

Cohen Smith & Company, P.A.

NEWSLETTER



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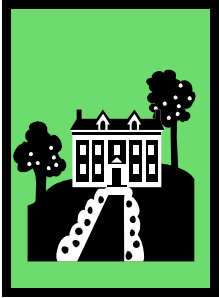
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Web Site Provides Small Business Owner's Information On New Health Care Law

The National Small Business Association has re-launched a web site that provides small business owners with critical information on the new federal

health care reform legislation. The web site provides answers to frequently asked questions, an implementation timeline, and a comprehensive list of resources. For information go to: www.healthreformtoday.org.



Estate Planning Amidst An Uncertain Future For Transfer Tax

Eight years ago, a law was enacted to repeal the estate tax for 2010, technically, for individuals dying in 2010, and then bring it back in harsher terms for those dying after 2010. Many had thought that the current Congress would undo the impending repeal and permanently, or temporarily, keep the tax at 2009 levels (\$3.5 million per person exemption and 45% top rate), perhaps with inflation adjustments to the exemption amount. However, with the contentious fight over health care and the continuing recession taking priority, that has not happened. This leaves estate planning in a confused state. And it doesn't necessarily mean that taxes will be lowered for heirs of a decedent dying in 2010. That's because, estate tax repeal includes changes to the income tax basis rules for property acquired from a decedent. As a result of these income tax changes, some heirs could face higher combined estate and income tax cost if their loved one dies in 2010.

For 2010, the basis rules for inherited property are similar to the gift tax rules (i.e. transfer of basis) but with many opportunities for heirs to get increases in basis. For example, it is possible to increase the basis of assets received from an individual dying in 2010 by \$1.3 million and by an additional \$3 million for assets going to a spouse.

A result of this change, it may make sense now for each spouse to hold approximately equal amounts of unrealized appreciation, rather than equal amounts of fair market value.

Winners under repeal

If the repeal remains in effect, heirs of individuals dying in 2010 with very large estates will save substantial amount of transfer tax. While they may also be exposed to some income tax under the modified carryover basis rules, the transfer tax savings would more than offset the increased income tax costs.

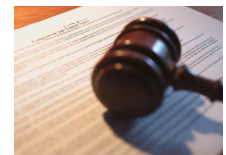
Losers under repeal

Heirs of many smaller estates could come out worse if repeal remains in force, and the step-up in basis is removed. That's because, while these individuals won't face transfer tax costs, they could face income tax costs in the future. This situation is different from the plight of heirs of wealthier individuals, because heirs of less wealthy individuals, currently face neither income tax nor estate tax costs. However, for 2010, they could face income tax costs.

- ❖ Illustration: Assume a single individual has an estate worth \$3.5 million and having a basis of \$1.2 million. If estate tax repeal is preserved and he dies in 2010, there would be no estate tax. But his heirs would face income tax on \$1 million worth of assets when they sell them. This is the \$3.5 million they inherit less a basis of \$2.5 million (the individual's original \$1.2 million basis, increased by \$1.3 million under the new basis rules). On the other hand, if the 2009 rules are restored for 2010, there would still be no estate tax and the heirs would face no income tax on any pre-death appreciation.

Some action seems likely

Although Congress hasn't addressed these transfer tax issues yet, it seems likely that something will be done in 2010. On December 3, 2009, the House, by a vote of 225 to 200, approved H.R. 4154, the "Permanent Estate Tax Relief for Families, Farmers, and Small Businesses Act of 2009." The bill would make permanent the 2009 estate, gift, and generation skipping transfer (GST) tax laws. The Senate has not acted on this measure, or on a bill introduced in the Senate on November 19, 2009 by Senators Tom Carpen (D-DE) and George V. Voinovich (R-OH) to permanently extend estate tax. Under that bill, the value of any estate above \$7 million per couple or \$3.5 million per individual, would be taxed at a 45% rate.



Whether for or against repeal, most legislators would not want to see a return in 2011 of the pre-2001 Act provisions. Thus, it seems fair to assume that some kind of compromise will be reached in 2010. Whether that would involve a retroactive undoing of repeal to the beginning of the year and, if so, whether such legislation would pass muster if challenged, remains to be seen. What does seem likely is that the estate tax will continue sometime next year with a minimum exemption of \$3.5 million per person and a maximum top rate of 45%. It also seems likely that the step-up in basis rules will be preserved. Thus, notwithstanding the current state of uncertainty, estate planning should continue to be undertaken. Individuals and couples, with sizable estates should review their present estate planning in light of these law changes.

Increased Producer Deduction For 2010

The Domestic Production Activities Deduction, also known as the Section 199 deduction or “Producer Deduction,” initially 3% of *qualified production activities income*, jumped to 6% in 2007, but has increased again. The Producer Deduction was established by the American Jobs Creation Act of 2004.

The definition of *qualified production activities*, or QPAI, is very broad. These activities include, but are not limited to, traditional manufacturing of tangible personal property, domestic construction, civil engineering and architectural services for U.S. projects, production of electricity, gas, and potable water, software production, film and videotape production and licensing, growing of agricultural products and food (farming), and processing agricultural products for food.

The deduction has increased once again in 2010 and is now set at 9% of QPAI (the deduction remains at 6% for certain oil-related qualified production.) So, if you qualified for this deduction in prior years, your federal tax bill may decrease a bit in 2010, if you continue to qualify. If you did not qualify in prior years, or you did qualify but the benefit was minimal, you might want to take another look in light of the increased deduction available.

The Producer Deduction is available to individual business owners as well as C corporations, S corporations, partnerships, and other entities.

Shareholder To Corporation Leasing Arrangement

Shareholders of closely held C corporations routinely lease real estate, equipment, and other property to their corporate entity. These leases are either held directly by the shareholder or through a separate entity such as a partnership, LLC, or S corporation. Of course, the C corporation could directly purchase the item or lease it from an independent source. However, advantages that can motivate shareholder leasing arrangements include:

1. **Avoiding Payroll Taxes.** Rental income from real estate is not subject to Social Security, Medicare, or self-employment (SE) tax.

2. **Avoiding Corporate-level Gain.** Corporate capital gains are taxed at ordinary income tax rates as opposed to the more favorable capital gains rates available to shareholders. Therefore, retaining ownership of real estate and other valuable tangible or intangible assets outside the corporation avoids the potential for triggering a gain within the corporation.

3. **Retirement Cash Flow.** Retaining valuable assets outside a controlled corporation allows the shareholder-lessor to continue to receive lease payments from the corporation, even though the shareholder is no longer actively employed by the corporation.

4. **Business Transition.** Retaining assets outside the corporation provides a natural segregation between the ownership of the business and the ownership of business assets. This can help transfer ownership and control to a successor by minimizing the value of the corporation (e.g., where the corporation contains only operating assets such as receivables and inventory, with fixed assets retained by the founder).

As you plan your business operations, please keep these potential advantages in mind. It is also important to understand that, as with most areas of tax law, some restrictions and limitations apply to shareholder-to-corporation leasing transactions. Therefore, when contemplating a leasing arrangement with your corporation, please contact us to discuss the details of how these arrangements should be structured.

Energy Star Office Equipment For Your Small Business

Energy Star-rated appliances are popular for homes because they can offer significantly more energy efficiency than the alternatives. You can get similar benefits from the office by choosing office equipment that has earned approval from Energy Star. Energy Star options are available for many common pieces of office equipment, from computers to copiers.

What the Energy Star Rating Means

While purchasing energy efficient office equipment sounds like a good idea on the surface, you can run into a dilemma when you actually start shopping. Many companies describe their products as energy efficient, especially when they're marketed to offices. The Energy Star rating is intended to eliminate confusion about just how efficient printers, scanners, and other office equipment actually are. In order to receive an Energy Star rating, a piece of office equipment must use at least 30 percent less electricity than standard equipment. That includes accessories, such as power adapters.

The Energy Star system is not perfect and relies on manufacturers to offer up information of their own accord; however, it remains one of the most reliable labeling systems used for products in the U.S. Australia, Canada, Japan, New Zealand, Taiwan, and the European Union have also adopted the system. Some European-manufactured products may alternatively bear a TCO Certification, which is a combined energy usage and ergonomics rating.

Purchasing Energy Star Office Equipment

Looking for the Energy Star label on office equipment can help you quickly narrow down your choices for servers, copiers and other equipment. The Energy Star website maintains information about purchasing a variety of types of office equipment, but you generally do not need to go through the Energy Star program to find specific products. Many online retailers allow you to easily search specifically for various types of office equipment with Energy Star ratings and if you're looking at stores, you can find labels right on the boxes of the products. Among the office equipment that can qualify for Energy Star ratings are the following:

- Computers
- Monitors
- Servers
- External power adapters
- Battery chargers
- Copiers
- Fax machines
- Printers
- Scanners
- All-in-one imaging devices
- Mailing machines

The Energy Star program is also working on specifications that will allow them to rate a variety of products in the future, including data center storage, uninterruptable power supplies, and other equipment useful in an office setting.

Equipment that stays on for long periods of time can provide the most significant change in your energy usage when you replace them. Copiers and computer monitors are just two examples that most workers prefer to leave on throughout the work day. Most of the energy savings for more efficient office products comes from the time that the equipment spends in a rest or low-power mode, between uses. Many monitors can power down over a timed period so that they don't waste power, but they also don't affect your ability to get back to work quickly.

Finding the Right Price

Depending on the office equipment you're purchasing, you may notice that prices are higher than their-less-efficient counterparts. The general assumption is that the reduced electricity bill that comes with making the switch to more efficient equipment covers the added expense. But since the Energy Star label simply states that a product is more efficient and does not necessarily guarantee that it will make a significant difference in your monthly bill, it is important that you carefully compare products before making a purchase.

1. *Consider the reviews of the product's overall performance.* Make sure that it meets your business needs.

2. *Look for estimates of the product's expected lifespan.* A scanner



might be expected to

save you \$7 per year in energy costs, but may only have an expected lifespan of a few years with heavy use. If the price of a particular scanner is more than the savings you can expect over the course of its lifetime, it may not be the right scanner for your business.

3. *Check what practices will get the best results with the equipment you're considering.* Some are more efficient in sleep mode, but you may be required to turn some products off entirely to get the best results.

4. *Consider benefits beyond efficiency.* Products with Energy Star approvals tend to produce less heat, which reduces heat-related equipment failures, as well as reducing air-conditioning costs.

5. *Check how new products will work with your current office equipment.* For instance, if you use a Local Area Network (LAN), you may need to check that your new computer's power management feature is compatible with your existing network system.

6. *Check the Energy Star website for information on the particular type of equipment you're purchasing.* Energy Star lists details like how much money you can

expect to save over the lifetime of a product, as well as the specs that a piece of equipment must meet to receive the Energy Star rating, including details like power management features.

Unlike some upgrades that you can make to increase energy efficiency, there is no tax incentive associated with purchasing office equipment that meets the standards of the Energy Star program. However your purchase is still a business expense and that fact should be taken into account when choosing a product, especially if you're purchasing a large piece of equipment that you will depreciate.

Beyond Office Equipment

Depending on your business, you may be able to consider a wider variety of equipment that Energy Star has approved as particularly energy efficient. Such equipment includes a variety of commercial food service equipment, as well as materials for upgrading your office space as a whole. From windows to plumbing fixtures, you can make your office as energy efficient as possible. You don't even need to do major renovations to improve the energy efficiency of your office. Even changing out your light bulbs can make a major difference.

You can even find vending machines and water coolers that have Energy Star ratings, if you're ready to make your break room more energy efficient, along with changing out refrigerators and other appliances for efficient models. Energy Star offers options beyond new printers and computers.

Tax Calendar



MAY 2010

May 10

Employees who work for tips. If you received \$20 or more in tips during April, report them to your employer. You can use Form 4070.

May 17

Employers. For Social Security, Medicare, withheld income tax and nonpayroll withholding, deposit the tax for payments in April if the monthly rule applies.

June 2010

June 10

Employees who work for tips. If you received \$20 or more in tips during May, report them to your employer. You can use Form 4070.

June 15

Individuals. Make a payment of your 2010 estimated tax if you are not paying your income tax for the year through withholding (or will not pay in enough tax that way). Use Form 1040-ES. This is the second installment date for estimated tax in 2010. For more information, see Publication 505.

Corporations. Deposit the second installment of estimated income tax for 2010. A worksheet, Form 1120-W, is available to help you estimate your tax for the year.

Other helpful line services



[www.IRS.gov](http://www.irs.gov)
www.MyFlorida.com
www.Volusia.org