

## Articles

### "Tax Provisions Contained in the President's Budget for FY2010"

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On February 26, 2009, the Office of Management and Budget released the budget for fiscal year 2010 (the "Budget"). The Budget outlines President Obama's tax proposals for the next fiscal year and beyond and signals to Congress tax policy changes the President recommends. Once the Budget is passed in Congress, it sets forth the parameters for future tax legislation. Thus, while the Budget's tax proposals are not yet in statutory or legislative form and therefore the details of the proposals are not yet known, they may potentially appear in upcoming proposed tax legislation. A summary of the Budget's tax proposals is set forth below.

#### Tax Cuts for Businesses

- **Modify federal aviation administration financing.** The Budget proposes repealing some aviation excise taxes and replacing these taxes with direct user charges, beginning in 2011.
- **Eliminate capital gains taxation on small businesses.**
- **Make research and experimentation tax credit permanent.**
- **Expand net operating loss carryback.**

#### Other Revenue Changes and Loophole Closers

- **Eliminate oil and gas company preferences.** The Administration hopes to improve the public's return on fees, royalties, and other federal payments related to oil, gas, coal, and other mineral development, by eliminating loopholes, charging appropriate fees, and reforming how royalties are set. These proposals (which generally begin in 2011) include:
  - Levy excise tax on Gulf of Mexico oil and gas production,
  - Repeal enhanced oil recovery credit,
  - Repeal marginal well tax credit,
  - Repeal expensing of intangible drilling costs,
  - Repeal deduction for tertiary injectants,
  - Repeal passive loss exception for working interests in oil and natural gas properties,
  - Repeal manufacturing tax deduction for oil and natural gas companies,
  - Increase geological and geophysical amortization period for independent producers to seven years, and
  - Repeal percentage depletion for oil and natural gas.
- **Reinstate Superfund Taxes.** The Budget proposes to, beginning in 2011, reinstate excise taxes that expired in 1995 and will collect over \$1 billion to clean up the most contaminated sites within the Superfund program.
- **Implement international enforcement, reform deferral, and other tax reform policies.** The Administration believes that the scope, complexity, and sheer magnitude of the international financial system pose significant enforcement challenges for the IRS in carrying out its tax administration responsibilities. The Budget proposes to fund a robust portfolio of IRS international tax compliance initiatives, and sustain and improve IRS efforts to narrow the annual tax gap.
- **Tax carried interest as ordinary income.**
- **Codify "Economic Substance Doctrine."**
- **Repeal LIFO.**
- **Require information reporting for rental payments.**
- **Eliminate advanced earned income tax credit.**

#### Tax Cuts for Families and Individuals

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- **Provide Making Work Pay Tax Credit.** The Budget proposes to make permanent the new refundable Making Work Pay Tax Credit created by the American Recovery and Reinvestment Act (the "Act"). The credit is calculated at a rate of 6.2% of earned income (up to \$400 for individuals and \$800 for married taxpayers filing jointly), with a phase out for taxpayers with adjusted gross income in excess of \$75,000 (single) or \$150,000 (married).
- **Expand refundability of the Child Tax Credit.** The Budget proposes to make permanent the Child Tax Credit and to increase the eligibility for this credit by reducing the floor to \$3,000, beginning 2012.
- **Expand saver's credit and automatic enrollment in IRAs and 401(k)s.** Under the Budget's proposal, beginning in 2011, employees will be automatically enrolled in workplace pension plans—and will be allowed to opt out if they choose. Employers who do not currently offer a retirement plan will be required to enroll their employees in a direct-deposit IRA account that is compatible with existing direct-deposit payroll systems.
- **Provide American Opportunity Tax Credit.** The Budget proposes to make permanent the \$2,500 American Opportunity Tax Credit, which was created by the Act.
- **Expand Earned Income Tax Credit.**

### Upper-income Tax Provisions Dedicated to Deficit Reduction

- Reinstates the 36 percent and 39.6 percent rates for those taxpayers earning over \$250,000 (married) and \$200,000 (single), beginning in 2011.
- Reinstates the personal exemption phaseout and limitation on itemized deductions for those taxpayers earning over \$250,000 (married) and \$200,000 (single), beginning in 2011.
- Imposes 20 percent rate on capital gains and dividends for those taxpayers earning over \$250,000 (married) and \$200,000 (single).

### More Information

For a copy of the Budget, please see the following website:

<http://www.whitehouse.gov/omb/budget/>

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