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Corrections were made to this material through January of 2012. No subsequent modifications were made.

TAX REFORM

At the time this chapter was written, there had been very little new income tax legislation. However, with all of the posturing going on between Congress and the White House, there is a very good possibility that late legislation will occur. If this happens, the University of Illinois Tax School will prepare an addendum to this chapter that will be available as a download at **www.TaxSchool.illinois.edu.**

There is consensus in Washington that tax simplification is necessary. However, legislators cannot agree on what changes to make. On April 6, 2011, the Joint Committee on Taxation held a public hearing in Washington.[1] Some of the comments made at the hearing follow.

- David Camp (MI) — *"The 1986 Act remains the basis of our system of taxation, but it is in some sense a shell of its former self. In the intervening years, members of Congress from both sides of the aisle have loaded the Tax Code with a dizzying array of credits, deductions, exclusions, and exemptions. While the merits of each of these changes can be debated, discussed and analyzed, the overall effect of those changes on the Code itself is beyond question.*

  With nearly 4,500 changes in the last decade alone — that is 4,500 changes in just 10 years — the Code is too complex. With Americans spending over 6 billion hours and over $160 billion annually to comply with the Code, it is too costly and too burdensome. Clearly, the time for comprehensive reform has come, and I am committed to finding a path forward."

- Max Baucus (MT) — *"I believe, and I think everyone in this room believes, that the time has come for tax reform, individual as well as corporate tax reform, in America. This country advanced the ball in 1986. We are proud of our accomplishments in 1986. We modernized the American Tax Code by lowering the rates and broadening the base, and that did help our country move forward, there is no question about it.*

  We are now here in 2011, and the Code has gathered barnacles. The figure I saw is 15,000 changes to the Tax Code since 1986. One can question the merits of those changes, but they are there nevertheless. Our country also is in a different time compared to where it was in 1986."

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1. Joint Committee on Taxation. *Roundtable Discussion on Ideas for Reforming the U.S. Internal Revenue Code.* JCX-28-11 (May 11, 2011).

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- James A. Baker III (instrumental in passing the Tax Reform Act of 1986) — *"But I do remember this. When we first started talking about tax reform in the counsels of the Reagan administration's first term, we saw it as a very difficult task. If you remember back to the President's State of the Union in January of 1985, he made that purposefully his number-one domestic priority. He said, America needs a better Tax Code. We need a more simplified Tax Code, or a Tax Code that broadens the base and reduces rates for all taxpayers — not just corporations, but all taxpayers, individual and corporate.*

  I'm encouraged to hear what Chairman Baucus said when he said he thinks it is time for tax reform, because I think the stars are right for tax reform today, for a couple of reasons. If I might, I'll go ahead and throw those out there. Our country badly needs to see our government cooperate. Partisanship and adversarial combat is probably worse than it was 25 years ago, although it was pretty tough then.

  Tax reform was an extraordinary [sic] difficult task to accomplish. But we had a President who made it his number-one priority, and we had a leadership in the House of Representatives, which at that time was Democratic, in Tip O'Neill and Dick Gephardt, who were pretty much, if not totally on board for it — I know Dick Gephardt was on board. Tip was a little bit like this, but willing to see it go forward. They put their shoulder to the wheel, but first and foremost, Chairman Rostenkowski, your predecessor, Chairman, as head of Ways and Means, was very solidly in the corner of trying to get tax reform done."

Note. The complete testimony from the roundtable meeting is available at **www.jct.gov/publications.html.**

COMPREHENSIVE 1099 TAXPAYER PROTECTION AND REPAYMENT OF EXCHANGE SUBSIDY OVERPAYMENTS ACT OF 2011

On April 13, 2011, President Obama signed into law the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (HR 4), which made the following changes to the Code.

1. Repealed the expanded Form 1099 reporting requirements for payments of $600 or more in a trade or business to corporations and of gross proceeds paid for any type of property (which would have become effective in 2012)
2. Repealed the Form 1099 reporting requirements for rental property not part of a trade or business (was contained in the 2010 Small Business Jobs Act (SBJA) and was effective for payments beginning in 2011)

Note. See Chapter 8, Small Business Issues, for more information on the repeal of the 1099 reporting requirements.

3. Increased the advance applicable dollar amount of the tax credit for healthcare premium assistance for taxpayers whose household income is less than 400% of the poverty line

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PREMIUM ASSISTANCE CREDIT

> **Note.** There have been several court challenges to various key provisions of the PPACA. In the highest-profile lawsuit, a total of 26 states filed a joint action to overturn the individual mandate portion of the law, which requires all U.S. citizens to have qualifying healthcare coverage. On January 31, 2011, the federal district judge hearing the multistate lawsuit declared the provision unconstitutional.[2] On August 12, 2011, the 11th Circuit Court of Appeals affirmed the district court's decision.[3] This ruling, which conflicts with another appellate ruling in June, makes it almost certain that the case will go to the Supreme Court.[4]

The Patient Protection and Affordable Care Act (PPACA) provides a refundable tax credit[5] (the "premium assistance credit") for eligible individuals and families who purchase health insurance through an exchange.[6] The premium assistance credit is refundable and payable in advance directly to the insurer. **It is available for taxable years ending after December 31, 2013.**

Under the provision, eligible individuals enroll in a qualified health plan offered through an exchange and report their income to the exchange.[7] Based on the information provided to the exchange and the individual's income, an eligible individual receives an advance premium assistance credit. The Treasury pays the premium assistance credit amount directly to the individual's insurance plan carrier. The individual then pays the carrier the difference between the premium assistance credit and the total premium charged for the plan. Individuals who fail to pay all or part of the remaining premium are given a mandatory 3-month grace period prior to an involuntary termination of their participation in the plan. For employed individuals who purchase health insurance through a state exchange, the premium payments are made through payroll deductions. Eligibility for the advance premium assistance credit is generally based on the individual's income for the taxable year that ended two years prior to the enrollment period.

The premium assistance credit is available for individuals (single or joint filers) with household incomes between 100% and 400% of the applicable federal poverty level (FPL) who do not receive health insurance through an employer or a spouse's employer.

For 2011, the FPL is shown below.[8]

Persons in Family	48 Contiguous States and D.C.	Alaska	Hawaii
1	$10,890	$13,600	$12,540
2	14,710	18,380	16,930
3	18,530	23,160	21,320
4	22,350	27,940	25,710
5	26,170	32,720	30,100
6	29,990	37,500	34,490
7	33,810	42,280	38,880
8	37,630	47,060	43,270
For each additional person, add	3,820	4,780	4,390

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2. *Florida et al v. U.S. Department of Health and Human Services,* 2011 U.S. Dist. LEXIS 8822 (N.D. Fla., Jan. 31, 2011).

3. *Florida et al v. U.S. Department of Health and Human Services,* Nos. 11-11021, 11-11067, 11th Cir. (Aug. 12, 2011).

4. *The Wall Street Journal.* Kendall, Brent. August 13, 2011. [http://online.wsj.com/article/SB10001424053111904006104576504383685080762.html] Accessed on Aug. 25, 2011.

5. IRC §36B.

6. Each state is required to establish an "exchange" to monitor and manage the overall insurance coordination as required by the PPACA. Individuals and families will be required to comply with the PPACA through their state's exchange.

7. PPACA, Sec. 1412.

8. *The 2011 HHS Poverty Guidelines.* U.S. Dept. of Health and Human Services. [http://aspe.hhs.gov/poverty/11poverty.shtml] Accessed on Jul. 25, 2011.

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As shown in the following table, premium assistance credits are available on a sliding scale for individuals and families to help offset the cost of private health insurance premiums. The applicable percentage for any taxpayer whose household income is within an income tier specified in this table increases on a graduated scale from the initial premium percentage to the final premium percentage.[9]

Household Income as % of FPL	Initial Premium Percentage	Final Premium Percentage
100%–133%	2.0%	2.0%
133%–150%	3.0%	4.0%
150%–200%	4.0%	6.3%
200%–250%	6.3%	8.05%
250%–300%	8.05%	9.5%
300%–400%	9.5%	9.5%

The premium assistance amount for any coverage month is the lesser of:[10]

- The **monthly premiums** for one or more qualified health plans enrolled in through an exchange and which cover the taxpayer, spouse, and dependents; or
- The amount, if any, that the **adjusted monthly premium** for the applicable second-lowest-cost silver plan[11] for the taxpayer exceeds one-twelfth of the product of the applicable premium percentage (see previous table) and the taxpayer's household income for the taxable year.

Example 1. Matthew and Morgan are married and have two children. Their 2014 annual premium for the applicable second-lowest-cost silver plan in the exchange is $11,000. Their total household income for 2012 (two years prior) was $70,000.

Matthew and Morgan's total household income is 313% of the FPL for a family of four. Their advance premium assistance credit for 2014 is $4,350 ($11,000 premium – ($70,000 household income × 9.5%), or the lesser of the premium or the computed credit.

An employee is ineligible for the premium assistance credit if the individual is offered minimum essential coverage[12] in the group market, including employer-provided health insurance coverage. If an employee is offered unaffordable coverage (i.e., the required premium is at least 9.5% of employee's household income) by their employer or the plan's share of provided benefits is less than 60% of the cost of the benefits, the employee is eligible for the premium assistance credit only if the employee declines to enroll in the coverage and satisfies the conditions for receiving a tax credit through an exchange.

Reconciliation

Eligibility for and the amount of premium assistance is determined in advance of the coverage year on the basis of the household income and family size from two years prior, and the monthly premiums for qualified health plans in the exchange in which the taxpayer, spouse, and any dependents enroll. Any advance premium assistance is paid during the year for which coverage is provided by the exchange. In the subsequent year, the amount of advance premium assistance is required to be reconciled with the **allowable refundable credit** for the year of coverage. Generally, this is accomplished on the tax return filed for the year of coverage, based on that year's actual household income, family size, and premiums. Any adjustment to tax resulting from the difference between the advance premium assistance and the allowable refundable tax credit is assessed as additional tax or a reduction in tax on the tax return.

9. Joint Committee on Taxation, Description of H.R. ___, *The "Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011."* (JCX-9-11) (Feb. 14, 2011).

10. IRC §36B(b)(2).

11. Under the PPACA, a silver plan is an essential health benefits package that provides benefits that are actuarially equivalent to 70% of the full actuarial value of benefits provided under the plan.

12. Minimum essential coverage is defined in IRC §5000A(f).

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If the premium assistance received through an advance payment exceeds the amount of credit to which the taxpayer is entitled, the excess advance payment is treated as an increase in tax. For persons whose household income is below 400% of the FPL, the amount of the increase in tax is limited to a specific dollar amount (the "applicable dollar amount"). **The applicable dollar amount was revised by HR 4 to the following.**[13]

Household Income as a Percentage of FPL	Applicable Dollar Amount	
	S	MFJ, QW, and HoH
Less than 200%	$ 300	$ 600
At least 200% but less than 300%	750	1,500
At least 300% but less than 400%	1,250	2,500

Persons with household incomes of 400% of the FPL and above are required to repay the full amount of any advance premium assistance credit received.

If the premium assistance received through an advance payment is less than the amount of the credit to which the taxpayer is entitled, the shortfall is treated as a reduction in tax.

Example 2. Use the same facts as **Example 1,** except Matthew and Morgan's income in 2014 is $85,000. Assume this is 380% of the 2014 FPL for their family size. Matthew and Morgan's allowable premium assistance credit is $2,925 ($11,000 premium – ($85,000 household income × 9.5%). Matthew and Morgan received an advance premium assistance credit of $4,350. Therefore, they are required to repay $1,425 ($4,350 − $2,925) on their 2014 tax return because this reconciled amount is less than the applicable dollar amount ($2,500) for MFJ taxpayers with their household income as identified in the preceding table.

Note. For information on other provisions in the PPACA, see Chapter 7, Individual Taxpayer Topics, and Chapter 8, Small Business Issues. For a discussion of all of the tax-related provisions in the PPACA, see the New Legislation chapter in the 2010 *University of Illinois Federal Tax Workbook.* This is available on the accompanying CD.

DEPARTMENT OF DEFENSE AND FULL-YEAR CONTINUING APPROPRIATIONS ACT OF 2011

The Department of Defense and Full-Year Continuing Appropriations Act of 2011 (HR 1473) was signed by the president on April 15, 2011, to avoid a government shutdown by funding the federal government for the remainder of the 2011 fiscal year. The tax-related portion of this act is described below.

FREE-CHOICE VOUCHERS

HR 1473 **repealed** a provision in the PPACA that would have required employers to provide qualified employees with vouchers whose value could be applied to the purchase of a health plan through a state exchange. The provision was to become effective in 2014.

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13. Joint Committee on Taxation, Description of H.R. ___, *The "Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011."* (JCX-9-11) (Feb. 14, 2011).

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SMALL BUSINESS JOBS ACT OF 2010

On September 27, 2010, the president signed the Small Business Jobs Act of 2010 (SBJA) into law. The main tax provisions of this act that are not covered in other chapters of this workbook are summarized below.

START-UP EXPENDITURE DEDUCTION INCREASED

Old Law. Taxpayers can elect to deduct a maximum of $5,000 of start-up expenditures in the taxable year in which a trade or business activity begins. The $5,000 amount is reduced by the amount by which the total cost of start-up expenditures exceeds $50,000.[14]

New Law. For **2010 only,** the SBJA increases the amount of start-up expenditures that a taxpayer can elect to deduct to a maximum of $10,000. This amount is phased out by the amount by which the total cost of start-up expenditures exceeds $60,000.

Effective Date. This provision is effective only for taxable years beginning **in 2010.**

QUALIFIED SMALL BUSINESS STOCK GAIN EXCLUSION

Old Law. Noncorporate taxpayers generally are allowed to exclude 50% of the gain from the sale of qualified small business stock held at least five years.[15] Sixty percent of the gain on the sale of qualified small business stock from certain empowerment-zone businesses may be excluded. A percentage of the excluded gain is an AMT preference item.[16] The taxpayer must acquire the stock at original issue in order to be eligible for the exclusion. The limit on the gain from any single stock that a taxpayer may exclude is the **greater of:**

- Ten times the taxpayer's basis in the stock, or
- $10 million.

The corporation's gross assets cannot exceed $50 million when the stock is issued. In addition, at least 80% of the value of its assets must be used in the active conduct of a qualified trade or business. A **qualified trade or business** means any trade or business **other than** the following.

- Any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business in which the principal asset is the reputation or skill of one or more of its employees
- Any banking, insurance, financing, leasing, investing, or similar business
- Any farming business
- Any business involving the production or extraction of products to which a deduction is allowable under IRC §§613 or 613A (mines, wells, and other natural deposits)
- Any business that operates a hotel, motel, restaurant, or similar business[17]

The gain exclusion for qualified small business stock was increased to 75% for stock acquired between February 17, 2009, and January 1, 2011. The increase in the gain exclusion does not apply to the sale of empowerment-zone stock.

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14. IRC §195(b)(1)(A).
15. IRC §1202.
16. IRC §57(a)(7).
17. IRC §1202(e)(3).

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New Law. Under a provision in the SBJA, the gain exclusion is increased to 100% for qualified small business stock acquired after September 27, 2010, and before January 1, 2011. Thus, **no regular or AMT tax is imposed** upon the sale of qualified stock held at least five years.

Effective Date. This provision only applies to stock issued after September 27, 2010, and before January 1, 2011, and that is held for at least five years.

> **Note.** This provision was extended for one additional year (through December 31, 2011) by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, which is discussed later in this chapter.

CARRYBACK OF GENERAL BUSINESS CREDIT

Old Law. A taxpayer's general business credit is limited to the amount that the taxpayer's net income tax exceeds the **greater of:**

- The tentative minimum tax for the taxable year, or
- 25% of the amount that the taxpayer's regular tax liability exceeds $25,000.[18]

A taxpayer's general business credit that exceeds these limitations may be carried back one year and forward 20 years.[19]

New Law. For taxable years beginning in 2010, the SBJA extends the carryback period from one year to five years for the general business credits of eligible small businesses. The extended carryback period applies for both regular tax and AMT purposes. Eligible small businesses are defined as follows.

- The entity must be a sole proprietorship, partnership, or corporation with stock that is not publicly traded.
- Businesses with average gross receipts for the preceding three taxable years that do not exceed $50 million.[20]

The 20-year carryforward period has not changed.

Effective Date. This provision is effective for credits determined in the taxpayer's first taxable year beginning after December 31, 2009, with the AMT exemption applicable only to credits determined in tax years beginning in 2010.

S CORPORATION BUILT-IN GAINS TAX

Old Law. A built-in gains (BIG) tax is imposed on assets sold by an S corporation that it held when it was converted from a C corporation, unless the assets are held for a statutorily determined period of time. The statutory period is generally 10 years after conversion but was reduced to seven years for gains recognized in taxable years beginning in 2009 and 2010.

New Law. For taxable years beginning in 2011, the SBJA reduces the statutory period for recognition of built-in gains to five years after conversion from a C corporation to an S corporation. Thus, a BIG tax will not be imposed on converted property sold in a taxable year beginning in 2011 if the fifth year in the recognition period preceded the 2011 tax year.

Example 3. Largo Corporation converted from a C corporation to an S corporation on January 1, 2006. If Largo sells a conveyor that was part of the C corporation property in its taxable year which begins January 1, 2011, no BIG tax is due because the 5-year recognition period was satisfied.

Effective Date. This provision is effective **only** for gains recognized in taxable years beginning in 2011.

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> **Note.** For more information about the BIG tax, see Chapter 1, S Corporations, in the 2010 *University of Illinois Federal Tax Workbook.* This can be found on the accompanying CD.

18. IRC §38(c).
19. IRC §39(a)(1).
20. IRC §38(c)(5).

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IRC §6707A PENALTY RELIEF

Old Law. IRC §6707A imposes a penalty for failure to comply with the reporting requirements of IRC §6011. IRC §6011 requires a taxpayer to disclose certain information regarding each "reportable transaction" in which the taxpayer participates.[21] A reportable transaction is one deemed to have a potential for tax avoidance or evasion.[22] There are five categories of reportable transactions.

1. Listed transactions
2. Confidential transactions
3. Transactions with contractual protection
4. Certain loss transactions
5. Transactions of interest[23]

The amount of the penalty varies depending on the type of the transaction and whether the taxpayer is an individual. For listed transactions, the maximum penalty is $100,000 for natural persons and $200,000 for all other taxpayers. For reportable transactions other than listed transactions, the maximum penalty is $10,000 for natural persons and $50,000 for all other taxpayers.[24]

New Law. The SBJA retains the current penalty amounts as the maximum penalty that can be imposed. However, it provides a general rule that a participant who fails to disclose relevant information regarding each reportable transaction in which the taxpayer participates is subject to a penalty of 75% of the reduction in tax reported on the participant's tax return as a result of participation in the transaction.

A minimum penalty is also established for failure to disclose a reportable transaction. The minimum penalty is $5,000 for natural persons and $10,000 for all other taxpayers.

Example 4. Megalo Corporation participates in a single listed transaction over the course of three taxable years. The decrease in tax shown on the corporate returns as a result of participation in the transaction is $1 million in the first year, $100,000 in the second year, and $10,000 in the third year. If Megalo Corporation fails to disclose the listed transaction in all three years, the corporation is subject to three separate penalties: a penalty of $200,000 in the first year (as a result of the cap on penalties), a $75,000 penalty in the second year (computed under the general rule) and a $10,000 penalty in the third year (as a result of the minimum penalty) for total penalties of $285,000.[25]

Effective Date. This provision applies retroactively to all penalties assessed under §6707A after December 31, 2006.

Caution. The SBJA does not provide for any discretion on the part of the IRS to abate the penalty when the taxpayer has acted in good faith.

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21. Treas. Reg. §1.6011-4.

22. IRC §6707A(c)(1).

23. Treas. Regs. §§1.6011-4(b)(2)–(6).

24. Joint Committee on Taxation, Technical Explanation of the Tax Provisions in Senate Amendment 4594 to HR 5297, "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010 (JCX-47-10), Sep. 16, 2010.

25. Example adapted from Joint Committee on Taxation, Technical Explanation of the Tax Provisions in Senate Amendment 4594 to HR 5297, "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010 (JCX-47-10), Sep. 16, 2010.

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CELL PHONES NO LONGER LISTED PROPERTY

Old Law. Cellular telephones are included in the definition of listed property. This means that no deduction is allowed unless the taxpayer adequately substantiates the expense and business usage of the property. If the listed property is used by an employee for personal use, the employer must substantiate that it included an appropriate amount in the employee's income.[26] Special depreciation rules apply to certain listed property, including cell phones.

New Law. The SBJA removes cell phones from the definition of listed property. Thus, the substantiation requirements and special depreciation rules for listed property do not apply to cell phones.

Effective Date. This provision is effective for all taxable years beginning after December 31, 2009.

ELECTIVE ROTH CONTRIBUTIONS ALLOWED IN §457 PLANS

Old Law. Qualified Roth contributions into applicable retirement plans are treated as elective deferrals but are not excludable from gross income. The term "applicable retirement plan," for purposes of the Roth contribution program rules, means:

- An employee trust described in IRC §401(a) which is tax exempt under IRC §501(a), and
- A plan in which the employer contributes amounts for an individual under an IRC §403(b) annuity contract.

New Law. A provision in the SBJA amends the definition of applicable retirement plan to include governmental §457(b) plans.

Effective Date. This provision is effective for taxable years beginning after December 31, 2010.

ROLLOVERS TO ROTH-DESIGNATED ACCOUNTS

Old Law. Rollover distributions from eligible employer plans that are not from designated Roth accounts may be rolled over to eligible retirement plans that are not Roth IRAs or designated Roth accounts. An **eligible employer plan** is a qualified retirement plan, a §403(b) plan, and a governmental §457(b) plan. These distributions generally are not currently includible in the distributee's gross income.

Distributions from eligible employer plans may also be rolled over into Roth IRAs but are subject to rules that apply to conversions from traditional IRAs into Roth IRAs. Thus, such distributions are includible in gross income (except the portion that represents a return of after-tax contributions), and the 10% early-distribution tax does not apply.

> **Note.** Special rules apply to conversions from traditional IRAs to Roth IRAs made in 2010. See pages 151–159 in the 2010 *University of Illinois Federal Tax Workbook* for a detailed discussion of this topic. This can be found on the accompanying CD.

New Law. A provision in the SBJA permits §401(k) plans, §403(b) plans, and governmental §457(b) plans with qualified designated Roth contribution programs to roll over accounts that are not designated Roth accounts into designated Roth accounts under the plan for the individual. However, plans that do not have designated Roth programs may not establish Roth accounts solely to accept these rollover contributions.

Under this provision, a permitted rollover contribution to a designated Roth account must be included in gross income by the individual (subject to basis recovery) in the same manner as if the distribution were rolled over into a Roth IRA.

> **Note.** Plans that include designated Roth programs are permitted, but not required, to allow employees (and surviving spouses) to make rollover contributions to designated Roth accounts. Plans that allow these rollover contributions to designated Roth accounts must be amended to reflect this plan feature.[27]

Effective Date. This provision is effective for distributions made after September 27, 2010.

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26. Temp. Treas. Reg. §1.274-5T(e)(2)(i)(A).

27. Joint Committee on Taxation, Technical Explanation of the Tax Provisions in Senate Amendment 4594 to HR 5297, "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010 (JCX-47-10), Sep. 16, 2010.

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PARTIAL ANNUITIZATION PERMITTED

Old Law. Rev. Proc. 2010-3[28] identified partial annuitization of endowment and life insurance contracts as an area "under study."

New Law. A provision in the SBJA permits a portion of an annuity, endowment, or life insurance contract to be annuitized while the balance is not annuitized if the annuitization period is 10 years or more, or is for the life of at least one individual. This will allow holders of nonqualified annuities (annuity contracts held outside of a tax-qualified retirement plan or IRA) to elect to receive a portion of an annuity contract in the form of a stream of payments, leaving the remainder of the contract to accumulate income on a tax-deferred basis.[29]

Effective Date. This provision is effective for amounts received in taxable years beginning after December 31, 2010.

CELLULOSIC BIOFUEL PRODUCER CREDIT

Old Law. The cellulosic biofuel producer credit is a nonrefundable income tax credit for each gallon of qualified cellulosic biofuel production for the taxable year. The credit is generally $1.01 per gallon.

New Law. The SBJA modifies the cellulosic biofuel producer credit to exclude processed fuels that are highly corrosive, such as crude tall oils (a waste byproduct of the paper manufacturing process).[30]

Effective Date. This provision is effective for fuels sold or used after December 31, 2009.

Note. The PPACA modified the cellulosic biofuel producer credit to exclude fuels with significant water, sediment, or ash content (black liquor). See page 457 in the 2010 *University of Illinois Federal Tax Workbook* for more information. This can be found on the accompanying CD.

Observation. Domestic production of oil and gas did not receive the increase in the IRC §199 deduction to 9% (it remained at 6%) that most U.S. manufacturers received beginning in 2010.

INCOME FROM GUARANTEES

Old Law. In *Container Corp. v. Comm'r,*[31] the Tax Court rejected IRS arguments that fees paid by domestic corporations to foreign parents with respect to guarantees by the parent for the debts of the domestic corporation were analogous to interest. The Tax Court held that the payments were more closely analogous to compensation for services and that the source of the fees should be determined by reference to the residence of the foreign parent. Accordingly, the income was treated as income from foreign sources.[32]

New Law. The SBJA effectively provides a legislative override of the opinion in *Container Corp.* The source rules of IRC §§861 and 862 are amended to address income from guarantees issued after date of enactment (September 27, 2010). Income from sources within the United States now includes amounts received, directly or indirectly, from noncorporate residents or domestic corporations for the provision of a guarantee of indebtedness of such resident or corporation.[33] Additionally, U.S.-source income includes amounts received, directly or indirectly, from any foreign person for the provision of a guarantee of indebtedness of such person, if the amount is effectively connected with income from the conduct of a trade or business in the United States.[34]

Effective Date. This provision applies to guarantees issued after September 27, 2010.

28. Rev. Proc. 2010-3, 2010-1 IRB 110.

29. Senate Committee on Finance, Summary of Modifications and Additions in the Small Business Jobs Act (Jul. 21, 2010).

30. Senate Committee on Finance, Summary of the Substitute Amendment to the Small Business Jobs Act (Jul. 21, 2010).

31. *Container Corp. v. Comm'r,* 134 TC No. 5 (Feb. 17, 2010), gov't notice of appeal filed (5th Cir. June 1, 2010).

32. Joint Committee on Taxation, Technical Explanation of the Tax Provisions in Senate Amendment 4594 to HR 5297, "Small Business Jobs Act of 2010," Scheduled for Consideration by the Senate on September 16, 2010 (JCX-47-10), Sep. 16, 2010.

33. IRC §861(a)(9)(A).

34. IRC §861(a)(9)(B).

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PLAIN WRITING ACT OF 2010

On October 13, 2010, President Obama signed into law the Plain Writing Act of 2010. Federal government agencies will be required to use "plain writing" in documents used by the public. The term **plain writing** means writing that is clear, concise, well-organized, and follows other best practices appropriate to the subject or field and intended audience.[35]

The documents that are covered by the act include the following.

- Any document that is necessary for obtaining a federal government benefit or service or filing taxes
- Any document that provides information about a federal government benefit or service
- Any document that explains to the public how to comply with a requirement that the federal government administers or enforces
- Letters, publications, forms, notices, or instructions

Examples of the affected documents include tax returns, federal college aid applications, and Veterans Administration forms.[36]

Senator George Voinovich (R-Ohio), one of the sponsors of the legislation, said, "It is vital that government forms and documents are easy for the American public to use and understand. Anyone who has done their own taxes understands how badly plain writing is needed. Americans spend 7.6 billion hours a year grappling with incomprehensible tax forms and instructions. In fact, 82% of Americans get so confused that they pay for help filing their taxes — stripping dollars from much-needed tax refunds. We work for the American people, and our constituents should be able to understand in clear language exactly what public documents ask of them."[37]

Within six months of the date of enactment, the Office of Management and Budget must develop and issue guidance on implementing the requirements of the act. Agencies have nine months after the date of enactment to train employees in plain writing.

TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION, AND JOB CREATION ACT OF 2010

President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Tax Relief Act) into law on December 17, 2010. The bill extends the "Bush-era tax cuts" for two years, reduces social security taxes by 2% in 2011, provides estate tax relief, and includes a 2-year AMT tax patch. It also contains new tax breaks for individuals and businesses and extends unemployment benefits for an additional 13 months.

Following is a summary of the principal provisions in the Tax Relief Act that are not covered in other chapters of this workbook.

TEMPORARY EXTENSION OF TAX RELIEF

Individual Income Tax Rates

Old Law. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) created a new 10% regular income tax bracket for a portion of taxable income that was previously taxed at 15%. It also reduced the regular income tax rates of 28%, 31%, 36%, and 39.6% to 25%, 28%, 33%, and 35%, respectively. The EGTRRA rates were scheduled to sunset after December 31, 2010.

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35. Plain Writing Act of 2010 (HR 946), §3.

36. [www.iowapolitics.com/index.Iml?Article=212804] Accessed on Oct. 14, 2010.

37. Ibid.

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New Law. The Tax Relief Act extends the rates effective under EGTRRA for an additional two years through December 31, 2012.

Itemized Deduction Limitation

Old Law. Prior to 2010, the total amount of allowable itemized deductions was limited for upper-income taxpayers. EGTRRA repealed the itemized deduction limitation over a 5-year period, until it was eliminated entirely in 2010. The phased-in repeal of the itemized deduction limitation was scheduled to sunset under EGTRRA at the end of 2010 and would become fully effective again in 2011.

New Law. Under a provision of the Tax Relief Act, the limitation on itemized deductions for upper-income taxpayers does not apply for two additional years through December 31, 2012.

Personal Exemption Phaseout

Old Law. Prior to 2010, the deduction for personal exemptions[38] was reduced or eliminated for taxpayers with incomes over certain thresholds. EGTRRA repealed the personal exemption phaseout (PEP) over five years. The PEP was eliminated entirely in 2010. However, under the EGTRRA sunset, the PEP would become fully effective again in 2011.

New Law. The Tax Relief Act delays the PEP for an additional two years through December 31, 2012.

Child Tax Credit

Old Law. Taxpayers with income under certain threshold amounts may claim a tax credit for each qualifying child under the age of 17. The maximum credit is $1,000 through 2010 and was scheduled to decrease to $500 thereafter. The credit is allowable against the regular tax and the alternative minimum tax (AMT) for taxable years beginning before January 1, 2011.

Taxpayers are eligible for an additional refundable child tax credit equal to 15% of earned income in excess of a threshold amount. This threshold was reduced from $10,000 to $3,000 for both 2009 and 2010 by the American Recovery and Reinvestment Act of 2009 (ARRA).

The additional child tax credit may be determined under an alternative formula for families with three or more qualifying children if this results in a larger credit than that determined under the earned income formula. Under the alternative formula, the additional credit is calculated as the amount by which the taxpayer's social security taxes exceed the taxpayer's earned income tax credit. The earned income formula expires after 2010, so the alternative formula is the only method of obtaining a refundable child tax credit.

New Law. The Tax Relief Act extends the $1,000 child tax credit and allows it against both regular income tax and AMT through December 31, 2012.

The Tax Relief Act extends the earned income threshold of $3,000 for determining the refundable child tax credit through 2012. It also allows the use of the earned income formula in determining the refundable credit through December 31, 2012.

Marriage Penalty Relief

Old Law. EGTRRA increased the basic standard deduction for a married filing jointly (MFJ) couple to twice that of an individual filing as single. EGTRRA also increased the size of the 15% regular income tax bracket for a MFJ couple to twice the size of the corresponding bracket for a single individual filing a return.

New Law. The Tax Relief Act extends the marriage penalty relief as it relates to the standard deduction and the size of the 15% bracket through December 31, 2012.

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38. For 2011, the amount of the personal exemption is $3,700.

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Income Exclusion for Qualified Scholarships

Old Law. IRC §117 excludes amounts received from qualified scholarships from gross income of individuals who are degree candidates. The amount of the scholarship must be used for tuition and fees required for enrollment or attendance at a primary, secondary, or post-secondary educational institution.

The exclusion of qualified scholarships from gross income does not apply to any amount received by a student that represents payment for teaching, research, or other services that the student is required to perform as a condition for receiving the scholarship. An exception applies in the case of the National Health Service Corps Scholarship Program (NHSC Scholarship Program) and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program (the Armed Forces Scholarship Program), which provide education awards to participants on the condition that the participants perform certain services.

The exclusion for the NHSC Scholarship Program and the Armed Forces Scholarship Program was scheduled to sunset under EGTRRA after December 31, 2010.

New Law. The Tax Relief Act delays the sunset provision as it relates to the NHSC Scholarship Program and the Armed Forces Scholarship Program for two years, through December 31, 2012.

Income Exclusion for Employer-Provided Educational Assistance

Old Law. Up to $5,250 of educational assistance provided by an employer to an employee may be excluded annually from gross income for income tax purposes and from wages for employment tax purposes.[39] Certain requirements must be satisfied in order for the exclusion to apply.

Under EGTRRA's sunset provisions, the exclusion would not be available for taxable years beginning after December 31, 2010. At that time, educational assistance would be excludable only if it qualified as a working condition fringe benefit.

New Law. The Tax Relief Act delays the sunset provision as it applies to the IRC §127 exclusion from income and wages for employer-provided educational assistance for two years. Thus, the exclusion will be available through December 31, 2012.

Student Loan Interest Deduction

Old Law. Certain individuals who have paid interest on qualified education loans may claim an above-the-line deduction for the interest. The maximum allowable deduction is $2,500 per year. For 2010, the deduction is phased out for taxpayers whose adjusted gross income (AGI) is between $60,000 and $75,000 ($120,000 and $150,000 for MFJ taxpayers).

For taxable years beginning after December 31, 2010, the phaseout ranges were scheduled to revert to pre-EGTRRA levels of between $40,000 and $55,000 ($60,000 and $75,000 for MFJ taxpayers), adjusted for inflation. Additionally, the EGTRRA changes that extended the deductibility of interest beyond the first 60 months that interest payments are required would expire.

New Law. The Tax Relief Act delays the sunset provisions for the student loan interest deduction for two years through December 31, 2012.

39. IRC §§127 and 3121(a)(18).

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Coverdell Education Savings Accounts

Old Law. EGTRRA increased the amount that may be contributed annually to Coverdell education savings accounts (ESA) from $500 to $2,000 per designated beneficiary. Distributions from Coverdell ESAs are excludable from the gross income of the distributee if the amount of the distribution does not exceed the qualified education expenses incurred during the year. Qualified education expenses under EGTRRA include elementary and secondary education expenses as well as higher education expenses.

For taxable years beginning after December 31, 2010, the following changes made by EGTRRA were scheduled to expire.

- The increase in the contribution limit from $500 to $2,000
- The increase in the phaseout range for MFJ taxpayers from $150,000–$160,000 to $190,000–$220,000
- The expansion of qualified education expenses to include elementary and secondary education expenses
- Special age rules for special-needs beneficiaries
- Clarification that corporations and other entities are permitted to make contributions, without regard to the entities' income during the year
- Rules pertaining to the time when contributions are deemed to have been made and extending the time during which excess contributions may be returned without incurring additional tax
- Rules regarding coordination with the Hope and lifetime learning credits and qualified tuition programs

New Law. The Tax Relief Act delays the EGTRRA sunset provisions applicable to Coverdell ESAs for two years through December 31, 2012.

American Opportunity Credit

Old Law. The American opportunity credit (AOC) is a modification of the Hope credit and is available for taxable years beginning in 2009 and 2010. The maximum annual AOC amount is $2,500 per eligible student for qualified education expenses (including course materials) paid for each of the first four years of the student's post-secondary education in a degree or certificate program. Forty percent of the AOC is refundable.

The AOC is phased out for taxpayers with modified adjusted gross income (MAGI) between $80,000 and $90,000 ($160,000 and $180,000 for MFJ taxpayers).

New Law. A provision in the Tax Relief Act extends the modifications to the Hope credit that are known as the AOC for an additional two years. Thus, **the AOC is available through December 31, 2012.**

Adoption Credit

Old Law. Taxpayers with qualified adoption expenses may be eligible for either the adoption credit or an exclusion from income of employer-provided adoption assistance. EGTRRA increased the dollar limitation for the adoption credit and the income exclusion to $10,000, indexed for inflation. For 2010, the maximum adoption credit and exclusion from income for employer-provided adoption assistance under EGTRRA was $12,170 per eligible child. However, the PPACA increased the credit and exclusion by an additional $1,000 for 2010 and 2011 and made the credit refundable.

For 2010, both the adoption credit and the exclusion from income for employer-provided assistance phase out for taxpayers with MAGI between $182,520 and $222,520. This phaseout range is indexed for inflation after 2010.

For taxable years beginning after December 31, 2011, both the adoption credit and the exclusion for employer-provided adoption assistance were to be available only for special-needs adoptions. Both the maximum credit and exclusion were scheduled to be reduced to $6,000, and the phaseout range was to be reduced to $75,000–$115,000.

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New Law. The Tax Relief Act extends the EGTRRA expansion of the adoption credit and employer-provided adoption assistance for one year. Accordingly, the maximum benefit for 2012 is $12,170 (adjusted for inflation) and is phased out for taxpayers with MAGI between $182,520 and $222,520 (adjusted for inflation). The credit is **not** refundable for taxable years after 2011.

> **Note.** The changes enacted under the PPACA to the adoption credit and exclusion from income for employer-provided adoption assistance were not extended by the Tax Relief Act. Thus, the refundability of the credit and the $1,000 increase in the maximum credit and exclusion only apply to 2010 and 2011.

Employer-Provided Child Care Tax Credit

Old Law. Employers may claim a tax credit of 25% of qualified expenses for employee child care and 10% of qualified expenses for child care resource and referral services. The maximum annual credit an employer can claim is $150,000.

Qualified child care expenditures include the amounts paid or incurred for the following purposes.[40]

- Acquiring, constructing, rehabilitating, or expanding property to be used as part of the taxpayer's qualified child care facility
- Operating the taxpayer's qualified child care facility
- Contracting with a qualified child care facility to provide child care services to the taxpayer's employees

This tax credit was set to expire for taxable years beginning after December 31, 2010.

New Law. The Tax Relief Act extended this tax benefit for two years through December 31, 2012.

Dependent Care Tax Credit

Old Law. Taxpayers may obtain a tax credit for an applicable percentage of qualifying expenses to care for a qualifying individual while the taxpayer is working or looking for work. EGTRRA increased the amount of eligible expenses from $2,400 for one child and $4,800 for two or more children to $3,000 and $6,000, respectively. EGTRRA also increased the maximum applicable percentage from 30% to 35%.

The EGTRRA changes to the dependent care tax credit were set to expire December 31, 2010.

New Law. The Tax Relief Act extended the EGTRRA enhancements to the dependent care credit for two years through December 31, 2012.

Tax Rate on Dividends

Old Law. Qualified dividend income is taxed to an individual at the same rates that apply to net capital gains for both regular tax and AMT purposes. For taxable years beginning after 2007 and before 2011, individuals in the 10% or 15% tax bracket have their qualified dividend income taxed at 0%. For individuals in higher brackets, qualified dividends are taxed at 15%.

Dividends received by individuals after 2010 would be taxed at ordinary income tax rates.

New Law. The regular and AMT rates for qualified dividend income in effect before 2011 are extended for two additional years through December 31, 2012.

40. IRC §45F(c)(1)(A).

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Capital Gains Rate

Old Law. For taxable years beginning after 2007 and before 2011, individuals in the 10% or 15% tax bracket have their net capital gains taxed at 0%. For individuals in higher brackets, net capital gains are taxed at 15%. These rates apply for both regular tax and AMT purposes.

Prior to passage of the Tax Relief Act, individuals in the 10% or 15% tax bracket would have capital gains taxed at a 10% rate after 2010. Individual in higher brackets would have net capital gains taxed at the maximum 20% rate.

New Law. The regular and AMT rates for net capital gains in effect before 2011 are extended for two additional years through December 31, 2012.

Accumulated Earnings Tax

Old Law. The accumulated earnings tax is imposed on a corporation that is formed or used to avoid income tax for its shareholders by permitting earnings and profits to accumulate instead of being divided or distributed.[41] The tax is levied at a rate of 15% on accumulated taxable income of C corporations for taxable years beginning before 2011.

New Law. The Tax Relief Act extends the 15% accumulated earnings tax rate for two additional years. Thus, the 15% rate will apply to the accumulated earnings of C corporations for taxable years beginning before 2013.

Personal Holding Company Tax

Old Law. A tax is imposed on undistributed personal holding company income at a rate of 15%. The 15% rate expires at the end of 2010.

New Law. The Tax Relief Act extends the 15% rate on undistributed personal holding company income for two additional years. Thus, the 15% rate applies to taxable years beginning before January 1, 2013.

Collapsible Corporation Rules

Old Law. Before 2003, certain transactions of "collapsible" corporations[42] were recognized as ordinary income rather than long-term capital gain. The Jobs and Growth Tax Relief Reconciliation Act of 2003 repealed the collapsible corporation rules through December 31, 2010.

New Law. The Tax Relief Act extends the repeal of the collapsible corporation rules for two additional years. The rules do not apply to taxable years beginning before January 1, 2013.

Earned Income Credit

Old Law. The earned income credit (EIC) is available to certain low-income taxpayers. The amount of the EIC generally depends on the individual's earned income, AGI, number of qualifying children, and filing status.

A provision in the ARRA increased the amount of the credit available to taxpayers with three or more qualifying children. For 2009 and 2010, taxpayers with three or more qualifying children may claim a credit of 45% of the first $12,590 of earnings, for a maximum credit of $5,666. The credit phases out for earnings between $16,450 and $43,352 ($21,460 and $48,362 for MFJ taxpayers).

The ARRA also raised the 2009 phaseout threshold for married couples to $5,000 above that for other filers. The increased threshold is $5,010 for 2010. Prior to passage of the ARRA, the phaseout threshold for married couples was $3,000 (indexed for inflation) greater than that of other filers.

New Law. The Tax Relief Act extends certain EIC provisions for two years (through 2012). These include the EIC rate of 45% for taxpayers with three or more qualifying children and the higher phaseout thresholds for MFJ taxpayers.

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41. IRC §532(a).

42. IRC §341.

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The Tax Relief Act also extends the following EIC provisions adopted for EGTRRA for two additional years through December 31, 2012.[43]

- Simplified definition of earned income
- Simplified relationship test
- Use of AGI instead of MAGI
- Simplified tie-breaking rule
- Additional math error authority for the IRS
- Repeal of prior-law provision that reduced the EIC by the amount of an individual's AMT liability

ALTERNATIVE MINIMUM TAX RELIEF

Old Law. For taxable years beginning before 2010, the full amount of an individual's regular tax and AMT may be offset by nonrefundable personal credits. Nonrefundable personal credits include the following.

1. Child tax credit
2. Saver's credit
3. Residential energy-efficient property credit
4. Credit for certain plug-in electric vehicles
5. Credit for alternative motor vehicles
6. Credit for new qualified plug-in electric drive motor vehicles
7. Dependent care credit
8. Credit for the elderly and disabled
9. Credit for interest on certain home mortgages
10. Hope/AOC and lifetime learning credits
11. Credit for certain nonbusiness energy property
12. D.C. first-time homebuyer credit

For taxable years beginning after 2009, certain nonrefundable personal credits (items 7-12 in the above list) are allowed only to the extent the individual's regular income tax liability exceeds the individual's tentative minimum tax.[44] The other nonrefundable personal credits are allowed to the full extent of the individual's regular tax and AMT.

The exemption amounts for AMT purposes were as follows:

Filing Status	2009	After 2009
MFJ and QW	$70,950	$45,000
Single	46,700	33,750
MFS	35,475	22,500

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43. Joint Committee on Taxation, Technical Explanation of the Revenue Provisions Contained in "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010," Scheduled for Consideration by the United States Senate (JCX-55-10), Dec. 10, 2010.

44. Ibid.

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New Law. The Tax Relief Act allows taxpayers to offset the entire regular tax and AMT liability by nonrefundable personal credits for 2010 and 2011.

The Tax Relief Act increases the AMT exemption amounts as follows:

Filing Status	2010	2011
MFJ and QW	$72,450	$74,450
Single	47,450	48,450
MFS	36,225	37,225

Note. For additional information regarding AMT, see Chapter 6, AMT for Individuals.

ESTATE, GIFT, AND GENERATION-SKIPPING TRANSFER TAXES

Before passage of the Tax Relief Act, the estate tax and generation-skipping transfer tax (GSTT) were repealed for decedents dying and gifts made during 2010 but were reinstated for decedents dying and gifts made after 2010.

Note. Additional information on estate planning for 2010 and 2011 can be found in Chapter 10, Estate Planning.

Exemption Amounts and Tax Rates

Old Law. Through 2009 and after 2010, a unified credit applies to taxable transfers by gift and at death. The unified credit offsets tax computed at the lowest estate and gift tax rates.

In 2009, the credit exemption amount was $3.5 million for estate tax purposes and $1 million for gift tax purposes. The highest estate and gift tax rate was 45%.

Under provisions of EGTRRA, the estate tax and GSTT were repealed for decedents dying and generation-skipping transfers made during 2010. The gift tax remains in effect during 2010, with a $1 million exemption amount and a 35% tax rate.

The estate tax, GSTT, and gift tax provisions of EGTRRA were scheduled to sunset at the end of 2010. As a result, the pre-EGTRRA tax rates and exemption amounts would have applied in 2011 and later years. That would have resulted in an exemption amount of $1 million and a graduated rate schedule with a top rate of 55% applying for purposes of determining the tax on cumulative taxable transfers by lifetime gift or bequest.[45]

New Law. The Tax Relief Act reinstates the estate tax and the GSTT, effective for decedents dying and transfers made after December 31, 2009. The applicable exclusion amount for estate tax purposes is $5 million in 2010 and is indexed for inflation for decedents dying after 2011. The maximum estate tax rate is 35%. Executors of 2010 decedents' estates have the option to use the new $5 million exclusion with stepped-up basis or to elect the old law of no estate tax for 2010 with a modified carryover basis.

The applicable exclusion amount for gift tax purposes is $1 million and the tax rate is 35%. For gifts made after December 31, 2010, the gift tax is reunified with the estate tax, with an applicable exclusion amount of $5 million and a maximum tax rate of 35%.

The GSTT exemption for decedents dying or gifts made after December 31, 2009 is the same as the exclusion amount for estate tax purposes (e.g., $5 million for 2010). The GSTT rate for transfers made during 2010 is 0%. For transfers made after 2010, the GSTT rate is equal to the highest estate and gift tax rate in effect for such year (e.g., 35% for 2011 and 2012).

45. Ibid.

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Portability of Unused Exemption between Spouses. Any applicable estate tax exclusion amount that remains unused at the date of 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 applicable exclusion amount. However, the Tax Relief Act does not allow a surviving spouse to use the unused GSTT exemption of a predeceased spouse.[46]

A surviving spouse may use a deceased spousal unused exclusion amount **only if an election is made on a timely filed estate tax return of the predeceased spouse,** even if the predeceased spouse is otherwise not required to file an estate tax return.

> **Example 5.** Herbert dies in 2011, having made taxable transfers of $3 million. He has no taxable estate. An election is made on Herbert's estate tax return to permit his wife, Wilma, to use Herbert's unused exclusion amount. Wilma made no taxable gifts before Herbert's death. Wilma's applicable exclusion amount is now $7 million (her $5 million basic exclusion amount plus Herbert's unused exclusion amount of $2 million). Wilma may use the $7 million exclusion amount for lifetime gifts or for transfers at her death.

If a surviving spouse is predeceased by more than one spouse, the amount of the unused exclusion available for use by the surviving spouse is limited to the lesser of $5 million or the unused exclusion of the last deceased spouse.[47]

> **Note.** Because the portability provision is scheduled to expire at the end of 2012, it can be utilized only in situations in which **both spouses die in 2011–2012,** unless Congress extends the provision. More information and examples related to portability of the unused exclusion can be found in Chapter 10, Estate Planning.

Basis in Property

Old Law. Property received from a donor of a lifetime gift generally has a carryover basis,[48] which means that the donee's basis is the same as the donor's basis. Any gift tax paid by the donor increases the basis of property transferred by lifetime gift, but the property's basis cannot exceed its fair market value (FMV) on the date of the gift.

Property passing from a decedent who died in 2009 or before generally received a "stepped-up" basis.[49] This means that the basis of property passing from a decedent's estate is generally the FMV on the date of the decedent's death. If the property's value on the date of the decedent's death was less than its adjusted basis, the property has a "stepped-down" basis when it passes from the decedent's estate.

The rules providing for a stepped-up basis in property acquired from a decedent are repealed for assets acquired from decedents dying in 2010. Instead, a modified carryover basis applies.[50] Under the modified carryover basis rules, recipients of property acquired from a decedent receive a basis equal to the lesser of the decedent's adjusted basis or the FMV of the property on the date of the decedent's death. An executor may increase the basis in assets owned by the decedent and acquired by the beneficiaries at death by up to a total of $1.3 million. The basis of property transferred to a surviving spouse may be increased by an additional $3 million, for a total of $4.3 million.

The modified carryover basis rules that determine the basis in property passing from a decedent who died in 2010 do not apply to decedents who die after December 31, 2010.

New Law. Under a provision in the Tax Relief Act, the laws in effect prior to 2010, which provide for a stepped-up basis in property, generally apply to property passing from a decedent who dies after December 31, **2009.** However, the estate executor can elect to apply the 2010 law that was in effect before the enactment of the Tax Relief Act for individuals who died **during 2010.**

46. Ibid.

47. Ibid.

48. IRC §1015.

49. IRC §1014(a).

50. IRC §1022(a).

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State Death Tax Credit

Old Law. Before 2005, a credit was allowed against the federal estate tax for any estate, inheritance, legacy, or succession taxes ("death taxes") that were paid to any state on any property included in a decedent's estate.[51] Under EGTRRA, the amount of the credit allowed for state death taxes was reduced from 2002–2004. For individuals who died after 2004, the state death tax credit was repealed entirely[52] and replaced with a deduction for death taxes paid to any state on property included in a decedent's estate.[53]

The EGTRRA modifications to the state death tax credit are not applicable for people who died after December 31, 2010. Instead, the state death tax credit as in effect prior to 2002 applies.

New Law. The Tax Relief Act extends the EGTRRA provisions in regard to the state death tax deduction for two additional years (through 2012). Thus, for people who die in 2011 and 2012, the state death tax credit is repealed and replaced with a deduction for state death taxes paid.

TEMPORARY EXTENSION OF EXPIRING ENERGY PROVISIONS

Biodiesel and Renewable Diesel Credits

Old Law. An income tax credit is allowed for biodiesel and renewable diesel fuels sold or used on or before December 31, 2009.

New Law. The Tax Relief Act extends the credits for biodiesel and renewable diesel fuels for two additional years through December 31, 2011.

Credit for Refined Coal Facilities

Old Law. Refined coal is a fuel produced from coal that is used to produce steam or to produce steel industry fuel. The placed-in-service date for a refined coal facility that qualifies for the credit is after October 22, 2004, and before January 1, 2010.

New Law. The Tax Relief Act extends the placed-in-service period for new refined coal facilities for two years through December 31, 2011. The extension does not apply to refined coal facilities that produce steel industry fuel.

New Energy-Efficient Home Credit

Old Law. A credit is available to eligible contractors for each qualified new energy-efficient home that is constructed and acquired by a person for use as a residence during the taxable year. The credit applies to homes purchased prior to January 1, 2010.

New Law. The Tax Relief Act extends the credit for two year for homes that are purchased prior to January 1, 2012.

Gas and Oil Well Percentage Depletion

Old Law. Under the percentage depletion method, 15% of the taxpayer's gross income from oil- or gas-producing properties is allowed as a deduction in each taxable year.[54] The deduction may not exceed 100% of the net income from the property in any year.[55] The 100% limitation has been suspended for taxable years beginning before January 1, 2010.

New Law. The Tax Relief Act extends the suspension of the 100% net-income limitation applicable to oil- and gas-producing properties for two years. Thus, the suspension applies to tax years beginning before January 1, 2012.

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51. IRC §2011(a).

52. IRC §2011(f).

53. RC §2058.

54. Ibid.

55. IRC §613(a).

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Alternative Fuels Credits

Old Law. Two excise tax credits are provided by the Code for alternative fuel: the alternative fuel credit and the alternative fuel mixture credit. The credits generally expired after December 31, 2009.

New Law. The Tax Relief Act extends the alternative fuel credit and alternative fuel mixture credit for two additional years through December 31, 2011.

Alcohol Fuels Credit

Old Law. Tax incentives are provided by the Code for the sale, use, and production of alcohol fuel and alcohol fuel mixtures. The incentives for alcohol generally are not available after December 31, 2010. For cellulosic biofuel, the incentive is not available after December 31, 2012.

New Law. The Tax Relief Act extends the incentives for alcohol fuels (other than the cellulosic biofuel producer credit) for an additional year through December 31, 2011.

Energy-Efficient Appliance Credit

Old Law. A credit is allowed to the manufacturer of certain energy-efficient dishwashers, clothes washers, and refrigerators. The credits differ based on the specifications of the appliance and the year of manufacture.

The energy-efficient appliance credits expired as of December 31, 2010.

New Law. The Tax Relief Act extends the credits for one year to include appliances manufactured in 2011. The provision modifies the standards and per-appliance credit amounts.

Nonbusiness Energy Property Credit

Old Law. A 30% credit is available under IRC §25C for the purchase of qualified energy-efficiency improvements to the envelope of existing homes. Additionally, a 30% credit is available under §25C for the purchase of the following.

- Qualified natural gas, propane, or oil furnace or hot water boilers
- Qualified energy-efficient property
- Advanced main air circulating fans

The credit applies to expenditures made after December 31, 2008, for property placed in service prior to January 1, 2011.

New Law. The Tax Relief Act extends the credits for existing principal residences owned by the taxpayer for one year (through 2011) but adjusts the credit structure and credit rates to conform to those that existed prior to the enactment of the ARRA. The following changes are made.

1. Expenditures made from subsidized energy financing do not qualify.
2. Certain efficiency standards that were weakened by the ARRA are restored to their previous levels.
3. Windows, skylights, and doors that meet the Energy Star standards are qualified improvements.
4. A 10% credit for purchase of qualified energy-efficiency improvements to existing homes is provided by §25C.
5. IRC §25C provides specified credits for the purchase of specific energy-efficient property originally placed in service by the taxpayer during the taxable year. The maximum aggregate credit for a taxpayer for all taxable years after December 31, 2005 is $500, of which no more than $200 may be attributable to expenditures on windows. The allowable credits are as follows.
    - **a.** $50 for each advanced main air circulating fan
    - **b.** $150 for each qualified natural gas, propane, or oil furnace or hot water boiler
    - **c.** $300 for each item of qualified energy-efficient property

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Alternative Fuel Vehicle Refueling Property

Old Law. Taxpayers may claim a 30% credit for the cost of installing qualified clean-fuel vehicle refueling property. The property can be used in a trade or business of the taxpayer or installed at the taxpayer's principal residence. The credit may not exceed $30,000 per taxable year per location for property used in a trade or business. For qualified refueling property installed at the principal residence of the taxpayer, the credit may not exceed $1,000 per taxable year per location.

For property placed in service in 2009 or 2010, the maximum credit amounts available for business property were increased to $200,000 for qualified hydrogen refueling property and to $50,000 for other qualified refueling property. The maximum credit for nonbusiness property was increased to $2,000 for refueling property other than hydrogen refueling property. The credit rate was also increased from 30% to 50% during 2009–2010 for refueling property other than hydrogen refueling property.

The credit is available for property placed in service after December 31, 2005, and before January 1, 2011, except for hydrogen refueling property, which must be placed in service before January 1, 2015.

New Law. The Tax Relief Act extends the 30% credit for one year for alternative fuel refueling property (other than hydrogen refueling property, which continues under present law through 2014). Thus, the credit is available through 2011, subject to the maximum credit amounts in effect prior to 2009.

TEMPORARY EXTENSION OF EXPIRING INDIVIDUAL TAX PROVISIONS

Deduction for Teachers' Expenses

Old Law. An above-the-line deduction is allowed for certain expenses of eligible educators up to a maximum of $250 annually. This deduction is not allowed for taxable years beginning after December 31, 2009.

New Law. The Tax Relief Act extends the deduction for eligible educator expenses for two years through December 31, 2011.

Deduction of State and Local Sales Taxes

Old Law. At the election of the taxpayer, an itemized deduction may be taken for state and local general sales taxes in lieu of the itemized deduction for state and local income taxes. This election is not available for taxable years beginning after December 31, 2009.

New Law. The Tax Relief Act extends the provision that allows taxpayers to elect to deduct state and local sales taxes in lieu of state and local income taxes for two years through December 31, 2011.

Contributions of Capital Gain Real Property for Conservation

Old Law. Contributions of capital gain property to certain charitable organizations are generally deductible up to 30% of the taxpayer's contribution base. For contributions made in taxable years beginning after December 31, 2005, the 30% contribution base limit on contributions of capital gain property by individuals does not apply to qualified conservation contributions. Instead, individuals may deduct the FMV of any qualified conservation contribution to an organization described in IRC §170(b)(1)(A) (i.e., public charities, private foundations, and certain governmental units), subject to a 50% contribution base limit. Excess contributions may be carried forward up to 15 years.

Qualified farmers and ranchers are allowed to deduct qualified conservation contributions up to 100% of the excess of the taxpayer's contribution base over the amount of all other allowable charitable contributions.

The special rules that apply to contributions of capital gain real property for conservation purposes do not apply to contributions made in taxable years beginning after December 31, 2009.

New Law. The Tax Relief Act extends the special rules applicable to contributions of capital gain real property for conservation purposes for two years. Thus, the rules apply to contributions made in taxable years beginning before January 1, 2012.

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Deduction for Qualified Tuition and Related Expenses

Old Law. Individuals are allowed an above-the-line deduction for qualified tuition and related higher education expenses paid during the taxable year. The maximum deduction is $4,000 for an individual whose AGI for the year does not exceed $65,000 ($130,000 for MFJ taxpayers), or $2,000 for other individuals whose AGI does not exceed $80,000 ($160,000 for MFJ taxpayers).

The deduction is not available for taxable years beginning after December 31, 2009.

New Law. The Tax Relief Act extends the qualified tuition deduction for two additional years through December 31, 2011.

IRA Distributions for Charitable Purposes

Old Law. Individuals may exclude qualified charitable distributions from gross income for otherwise taxable IRA distributions. A taxpayer's exclusion may not exceed $100,000 per taxable year and must be made on or after the date the IRA owner reaches age 70½.

Under present law, the exclusion from gross income does not apply to IRA distributions made in taxable years beginning after December 31, 2009.

New Law. The Tax Relief Act extends the exclusion for qualified charitable distributions for two years through December 31, 2011.

The provision contains a special rule that permits taxpayers to elect to have qualified charitable distributions made in January 2011 treated as having been made on December 31, 2010. Accordingly, qualified charitable distributions made in January 2011 can be:

1. Treated as made in the taxpayer's 2010 taxable year and therefore permitted to count against the 2010 $100,000 exclusion limitation, and
2. Treated as made in the 2010 calendar year and therefore permitted to be used to satisfy the taxpayer's 2010 required minimum distribution.

Note. Information about IRA distributions for charitable purposes can be found in Chapter 5, Retirement.

Mortgage Insurance Premiums

Old Law. A tax deduction is allowed for those individuals who purchase a home and buy qualified mortgage insurance. Mortgage insurance premiums are treated as qualified residence interest if the mortgage insurance contract was issued on or after January 1, 2007. The provision terminates for any amounts paid or accrued after December 31, 2010.

New Law. The Tax Relief Act extends the deductibility of qualified mortgage insurance for one year. Thus, the provision applies to qualified mortgage insurance premiums paid or accrued before December 31, 2011.

Exclusion from Income for Transportation Fringe Benefits

Old Law. Prior to February 17, 2009, the maximum amount that could be excluded as qualified transportation fringe benefits was $100 per month in combined vanpooling and transit pass benefits and $175 per month in qualified parking benefits. These limits were adjusted annually for inflation; the applicable 2009 amounts were $120 and $230, respectively. The ARRA increased the monthly exclusion for employer-provided vanpool and transit pass benefits to the same level as the exclusion for employer-provided parking (i.e., $230 for 2010). The temporary increase enacted by the ARRA expired on December 31, 2010.

New Law. The Tax Relief Act extends the increase in the monthly exclusion for employer-provided vanpool and transit pass benefits for one year through December 31, 2011.

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Refunds Disregarded in Determining Eligibility for Federal Benefits

Old Law. Qualifying individuals receive refundable credits under various provisions of the Code. The treatment of the various credits for purposes of determining eligibility for benefits or assistance under federal programs is not uniform.

New Law. Tax refunds and advance payments of refundable credits received by individuals after December 31, 2009, may not be taken into account over a 12-month period as a resource for purposes of determining the individual's eligibility for benefits or assistance under any federal program. This provision of the Tax Relief Act terminates on December 31, 2012.

BUSINESS TAX RELIEF

Research Credit

Old Law. A taxpayer may claim a research credit of 20% of the amount by which qualified research expenses for a taxable year exceed the taxpayer's base amount for the year.[56] The research credit expires for amounts paid or incurred after December 31, 2009.

New Law. The Tax Relief Act extends the research credit for two years through December 31, 2011.

Indian Employment Tax Credit

Old Law. Employers are allowed a tax credit for the qualified wages and qualified employee health insurance costs paid or incurred by the employer for certain employees. Qualified employees are those who satisfy **all** of the following conditions.

- The employee is an enrolled member of an Indian tribe or the spouse of an enrolled member.
- The employee performs substantially all of the services for an employer within an Indian reservation.
- The employee has a principal place of abode on or near the reservation in which the services are performed.

The wage credit is available for wages paid or incurred in taxable years beginning before January 1, 2010.

New Law. The Tax Relief Act extends the employment tax credit provision for two years through December 31, 2011.

Differential Wage Credit

Old Law. An eligible small business employer is allowed to take a 20% tax credit on the sum of eligible differential wage payments for each of the employer's qualified employees for the taxable year.[57] Differential wage payments are defined as the voluntary payments paid by employers to employees who are on active duty in the armed forces of the United States for more than 30 days. The differential wage payments represent all or a portion of the wages the individual would have received from the employer if the individual were performing services for the employer.[58]

The credit is available for differential wage payments made after June 17, 2008, and before January 1, 2010.

New Law. The Tax Relief Act extends the differential wage credit to amounts paid through December 31, 2011.

56. IRC §41(a).

57. IRC §45P(a).

58. IRC §3401(h)(2).

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15-Year Depreciation for Qualified Improvements

Old Law. The following types of property are eligible for a 15-year recovery period.

- Qualified leasehold improvements[59] placed in service before January 1, 2010 and for leases between unrelated parties
- Qualified restaurant property[60] placed in service before January 1, 2010
- Qualified retail improvement property[61] placed in service before January 1, 2010

New Law. The Tax Relief Act extends the provisions regarding the recovery period for qualified leasehold improvements, qualified restaurant property, and qualified retail improvement property for two years. Thus, qualified property placed in service before January 1, 2012, is eligible for a 15-year recovery period.

Enhanced Charitable Deduction for Food Inventory Contributions

Old Law. Any taxpayer engaged in a trade or business is eligible to claim an enhanced deduction for donations of food inventory. Food inventory contributions must be items fit for human consumption and must be contributed to a qualified charity or private operating foundation for use in the care of infants, the ill, or the needy.

The amount of the enhanced deduction for food inventory donations is the basis of the donated item plus one-half of the item's appreciation, not to exceed two times the basis of the donated item. Appreciation of the food item is defined as the amount of gain that would be realized if the donated item was sold at FMV on the date of the contribution.

The enhanced deduction does not apply to contributions of food inventory made after December 31, 2009.

New Law. The Tax Relief Act extends the enhanced deduction for contributions of food inventory for two years through December 31, 2011.

Enhanced Charitable Deduction for Book Inventory Contributions

Old Law. C corporations may claim an enhanced charitable deduction for donations of books to public schools. The amount of the enhanced deduction that may be taken is the donated item's basis plus one-half of the item's appreciation, not to exceed two times the donated item's basis.

Qualified book contributions are those made to a public school providing elementary or secondary education. The school must maintain a regular faculty and curriculum and have a regularly enrolled student body.

Additionally, the school must certify in writing that:

- The books are suitable for use in the school's education programs, and
- The books will actually be used in the school's educational programs.

The enhanced deduction does not apply to contributions of book inventory made after December 31, 2009.

New Law. The Tax Relief Act extends the enhanced deduction for contributions of book inventory for two years through December 31, 2011.

59. IRC §168(e)(3)(E)(iv).
60. IRC §168(e)(3)(E)(v).
61. IRC §168(e)(3)(E)(ix).

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Enhanced Charitable Deduction for Computer Inventory Contributions

Old Law. Corporations making qualified computer contributions may claim an enhanced deduction, which is defined as the corporation's basis in the contributed property plus one-half of the ordinary income that would have been realized if the property was sold. This enhanced deduction is limited to twice the corporation's basis in the property.

The computer equipment and technology that may be contributed for the enhanced deduction must meet standards of functionality and suitability established by the Secretary of the Treasury.

The contribution must be to certain educational organizations or public libraries. Additionally, the property must be donated no later than three years after acquisition by the corporation. If the corporation constructed or assembled the property, the contribution must occur no later than three years after the date construction or assembly is substantially completed.

The enhanced deduction does not apply to contributions of computer inventory made after December 31, 2009.

New Law. The Tax Relief Act extends the enhanced deduction for contributions of computer inventory for two years through December 31, 2011.

Basis Adjustment to S Corporation's Stock for Charitable Contributions

Old Law. Shareholders of an S corporation that contributes to a charity reduce their stock bases by the shareholders' pro rata share of the adjusted basis of the contributed property. This provision applies to contributions made by an S corporation in taxable years beginning before January 1, 2010.

For contributions made by an S corporation in taxable years beginning after December 31, 2009, the amount of the reduction in basis is the shareholders' pro rata share of the FMV of the contributed property.

New Law. The Tax Relief Act extends the rules pertaining to S corporation charitable contributions for two years. Thus, for contributions made by an S corporation in taxable years beginning before January 1, 2012, shareholders reduce their stock bases by their pro rata share of the adjusted basis of the contributed property.

Work Opportunity Credit

Old Law. The work opportunity tax credit (WOTC) provides an incentive to employers to hire employees from targeted groups that traditionally face significant barriers to employment. The employers are allowed a tax credit for a portion of the qualified wages paid during the first one or two years that the employee works for the employer.

The WOTC is not available for individuals who begin work for an employer after August 31, 2011.

New Law. The Tax Relief Act extends the WOTC for four months. Therefore, it is available for individuals who begin work for an employer after August 31, 2011, but before January 1, 2012.

Qualified Small Business Stock Gain Exclusion

Old Law. As discussed earlier in this chapter, a provision in the SBJA increased the gain exclusion to 100% for qualified small business stock acquired after September 27, 2010, and before January 1, 2011. In addition, the minimum tax preference does not apply.

New Law. The Tax Relief Act extends the 100% exclusion and the exception from minimum tax preference treatment for one year for stock acquired before January 1, 2012.

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EXPIRING TAX PROVISIONS

Note. Effective July 1, 2011, the FUTA surtax of 0.2% expired. The FUTA surtax after that date is 6.0% rather than 6.2%. The surtax was never a permanent part of the law and was extended many times.

For 2011, the impact of the reduction will require taxpayers to keep separate records. They must track wages paid from January 1, 2011, through the end of June and keep those separate from wages paid for the second half of 2011.This applies to employers who pay $20,000 or more in wages in any calendar year quarter for 2010 or 2011 and employ at least 10 workers in any one day for any 20-week period during 2010 or 2011. The IRS will revise Form 940 accordingly.

The following tables list selected tax provisions scheduled to expire in 2010–2012.[62] The entire list can be found on the Joint Committee on Taxation's website at **www.jct.gov.** At the time this table was prepared, these provisions were not extended beyond the dates shown.

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62. Joint Committee on Taxation, *List of Expiring Federal Tax Provisions,* 2010–2020 (JCX-2-11) (Jan. 21, 2011).

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Provisions Expiring in 2010

IRC Section	Expiring Provision	Expiration Date
36(h)	First-time homebuyer credit	Apr. 30, 2010
6432	65% subsidy for payment of COBRA health care coverage continuation premiums	May 31, 2010
36A	Making work pay credit	Dec. 31, 2010
38(c)(5)	General business credits of eligible small businesses not subject to AMT	Dec. 31, 2010
39(a)(4)	General business credits of eligible small businesses carried back five years	Dec. 31, 2010
51(d)(14)	Work opportunity tax credit targeted group status for unemployed veterans and disconnected youth	Dec. 31, 2010
162(l)(4))	Deduction for health insurance costs in computing self-employment taxes	Dec. 31, 2010
195(b)(3)	Increased amount allowed as a deduction for start-up expenditures	Dec. 31, 2010
529(e)(3)(A)(iii)	Computer technology and equipment allowed as a qualified higher education expense for §529 accounts	Dec. 31, 2010
3111(d)	Payroll tax forgiveness for hiring unemployed workers	Dec. 31, 2010
301(c) of PL No. 111-312	Election for executors of estates of decedents dying during 2010 to apply the 2010 EGTRRA estate tax and modified carryover basis rules	Dec. 31, 2010
302(c) of PL No. 111-312	Zero rate for generation-skipping transfer tax	Dec. 31, 2010
2505	$1 million gift tax exemption	Dec. 31, 2010

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Provisions Expiring in 2011

IRC Section	Expiring Provision	Expiration Date
35(a)	Enhanced credit for health insurance costs of eligible individuals	Feb. 13, 2011
36(h)(3)	First-time homebuyer credit for individuals on qualified official extended duty outside United States	Apr. 30, 2011
3301(1)	FUTA surtax of 0.2%	Jun. 30, 2011
4481(f)	Annual use tax on heavy highway vehicles	Sep. 30, 2011
25C(g)	Credit for certain nonbusiness energy property	Dec. 31, 2011
26(a)(2)	Personal tax credits allowed against regular tax and AMT	Dec. 31, 2011
36C and 137	Expanded adoption credit and adoption assistance programs	Dec. 31, 2011
45G(f)	Credit for certain expenditures for maintaining railroad tracks	Dec. 31, 2011
45L(g)	Credit for construction of new energy efficient homes	Dec. 31, 2011
45M(b)	Credit for energy efficient appliances	Dec. 31, 2011
45P	Employer wage credit for activated military reservist	Dec. 31, 2011
51(c)(4)	Work opportunity tax credit	Dec. 31, 2011
55(d)(1)	Increased AMT exemption amount	Dec. 31, 2011
62(a)(2)(D)	Deduction for certain expenses of elementary and secondary school teachers	Dec. 31, 2011
163(h)(3)	Premiums for mortgage insurance deductible as qualified residence interest	Dec. 31, 2011
164(b)(5)	Deduction for state and local general sales taxes	Dec. 31, 2011

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Provisions Expiring in 2011 *(continued)*

IRC Section	Expiring Provision	Expiration Date
168(e)(3)(E)(iv), (v), (ix), 168(e)(7)(A)(i) and (e)(8)	15-year straight line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements	Dec. 31, 2011
168(k)(5)	Additional first-year (bonus) depreciation for 100% of basis of qualified property	Dec. 31, 2011
170(b)(1)(E) and 170(b)(2)(B)	Special rules for contributions of capital gain real property made for conservation purposes	Dec. 31, 2011
170(e)(3)(C)	Enhanced charitable deduction for contributions of food inventory	Dec. 31, 2011
170(e)(3)(D)	Enhanced charitable deduction for contributions of book inventories to public schools	Dec. 31, 2011
170(e)(6)(G)	Enhanced charitable deduction for corporate contributions of computer equipment for educational purposes	Dec. 31, 2011
179(b)(1) and (2) and 179(f)	Increased expensing to $500,000/$2,000,000 and expanded definition of §179 property	Dec. 31, 2011
222(e)	Above-the-line deduction for qualified tuition and related expenses	Dec. 31, 2011
408(d)(8)	Tax-free distributions from individual retirement plans for charitable purposes	Dec. 31, 2011
871(k)(1)(C) and (2)(C), and 881(e)(1)(A) and (2)	Treatment of certain dividends of regulated investment companies	Dec. 31, 2011
1202(a)(4)	Special rules for qualified small business stock	Dec. 31, 2011
1367(a)	Basis adjustment to stock of S corporations making charitable contributions of property	Dec. 31, 2011
1374(d)(7)	Reduced S corporation recognition period for built-in gains tax	Dec. 31, 2011
601 of PL No. 111-312	Temporary payroll tax cut	Dec. 31, 2011

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Provisions Expiring in 2012

IRC Section	Expiring Provision	Expiration Date
1(f)(8)	Increase the size of 15% rate bracket for married filers to double that of unmarried filers	Dec. 31, 2012
1(h), 55(b), 57(a)(7), 1445(e)(1), 7518(g)(6)(A)	Reduced capital gain rates for individuals	Dec. 31, 2012
1(h)(11), 163(d)(4)(B), 854(a) and (b), and 857(c)	Dividends of individuals taxed at capital gain rates	Dec. 31, 2012
1(i)	10% individual income tax rate	Dec. 31, 2012
1(i)(2)	Reduced individual income tax rates — size of 15% rate bracket modified to reflect 10% rate, and 28%, 31%, 36% and 39.6% rates are reduced to 25%, 28%, 33%, and 35%, respectively	Dec. 31, 2012
21(a)(2) and 21(c)	Dependent care credit — increase of dollar limit on creditable expenses from $2,400 to $3,000 ($4,800 to $6,000 for two or more children), increase of applicable credit percentage from 30 to 35%, increase of beginning point of phaseout range from $10,000 to $15,000	Dec. 31, 2012
23 and 137	Adoption credit and adoption assistance exclusion — increase to $10,000 for maximum credit and maximum exclusion, special needs adoptions deemed to have $10,000 eligible expenses for purposes of credit and exclusion, increase the beginning and ending points of phaseout range for credit and exclusion, allow the credit against AMT	Dec. 31, 2012
24(a) and (b)(3)	Child tax credit — increase from $500 to $1,000, expand eligibility for refundable portion of the credit, AMT relief, provide that child tax credit not treated as income or resources for purposes of benefit or assistance programs financed in whole or in part with federal funds	Dec. 31, 2012
24(d)	Refundable child tax credit floor amount at $3,000	Dec. 31, 2012
25A(i)	American opportunity credit	Dec. 31, 2012
32(b)(2), (c)(2)(A)(i), (h), and 6213(g)(2)	Earned income credit (EIC) — increase in the beginning point of the phaseout range for joint returns, modify EIC treatment of amounts not includible in income, repeal reduction of EIC for AMT liability, expand math error authority	Dec. 31, 2012

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Provisions Expiring in 2012 *(continued)*

IRC Section	Expiring Provision	Expiration Date
32(b)(3)(A)	EIC credit percentage of 45% for three or more qualifying children	Dec. 31, 2012
32(b)(3)(B)	Phaseout threshold for marriage penalty relief	Dec. 31, 2012
45F	Credit for employer-provided child care	Dec. 31, 2012
53(e)	Credit for prior-year minimum tax liability made refundable after period of years	Dec. 31, 2012
63(c)(2)(A)	Increase the standard deduction for married filers to double that of unmarried filers	Dec. 31, 2012
68(g)	Repeal of overall limitation on itemized deductions (Pease limitation)	Dec. 31, 2012
108(a)(1)(E)	Discharge of indebtedness on principal residence excluded from gross income of individuals	Dec. 31, 2012
127(c)(1)	Employer-provided educational assistance — expansion to graduate education and making the exclusion permanent	Dec. 31, 2012
151(d)(3)(F)	Repeal of the personal exemptions phaseouts (PEP) for high-income taxpayers	Dec. 31, 2012
168(k)(1) and (2)	Additional first-year (bonus) depreciation for 50% of basis of qualified property	Dec. 31, 2012
168(k)(4)	Election to accelerate AMT credits in lieu of additional first-year (bonus) depreciation	Dec. 31, 2012
179(b)(1) and (2), (c)(2), and (d)(1)(A)(ii)	Increase dollar limitations for expensing to $125,000/500,000 (indexed)	Dec. 31, 2012
221	Student loan interest deduction — increase and index phaseout ranges for inflation, repeal the limit on the number of months that interest payments are deductible, repeal the rule that voluntary payments of interest are not deductible	Dec. 31, 2012

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Provisions Expiring in 2012 *(continued)*

IRC Section	Expiring Provision	Expiration Date
530(b)(1), (b)(2), (b)(4), (c)(1), (d)(2)	Coverdell education savings accounts — increase maximum annual contribution from $500 to $2,000, expand definition of qualified education expenses, increase the size of the phaseout range for married filers to double that of unmarried filers, provision of special needs beneficiary rules, contributions by corporations and other entities, and contributions until April 15th, permitted	Dec. 31, 2012
531 and 541	Reduced rates under accumulated earnings tax and personal holding company tax	Dec. 31, 2012
2001 and 2502	Reduced the maximum estate and gift tax rate to 35%	Dec. 31, 2012
2001(b)(2), 2001(g), and 2505(a)	Modified estate and gift taxes to reflect differences in credit resulting from different tax rates	Dec. 31, 2012
2010	Increase estate and gift tax exemption to $5 million (indexed for inflation in years after 2011)	Dec. 31, 2012
2010	"Portability" rules permitting a surviving spouse to use the unused estate and gift tax exemptions of the last deceased spouse	Dec. 31, 2012
2011, 2053, 2058, 2102, 2106, and 2604)	Estate tax deduction for state death taxes paid	Dec. 31, 2012
2031(c)(2) and (c)(8)(A)(i)	Expanded and clarified estate tax conservation easement rules	Dec. 31, 2012
2632(c) and 2642(a)(3), (b)(1), and (b)(2)(A)	Modified GSTT rules regarding deemed allocations of exemption to certain transfers in trust, severing of trusts, valuation, and relief for late elections	Dec. 31, 2012
6166(b)(1)(B)(ii), (b)(1)(C)(ii), (b)(8)(B), (b)(9)(B)(iii)(I), and (b)(10)	Modified estate tax installment payment rules	Dec. 31, 2012

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