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THE 2010 TAX RELIEF ACT

After all of the politicking was complete, several tax cuts, previously passed in 2001 and 2003 and due to expire at the end of 2010, were extended through 2012. The favorable tax provisions commonly referred to as the “Bush Tax Cuts” were extended for two years after Congress and President Obama were unable to come to an agreement on a permanent solution for taxpayers.

In terms of expected revenue impact, the most consequential provisions of the Act, according to the Joint Committee on Taxation, are as follows:

Tax rates extended. The income tax rates for individuals will stay at 10%, 15%, 25%, 28%, 33% and 35% (instead of moving, as previously scheduled, to 15%, 28%, 31%, 36% and 39.6%).

Capital gains and qualified dividend rates extended. Under current law, the capital gains and dividend rates for taxpayers below the 25% bracket is equal to zero percent. For those in the 25% bracket and above, the capital gains and dividend rates are currently 15%. These rates expire at the end of 2010. Upon expiration, the rates for capital gains were to become 10% and 20%, respectively, and dividends were to be

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subject to the ordinary income rates. The 2010 Tax Relief Act extends the current capital gains and dividends rates for all taxpayers for an additional two years, through 2012.

Two-year AMT “patch”. Currently, a taxpayer receives an exemption of \$33,750 (individuals) and \$45,000 (married filing jointly) under the AMT. Current law also does not allow nonrefundable personal credits against the AMT. The 2010 Tax Relief Act increases the exemption amounts for 2010 to \$47,450 (individuals) and \$72,450 (married filing jointly) and for 2011 to \$48,450 (individuals) and \$74,450 (married filing jointly). It also allows the nonrefundable personal credits against the AMT. The effective date is for taxable years beginning after December 31, 2009.

Temporary reduction in employee-paid payroll taxes. Under current law, employees pay a 6.2 percent Social Security tax on all wages earned up to \$106,800 (in 2011) and self-employed individuals pay a 12.4 percent Social Security self-employment tax on all their self-employment income up to the same threshold. The bill provides a payroll/self-employment tax holiday during 2011 of two percentage points. This means employees will pay only 4.2 percent on wages and self-employment individuals will pay only 10.4 percent on self-employment income up to the threshold.

Temporary extension of the modified child tax credit. The Tax Relief Act of 2010 extends the current child tax credit for an additional two years, through 2012.

Temporary estate, gift and generation skipping transfer tax relief. The relief includes the following provisions:

Rates and exemptions Prior legislation phased-out the estate and generation-skipping transfer taxes so that they were fully repealed in 2010, lowered the gift tax rate to 35 percent and increased the gift tax exemption to \$1 million for 2010. The 2010 Tax Relief Act sets the exemption at \$5 million per person and \$10 million per couple and a top tax rate of 35 percent for the estate, gift, and generation-skipping transfer taxes for two years, through 2012.

Portability Prior to the enactment of the current legislation, any unused portion of the estate tax exemption was forfeited if not used at the death of the taxpayer. Under the 2010 Tax Relief Act, married persons may utilize any unused exemption from the death of the first spouse upon the death of the surviving spouse. The portability of the exemption was intended to assist taxpayers whose estate planning did not include a "credit shelter trust." These estate plans are typically funded by establishing one trust with the maximum amount that may be transferred tax-free (e.g., \$3.5 million in 2009), and a separate marital trust for any remaining assets which

may transfer tax-free due to the unlimited marital deduction. This allows the "credit shelter" portion to avoid being taxed in the surviving spouse's estate at his or her death. The portability provision is only effective through 2012 and, as a result, many taxpayers may choose to continue using the two-trust structure, given the continued uncertainty due to the two year duration of the law.

Reunification Prior to the 2001 tax act, the estate and gift taxes were unified, creating a single graduated rate schedule for both. That single lifetime exemption could be used for gifts and/or bequests. The 2001 act decoupled these systems. The new law reunifies the estate and gift taxes and is effective for gifts made after December 31, 2010.

Business Tax Relief Provisions

Individual taxpayers are not the only ones to benefit from the new tax law. Several tax incentives have been extended and/or expanded for businesses as well:

Bonus Depreciation In order to encourage investment in machinery and equipment, businesses have had opportunities over the last several years to immediately write off 50 percent of qualified purchases in the year of acquisition. Taxpayers will be able to write off 100 percent of the cost of qualified assets placed in service between September 9, 2010 and December 31, 2011. Unlike the Section 179 asset expensing election, there is no taxable income requirement or any limitation on the size of the deduction or the amount of assets placed in service during the year. The 50 percent bonus depreciation provision will be available for assets placed in service in 2012. Eligible property generally includes new depreciable property with a recovery period of 20 years or less, computer software and qualified leasehold improvements. The provision also extends the \$8,000 increase in luxury auto depreciation limits on property eligible for bonus depreciation.

Asset Expensing Election Earlier this fall, Congress expanded the asset expensing election to enable eligible businesses to deduct up to \$500,000 of eligible asset purchases in 2010 and 2011. The maximum deduction had been scheduled to revert to \$25,000 in 2012. The new law increases the maximum asset expensing election to \$125,000 in 2012.

Research and Experimentation Credit The research and experimentation credit expired at the end of 2009. The new law reinstates the credit for 2010 and 2011.

New Markets Tax Credit This credit, which encourages investment in low-income communities, has been extended for two more years, through 2011.

The information on the 2010 Tax Relief Act, provided above, is presented solely for information purposes. For advice on estate planning and tax matters, one should consult his or her tax professional.

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