

**WEALTH PRESERVATION AND TAX PLANNING ALERT**

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**Tax Provisions Scheduled to Expire in 2011**

Last December, President Obama signed into law the *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010* (the “2010 Tax Relief Act”) which included certain temporary tax breaks for individuals and businesses, some of which are scheduled to expire at the end of this year. For a discussion of the 2010 Tax Relief Act, [click here](#).

**Expiring 2% Payroll Tax Cut for Employees and Self-Employed Individuals**

The 2010 Tax Relief Act provided a 2% reduction for 2011 in the employee’s portion of the old-age, survivors, and disability insurance (OASDI) payroll tax (i.e., the social security tax) from 6.2% to 4.2%. A similar 2% reduction also applied in 2011 for self-employed individuals. The employer’s payroll tax rate, however, remained the same.

This temporary 2% OASDI payroll tax reduction is scheduled to expire at the end of this year. Although there appears to be bi-partisan support for extending this payroll tax cut, there is a significant divergence between Senate Democrats and House Republicans regarding how such a payroll tax reduction should be paid for.

**Expiring Provisions Regarding Alternative Minimum Tax**

The 2010 Tax Relief Act increased the alternative minimum tax (AMT) exemption amounts for individuals for 2010 and 2011 to reflect indexing for inflation. In addition, this legislation allowed individuals to offset their AMT (and regular tax) liability by their personal nonrefundable tax credits for 2010 and 2011. Prior to the 2010 Tax Relief Act, Congress has increased the AMT exemption amounts (and has allowed AMT tax to be offset by personal nonrefundable tax credits) by means of a legislative “AMT patch” which has typically been enacted on an annual basis.

These AMT provisions are scheduled to expire at the end of this year. Accordingly, unless Congress acts to extend these provisions, more “middle-class” taxpayers will be subject to AMT liability. It is hopeful that Congress will enact an “AMT patch” for 2012 similar to what it has done in recent prior years.

**Expiring Tax Breaks for Individuals**

Set forth below are some of the tax breaks for individuals that, barring subsequent tax legislation, will expire at the end of this year:

- Deduction of state and local sales taxes.
- Above-the-line deduction for qualified tuition and related expenses.
- New energy efficient home credit and the energy efficient appliance credit.
- Allowing qualified mortgage insurance premiums to be deducted as qualified residence interest.
- Tax-free distributions of up to \$100,000 from individual retirement plans (IRAs) to eligible charities, after the individual for whose benefit the plan has been maintained has attained at least age 70 1/2. These distributions are considered as part of the individual’s required minimum distribution.

**Expiring Tax Breaks for Businesses**

Set forth below are some of the tax breaks for businesses that, barring subsequent tax legislation, will expire at the end of this year:

- Research tax credit.
- Work opportunity tax credit.
- New markets tax credit.
- Empowerment zone tax initiatives.
- 15-year write-off for qualified leasehold improvements, qualified restaurant buildings and improvements and qualified retail improvements placed in service in 2010 or 2011.
- Expensing of environmental remediation costs.
- Subpart F exclusion for certain active financing income.

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- The “look-through” rule for payments between related controlled foreign corporations (CFCs) under the foreign personal holding company income rules.
- Exclusion of 100% of gain on sale or exchange of qualified small business stock held for more than 5 years.

### Expiring Investment Incentives

Set forth below are some of the investment incentives that, barring subsequent tax legislation, will expire at the end of this year:

- 100% bonus depreciation for qualified property placed in service after September 8, 2010 and before January 1, 2012. This period is extended to January 1, 2013 for certain longer-lived and transportation property.
- Increased maximum expensing election of \$500,000 under Internal Revenue Code Section

179 for investments in qualified assets, subject to reduction for investments exceeding \$2 million.

The above summary is not intended to be an exhaustive summary of the expiring tax provisions of the 2010 Tax Relief Act, but rather is intended to highlight some of the more important provisions which, barring subsequent tax legislation, are scheduled to expire at the end of this year. ■

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