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After weeks of intense negotiations between the White House and Congressional leaders, Congress passed and President Obama signed into law a two-year extension of soon-to-have-expired Bush-era tax cuts, including an extension of current individual tax rates and capital gains/dividend tax rates. Called the most sweeping tax law in a decade, the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (H.R. 4853), was approved by the Senate on December 15, 2010 and by the House on December 16, 2010. The new law is, however, much more than just an extension of existing tax rates. The new law also provides a temporary across-the-board payroll tax cut for wage earners, a retroactive AMT "patch", estate tax relief, education and energy incentives and many valuable incentives for businesses, including 100 percent bonus depreciation and extension of many temporary tax breaks. This letter highlights many of the key incentives in the new law. As always, please call or email our office for more details.

The 2010 Tax Relief Act - Key Provisions

General Tax Break for Individuals

- The lower tax rates provided for in the Economic Growth and Tax Relief Reconciliation Act of 2001 are extended for two more years. The individual rates will stay at 10%, 15%, 25%, 28%, 33% and 35%.
- Itemized deductions will not be reduced by 3% for higher income taxpayers.
- Personal exemptions will not be phased out for higher income taxpayers.
- The maximum tax on long-term capital gains and qualified dividends will remain at 15% for two years.
- The AMT has been patched for 2010 and 2011.
- Many nonrefundable credits will be allowed to offset the AMT for 2010 and 2011.
- American Opportunity Tax Credit extended for two years.

Business

- A 100% writeoff in the placed-in-service year of the cost of property eligible for bonus depreciation under Code Sec. 168(k). This will apply for property acquired and placed in service after September 8, 2010, and before January 1, 2012.
- A 50% bonus first-year depreciation allowance under Code Sec. 168(k) for property placed in service after December 31, 2011, and before January 1, 2013.
- Extension through December 31, 2012, of the election to accelerate the AMT credit instead of claiming additional first-year depreciation.
- Research credit extended for 2010 and 2011.

Temporary Employee/Self-Employed Payroll Tax Cut for 2011

For 2011, only employees and the self-employed will receive a 2% tax holiday on Social Security tax. Employees will pay 4.2% (6.2% - 2.0%). Self-employed will pay 10.4% (12.4% - 2.0%). The payroll tax holiday does not apply to Medicare tax nor to the employer portion of Social Security tax.

Tax Breaks for Individuals Extended Through 2011

All of the following tax breaks for individuals that expired at the end of 2009 will be retroactively reinstated and extended through 2011:

- \$250 above-the-line deduction for certain expenses of elementary and secondary school teachers.
- Election to take an itemized deduction for State and local general sale taxes in lieu of the itemized deduction permitted for State and local income taxes.
- Increased contribution limits and carryforward period for contributions of appreciated real property, including partial interests in real property, for conservation purposes.
- Above-the-line deduction for qualified tuition and related expenses.
- Provision that permits taxpayers age 70-1/2 or older to make tax-free distributions to charity from an Individual Retirement Account (IRA) of up to \$100,000 per taxpayer, per tax year (additionally, individuals will be allowed to treat IRA transfers to charities during January of 2011 and as if made during 2010).

The following tax breaks for individuals that were set to expire at the end of 2010 will be extended through 2011:

- Treatment of mortgage insurance premiums as deductible qualified residence interest.
- Exclusion of 100% of gain on certain small business stock.
- Energy tax credit for energy efficiency improvements.

Estate Tax

- Lowers estate and GST taxes for 2011 and 2012 by increasing the exemption amount (technically, the applicable exclusion amount) from \$1 million to \$5 million (as indexed after 2011) and reducing the top rate from 55% to 35%.
- Allows estates of decedents dying in 2010 to choose between (1) estate tax (based on a \$5 million exemption and 35% top rate) and a step-up in basis, or (2) no estate tax and modified carryover basis. In technical terms, the Act achieves this choice by making the estate tax and basis changes effective retroactively for estates of decedents dying after 2009 but allowing the opt-out choice for estates of decedents dying in 2010.
- For gifts made after December 31, 2010, reunifies the gift tax with the estate tax, with an applicable exclusion amount of \$5 million and a top estate and gift tax rate of 35%.
- Provides that the GST tax exemption for decedents dying or gifts made after December 31, 2009, is equal to the applicable exclusion amount for estate tax purposes (e.g., \$5 million for 2010). Therefore, up to \$5 million in GST tax exemption may be allocated to a trust created or funded during 2010. Although the GST tax is applicable in 2010, the GST tax rate for transfers made during 2010 is 0%. The GST tax rate for transfers made in 2011 and 2012 will be 35%.
- For a decedent dying after December 31, 2009, and before the enactment date, provides that the due date for actions (e.g., filing an estate tax return) is not to be earlier than the date that's nine months after the enactment date.
- Effective for estates of decedents dying after December 31, 2010, allows the executor of a deceased spouse's estate to transfer any unused exemption to the surviving spouse.

The new law extends, renews or enhances a large number of tax incentives targeted to businesses. Please contact our office if you have any questions about the provisions we have discussed or any of the measures in the new law. Our office can help you plan a strategy that maximizes your tax savings.



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