

## **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 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 credits in lieu of bonus depreciation for the 2011 and 2012 tax years.

Other special rules apply to this new round of extension property, labeled "round 2 extension property." If you plan on continuing or increasing your business asset investments, we should sit down to discuss all the procedures to qualify for the maximum depreciation deduction allowable.

**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 certain credits, rather than electing to expense the cost. Please contact us with the specific property acquired and its cost so that we can determine which alternative would yield the greatest tax benefit for your particular circumstances.

### **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). For federal laws other than the tax Code, the rate of tax in effect under § 3101(a) is determined without regard to the reduction in that rate under the 2010 TRA. Also, the income tax deduction allowed under for taxable years beginning in 2011 is determined using 59.6% of the OASDI tax paid, plus one half of the HI tax paid.

### **EXTENSION OF CERTAIN EXPIRING PROVISIONS**

## Energy Incentives

**Incentives for Biodiesel and Renewable Diesel.** The Act extends, from December 31, 2009, the credits for biodiesel, renewable diesel used as fuel, and biodiesel mixture, and the payments for non-taxable biodiesel mixture, for fuel sold or used through December 31, 2011. The Act also provides that biodiesel mixture credits properly determined during 2010 will be allowed, and any refunds or payments attributable to those credits will be made according to IRS guidance.

**Credit for Refined Coal Facilities.** The Act extends, from December 31, 2009, the renewable electricity production credit for facilities producing refined coal that are placed in service before January 1, 2012.

**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.

**Excise Tax Credits and Outlay Payments for Alternative Fuel and Alternative Fuel Mixtures.** The Act allows credits for alternative fuel and alternative fuel mixtures (excepting, in both cases, liquefied hydrogen) and payments for non-taxable alternative fuel and alternative fuel mixtures (excepting, in both cases, liquefied hydrogen) to such fuels sold or used on or before December 31, 2011. The Act also continues to exclude black liquor from credit eligibility. Finally, the Act provides that credits for alternative fuel or alternative fuel mixtures properly determined during 2010 will be allowed, and refunds or payments attributable to those credits will be made according to IRS guidance.

**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.

**Extension of Grants for Specified Energy Property in Lieu of Tax Credits.** The Act extends the American Recovery and Reinvestment Act of 2009 grants for specified energy property in lieu of tax credits through 2011.

**Extension of Provisions Related to Alcohol Used as Fuel.** The Act extends the alcohol fuels credit to any sale or use of such fuels for any period on or before December 31, 2011. However, the credit does not apply to any period before January 1, 2012, during which time the Highway Trust Fund gasoline excise tax financing rates are 4.3 cents per gallon. In addition, the Act extends the reduced credit for ethanol blenders through 2011. The Act also provides that the payments for non-taxable alcohol fuel mixtures apply to such fuel sold or used on or before 2011.

**Energy Efficient Appliance Credit.** The Act extends the energy efficient appliance credit for qualifying dishwashers, clothes washers and refrigerators manufactured in calendar year 2011. The Act decreases the aggregate credit amount allowed to \$25,000,000, less the credit amount allowed in all prior tax years. Also, the Act excludes the most efficient refrigerators and front-loading clothes washers from the aggregate credit amount.

**Alternative Fuel Vehicle Refueling Property.** The Act extends, from December 31, 2010, the alternative fuel vehicle refueling property credit to any non-hydrogen related property placed in service on or before December 31, 2011.

## 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.

**Railroad Track Maintenance Credit.** The Act extends, from December 31, 2010, the railroad track maintenance credit for 50% of qualified railroad track maintenance expenditures paid or incurred in taxable years beginning before January 1, 2012.

**Mine Rescue Team Training Credit.** The Act extends, from December 31, 2009, the mine rescue team training credit of 20% of the cost of training rescue team members to tax years beginning before January 1, 2012.

**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 Contributions of Book Inventories to Public Schools.** The Act extends the special rule for charitable deductions for contributions of book inventory to public schools that expired on December 31, 2009, to contributions 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.

**Election to Expense Mine Safety Equipment.** The Act extends, from December 31, 2009, the election to expense mine safety equipment, generally available for 50% of the cost of any qualified advanced mine safety equipment property, to property placed in service before 2012.

**Special Expensing Rules for Certain Film and Television Productions.** The Act extends, from December 31, 2009, the special expensing rules for certain film and television producers to qualified television or film production costs beginning before 2012. The deduction is generally applicable to the first \$15 million of qualified television or film production costs.

**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.

**Deduction Allowable with Respect to Income Attributable to Domestic Production Activities of**

**Puerto Rico.** The Act extends the special domestic production activities rules for Puerto Rico to apply for the first six taxable years of a taxpayer beginning after December 31, 2005, and before January 1, 2012.

**Modification of Tax Treatment of Certain Payments to Controlling Exempt Organizations.** Under § 512(b)(13)(E), certain payments made to an exempt organization by a controlled organization must be treated as unrelated business income. For payments received or accrued before January 1, 2010, the amount taken into income was limited to “excess payments” as determined under § 482. The Act extends the excess payments rule to include payments received or accrued before January 1, 2012.

**Treatment of Certain Dividends of Regulated Investment Companies.** The Act extends, from December 31, 2009, the exemption from the 30% withholding tax and for qualified interest-related dividends and short-term capital gain dividends received by a foreign person from a regulated investment company (RIC) through December 31, 2011.

**RIC Qualified Investment Entity Treatment Under FIRPTA.** The Act extends, from December 31, 2009, the inclusion of a regulated investment company (RIC) within the definition of a “qualified investment entity” for purposes of determining whether a distribution from a RIC is subject to FIRPTA tax and withholding pursuant to § 897 and 1445 through December 31, 2011. The extension, however, does not apply to the withholding requirement for any payment made before the December 17, 2010 enactment date of the Act. However, a RIC that withheld and remitted tax on post-2009 distributions before the enactment date is not held liable to the distributee for such amounts.

**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.

**Tax Incentives for Investment in the District of Columbia.** The Act 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, within which businesses are eligible for special tax incentives.

**Work Opportunity Credit.** Businesses are allowed to claim a work opportunity tax credit equal to 40% of the first \$6,000 of wages paid to new hires of one of nine targeted groups. While scheduled to expire August 31, 2011, the Act extends the credit through December 31, 2011, effective for individuals who begin work for an employer after December 17, 2010.

**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.

**Qualified Zone Academy Bonds.** Qualified zone academy bonds (QZABs) are tax credit bonds which offer the holder a tax credit instead of interest. They are used to finance renovations, equipment and course material purchases, and teacher training at a qualified zone academy. A qualified zone academy is generally a public school or academic program within that school located in an enterprise community or empowerment zone). The program is designed to work with the business community to increase graduation and employment rates. The Act extends the QZAB program by providing an additional \$400 million for 2011. The Act also repeals the prior law direct subsidy feature of QZABs.

#### **GO Zone Disaster Relief**

**Increase in Rehabilitation Credit.** The Act extends, from December 31, 2009, the increased

rehabilitation credit for qualified rehabilitation buildings and certified historic structures located in the Gulf Opportunity Zone, for amounts paid or incurred on or before December 31, 2011.

**Low-Income Housing Credit Rules for Buildings in GO Zones.** The Act extends the placed in service date for qualification of additional allocations of low-income housing credits made in 2006, 2007, and 2008 for buildings located in the GO Zone, the Rita GO Zone, or the Wilma GO Zone to buildings placed in service before January 1, 2012.

**Bonus Depreciation Deduction Applicable to the GO Zone.** The Act extends, from December 31, 2009, the additional depreciation deduction for Gulf Opportunity Zone extension property for property placed in service by December 31, 2011.

As you can see, the Act covers many, but not all, of the various proposed tax provisions important to the business community. Please contact us so that we can review your particular circumstances in order to maximize your tax benefits for 2010, as well as plan for 2011, and beyond.

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