Summary of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010

(Tax Relief Act of 2010)

The following material has been adapted from CCH's Tax Briefing of the Tax Relief Act of 2010, the Senate Finance Committee Summary of the Tax Relief Act, and the Joint Committee on Taxation's "Technical Explanation of the Revenue Provisions of the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010"

INDIVIDUAL CHANGES

Individual Rates

The individual income rates were scheduled to revert from their current levels of 10, 15, 25, 28, 33, and 35 percent to 15, 28, 31, 36, and 39.6 percent after December 31, 2010. The Tax Relief Act extends the reduced income tax rates currently in place for ordinary income, capital gains and dividends for two years, through December 31, 2012 as reflected in the chart below.

INDIVIDUAL TAX BRACKETS AS ENACTED			
	SINGLE	**JOINT**	**2011-2012**
ORDINARY INCOME TAX BRACKETS	$0 – $8,500	$0 – $17,000	10%
	$8,501 – $34,500	$17,001 – $69,000	15%
	$34,501 – $83,600	$69,001 – $139,350	25%
	$83,601 – $174,400	$139,351 – $212,300	28%
	$174,401 –$379,150	$212,300 – $379,150	33%
	Over $379,150	Over $379,150	35%
Capital Gains Top Rate			15%
Dividend Top Rate			15%
Interest Income Top Rate			35%

After 2012, individuals are scheduled to face additional taxes in the form of the .9% additional Medicare Tax and a 3.8% Medicare contribution tax.

The zero rate for capital gains and dividends for those individuals in the bottom brackets will continue to apply.

Itemized Deductions

The "Pease" limitation (named after the member of Congress who sponsored the bill enacting it) reduces the total amount of a higher-income individual's otherwise allowable deductions. Under EGTRRA, the Pease limitation is repealed for 2010 but was scheduled to return in full after 2010 at a projected level of income starting at $169,550 ($84,775 for married couples filing separately). The 2010 Tax Relief Act extends full repeal of the Pease limitation for two years, through December 31, 2012.

Personal Exemption Phase Out

Before 2010, taxpayers with incomes over certain thresholds were subject to the personal exemption phaseout (PEP). The PEP reduced the total amount of exemptions that may be claimed by two percent for each $2,500 or portion thereof ($1,250 for married couples filing separate returns) by which the taxpayer's adjusted gross income (AGI) exceeded the applicable threshold (projected for 2011 to start at $169,550 for singles and $254,350 for joint filers). Under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the PEP is repealed for 2010. The 2010 Tax Relief Act extends repeal of the PEP for two years, through December 31, 2012.

Marriage Penalty

Marriage penalty relief has been extended through December 31, 2012 by extending the EGTRRA increase in the standard deduction and the size of the 15 percent income tax rate bracket for married couples filing jointly to twice the amount for a single individual.

Child Tax Credit

The Child Tax Credit was scheduled to revert to $500 per qualifying child. The Act extends the $1,000 child tax credit for two years through December 31, 2012. (The credit continues to be phased out for most taxpayers with adjusted gross income in excess of $110,000, however the credit is allowed against the AMT and the refundable portion is not reduced by the AMT.)

Earned Income Credit

EGTRRA and subsequent legislation temporarily increased the beginning and end points of the earned income tax credit (EITC) and increased the credit for three or more children. Legislation also simplified the definition of earned income, eliminated the rule that reduced a taxpayer's EITC by the amount of AMT liability, reformed the relationship test, and modified the tie-breaking rule. All these enhancements were subject to the general EGTRRA sunset of December 31, 2010 and have now been extended by the 2010 Tax Relief Act through December 31, 2012.

Adoption Credit

The enhancements to the Adoption Credit detailed in EGTRRA largely remain in place under the Act through December 31, 2012. However, the enhancements made by the Patient Protection and Affordable Care Act (PPACA), specifically that it be refundable and the additional increase of $1,000 is not available after 2010.

Dependent Care Credit

The Dependent Care Credit provides a credit to taxpayers who incur expenses for children under age 13 or for incapacitated dependents or spouse. The Act extends through December 31, 2012 the enhanced Dependent Care Credit, that increased it from $2,400 to $3,000 (from $4,800 to $6,000 for more than one dependent). The credit is based on a maximum 35% up to $3,000 (or $6,000 for more than one dependent.)

Employer Provided Child Care

Employers may continue to qualify for tax credits for making child care available to employees through December 31, 2012. Under EGTRRA, employers have been eligible for a tax credit equal to 25 percent of qualified expenses for employee child care plus an amount equal to 10 percent of qualified expenses for child care resource and referral services. The credit is subject to a $150,000 annual cap on qualified costs.

Mortgage Insurance Premiums
Under current law, a taxpayer may itemize the cost of mortgage insurance on a qualified personal residence. The deduction is phased-out ratably by 10% for each $1,000 by which the taxpayer's AGI exceeds $100,000. Thus, the deduction is unavailable for a taxpayer with an AGI in excess of $110,000. The bill extends this provision for an additional year, through 2011.

The American Opportunity Tax Credit (AOTC)
The American Opportunity Tax Credit (AOTC) has been extended through December 31, 2012. Formerly known as the Hope Credit, the AOTC provides a maximum credit of $2,500 for qualifying higher education expenses for four years (formerly two years) of post secondary education. The credit is allowed to offset AMT with up to 40% refundable.

Educational Assistance Exclusion
An employee may exclude from gross income up to $5,250 for income and employment tax purposes per year of employer-provided education assistance. Prior to 2001, this incentive was temporary and only applied to undergraduate courses. The EGTRRA expanded this provision to graduate education and extended the provision for undergraduate and graduate education to the end of 2010. The proposal extends the changes to this provision for an additional two years, through 2012.

Student Loan Interest Deduction
Certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for such interest expenses up to $2,500. Prior to 2001, this benefit was only allowed for 60 months and phased-out for taxpayers with income between $40,000 and $55,000 ($60,000 and $75,000 for joint filers). The EGTRRA eliminated the 60 month rule and increased the income phase-out to $55,000 to $70,000 ($110,000 and $140,000 for joint filers). The proposal extends the changes to this provision for an additional two years, through 2012.

Scholarships
Scholarships for qualified tuition and related expenses are excludible from income. Qualified tuition reductions for certain education provided to employees are also excluded. Generally, this exclusion does not apply to qualified scholarships or tuition reductions that represent payment for teaching, research, or other services. The National Health Service Corps Scholarship Program and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program provide education awards to participants on the condition that the participants perform certain services. The EGTRRA allowed the scholarship exclusion to

apply to these programs. The proposal extends the changes to this provision for an additional two years, through 2012.

Coverdell Education Savings Accounts

Coverdell Education Savings Accounts are tax-exempt savings accounts used to pay the higher education expenses of a designated beneficiary. The EGTRRA increased the annual contribution amount from $500 to $2,000 and expanded the definition of education expenses to include elementary and secondary school expenses. The proposal extends the changes to Coverdell accounts for an additional two years, through 2012.

Above-the-line deduction for certain expenses of elementary and secondary school teachers. The bill extends for two years (through 2011) the $250 above-the-line tax deduction for teachers and other school professionals for expenses paid or incurred for books, supplies (other than non-athletic supplies for courses of instruction in health or physical education), computer equipment (including related software and service), other equipment, and supplementary materials used by the educator in the classroom.

Deduction of State and local general sales taxes. The bill extends for two years (through 2011) the election to take an itemized deduction for State and local general sales taxes in lieu of the itemized deduction permitted for State and local income taxes.

Extension of provision encouraging contributions of capital gain real property for conservation purposes. The bill extends for two years (through 2011) the increased contribution limits and carryforward period for contributions of appreciated real property (including partial interests in real property) for conservation purposes.

Extension of tax-free distributions from individual retirement plans for charitable purposes. The bill extends for two years (through 2011) the provision that permits tax-free distributions to charity from an Individual Retirement Account (IRA) of up to $100,000 per taxpayer, per taxable year. The bill allows individuals to make charitable transfers during January of 2011 and treat them as if made during 2010.

Estate tax look-through of certain Regulated Investment Company (RIC) stock held by nonresidents. Although stock issued by a domestic corporation generally is treated as property within the United States, stock of a RIC that was owned by a nonresident non-citizen is not deemed property within the United States in the proportion that, at the end of the quarter of the RIC's taxable year immediately before a decedent's date of death, the assets held by the RIC are debt obligations, deposits, or other property that would be treated as situated outside the United States if held directly by the estate (the "estate tax look-through rule for RIC stock"). The proposal permits the look-through rule for RIC stock to apply to estates of decedents dying before January 1, 2012.

Parity for mass transit benefits. The bill extends through 2011 the increase in the monthly exclusion for employer-provided transit and vanpool benefits to that of the exclusion for employer-provided parking benefits.

Refund and tax credit disregard for means tested programs. Current law ensures that the refundable components of the EITC and the Child Tax Credit do not make households ineligible for means-tested benefit programs and includes provisions stating that these tax credits do not count as income in determining eligibility (and benefit levels) in means-tested benefit programs, and also do not count as assets for specified periods of time. Without them, the receipt of a tax credit would put a substantial number of families over the income limits for these programs in the month that the tax refund is received. The proposal disregards all refundable tax credits and refunds as income for means tested programs. The proposal is effective for amounts received after December 31, 2009 and does not apply to amounts received after December 31, 2012.

The Act does **not** extend the additional standard deduction for real property taxes which expired in 2009.

Alternative Minimum Tax

The 2010 Tax Relief Act increases the exemption amounts for 2010 to $47,450 for individual taxpayers, $72,450 for married taxpayers filing jointly and surviving spouses, and $36,225 for married couples filing separately.

AMT "PATCH" **Alternative minimum tax exemption for 2010 and 2011**			
	2009	**2010**	**2011**
Single/head of household	$46,700	$47,450	$48,450
Married filing jointly	$69,950	$72,450	$74,450
Married filing separately	$34,975	$36,225	$37,225

Without the patch, which had expired at the end of 2009, an estimated 21 million taxpayers may have been subjected to AMT.

Payroll Tax Cut

The Act reduces the employee share of Social Security Tax (OASDI) from 6.2% to 4.2% for wages earned in calendar year 2011 up to $106,800. Self employed individuals would pay a *combined* rate of 13.3% (10.4% plus 2.9% Medicare tax) on self employment income, reduced from a *combined* rate of 15.3%, up to the same threshold. The payroll tax holiday is expected to inject billions into the economy.

The change only applies to the OASDI and not the Medicare portion of the payroll and self employment taxes. Individuals earning above the FICA cap of $106,800 will receive a $2,136 tax benefit in 2011. This is an employee side cut only, as the employer's share of OASDI will remain at 6.2%.

Employment Insurance

The Act provides for a temporary extension of unemployment insurance for one year. The unemployed will get a 13-month extension of the deadline to file for additional unemployment benefits , which can be as high as 99 weeks in states hit hardest by job loss.

BUSINESS CHANGES

Bonus Depreciation

The Act increases the bonus depreciation from **50%** to **100%** for qualified investments made after September 8, 2010 and before January 1, 2012. The Act also makes 50% bonus depreciation available for property placed in service during 2012. This provision is one of the most generous of the Act and is expected to stimulate business activity.

Property eligible for bonus depreciation includes original use MACRS property with a useful life of 20 years or less, computer software, qualified leasehold improvements and water utility property. Bonus depreciation is not limited to smaller businesses nor is it capped at certain dollar levels and is more expansive then Section 179 expensing.

The Act also extends a 2009 provision which provides an election to accelerate AMT and research credits in lieu of claiming bonus depreciation for 2011 and 2012. Taxpayers can elect to forgo bonus depreciation and claim a refundable credit. The prior limits of 6% of the amount of cumulative credits not to exceed $30 million have also been eliminated.

Section 179 Expensing

The dollar and investment limits under Section 179 have been continually increased to encourage business spending. As recently as September, pursuant to the Small Business Jobs Act, the Section 179 dollar limits were increased to $500,000 (expense) and $2 million (phaseout) for years 2010 and 2011. While the Act extends this provision of the Internal Revenue Code Section, it does not maintain the very generous limitations of 2010 and 2011. The Act modifies the expensing limits for years beginning in 2012 to a $125,000 dollar expense limit and a $500,000 investment limit. Without this change, the limits would revert to $25,000/$200,000 beginning in 2012. Qualified real property does not share in the expensing benefits allowed under the 2010 Tax Relief Act. Under the 2010 Small Business Jobs Act, a taxpayer can elect up to $250,000 of the $500,000 Code Sec. 179 deduction limit (subject to the investment limit) for qualified real property (qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property) for any tax year beginning in 2010 or 2011. The 2010 Tax Relief Act does not extend this treatment.

Research and Development Tax Credit
The Research Tax Credit, which had expired at the end of 2009, has been retroactively extended for two years through December 31, 2011. The credit has been regularly extended since its creation in 1981.

Small Business Capital Gains
The Small Business Jobs Act expanded the exclusion of gain from qualified business stock to 100% for stock acquired between September 27, 2010 and January 1, 2011. Qualified stock must be original issue stock and held more than five years. The 100% exclusion has been extended to stock acquired before January 1, 2012.

Transit Benefits
The $230 employer provided transit benefits have been extended through the end of 2011.

Work Opportunity Tax Credit (WOTC)
The WOTC is intended to encourage employers to hire individuals from certain targeted groups, for example, unemployed veterans and "disconnected youth." The credit, which is based on 40% of up to $6,000 of a targeted employee's wages, was set to expire August 31, 2011. The credit has been extended through December 31, 2011.

Indian employment credit. The bill extends for two years (through 2011) the business tax credit for employers of qualified employees that work and live on or near an Indian reservation. The amount of the credit is 20 percent of the excess of wages and health insurance costs paid to qualified employees (up to $20,000 per employee) in the current year over the amount paid in 1993.

New Markets Tax Credit. Through the New Markets Tax Credit (NMTC) program, the federal government is able to leverage federal tax credits to encourage significant private investment in businesses in low-income communities. For each dollar of qualified private investment, the NMTC program provides investors with either five cents or six cents of federal tax credits (depending on the amount of time that has passed since the original investment was made). The bill extends for two years (through 2011) the new markets tax credit, permitting a maximum annual amount of qualified equity investments of $3.5 billion each year. This is effective for calendar years beginning after December 31, 2009.

Extension of railroad track maintenance credit. The bill extends for two years (through 2011) the railroad track maintenance credit.

Mine rescue team training credit. The bill extends for two years (through 2011) the credit for training mine rescue team members.

Employer wage credit for activated military reservists. The bill extends for two years (through 2011) the provision that provides eligible small business employers with a credit against the taxpayer's income tax liability for a taxable year in an amount equal to 20 percent of the sum of differential wage payments to activated military reservists.

Tax benefits for certain real estate developments. The bill extends for two years (through 2011) the special 15-year cost recovery period for certain leasehold improvements, restaurant buildings and improvements, and retail improvements.

Extension of seven year straight line cost recovery period for motorsports entertainment complexes. The bill extends for two years (through 2011) the special seven year cost recovery period for property used for land improvement and support facilities at motorsports entertainment complexes.

Accelerated depreciation for business property on an Indian reservation. The bill extends for two years (through 2011) the placed-in-service date for the special depreciation recovery period for qualified Indian reservation property. In general, qualified Indian reservation property is property used predominantly in the active conduct of a trade or business within an Indian reservation, which is not used outside the reservation on a regular basis and was not acquired from a related person.

Extension of enhanced charitable deduction for contributions of food inventory. The bill extends for two years (through 2011) the provision allowing businesses to claim an enhanced deduction for the contribution of food inventory.

Extension of enhanced charitable deduction for contributions of book inventories to public schools. The bill extends for two years (through 2011) the provision allowing C corporations to claim an enhanced deduction for contributions of book inventory to public schools (kindergarten through grade 12).

Extension of enhanced charitable deduction for corporate contributions of computer equipment for educational purposes. The bill extends for two years (through 2011) the provision that encourages businesses to contribute computer equipment and software to elementary, secondary, and post-secondary schools by allowing an enhanced deduction for such contributions.

Election to expense advanced mine safety equipment. The bill extends for two years (through 2010) the provision that provides businesses with 50 percent bonus depreciation for certain qualified underground mine safety equipment.

Extension of special expensing rules for U.S. film and television productions. The bill extends for two years (through 2011) the provision that allows film and television producers to expense the first $15 million of production costs incurred in the United States ($20 million if the costs are incurred in economically depressed areas in the United States).

Extension of expensing of environmental remediation costs. The bill extends for two years (through 2011) the provision that allows for the expensing of costs associated with cleaning up hazardous sites.

Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico. The bill extends for two years (through 2011) the provision extending the section 199 domestic production activities deduction to activities in Puerto Rico.

Extension of special tax treatment of certain payments to controlling exempt organizations. The bill extends for two years (through 2011) the special rules for interest, rents, royalties and annuities received by a tax exempt entity from a controlled entity.

Treatment of certain dividends of Regulated Investment Companies (RICs). The bill extends a provision allowing a RIC, under certain circumstances, to designate all or a portion of a dividend as an "interest-related dividend," by written notice mailed to its shareholders not later than 60 days after the close of its taxable year. In addition, an interest-related dividend received by a foreign person generally is exempt from U.S. gross-basis tax under sections 871(a), 881, 1441 and 1442 of the Code. The proposal extends the treatment of interest-related dividends and short-term capital gain dividends received by a RIC to taxable years of the RIC beginning before January 1, 2012.

Treatment of RIC investments as "Qualified Investment Entities" under FIRPTA. The bill extends the inclusion of a RIC within the definition of a "qualified investment entity" under section 897 of the Tax Code through December 31, 2011.

Active financing exception. The bill extends for two years (through 2011) the active financing exception from Subpart F of the tax code.

Look-through treatment of payments between related controlled foreign corporations. The bill extends for two years (through 2011) the current law look-through treatment of payments between related controlled foreign corporations.

Extension of special rule for S corporations making charitable contributions of property. The bill extends for two years (through 2011) the provision allowing S corporation shareholders to take into account their pro rata share of charitable deductions even if such deductions would exceed such shareholder's adjusted basis in the S corporation.

Empowerment Zones. The bill extends for two years (through 2011) the designation of certain economically depressed census tracts as Empowerment Zones. Businesses and individual residents within Empowerment Zones are eligible for special tax incentives.

District of Columbia Enterprise Zone. The bill extends for two years (through 2011) the designation of certain economically depressed census tracts within the District of Columbia as the District of Columbia Enterprise Zone. Businesses and individual residents within this enterprise zone are eligible for special tax incentives. The bill also extends for two years (through 2011) the $5,000 first-time homebuyer credit for the District of Columbia.

Extension of temporary increase in limit on cover over of rum excise tax revenues to Puerto Rico and the Virgin Islands. The bill extends for two years (through 2011) the provision providing for payment of $13.25 per gallon to cover over a $13.50 per proof gallon excise tax on distilled spirits produced in or imported into the United States.

Extension of American Samoa economic development credit. The bill extends through 2011 the American Samoa economic development credit.

*Extension and increase in authorization for qualified zone academy bonds (QZABs)***.** QZABs are a form of tax credit bond which offer the holder a Federal tax credit instead of interest. QZABs can be used to finance renovations, equipment purchases, developing course material, and training teachers and personnel at a qualified zone academy. In general, a qualified zone academy is any public school (or academic program within a public school) below college level that is located in an empowerment zone or enterprise community and is designed to cooperate with businesses to enhance the academic curriculum and increase graduation and employment rates. The provision extends the QZAB program providing an additional $400 million for 2011. It also repeals the direct subsidy feature created as part of the *American Recovery and Reinvestment Act* for 2011 and for any carryforward of unused allocation.

Energy Incentives

The popular energy incentives for individuals who make energy efficient improvements to principal residences such as furnaces, windows, insulation, water heaters, etc., was set to expire at the end of 2010 (Sec. 25C). This provision has been extended to 2011, but provides a 10% credit rather than the more generous 30% credit and will also impose lower credit maximum limits.

Many other business energy incentives were extended and include:

Biodiesel and renewable diesel. The bill extends through 2011 the $1.00 per gallon production tax credit for biodiesel, as well as the small agri-biodiesel producer credit of 10 cents per gallon. The bill also extends through 2011 the $1.00 per gallon production tax credit for diesel fuel created from biomass.

Refined Coal. The bill extends through 2011 the placed-in-service deadline for qualifying refined coal facilities.

Energy-efficient new homes credit. The bill extends through 2011 the credit for manufacturers of energy-efficient residential homes.

Alternative fuels credit. The bill extends through 2011 the $0.50 per gallon alternative fuel tax credit. The bill does not extend this credit any liquid fuel derived from a pulp or paper manufacturing process (i.e., black liquor).

*Special rule for sales of electric transmission property***.** The bill extends through 2011 the present law deferral of gain on sales of transmission property by vertically integrated electric utilities to FERC-approved independent transmission companies.

Special rule for marginal wells. The bill extends through 2011 the suspension on the taxable income limit for purposes of depleting a marginal oil or gas well.

Section 1603. The bill extends for one year the start-of-construction deadline for the cash grant in lieu of tax credit program, established in Section 1603 of the *American Recovery and Reinvestment Act.*

Ethanol. The bill extends through 2011 the per-gallon tax credits and outlay payments for ethanol. The bill also extends through 2011 the existing 14.27 cents per liter (54 cents per gallon) tariff on imported ethanol and the related 5.99 cents per liter (22.67 cents per gallon) tariff on ethyl tertiary-butyl ether (ETBE).

Energy-efficient appliances. The bill extends through 2011 and modifies standards for the Section 45M credit for US-based manufacture of energy-efficient clothes washers, dishwashers and refrigerators.

Disaster Relief

The Act extends certain disaster relief measures which include:

- NYC Liberty Zone
- Various GO Zone Credits

Bonds

While the Act does extend several bond programs into 2012, such as private activity bonds for qualified educational facilities, the Build America Bond Program was not extended.

Estate and Gift Tax Provisions

For decedents dying in 2010, the estate tax was abolished. It was scheduled to be revived at 55% after 2010. The Act has made some significant modifications to, not only the estate tax, but to gift and generation skipping transfer taxes.

The Act imposes a maximum estate tax rate of 35% with a $5 million exclusion ($10 million per married couple) for decedents dying after January 1, 2011 and before December 31, 2012. The exclusion amount is to be adjusted for inflation.

The Act also maintains a traditional stepped up basis rule for all assets included in a gross estate for decedents dying after January 1, 2011 and before December 31, 2012. Prior to the Act passing, the stepped up rules were replaced with modified carry over basis.

The Act provides that estates of decedents dying during 2010, may elect to apply either the carry over basis rule or the stepped up basis rule. Estates of decedents dying in 2010 may choose between (a) estate tax based on $5 million exemption and 35% rate and a stepped up basis or (b) no estate tax and a modified carry over basis.

The Act allows a surviving spouse to elect to use the unused portion of the estate tax exclusion of a deceased spouse (who passed away after 2010), which provides the surviving spouse a larger exclusion. This is known as *portability* which will remain available until the end of 2012. The Act allows estates of decedents dying after December 31, 2009, and up to the date of enactment, nine months to file returns and make payments.

Under the Act, the Gift tax is retained and will be subject to a top rate of 35% with a $5 million exclusion for two years through December 31, 2012. The Act reunifies the Gift and Estate taxes for gifts made after December 31, 2010. Before this change, each tax type had a separate exclusion amount.

Under current law, the Generation Skipping Tax (GST) did not apply for year 2010. The Act revives the GST for 2011 and 2012 with a 35% rate and $5 million exclusion.
Other Estate/Gift Tax provisions include the following extenders:

- Deduction for qualified family owned businesses
- State death tax deduction
- Relief for missed allocations of GST exemption