

## 2010 Cost-of-Living Limits

IRA Contribution Limit \$5,000  
IRA 50 & Over Catch-up Contribution  
\$1,000  
401(k) Deferral Limit \$16,500  
401(k) 50 & Over Catch-up Contribution  
\$5,500  
SIMPLE Deferral limit \$11,500  
SIMPLE 50 & Over Catch-up  
Contribution \$2,500  
Annual Compensation limit \$245,000  
Defined Contribution IRC Sec 415 limit  
\$49,000  
Compensation limit for SEP eligibility  
\$550  
IRC Section 179 \$250,000  
Estate Tax Exclusion Unlimited subject to  
New Carryover Basis Rules  
Social Security Wage Base \$106,800  
[2009 & Prior Years' Limits](#)

## **2010 Standard Mileage Rates:**

Business mileage rate \$0.50  
Medical & Moving mileage rate \$0.165  
Charitable mileage rate \$0.14/mile

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## **Have a Question?**

If you have a subject or question that you would like covered, or comment, please email us at [jenny@jajonescpa.com](mailto:jenny@jajonescpa.com)

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# JENNIFER A. JONES, CPA, LTD.

Volume 11, Issue 2

Client Newsletter

July 2010

**IRS Is Sending Out Letters:** The IRS reports that its Employee Plans Compliance Unit (EPCU) is sending a letter and instructions to 1,200 random employers who sponsor 401(k) plans and asking them to complete a compliance check questionnaire. Responses on such topics as demographics, participation, employer and employee contributions, nondiscrimination testing, distributions and plan loans will be used by EPCU to guide its education and enforcement efforts. According to the IRS, 401(k) plans make up over 60% of all retirement plans but are the most noncompliant. Failure to respond or provide complete information on the questionnaire will result in further action or examination of the plan.

**Have you hired a new employee since February 3, 2010?** If so, you may be eligible for the Temporary Employer Social Security Tax Exemption for Wages Paid to New Hires; and the Temporary Tax Credit for Retaining Qualified New Employees. If your new employee was 1) not employed for more than 40 hours during the 60-day period ending on the date the employee began employment with you, 2) is not related to you, and 3) was not hired to replace another employee unless the other employee left voluntarily or for cause (including downsizing), have your new employee complete [Form W-11](#). You are eligible for the exemption from the employer social security tax.

The IRS posted Q&As for two of the new tax incentives authorized by the 2010 HIRE Act: (1) the payroll tax exemption for hiring unemployed workers, and (2) the business credit for retaining certain newly hired individuals in 2010. The Q&As, along with an IRS news release introducing these two new incentives, are available at [www.irs.gov/businesses/small/article/0,,id=220745,00.html](http://www.irs.gov/businesses/small/article/0,,id=220745,00.html). Also, [click here](#) for more info and [click here](#) to read CCH's Tax Briefing on this law.

**Do you pay for health insurance for your employees?** For IRS' worksheet to determine if your small business is eligible for the Small Business Health Care Tax Credit see [more information about the credit](#), including a step-by-step [guide](#) and [answers to frequently asked questions](#)

**IRS Notice Provides Guidance on Determining Eligibility for Small Firm Health Care Credit** The IRS, on May 17, provided comprehensive guidance on a small-employer tax credit included in recently enacted health care reform legislation. **Notice 2010-44** addresses four primary issues taxpayers raised to IRS and the Treasury Department about the small business health care tax credit—the effect of state subsidies on the federal credit, how add-on insurance is treated, how to calculate the hours worked by employees, and some transition issues small businesses may face.

The tax code Section 45R tax credit, which is effective for taxable years beginning in 2010 through 2013, is designed to encourage small employers to offer health coverage for the first time or to maintain coverage they already provide. Partners in a business, certain owners, and their family members are not taken into account as employees for purposes of the tax credit, the IRS said in the notice.

In order for an employer to qualify for the credit, it must have fewer than 25 full-time-equivalent employees (FTEs) for the taxable year; the average annual wages of its employees for the year must be less than \$50,000 per FTE; and it must maintain a "qualifying arrangement" under which the employer pays a uniform percentage of at least 50 percent of the premium cost of the health coverage for each employee covered under the employer-provided insurance, according to the notice. The Section 45R credit covers up to 35 percent of the premiums that eligible small businesses pay on behalf of their employees and up to 25 percent of the employer's premium payments for a tax-exempt eligible small employer.

The credit will work in two stages, with the 35 percent credit being available through 2013 as the lead-in to the establishment to the state health insurance exchanges. At that point, small employers will be expected to transition employees to the exchanges. The notice makes clear that small businesses receiving state health care tax credits may still qualify for the full federal credit, the IRS said in the news release. The guidance also allows businesses to receive the credit for add-on dental and vision coverage as well as for regular health insurance as long as they meet the requirements of the notice.

The guidance provides three methods for employers to calculate the total number of hours of service that must be taken into account for an employee for the year:

- determine actual hours of service from records of hours worked and hours for which payment is made or due, including such payment for illness, vacation, holiday, and other applicable leave of absence time;
- use a “days-worked equivalency” through which the employee is credited with eight hours of service for each day for which he or she would be required to be credited with at least one hour of service; or
- use a “weeks-worked equivalency” through which the employee is credited with 40 hours of service for each week for which he or she would be required to be credited with at least one hour of service.

Click here to download a copy of **Notice 2010-44**.

### **Tax Year 2012 Form 1099 Filing Requirements:**

Effective for payments made after 2011, newly enacted IRC Sec. 6041(h) requires businesses that pay more than \$600 during the year to corporate providers of property and services to file an information report with each provider and the IRS. According to recent comments by IRS Commissioner Doug Schulman, the IRS will look for opportunities to minimize burden and avoid duplicative reporting. Specifically, he said that the IRS plans to use its "administrative authority to exempt from this new requirement business transactions conducted using payment cards such as credit and debit cards. These transactions will already be covered by reporting requirements on payment card processors, so there is no need for businesses to report them as well. So, whenever a business uses a credit or debit card, there will be no new burden under the new law." News Release IR-2010-68 .

**Estate Tax Planning:** For 2010, there is a one-year repeal of the federal estate and the generation skipping tax, and a reduction in the gift tax. Also for 2010, there is a new system that provides that for the first \$1.3 million of assets, with an additional \$3 million available for a spouse, there will be a step-up in basis to the fair market value on the date of death on an asset by asset basis, and any assets in excess of the \$1.3 million will have what is called a “carryover basis.” For those assets subject to the carryover basis rule, the heir will receive those assets subject to the basis being set at the lower of the fair market value at the date of death or the decedent’s original cost basis, similar to the carryover basis rules that apply to gifts.

Although it hasn’t happened yet, it is possible that Congress will reinstate the estate tax law retroactively to January 1, 2010, and remove the carryover basis rule.

Two actions to take now: 1) have an estate attorney review your will and trust documents to see if the language is appropriate for the current and potential tax situations, and 2) collect and record the ownership and tax basis information of all assets owned, e.g. residences, stocks, bonds, investments, artwork, and collectibles.

**Roth IRA Conversion:** Two advantages of Roth IRAs over traditional IRAs are that qualifying withdrawals from Roth IRAs are federal-income-tax-free and the original Roth account owner need not take required minimum distributions after reaching age 70 1/2, and so can pass the account’s assets on to his or her heirs. Beginning this year, the \$100,000 modified AGI restriction on converting a traditional IRA to a Roth IRA went away. This, coupled with lower IRA asset values, makes 2010 a great time for

many people to make a conversion. According to a story appearing in the *2/5/10 CPA Letter Daily*, 58% of the responding CPAs said that anticipation of higher future tax rates was the most likely trigger for 2010 conversions, and 54% are advising clients to pay tax on the Roth IRA conversion in full in 2010, despite the ability to defer the resulting income into 2011 and 2012.

### **Self-Employment Tax Hike for Sub-Chapter S**

**Firms:** The tax will nail all profits of service firms, starting next year. The revenue raiser, a late addition to a bill that reinstates a set of expired tax breaks, helps offset a portion of the measure’s tax relief. Even though lawmakers failed to approve the bill before Memorial Day, the tax increase on S firms will be part of the measure when it finally passes. Small personal service S firms will be hit...businesses where the principal asset is the reputation and skill of three or fewer workers. Owners of S firms that are partners in a service partnership will owe SECA tax on their entire profit. Currently, the tax is 15.3% of the first \$106,800 in profits and 2.9% above that. The profits of small S firms in these fields will be subject to SECA tax: Accounting. Law. Health. Actuarial science. Engineering. Architecture. Lobbying. Consulting. Brokerage services. Investment management. Sports. Performing arts. The change will end a popular SECA tax saver for personal service S firms: Taking a modest salary and receiving the rest of the profit as a dividend. S corporation profits flow through to the owners’ individual income tax returns as dividends. Those dividends are exempt from self-employment tax, but they are hit with income tax. A few years ago, Treasury inspectors found massive tax avoidance in this area. More than 35,000 one-owner S companies with profits of \$100,000 or more paid no payroll taxes on the profits because the owners didn’t take a salary. Ditto for owners of about 40,000 S firms with profits in the \$50,000-\$100,000 range. So tax writers decided to take action to end any possibility of gaming the system. This ends one advantage of choosing S status for small service businesses. No exception will be allowed for amounts left in the firm for working capital, at least for small professional service S firms. Dividends passed through to owners of larger S service firms or of S corporations that aren’t in professional service fields, such as manufacturers, will continue to be exempt from self-employment tax.

**The Virginia Uniform Power of Attorney Act** As outlined in the 6-29-10 edition of the [ElderLaw News](#) from The Estate Planning and Elder Law Firm, PC, the Virginia Uniform Power of Attorney Act (UPOAA; the Act) has been enacted by the Virginia General Assembly and signed by the Governor. The Act will have a significant impact on laws related to the use and acceptance of durable powers of attorney (DPA) in Virginia.

The enactment of this important bill represents an effort to bring uniformity to an area of law that has been rapidly emerging as a significant, if not vital, estate planning tool. The UPOAA will also provide greater protections for third parties at a time when a dramatically increasing amount of the nation’s wealth is being managed under DPAs because of the aging of the baby boomer generation. Current Virginia law is inadequate to meet those needs.

A DPA is legal document that grants authority to an agent to act on behalf of a principal, and it provides for the continuation of that authority in the event the principal suffers a subsequent

disability or incapacity. As the popularity of DPAs continues to increase, so has litigation related to their use. Unlike guardianships and conservatorships, DPAs require little to no oversight. Therefore, financial exploitation by unscrupulous agents is a widespread problem.

DPAs are governed by state law, and those laws vary substantially. In 2002, the National Conference of Commissioners on Uniform State Laws (NCCUSL) conducted a survey comparing state DPA statutes. The study revealed many issues related to DPAs that needed to be addressed, including (1) improving portability, (2) including safeguards, remedies, and sanctions for abuse by an agent, (3) protecting the reliance of a third party on a DPA, and (4) including remedies and sanctions for third party refusal to honor a DPA.

As a result of this survey, in 2006 the NCCUSL adopted and promulgated the UPOAA. The UPOAA is an endeavor by NCCUSL to codify both state legislative trends and collective best practices, and strike a balance between the need for flexibility and acceptance of an agents authority by third parties and the need to prevent and redress financial abuse. The UPOAA seeks to preserve DPAs as a low-cost, flexible, and private form of surrogate decision making while at the same time attempting to prevent and redress financial abuse of incapacitated individuals. The UPOAA is basically a set of default rules that preserve a principals freedom to choose both the extent of the agents authority and also the rules that govern the agents conduct. While the UPOAA substantially clarifies Virginia law related to DPAs, it also makes several key changes to the law.

A few of those changes are the following:

All powers of attorney are presumed durable unless stated otherwise in the document.

The UPOAA provides protections for third parties who in good faith accept a purportedly acknowledged power of attorney. To promote the acceptance of powers of attorney, the UPOAA places the risk that a power of attorney is invalid upon the principal rather than the third party; however, the risk of loss for a forged DPA rests with the third party who accepted it rather than the purported principal.

The UPOAA rejects an imputed knowledge standard for those individuals who conduct activities through employees; however, third parties must use commercially reasonable systems to disseminate information among employees in order to receive protections under the UPOAA.

The UPOAA provides sanctions against third parties for their unreasonable refusals of DPAs.

**The UPOAA identifies certain powers (e.g., gifting, changing designations of beneficiary) that must be specifically granted.**

Since its inception in 2006, the UPOAA has been enacted in Idaho, New Mexico, Colorado, Maine, Nevada, and the U.S. Virgin Islands. Maryland and Minnesota, along with Virginia, introduced bills in their legislatures in 2010. Additionally, bar associations in Alabama, Massachusetts, and Ohio are currently studying the UPOAA.

For more information on the UPOAA, visit [www.nccusl.com](http://www.nccusl.com). Or

<http://www.lifecareplanningforseniors.com/newsletter.html>

**Charitable Contribution of Credit Card Rebates:** This private letter ruling looked at whether taxpayers have gross income on credit card rebates when taxpayers can choose to direct the rebate to a participating charity under a program offered by the card company, and if these charitable payments qualify for a contribution deduction. The IRS ruled that the rebates directed to a charity are adjustments to the purchase price, rather than gross income, and are deductible contributions as long as the substantiation requirements are met for amounts of \$250 or more. The substantiation requirements were not met in this ruling because the written acknowledgement did not include the date of the contribution by the credit card company. Ltr. Rul. 201027015 .

