

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

On December 17, 2010, the president signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. This Act, in essence, is a two-year extension of the 2001/2003 Bush-era tax cuts. The Act also incorporated many business extensions of the so-called “annual extenders.” The following is a list of the more common provisions that may affect your 2011, and in some cases, 2010 and 2012 tax liability.

BUSINESS INVESTMENT INCENTIVES

Bonus Depreciation. The Act extends the 50% bonus depreciation provision for qualified property acquired after December 31, 2007, and before January 1, 2013. In addition, it allows 100% bonus depreciation for property acquired and placed in service after September 8, 2010, and before January 1, 2012. Thus, taxpayers can claim a 100% depreciation deduction for property acquired and placed in service in the latter third of 2010, all of 2011 (and 2012, for certain property). Property placed in service during 2012 (2013 for certain property) would be eligible for 50% bonus depreciation. The Act also extends the provision allowing corporate taxpayers to elect to accelerate the AMT and research credits in lieu of bonus depreciation to the 2011 and 2012 taxable years. Other special rules apply to this new round of extension property, labeled “round 2 extension property”.

Small Business Expensing. Under prior legislation, for taxable years beginning in 2010 and 2011, small businesses may elect to expense up to \$500,000 of capital investment, with the phase out beginning at \$2,000,000. The limits were scheduled to be lowered to \$25,000 with a \$200,000 limitation for 2012. Under the new law, for 2012, such amount is raised to \$125,000, with a phase out threshold of \$500,000 (both figures to be adjusted for inflation). A \$25,000 maximum and \$200,000 phase out threshold will apply for tax years beginning after 2012 and will not be adjusted for inflation. In view of the 100% bonus depreciation property acquired and placed in service from September 9, 2010, through December 31, 2011, for any property that you acquired or may acquire in excess of the expensing limitations during that period, you should consider whether it would be advantageous to claim 100% bonus depreciation or to accelerate AMT or research credits, rather than electing to expense the cost.

TEMPORARY EMPLOYEE PAYROLL TAX CUT

For 2011 only, the 2010 TRA reduces the Social Security (OASDI) tax rate on employees to 4.2% (from 6.2%) and reduces the self-employment tax (SECA) rate to 10.4% (from 12.4%). The employer OASDI tax rate stays at 6.2%. Note that the 2010 TRA does not reduce the OASDI contribution base, which is \$106,800 for 2011. Thus, the maximum OASDI tax in 2011 for employees is \$4,485.60. This rate reduction is not taken into account in determining the SECA tax deduction allowed for determining net earnings from self employment. As a result, the deduction for

2011 remains 7.65% of self-employment income (determined without regard to the deduction).

EXTENSION OF CERTAIN EXPIRING PROVISIONS

Energy Incentives

New Energy Efficient Home Credit. The Act extends, from December 31, 2009, the new energy efficient home credit for qualified homes acquired from an eligible contractor on or before December 31, 2011.

Suspension of Limitation on Percentage Depletion for Oil and Gas from Marginal Wells. The Act extends the temporary suspension of the taxable income limit on percentage depletion for oil and gas from marginal wells to depletion determined for taxable years beginning before January 1, 2012.

Business Tax Relief

Research Credit. Although the research credit expired on December 31, 2009, the Act extends the credit for amounts paid or incurred on or before December 31, 2011. The December 31, 2008 termination date for the alternative incremental credit election remains unchanged. **Indian Employment Credit.** The Act extends, from December 31, 2009, the Indian employment credit to tax years beginning on or before December 31, 2011. **New Markets Tax Credit.** The Act sets a new national designated investment limitation for the new markets tax credit of \$3.5 billion in 2010 and 2011, and permits unused credits to be carried over to 2016. **Employer Wage Credit for Employees Who Are Active Duty Members of the Uniformed Services.** The Act extends, from December 31, 2009, the activated military reservist wage payment credit of 20% of differential wage payments made to activated military reservists for payments made before January 1, 2012.

15-Year Straight-Line Cost Recovery for Qualified Leasehold Improvements, Qualified Restaurant Buildings and Improvements, and Qualified Retail Improvements. The Act extends, from December 31, 2009, the special 15-year cost recovery period for certain leasehold improvements, restaurant buildings and improvements, and retail improvements to qualified property placed in service before 2012.

7-Year Recovery Period for Motorsports Entertainment Complexes. The Act extends, from December 31, 2009, the 7-year recovery period for motorsports entertainment complexes to property placed in service before 2012. **Accelerated Depreciation for Business Property on an Indian Reservation.** The Act extends, from December 31, 2009, the accelerated depreciation rules for business property located on an Indian reservation to property placed in service before 2012.

Charitable Deduction for Contributions of Food Inventory. The Act extends the special rule for charitable deductions for contributions of food inventory made from the taxpayer's trade or business that expired on December 31, 2009, to contributions made on or before December 31, 2011.

Charitable Deduction for Corporate Contributions of Computer Inventory for Educational Purposes. The Act extends the special rule for charitable deductions for contributions of computer technology and equipment for educational purposes that expired on December 31, 2009, to contributions made on or before December 31, 2011. Expensing of Environmental Remedial Costs. The Act extends, from December 31, 2009, the election to deduct environmental remediation costs in lieu of capitalization through December 31, 2011.

Basis Adjustment to Stock of S Corporations Making Charitable Contributions of Property. Section 1367(a)(2) provides that an S corporation shareholder's §1367(a)(2)(B) basis reduction resulting from the corporation's charitable contribution of property equaled the shareholder's pro rata share of the adjusted basis of the contributed property. The Act extends this special rule from December 31, 2009, to contributions made on or before December 31, 2011.

Empowerment Zone Tax Incentives. The Act extends, from 2009, the designation of certain economically depressed census tracts as Empowerment Zones, within which businesses are eligible for special tax incentives, through 2011.

Exclusion of 100 Percent of Gain on Certain Small Business Stock. The Act extends the 100% exclusion of the gain from the sale of qualifying small business stock to stock that is acquired before January 1, 2012, and held for more than five years.

In Conclusion

This brief summary of the Act provides a limited outline of the major changes. It does not cover some of the various tax changes related to unique industries. Many of the provisions mentioned above have specific limitations or requirements. Business planning decisions should not be made without an in depth discussion of your specific goals and circumstances and the income tax impact of the new as well as old provisions of the income tax laws.