President Signs Two-Year Extension Of Bush-Era Tax Cuts, Payroll Tax Relief, Estate Tax Compromise

President Obama signed a multi-billion dollar tax cut package, the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (2010 Tax Relief Act) (P.L. 111-312), on December 17. The new law follows through on the framework agreed to December 6 by President Obama and GOP leaders in Congress. The 2010 Tax Relief Act extends the Bush-era individual and capital gains/dividend tax cuts for all taxpayers for two years. The bill also provides for an AMT “patch,” a one-year payroll tax cut, 100 percent bonus depreciation through 2011 and 50 percent bonus depreciation for 2012, a top federal estate tax rate of 35 percent with a $5 million exclusion, and more.

IMPACT. The new law gives taxpayers some certainty in tax planning for the next two years, especially concerning the individual income tax rates, capital gains/dividend tax rates and the estate tax. However, the provisions are temporary and the new law punts the ultimate fate of the Bush-era tax cuts to 2012, a presidential election year.

INDIVIDUALS

Individual Tax Rates

Under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the individual income tax rates had been scheduled to revert from their current levels of 10, 15, 25, 28, 33, and 35 percent to 15, 28, 31, 36, and 39.6 percent after December 31, 2010 (the 10 percent rate was put in place by EGTRRA). The 2010 Tax Relief Act extends all individual rates at 10, 15, 25, 28, 33, and 35 percent for two years, through December 31, 2012.

IMPACT. EGTRRA made across the board rate reductions and the 2010 Tax Relief Act will keep all of them, albeit for only two years, at an estimated cost of over $186 billion. President Obama has said he will make the sunset of the reduced individual income tax rates. With-in hours of passage, the IRS reacted with Notice 1036, which makes available the employers early release copies of new 2011 withholding tables that reflect the payroll tax cut and extended income tax rates.
**IMPACT.** Combined with the payroll tax cut (discussed below), the extension of the individual rate cuts will give many individuals a significant increase in immediate dollars available to them in 2011 over what would have resulted without a tax bill. For example, an individual earning $50,000 in 2011 will see an approximate tax savings of $1,890 in combined income tax and payroll tax rate reductions ($890 and $1,000, respectively) over what was scheduled under the EGTRRA sunset.

The income tax rate schedule used by estates and nongrantor trusts (15, 25, 28, 33 and 35 percent) also has been extended for two years. The 10 percent bracket established under EGTRRA for individuals has never applied to estates and trusts.

**Capital Gains/Dividends**

Qualified capital gains and dividends are taxed at a maximum rate of 15 percent (zero percent for taxpayers in the 10 and 15 percent income tax brackets) for 2010. The 2010 Tax Relief Act continues this treatment for two years, through December 31, 2012.

**IMPACT.** Without any action on Capitol Hill, the maximum rate on net capital gain had been scheduled to rise to 20 percent in 2011 (10 percent for taxpayers in the 15 percent bracket), under the sunset rule in the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA). Without the 2010 Tax Relief Act, the rate on qualified dividends also would have risen from 15 percent to the tax rates on regular income that threatened to reach as high as 39.6 percent.

**COMMENT.** The 2010 Tax Relief Act also extends the 100 percent exclusion of gain realized from qualified small business stock held for more than five years. (See Business Incentives/Small Business Stock, below, for details.)

Qualified dividends, which continue to be eligible for the reduced tax rates, are dividends received from a domestic corporation or a qualified foreign corporation, on which the underlying stock is held for at least 61 days within a specified 121 day period. A qualified foreign corporation is eligible for U.S. treaty benefits or has stock that is readily tradable on an established U.S. securities market. The reduced tax rates do not apply to dividends received from an organization that is exempt from taxation under Code Sec. 501 or was a tax-exempt farmers’ cooperative in either the tax year of the distribution or the preceding tax year, dividends received from a mutual savings bank that received a deduction under Code Sec. 591, or deductible dividends paid on employer securities.

**PLANNING TIP.** While the extension of the maximum capital gains tax rate is receiving the most press attention, continuation of the zero percent rate will be equally as important to many taxpayers, from graduate students to retirees to those who live on their portfolio savings. To the extent that capital gains and dividends, when added to other taxable income, do not exceed the top of the 15 percent income tax bracket ($34,500 for single individuals or $69,000 for joint filers in 2011), those capital gains and dividends are effectively tax-free, subject to the zero percent rate. Gifts of appreciated securities to taxpayers in that rate bracket might also continue to be a worthwhile technique to maximize the value of such gifts.

**CAUTION.** Installment payments are subject to the tax rates for the year of the payment, not the year of the sale. Thus, the capital gains portion of payments made after 2012 may be subject to a higher 20-percent rate under sunset provisions, irrespective of whether the sales agreement was executed in a year, such as 2010, 2011 or 2012, in which the maximum capital gains rate was set at a lower rate.

The 2010 Tax Relief Act also extends the treatment of dividends received from a regulated investment company (RIC), real estate investment trust (REIT) and other qualified pass-through entities as qualified dividends for purposes of the reduced tax rates. Rules setting the accumulated earnings tax and

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### CCH PROJECTED TAX RATES FOR 2011 UNDER THE 2010 TAX RELIEF ACT

#### Single Individuals

<table>
<thead>
<tr>
<th>If taxable income is:</th>
<th>The tax will be:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $8,500</td>
<td>10% of taxable income</td>
</tr>
<tr>
<td>Over $8,500 but not over $34,500</td>
<td>$850.00 plus 15% of the excess over $8,500</td>
</tr>
<tr>
<td>Over $34,500 but not over $83,600</td>
<td>$4,750.00 plus 25% of the excess over $34,500</td>
</tr>
<tr>
<td>Over $83,600 but not over $174,400</td>
<td>$17,025.00 plus 28% of the excess over $83,600</td>
</tr>
<tr>
<td>Over $174,400 but not over $379,150</td>
<td>$42,449.00 plus 33% of the excess over $174,400</td>
</tr>
<tr>
<td>Over $379,150</td>
<td>$110,016.50 plus 35% of the excess over $379,150</td>
</tr>
</tbody>
</table>

#### Married Couples Filing Jointly

<table>
<thead>
<tr>
<th>If taxable income is:</th>
<th>The tax will be:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not over $17,000</td>
<td>10% of taxable income</td>
</tr>
<tr>
<td>Over $17,000 but not over $69,000</td>
<td>$1,700.00 plus 15% of the excess over $17,000</td>
</tr>
<tr>
<td>Over $69,000 but not over $139,350</td>
<td>$9,500.00 plus 25% of the excess over $69,000</td>
</tr>
<tr>
<td>Over $139,350 but not over $212,300</td>
<td>$27,087.50 plus 28% of the excess over $139,350</td>
</tr>
<tr>
<td>Over $212,300 but not over $379,150</td>
<td>$47,513.50 plus 33% of the excess over $212,300</td>
</tr>
<tr>
<td>Over $379,150</td>
<td>$102,574.00 plus 35% of the excess over $379,150</td>
</tr>
</tbody>
</table>
personal holding company tax at the maximum 15 percent rate for qualified dividends are also extended.

**COMMENT.** The current 28 and 25 percent capital gains rates for collectibles and recaptured $250 gain, respectively, would continue unchanged.

**Itemized Deduction Limitation**

The “Pease” limitation (named after the member of Congress who sponsored the bill enacting it) reduces the total amount of a higher-income individual’s otherwise allowable deductions. Under EGTRRA, the Pease limitation is repealed for 2010 but was scheduled to return in full after 2010. The 2010 Tax Relief Act extends full repeal of the Pease limitation for two years, through December 31, 2012.

**COMMENT.** The Pease limitation was gradually repealed starting in 2006 until fully repealed for 2010. Certain deductions (medical expenses, investment interest, casualty, theft, and wagering losses), however, have never been impacted by the Pease limitation.

**Personal Exemption Phaseout**

Before 2010, taxpayers with incomes over certain thresholds were subject to the personal exemption phaseout (PEP). The PEP reduced the total amount of exemptions that may be claimed by two percent for each $2,500 or portion thereof ($1,250 for married couples filing separate returns) by which the taxpayer’s adjusted gross income (AGI) exceeded the applicable threshold (projected for 2011 to start at $169,550 for single filers and $254,350 for joint filers). Under EGTRRA, the PEP is repealed for 2010. The 2010 Tax Relief Act extends repeal of the PEP for two years, through December 31, 2012.

**COMMENT.** The personal exemption amount for 2010 is $3,650. CCH projects the inflation-adjusted personal exemption amount for 2011 will rise to $3,700.

**Marriage Penalty Relief**

EGTRRA provided relief from the so-called marriage penalty by increasing the basic standard deduction for a married couple filing a joint return to twice the amount for a single individual. EGTRRA also temporarily expanded the size of the 15 percent income tax rate bracket for married couples filing a joint return to twice that of single filers to help mitigate the marriage penalty. The 2010 Tax Relief Act extends EGTRRA’s marriage penalty relief for two years, through December 31, 2012.

**IMPACT.** The Joint Committee on Taxation estimates that higher-income taxpayers will save over $20 billion from the combined itemized deduction and personal exemption provisions in the new law.

**Child Tax Credit**

The 2010 Tax Relief Act extends the $1,000 child tax credit for two years, through December 31, 2012. Also extended for two years are enhancements to the credit made by EG-TRRA, the 2009 Recovery Act and other bills. The 2010 Tax Relief Act also extends alternative minimum tax (AMT) benefits: the credit is allowed against the AMT and the refundable portion is not reduced by the AMT.

**IMPACT.** The child credit continues to be phased out for taxpayers with adjusted gross income starting at $110,000 for joint filers ($75,000 for others). The qualifying child must be under age 17 at the close of the year and satisfy relationship, residency, support, citizenship, and dependent tests.

**IMPACT.** Under EGTRRA’s sunset rules, the child credit was scheduled to revert to $500 per qualifying child.

**COMMENT.** To the extent the child tax credit exceeds an individual’s tax liability, the taxpayer may be eligible for a refundable credit (the additional child tax credit) equal to 15 percent of earned income in excess of a threshold dollar amount. Under EGTRRA, the threshold was $10,000 indexed for inflation. The 2009 Recovery Act reduced the threshold to $3,000 for 2009 and 2010. The 2010 Tax Relief Act extends the $3,000 threshold for two years, through December 31, 2012. However, the 2010 Tax Relief Act stops indexing for inflation of the $3,000 earnings threshold for that period.

**Earned Income Tax Credit**

EGTRRA and subsequent legislation temporarily increased the beginning and end points of the earned income tax credit (EITC), increased the credit for three or more children and made other taxpayer friendly changes. Legislation also simplified the definition of earned income, eliminated the rule that reduced a taxpayer’s EITC by the amount of AMT liability, reformed the relationship test, modified the tie-breaking rule, and gave the IRS additional math error authority. All these enhancements were subject to the general EGTRRA sunset of December 31, 2010. The 2010 Tax Relief Act extends the enhanced EITC for two years, through December 31, 2012.
Adoption Credit

Taxpayers who incur qualified adoption expenses may be eligible for the adoption credit or, in the case of employer-provided assistance, an exclusion from income. EGTRRA increased the dollar limitation for the adoption credit and the income exclusion for employer-paid or reimbursed adoption expenses to $10,000 (indexed for inflation) (both for non-special needs adoptions and special needs adoptions). The Patient Protection and Affordable Care Act (PPACA) increased the credit and exclusion by another $1,000 (adjusted for inflation) for 2010 and 2011. The PPACA also made the adoption credit refundable for 2010 and 2011. The 2010 Tax Relief Act extends the enhancements in EGTRRA to the credit and exclusion amount through December 31, 2012.

**IMPACT.** Both the adoption credit and the exclusion amount phase out ratably for taxpayers with modified AGI between $182,520 and $222,250 (indexed for inflation after 2010).

**COMMENT.** The 2010 Tax Relief Act does not extend the enhancements to the adoption credit and exclusion made by the PPACA. Therefore, the credit is not refundable after 2012 and the additional $1,000 under the PPACA is not available after 2012.

Dependent Care Credit

A taxpayer who incurs expenses to care for a child under age 13 or for an incapacitated dependent or spouse to enable him or her to work or look for work can claim a dependent care credit. EGTRRA temporarily increased the maximum amount of eligible expenses for the dependent care credit from $2,400 to $3,000 (from $4,800 to $6,000 for more than one qualifying individual). EGTRRA also raised the maximum credit from 30 to 35 percent of qualifying expenses and provided for a reduction in the credit, but not below 20 percent, by one percentage point for each $2,000, or fraction thereof, of AGI above a $15,000 threshold amount. The 2010 Tax Relief Act extends the enhanced dependent care credit for two years, through December 31, 2012.

**IMPACT.** The 35 percent rate under the 2010 Tax Relief Act therefore continues to be applied to a maximum $3,000 of eligible expenses, $6,000 for more than one eligible dependent (for a maximum $1,050/$2,100 credit). The 35-percent credit rate will also continue to be reduced, but not below 20 percent, by each percentage point of AGI above $15,000.

Employer-Provided Child Care

Employers that provide child care facilities may be eligible for a tax credit. Under EGTRRA, employers have been eligible for a tax credit equal to 25 percent of qualified expenses for employee child care plus an amount equal to 10 percent of qualified expenses for child care resource and referral services. The credit is subject to a $150,000 annual cap on qualified costs. The new law extends the credit for two years, through December 31, 2012.

**COMMENT.** The AOTC can be claimed for all four years of postsecondary education. The old HOPE credit was limited to the first two years of post-secondary education.

Educational Assistance Exclusion

Prior to EGTRRA, graduate school tuition assistance did not qualify for the exclusion. EGTRRA allows graduate school tuition to qualify and the 2010 Tax Relief Act extends this benefit for two years.
**Student Loan Interest Deduction**

EGTRRA eliminated a 60-month rule for the $2,500 above-the-line student loan interest deduction and expanded the modified AGI range for phase-out. This treatment was scheduled to expire after December 31, 2010. The 2010 Tax Relief Act extends the enhancements for two years, through December 31, 2012.

**Coverdell Education Savings Accounts**

EGTRRA increased the maximum contribution amount to a Coverdell Education Savings Account (ESA) from $500 to $2,000 and, among other things, made elementary and secondary school expenses, in addition to post-secondary school expenses, qualified expenses. These enhancements were scheduled to sunset after 2010. The 2010 Tax Relief Act extends them for two years, through December 31, 2012.

**Scholarships**

Under EGTRRA, the National Health Service Corps Scholarship Program and the Armed Forces Scholarship Program are qualified scholarships for exclusion from income purposes. Because of EGTRRA’s sunset rules, these scholarships were scheduled to be included in a recipient’s income after 2010. The 2010 Tax Relief Act extends the income exclusion for these scholarships for two years, through December 31, 2012.

**Individual Tax Extenders**

The 2010 Tax Relief Act extends a number of temporary individual tax incentives which had expired at the end of 2009. These incentives, known as extenders, are extended for two years (2010 and 2011).

Among the individual incentives extended by the new law (not an exhaustive list) are:

- Teacher’s classroom expense deduction
- Charitable contribution of IRA proceeds
- State and local sales tax deduction
- Higher education tuition deduction

**COMMENT.** The amount of qualified tuition and related expenses for the higher education tuition deduction must be reduced for certain items. These include any exclusion from gross income for a Coverdell ESA and income from savings bonds used to pay higher education tuition and fees. Other limits also apply relating to the HOPE and Lifetime Learning credits.

**ALTERNATIVE MINIMUM TAX**

The 2010 Tax Relief Act provides an AMT “patch” intended to prevent the AMT from encroaching on middle income taxpayers by providing higher exemption amounts and other targeted relief for 2010 and 2011. Without this patch, which had expired at the end of 2009, an estimated 21 million additional households would be subject to the AMT.

The 2010 Tax Relief Act increases the exemption amounts for 2010 to $47,450 for individual taxpayers, $72,450 for married taxpayers filing jointly and surviving spouses, and $36,225 for married couples filing separately.

**IMPACT.** Without the AMT patch, the exemption amounts for 2010 and again for 2011 would have dropped to $33,750 for unmarried individuals filing a single return, $45,000 for married couples filing a joint return and surviving spouses, and $22,500 for married individuals filing a separate return. The exemption amounts under the 2009 patch were $46,700 for unmarried individuals filing a single return, $70,950 for married couples filing a joint return and surviving spouses, and $35,475 for married couples filing a separate return.

**COMMENT.** The President’s Deficit Commission recommended on December 1, 2010 what some experts are calling a “super AMT” for all taxpayers that would replace the current income tax and AMT structure entirely. A “super AMT” would be similar to the current AMT in denying certain tax preference items... but more so, with many more deductions and credits disallowed in computing taxable income. For example, the mortgage interest deduction might be severely or completely eliminated. In exchange, tax rates would be significantly lower than they now exist. President Obama has endorsed a serious discussion of tax reform starting next year. Momentum for a broader solution to annual AMT “patches” may gradually start to build.

**PAYROLL TAX CUT**

The 2010 Tax Relief Act reduces the employee-share of the OASDI portion of Social Security taxes from 6.2 percent to 4.2 percent for wages earned during the payroll tax holiday period (calendar year 2011) up to the taxable wage base of $106,800. Self-employed individuals will pay 10.4 percent on self-employment income up to the threshold.

**AMT PATCH**

**Exemption amounts for 2010 and 2011 with/and without a patch:**

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Single individuals/not surviving spouse:</td>
<td>$47,450/$33,750</td>
<td>$48,450/$33,750</td>
</tr>
<tr>
<td>Married couples filing jointly/surviving spouse:</td>
<td>$72,450/$45,000</td>
<td>$74,450/$45,000</td>
</tr>
<tr>
<td>Married couples filing separately:</td>
<td>$36,225/$22,500</td>
<td>$37,225/$22,500</td>
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</tbody>
</table>
**BUSINESS INCENTIVES**

### 100 Percent Bonus Depreciation


**IMPACT.** This provision is one of the most expansive for businesses. Unlike Code Sec. 179 expensing, it is not limited to use by smaller businesses or capped at a certain dollar level.

### Code Sec. 179 Expensing

Congress has repeatedly increased the dollar and investment limits under Code Sec. 179 to encourage business spending. The 2010 Small Business Jobs Act increased the Code Sec. 179 dollar and investment limits to $500,000 and $2 million, respectively, for tax years beginning in 2010 and 2011. The new law provides for Code Sec. 179 expensing at a level of $125,000 for 2012 (see below). Bonus depreciation is not limited by the size of a taxpayer’s investments in qualified property and it can generate net operating losses. Bonus depreciation, however, applies only to new property and is not exempt from certain uniform capitalization rules as is small business expensing.

**Refundable credits in lieu of bonus depreciation.** The new law also includes an election to accelerate AMT credit in lieu of bonus depreciation provided for “round 2 extension property.”

### Code Sec. 179 Expensing

Congress has repeatedly increased the dollar and investment limits under Code Sec. 179 to encourage business spending. The 2010 Small Business Jobs Act increased the Code Sec. 179 dollar and investment limits to $500,000 and $2 million, respectively, for tax years beginning in 2010 and 2011. The new law provides for Code Sec. 179 expensing at a level of $125,000 for 2012 (see below). Bonus depreciation is not limited by the size of a taxpayer’s investments in qualified property and it can generate net operating losses. Bonus depreciation, however, applies only to new property and is not exempt from certain uniform capitalization rules as is small business expensing.

**Refundable credits in lieu of bonus depreciation.** The new law also includes an election to accelerate AMT credit in lieu of bonus depreciation provided for “round 2 extension property.”
Research Tax Credit

The Code Sec. 41 research tax credit expired at the end of 2009. The 2010 Tax Relief Act renews the credit for two years, through December 31, 2011 and is effective for amounts paid or incurred after December 31, 2009.

COMMENT. Earlier in 2010, President Obama urged Congress to make the credit permanent (the credit has been regularly extended since its creation in 1981). The 2010 Tax Relief Act reflects a temporary two-year extension of the credit that alone carries a $13 billion tax cost. Consideration of an expensive, permanent extension is left to another Congress.

Small Business Stock

The 2010 Small Business Jobs Act enhanced the exclusion of gain from qualified small business stock to non-corporate taxpayers. For stock acquired before January 1, 2012.

TRANSPORTATION INCOME

Certain baseline requirements for the exclusion continue to apply:

- To qualify as small business stock, the stock must be issued by a C corporation that invests 80 percent of its assets in the active conduct of a trade or business and that has assets of $50 million or less when the stock is issued.
- Qualified stock must be held for more than five years (rollovers into other qualified stock are allowed).
- The amount taken into account under the exclusion is limited to the greater of $10 million or ten times the taxpayer’s basis in the stock.
- Any taxpayer, other than a C corporation, can take advantage of the exclusion.

Impact.

The 2010 Tax Relief Act boosts 50-percent bonus depreciation to 100-percent for qualified investments made after September 8, 2010 and before January 1, 2012.

Transit Benefits

The 2009 Recovery Act provided for parity among employer-provided transit benefits (at $230 adjusted for inflation) for March 2009 through the end of 2010. These benefits may be realized as a tax-free fringe benefit offered by employers or as pre-tax benefit when paid for by the employee. The 2010 Tax Relief Act extends parity among transit benefits for one year, through December 31, 2011.

Impact.

The 2010 Tax Relief Act extends a number of business tax extenders, which had expired at the end of 2009. These business tax extenders are generally extended for two years: 2010 and 2011 (in some cases calendar years, in other cases tax years beginning after December 31, 2009 and before January 1, 2012 and in other cases for property placed in service on or before December 31, 2011). The business tax incentives extended by the 2010 Tax Relief Act are:

- Indian employment credit and accelerated depreciation for business property on an Indian reservation
- New Markets Tax Credit with modifications
- Differential wage credit
- 15-year recovery period for qualified leasehold improvements, restaurant building and improvements, and retail improvements
- Seven year motor sports entertainment costs recovery
- Expensing election for certain film and television production costs

Work Opportunity Tax Credit

The Work Opportunity Tax Credit (WOTC) is intended to encourage employers to hire individuals from targeted groups. The WOTC is equal to 40 percent of up to $6,000 of the targeted employee’s qualified first-year wages, subject to certain requirements and limitations. The WOTC was scheduled to expire after August 31, 2011. The 2010 Tax Relief Act extends the WOTC for individuals who begin employment after August 31, 2011 and before January 1, 2012, but with some modifications.

Impact. The 2009 Recovery Act added two new targeted groups, unemployed veterans and disconnected youth, who begin work for an employer in 2009 or 2010. The 2010 Tax Relief Act does not extend these two targeted groups beyond 2010.
Brownfields remediation expensing
Code Sec. 199 deduction for Puerto Rico
Subpart F exception for active financing income
Look-through treatment for CFCs
Special rules for payments by controlled entity
Tax incentives for empowerment zones
Tax incentives for investment in the District of Columbia
Special rules for RICs
Railroad track maintenance credit
Mine rescue team training credit and expensing of mine safety equipment
Cover over of rum excise taxes to Puerto Rico and USVI
American Samoa economic development credit

COMMENT. The 2010 Tax Relief Act extends the first-time homebuyer credit for purchases of a qualified residence in the District of Columbia but does not extend the national first-time homebuyer credit, which generally has expired except for qualified military personnel.

ENERGY INCENTIVES
The 2010 Tax Relief Act temporarily extends for one or two years a number of energy tax incentives, primarily targeted to businesses. One popular energy incentive for individuals, the Code Sec. 25C residential energy property credit, is extended but with some limitations.

Business Energy Incentives
Business energy incentives extended by the 2010 Tax Relief Act are:

- Credits for biodiesel and renewable diesel fuel (two years)
- Credit for refined coal facilities (two years with modifications)
- New energy efficient home credit for qualified builders and manufacturers (homes purchased before January 1, 2012)
- Excise tax credits and outlay payments for alternative fuel and alternative fuel mixtures (two years)
- Sales of electric transmission property (sales before January 1, 2012)
- Percentage depletion for oil and gas from marginal wells (two years)
- Grants for certain energy property in lieu of tax credits (variable)
- Tax credits and outlay payments for ethanol and duties on imported ethanol (one year with modifications)
- Energy efficient appliance credit (one year with modifications)

COMMENT. Authority to provide grants in lieu of tax credits for certain energy property is extended for one year, through December 31, 2011. Generally, qualified property must be placed in service in calendar years 2009, 2010 or 2011 or construction of qualified property must begin in that period and be completed before 2013 for wind energy property (or 2014 or 2017 for other qualified property). An application for a grant must be made before October 11, 2011.

Individuals
The Code Sec. 25C credit is designed to reward individuals who make energy efficiency improvements to their residences with a tax benefit. Under current law, the credit amount is 30 percent of the sum of expenditures for qualified energy efficiency improvements and property, such as furnaces, water heaters, insulation materials, exterior windows and doors, and other items, for 2009 and 2010 property. The credit under current law is limited to a lifetime maximum credit of $1,500 for 2009 and 2010 property. The 2010 Tax Relief Act extends the Code Sec. 25C credit through 2011. However, the new law returns the credit to its pre-2009 Recovery Act parameters.

COMMENT. The Code Sec. 25C credit remains nonrefundable under the 2010 Tax Relief Act.

DISASTER INCENTIVES
The 2010 Tax Relief Act extends a number of targeted disaster relief measures for one or two years. They are:

- Tax-exempt bond financing for the New York City Liberty Zone (9-11 relief) (two years)
- Increased rehabilitation credit for historic structures in the Gulf Opportunity Zone (GO Zone) (two years)
- Placed-in-service deadline for low income housing tax credits for GO Zone (one year)
- Tax-exempt bond financing for GO Zone (one year)
- Bonus depreciation for certain GO Zone property (generally one year)

BONDS
The 2010 Tax Relief Act temporarily extends several bond programs. These include

EXTENSION EFFECTIVE DATES FOR EXPIRING & EXPIRED PROVISIONS

<table>
<thead>
<tr>
<th>Provision</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual Tax Rates</td>
<td></td>
<td>01/01/11 – 12/31/12</td>
<td></td>
</tr>
<tr>
<td>Individual Extenders</td>
<td>01/01/10 – 12/31/11</td>
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<tr>
<td>AMT Relief</td>
<td>01/01/10 – 12/31/11</td>
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</tr>
<tr>
<td>100% Bonus Depreciation</td>
<td>9/9/10 – 12/31/11</td>
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</tbody>
</table>
tax exempt private activity bonds for qualified education facilities and qualified zone academy bonds.

**COMMENT.** Notably absent from the list of bonds extended by the 2010 Tax Relief Act are Build America Bonds. Under the 2009 Recovery Act, Build America Bonds must be issued by state and local governments before January 1, 2011.

### CHARITABLE INCENTIVES

In addition to extending tax-free distributions from IRAs for charitable purposes, the 2010 Tax Relief Act also extends through 2011 (not an exhaustive list):

- Charitable deduction for contributions of food inventory
- Charitable deduction for contributions by C corporations of books to public schools
- Charitable deduction for corporate contributions of computer equipment for educational purposes
- Basis adjustment to stock of S corporations making charitable contributions of property

### FEDERAL ESTATE TAX

EGTRRA gradually reduced over a period of years and then abolished the federal estate tax for decedents dying in 2010. The pre-EGTRRA estate tax (with a maximum tax rate of 55 percent and a $1 million applicable exclusion amount) was scheduled to be revived after 2010. Additional EGTRRA changes affected the gift and generation-skipping transfer (GST) tax.

### Estate Tax Compromise

The 2010 Tax Relief Act revives the estate tax for decedents dying after December 31, 2009, but at a significantly higher applicable exclusion amount and lower tax rate than had been scheduled under EGTRRA. The maximum estate tax rate is 35 percent with an applicable exclusion amount of $5 million. This new estate tax regime, however, is itself temporary and is scheduled to sunset on December 31, 2012.

**IMPACT.** The applicable exclusion amount is adjusted for inflation beginning in 2012. The new rate and exclusion represent a significant reduction from the 45 percent rate and $3.5 million exclusion applicable for 2009, which many House Democrats wanted to continue before the compromise bill was approved.

Together with the revival of the estate tax, the 2010 Tax Relief Act eliminates the modified carryover basis rules and replaces them with the stepped up basis rules that had applied until 2010. Property with a stepped-up basis receives a basis equal to the property’s fair market value on the date of the decedent’s death (or on an alternate valuation date). Under a modified carryover basis that EGTRRA had put into place for 2010, the executor may increase the basis of estate property only by a total of $1.3 million, with other estate property taking a carryover basis equal to the lesser of the decedent’s basis or the fair market value of the property on the decedent's death. An executor may increase the basis of assets passing to a surviving spouse by an additional $3 million (for a total of $4.3 million).

### Option for 2010

The 2010 Tax Relief Act gives estates of decedents dying after December 31, 2009 and before January 1, 2011, the option to elect not to come under the revived estate tax. The new law gives those estates the option to elect to apply (1) the estate tax based on the new 35 percent top rate and $5 million applicable exclusion amount, with stepped-up basis or (2) no estate tax and modified carryover basis rules under EGTRRA. Any election would be revocable only with the consent of the IRS.

**EXAMPLE.** Caleb, who is unmarried, died on September 30, 2010. Caleb’s estate is valued at $15 million. Caleb’s estate can elect not to have the revived estate tax apply (with a maximum estate tax rate of 35 percent and a $5 million applicable exclusion amount). If Caleb’s estate makes this election, the estate would not be subject to the estate tax, and the carryover basis rules under EGTRRA would apply.

**COMMENT.** The 2010 Tax Relief Act instructs the IRS to determine the time and manner for making the election.

### Portability

The 2010 Tax Relief Act provides for “portability” between spouses of the estate tax

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### 2010 TAX RELIEF ACT REVENUE COST

| Individual Tax Cuts | $186 billion |
| AMT Relief | $136 billion |
| Payroll Tax Deduction | $111 billion |
| Estate/Gift Tax Relief | $68 billion |
| Capital Gains/Dividend Cuts | $53 billion |
| Bonus Depreciation/179 Expensing | $21 billion |
| Other | $226 billion |

*$801 billion total cost of tax provisions

**(+$857 billion total cost of law includes $56 billion for unemployment insurance extension)**
applicable exclusion amount. Generally, portability would allow a surviving spouse to elect to take advantage of the unused portion of the estate tax applicable exclusion amount of his or her predeceased spouse, thereby providing the surviving spouse with a larger exclusion amount. A “deceased spousal unused exclusion amount” would be available to the surviving spouse only if an election is made on a timely filed estate tax return. Portability would be available to the estates of decedents dying after December 31, 2010. Under the Tax Relief Act of 2010, the portability election will sunset on January 1, 2013.

**IMPACT.** With the election and careful estate planning, married couples can effectively shield up to $10 million from estate tax by providing that each spouse maximize his or her $5 million applicable exclusion. Because this provision is scheduled to sunset after 2012, the utility of the portability election is limited to situations where both spouses die with the two-year term (that is, 2011-2012).

**EXAMPLE.** David dies in 2011 with a taxable estate of $3 million. An election is made on David’s estate tax return to permit David’s wife Alicia to use David’s unused applicable exclusion amount. At the time of David’s death, Alicia had made no taxable gifts. Alicia’s applicable exclusion amount would be her $5 million basic exclusion plus $2 million of the deceased spousal unused exclusion amount for a total exclusion amount of $7 million.

**COMMENT.** If the surviving spouse is predeceased by more than one spouse, the deceased spousal unused exclusion amount available for use by the surviving spouse would be limited to the lesser of $5 million or the unused exclusion of the last deceased spouse.

**COMMENT.** A surviving spouse is not allowed to use the unused GST tax exemption of a deceased spouse.

### State death tax credit/deduction
EGTRRA repealed the state death tax credit for decedents dying after 2004 and replaced the credit with a deduction. Under EGTRRA’s sunset provisions, the credit, as it existed before 2002, is revived for decedents dying after 2010. The 2010 Tax Relief Act extends the deduction through 2012.

**COMMENT.** The 2010 Tax Relief Act also extends EGTRRA’s provisions affecting qualified conservation easements, qualified family-owned business interests (QFOBIs), and the installment payment of estate tax for closely-held businesses for purposes of the estate tax.

### Filings
The 2010 Tax Relief Act gives estates of decedents dying after December 31, 2009, and before the date of enactment, extended time (generally nine months) to perform certain acts. These include the filing of any return and the making of any payment.

### Gift Taxes
For gifts made in 2010, the 2010 Tax Relief Act provides that gift tax is computed using a rate schedule having a top tax rate of 35 percent and an applicable exclusion amount of $1 million. For gifts made after 2010, the gift tax is reunified with the estate tax with a top gift tax rate of 35 percent and an applicable exclusion amount of $5 million.

**COMMENT.** The 2010 Tax Relief Act reunifies the gift and estate taxes for gifts made after December 31, 2010.

**COMMENT.** Donors of lifetime gifts continue to be able to apply the annual gift tax exclusion before having to use part of their applicable exclusion amount. For 2010 and 2011, that inflation-adjusted annual exclusion amount is $13,000 per donee (married couples may continue to “split” their gift and may make combined gifts of $26,000 to each donee).

### GST Tax
The 2010 Tax Relief Act provides a $5 million exemption amount for 2010 (equal to the applicable exclusion amount for estate tax purposes) with a GST tax rate of zero percent for 2010. For transfers made after 2010, the GST tax rate would be equal to the highest estate and gift tax rate in effect for the year (35 percent for 2011 and 2012). The 2010 Tax Relief Act also extends certain technical provisions under EGTRRA affecting the GST tax.
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