of the individuals who prepared them and do not necessarily reflect the opinions of the MSBA Tax Section.

Overview of 2010 Tax Relief Act

The recently enacted Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "Act") is a wide ranging piece of legislation that extends many of the Bush-era tax cuts and provides significant estate tax relief. It also contains many other tax breaks for businesses and individuals, including increased expensing provisions for certain property and a payroll/self-employment tax cut of two percentage points for 2011 for employees and self-employed individuals. The following is a brief summary of the Act.

Income Tax Rates. The current income tax rates will be retained for two years (2011 and 2012), with a top rate of 35% on ordinary income and 15% on qualified dividends and long-term capital gains. If the Act had not been enacted, long-term capital gains would have been taxed at 20% (or 18% for assets held more than five years), and qualified dividends would have been taxed at the same rates that apply to ordinary income.

Payroll Tax Reduction. Employees and selfemployed workers will receive a reduction of two percentage points in their Social Security payroll tax for 2011, bringing the rate down from 6.2% to 4.2% for employees, and from 12.4% to 10.4% for the selfemployed. Under the Act, the maximum savings will be \$2,136 per employee or self-employed worker, which represents 2% of the applicable Social Security tax threshold of \$106,800.

Estate Taxes. The estate tax has been reinstated for 2011 and 2012, with a top rate of 35%. The estate tax exemption amount will be \$5 million per individual in 2011 and will be indexed to inflation in following years. Specifically, the Act lowers estate and generation skipping transfer taxes for 2011 and 2012 by increasing the exemption amount from \$1 million to \$5 million and reducing the top rate from 55% to 35%. The Act allows estates of decedents dying in 2010 to choose between (1) an estate tax (based on a \$5 million exemption and 35% top rate) and a step-up in basis or (2) no estate tax and modified carryover basis. In other words, the estates of individuals dying in 2010 may choose between application of the old or the new law.

Gift Taxes. For gifts made after December 31, 2010, the Act reunifies the gift tax with the estate tax, with an applicable exclusion amount of \$5 million and a top estate and gift tax rate of 35%.

Alternative Minimum Tax. A twoyear alternative minimum tax (AMT) "patch" for 2010 and 2011 will keep the AMT exemption near current levels and allow personal credits to

offset AMT. Without the patch, an estimated 21 million additional taxpayers would have owed AMT for 2010.

Business Expensing. Under the Act, businesses can write off (expense) 100% of their equipment and machinery purchases, effective for qualified property placed in service after September 8, 2010 and through December 31, 2011. For property placed in service in 2012, the Act provides for 50% additional firstyear depreciation.

Extension of Existing Tax Provisions. The Act provides for many existing tax benefits to be extended for two years, retroactively to 2010 and through the end of 2011. Among many others, the extended provisions include: the election to take an itemized deduction for state and local general sales taxes in lieu of the itemized deduction for state and local income taxes; the research credit; new markets tax credit; and 15-year write off for qualifying leasehold improvements, restaurant buildings and improvements, and retail improvements.

Notable Provisions Not Included in the Act. Several important provisions were omitted from the Act, including the much discussed repeal of a controversial expansion of Form 1099 reporting requirements for corporations, and the extension of the Build America Bonds program, which permits state and localities to issue federallysubsidized municipal bonds.

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This article was written by Christopher A. Davis, Esquire, an Associate in the firm's office in Baltimore, Maryland and Jeffrey A. Markowitz, Esquire, a Principal in the firm's office in Baltimore, Maryland. Any opinions expressed and any legal positions asserted in the article are those of the author(s) and do not necessarily reflect the opinions or positions of Miles & Stockbridge P.C. or its other lawyers. This article is for general information purposes and is not intended to be and should not be taken as legal advice on any particular matter. It is not intended to and does not create any attorney-client relationship. Because legal advice must vary with individual circumstances, do not act or refrain from acting on the basis of this article without consulting professional legal counsel. If you would like additional information on the subject matter of this article, please feel free to contact any of the lawyers listed above.

www.msba.org/sec_comm/sections/taxation

Report on December Joint Section Meeting

~ *Tax and Immigration Law Sections Convene* ~

On December 9, 2010, approximately 35 members of the Tax and Immigration Law Sections enjoyed an evening of networking and education at the Coho Grill in Columbia, MD.

Leonardo Canseco, CPA, Esq. began the presentation with useful information every attorney should know about tax law in U.S. immigration related cases. Select audience members participated in a hypothetical family-based immigration case, in which a U.S. citizen was sponsoring her non-immigrant spouse for permanent resident “green card” status in the United States. The hypothetical demonstrated various scenarios where tax and immigration law intersect. Attendees learned that one should always ask for evidence of tax compliance from both the sponsor and beneficiary. It is particularly important for the sponsor to produce evidence of tax compliance which is part of the Affidavit of Support in family-based petitions. A sponsor who is self employed will need to provide more additional business-related tax filings and other supporting income documentation during the United States Citizenship and Immigration Service (“USCIS”) interview to substantiate income.

Steve Trow, Esq. from Trow and Rahal, P.C. discussed various immigration strategies for high net worth individuals, including: developing U.S. immigration strategies to avoid U.S. Tax residency while maintaining the ability to reside and work in the U.S.; identifying “accidental U.S. citizenship” resulting from birth abroad to a U.S. citizen parent or other circumstance; and the “exit tax” for U.S. expatriates and long-term U.S. permanent residents who give up their green cards after holding them for 8 of the last 15 years. Attendees learned that both categories are subject to an immediate “exit tax” on unrealized gains on all their assets in the U.S. and worldwide, including grantor trusts, as well as on any future gifts or bequests to U.S. citizens and residents.

The Tax and Immigration Law Sections thank both Leo and Steve for an interesting and informative presentation.

THE 2011 J. RONALD SHIFF MEMORIAL PRO BONO AWARD

THE J. RONALD SHIFF MEMORIAL PRO BONO AWARD is presented annually to an attorney (whether in private practice, government, academia, public service or other area) who has demonstrated a commitment to providing legal services to low-income taxpayers. The Award will be **presented** to the recipient at the Section of Taxation’s **Annual Irving Shulbank Memorial Dinner and Program** to be held in **May 2011**, at the Belvedere Hotel in Baltimore.

If you know an individual who should be considered, please send your nomination by e-mail (tbornstein@sgrwlaw.com) or fax (301.986.1301) to Todd Bornstein. You must include a brief statement as to why you feel the nominee is worthy of consideration. Nomination forms are available on the Section’s website www.msba.org/sec_comm/sections/taxation/. Nominations must be **submitted** on or before **March 7, 2011**.

THE 2011 TAX EXCELLENCE AWARD

THE TAX EXCELLENCE AWARD is presented annually to an attorney, law school professor, public official or member of the judiciary who exemplifies professional, academic or public service excellence, integrity, compassion and commitment in the areas of practicing, teaching or developing tax law or tax policy. The Award will be **presented** to the recipient at the Section of Taxation’s **Annual Irving Shulbank Memorial Dinner and Program** to be held on **May 2011**, at the Belvedere Hotel in Baltimore.

If you know an individual who should be considered, please send your nomination by e-mail (tbornstein@sgrwlaw.com) or fax (301.986.1301) to Todd Bornstein. You must include a brief statement as to why you feel the nominee is worthy of consideration. Nomination forms are available on the Section’s website www.msba.org/sec_comm/sections/taxation/. Nominations must be submitted on or before **March 7, 2011**.

TAX SECTION CALENDAR

Events Sponsored By Your Tax Section



FEBRUARY

- Feb. 9, 2011 Transactional Tax Study Group (Whiteford Taylor, Baltimore) - 12 PM
- Feb. 9, 2011 Tax Council Meeting – 6 PM
- Feb. 15, 2011 State Tax Study Group (Ober | Kaler, Baltimore) - 8:30 AM
- Feb. 16, 2011 Tax Controversy Study Group (Rosenberg | Martin | Greenberg, Baltimore) - 9 AM
- Feb. 17, 2011 Montgomery / PG County Tax Study Group (Law Office of Mary Beth Beattie, Rockville) - 8 AM
- Feb. 24, 2011 Tax-Exempt Study Group (Whiteford Taylor, Baltimore) – 8:30 AM
- Feb. 24, 2011 Estate and Gift Tax Study Group (Bank of America, Baltimore) - 12:30 PM

MARCH

- March 8, 2011 Employee Benefits Study Group (Whiteford Taylor, Baltimore) - 12 PM
- March 9, 2011 Transactional Tax Study Group (Whiteford Taylor, Baltimore) - 12 PM
- March 9, 2011 Tax Council Meeting - 6 PM
- March 15, 2011 State Tax Study Group (Ober | Kaler, Baltimore) - 8:30 AM
- March 16, 2011 Tax Controversy Study Group (Rosenberg | Martin | Greenberg, Baltimore) - 9 AM
- March 17, 2011 Montgomery / PG County Tax Study Group (Shulman, Rogers, Potomac) - 8 AM
- March 24, 2011 Estate and Gift Tax Study Group (Bank of America, Baltimore) - 12:30 PM

APRIL

- April 6, 2011 Tax Council Meeting – 6 PM
- April 11, 2011 U.S. Tax Court calendar call - MSBA U.S. Tax Court Pro Bono Program
- April 13, 2011 Tax-Exempt Study Group (Y j kghqtf "Vc{mqt, Baltimore) – 8:30 AM
- April 13, 2011 Transactional Tax Study Group (Whiteford Taylor, Baltimore) - 12 PM
- April 20, 2011 Tax Section Webinar - Employment Tax Examination Basics and Hot Topics – 12:30 PM
- April 21, 2011 Montgomery / PG County Tax Study Group (Stein Sperling, Rockville) - 8 AM
- April 21, 2011 State Tax Study Group (Ober | Kaler, Baltimore) - 8:30 AM
- April 21, 2011 Estate and Gift Tax Study Group (Bank of America, Baltimore) - 12:30 PM
- April 27, 2011 Tax Controversy Study Group (Rosenberg | Martin | Greenberg, LLP, Baltimore) - 9 AM

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MAY

- May 10, 2011 Employee Benefits Study Group (Whiteford Taylor, Baltimore) - 12 PM
- May 11, 2011 Transactional Tax Study Group (Whiteford Taylor, Baltimore) - 12 PM
- May 12, 2011 Annual Irving Shulbank Memorial Dinner and Program (The Belvedere, Baltimore, MD)
- May 17, 2011 State Tax Study Group (Ober | Kaler, Baltimore) - 8:30 AM
- May 18, 2011 Tax Controversy Study Group (Rosenberg | Martin | Greenberg, LLP, Baltimore) - 9 AM
- May 19, 2011 Montgomery / PG County Tax Study Group (Grossberg Co. LLP) - 8 AM
- May 19, 2011 Estate and Gift Tax Study Group (Bank of America, Baltimore) - 12:30 PM
- May 19, 2011 Annual Irving Shulbank Memorial Dinner and Program (tentative date)

JUNE

- June 8, 2011 Transactional Tax Study Group (Whiteford Taylor, Baltimore) - 12 PM
- June 8-11 MSBA Annual Meeting, Ocean City
- June 23, 2011 Tax-Exempt Study Group (Whiteford Taylor, Baltimore) - 8:30 AM

