
THOMPSON HINE

December 2010

TAX UPDATE

# Income and Estate Tax Provisions of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010

## SELECTED INCOME AND ESTATE TAX PROVISIONS

On December 17, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("Act"). The Act includes the following selected income, estate, gift and generation-skipping transfer (GST) tax provisions:

### *Income Tax Provisions*

The Act extends a number of Bush-era income tax provisions. Significant items include:

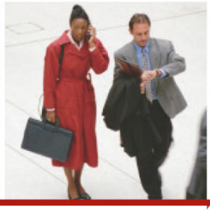
- Extension of the 10 percent, 15 percent, 25 percent, 28 percent, 33 percent and 35 percent individual income tax rates for two years (through 2012).
- Extension of the favorable current capital gain rates (e.g., 15 percent) for certain long-term capital gains and qualifying dividends for another two years (through 2012).
- No overall limitation on itemized deductions for two additional years (through 2012).
- No phase-out of personal exemptions for two additional years (through 2012).
- Extension of relief from the "marriage penalty" by increasing the basic standard deduction and the 15 percent rate bracket for married persons for another two years (through 2012).
- Extension of the $1,000 child tax credit for two additional years (through 2012).
- Extension of dependent care tax credit, adoption credit and employer-provided child care tax credit.

The Act increases the alternative minimum tax (AMT) exemption amount and permits the use of certain nonrefundable personal credits against the AMT in order to reduce the AMT burden on taxpayers for 2010 and 2011.

### *Business and Investment Incentives*

The Act provides a number of business and investment incentives. Significant items include:

- Extension and expansion of additional first-year depreciation to allow deduction of 100 percent of the cost of qualifying new property placed in service after September 8, 2010 and before January 1, 2012 (before January 1, 2013 for certain longer-lived and transportation property).

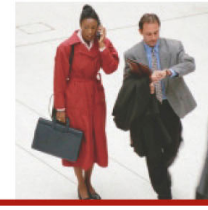


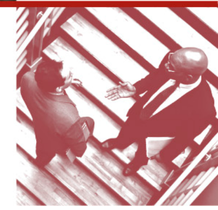
- Allowance of 50 percent additional first-year depreciation deduction for qualified new property placed in service after December 31, 2011 and before January 1, 2013 (after December 31, 2012 and before January 1, 2014 for certain long-lived and transportation property).
- Extension of election to increase the taxpayer's minimum tax credit limitation by the bonus depreciation amount in lieu of claiming bonus depreciation for property placed in service in 2011 and 2012.
- For tax years beginning in 2012, the maximum Section 179 expense amount is $125,000, reduced on a dollar-for-dollar basis to the extent that the cost of qualifying property exceeds $500,000. For taxable years beginning in 2013 and later, the maximum expensing amount is $25,000 and the phase-out limitation amount is $200,000.
- For 2011, the old age, survivors and disability insurance (OASDI) portion of the employee FICA tax rate is reduced by two percentage points, from 6.2 percent to 4.2 percent. Similarly, the self-employment OASDI tax rate is also reduced by two percentage points, from 12.4 percent to 10.4 percent. A similar reduction applies to railroad retirement tax.

***Extension of Certain Expiring Provisions***

The Act extends certain expiring tax provisions. Significant items include:

- Extension of research credit for two years (through December 31, 2011).
- Extension of new markets tax credit for two years, through 2011, permitting up to $3.5 billion in qualifying equity investments for each of 2010 and 2011. Unused new markets tax credits may be carried over until 2016.
- Extension of 15-year straight-line amortization for qualified leasehold improvements, qualified restaurant property and qualified retail improvements for two years, to apply to property placed in service on or before December 31, 2011.
- Extension of enhanced charitable deductions for contributions of food inventories, book inventories and computer equipment to designated institutions for two years (through 2011).
- Extension of deduction for certain environmental renovation costs for two years (through 2011).
- Extension of the exception to unrelated business taxable income regarding payments of rent, royalties, annuities or interest income by a controlled organization to its tax-exempt controlling parent pursuant to a binding written contract in effect on August 17, 2006.
- Extension of the temporary 100 percent capital gains exclusion for individuals who sell "qualified small business stock."
- Extension of the Section 954(c)(6) look-through rule for dividends, interest, rents and royalties received by a controlled foreign corporation from a related controlled foreign corporation for two years (through 2011).





The Act also extends certain energy-related provisions:

- Extension of income tax credit, excise tax credit and payment provisions for biodiesel and renewable diesel for two additional years (through December 31, 2011). (Claim procedures will apply for retroactive relief for 2010.)
- Extension of the alternative fuel tax credit (except for liquid fuel derived from a pulp or paper manufacturing process) and the investment tax credit for alternative vehicle refueling property.
- Extension of new energy-efficient home credit to qualifying homes purchased before January 1, 2012, and a one-year extension (through 2011) of tax credit for energy efficient dishwashers, clothes washers and refrigerators.
- Grants for specified energy property in lieu of credits are authorized through 2011.

Similarly, the Act extends several individual tax provisions:

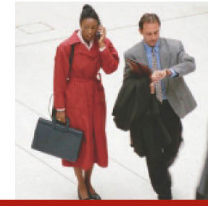
- Extension through 2011 of deduction for certain expenses of elementary and secondary school teachers.
- Extension through 2011 of the election to deduct state and local sales taxes in lieu of state and local income taxes.
- Extension of the special rule regarding contributions of capital gain real property by individuals for conservation purposes, and the exclusion from gross income for distributions from an IRA that are “qualified charitable distributions” (through 2011).
- Extension of the qualified tuition deduction (through 2011).
- Extension through 2011 of the increase in the monthly exclusion for employer-provided van pool and transit pass benefits and the deduction for mortgage insurance premiums.

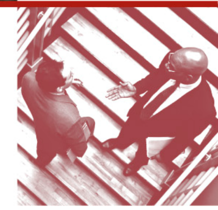
***Estate, Gift and GST Provisions***

The Act makes important modifications to the estate, gift and GST law. Significant items include:

Reinstatement of the estate tax:

- The Act retroactively reinstates the federal estate tax for decedents dying after December 31, 2009.
- The Act sets the estate tax applicable exclusion amount, or exemption, at $5 million per person (or $10 million for married couples), and indexes the exemption for inflation for decedents dying after December 31, 2011.
- The Act sets the maximum estate tax rate at 35 percent.





Reunification of the estate and gift taxes:

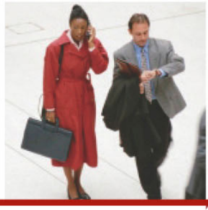
- For gifts made after December 31, 2010, the Act reunifies the federal estate and gift taxes so that the gift tax exemption is equal to the estate tax exemption (i.e., \$5 million per person or \$10 million for married couples), and the maximum gift tax rate is equal to the maximum estate tax rate (i.e., 35 percent).
- For gifts made during 2010, the Act sets the gift tax exemption at \$1 million per person (as under prior law) and sets the maximum gift tax rate at 35 percent (as under prior law).

Reinstatement of the GST tax:

- The Act retroactively reinstates the federal GST tax for decedents dying and transfers made after December 31, 2009.
- The Act provides that the GST tax exemption is equal to the estate tax exemption (i.e., \$5 million per person or \$10 million for married couples).
- The Act provides that, although the GST tax applies in 2010, the GST tax rate for decedents dying and transfers made during 2010 is 0 percent.
- For decedents dying and transfers made during years after 2010, the Act sets the GST tax rate equal to the highest estate and gift tax rate in effect for such year (i.e., 35 percent for 2011 and 2012).

Repeal of the modified carryover basis rules; election for decedents dying during 2010:

- The Act generally repeals the modified carryover basis rules that, under prior law, would have applied in determining the tax basis in property acquired from a decedent who dies during 2010.
- Under the Act, a recipient of property acquired from a decedent who dies after December 31, 2009 generally will have a tax basis in such property equal to the fair market value of such property under the "stepped up" basis rules that applied to assets acquired from decedents who died during 2009.
- The Act, however, allows the executor of the estate of a decedent who dies during 2010 to elect to apply the tax laws as if the new estate tax and basis step-up rules had not been enacted. Thus, instead of applying the aforementioned new estate tax and basis step-up rules of the Act, such executor may elect to have prior law (as enacted under EGTRRA) apply. Generally, if such an election is made, the estate would not be subject to the estate tax, but the tax basis of property acquired from the decedent would be determined under the modified carryover basis rules.



Portability of the estate tax exemption between spouses:

- The Act provides that any portion of the estate tax exemption that remains unused at the death of a spouse who dies after December 31, 2010 generally is available for use by the surviving spouse in addition to the surviving spouse's own estate tax exemption.
- A surviving spouse may utilize the predeceased spouse's "carryover exemption" in addition to his or her own exemption for transfers made during life or at death.
- In order for portability to apply, a special election must be made on a timely filed estate tax return (including extensions) of the predeceased spouse.

Miscellaneous provisions:

- The Act allows for a deduction of certain death taxes paid to any state or the District of Columbia.
- The Act extends the EGTRRA modifications to rules pertaining to installment payments of estate taxes, qualified conservation easements and certain technical provisions relating to the GST tax.
- The Act provides for the extension of filing deadlines for certain transfer tax returns.
- The Act's sunset provisions require that the EGTRRA estate, gift and GST tax rules and the new rules of the Act will not apply after December 31, 2012.

## For More Information

For more information on the Act and its provisions, please contact any of our **Tax** or **Personal & Succession Planning** lawyers.

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