

# Cooley

December 17, 2010

The U.S. House of Representatives has passed the "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010" (the "Act"), sending the legislation to the President for signature.

## Tax rate extensions and estate tax

**Extension of Current Tax Rates.** The new law extends current tax rates for two years for individual taxpayers at all income levels. Thus, the following maximum marginal federal income tax rates will remain in effect for individual taxpayers until December 31, 2012:

Ordinary income and short-term capital gains	35%
Long-term capital gains and "qualified" dividends	15%

**Reinstatement of Estate Tax and Generation-Skipping Tax.** The Act reinstates the federal estate tax and generation-skipping tax (which were temporarily suspended during 2010), and for at least the next two years:

- Provides an exemption for individual estates with less than \$5 million in assets;
- Increases the exemption for the estate of a surviving spouse by the unused exemption of the first spouse to die (allowing spouses to shelter a total of \$10 million in assets from estate tax);
- Sets the maximum federal estate tax, gift tax and generation-skipping tax rates at 35%; and
- Reunifies the estate tax, gift tax, and generation-skipping tax exemptions, so that an individual may make gifts (including generation-skipping gifts) of up to \$5 million free of tax. However, this amount is reduced by previously-used portions of these exemptions.

Note that there is still time before the end of 2010 to make gifts that are not subject to generation-skipping tax and to make distributions from trusts without any generation-skipping tax.

**AMT Patch.** The Act includes a two-year alternative minimum tax "patch", increasing the AMT exemption amounts for individuals for the 2010 and 2011 tax years.

## Other notable provisions

The following is a non-exhaustive list of other notable provisions in the new tax law:

**100% Exclusion for Qualified Small Business Stock.** As described in our [accompanying Alert](#), the Act extends the 100% tax exclusion for qualified small business stock to QSBS purchased during all of 2011.

**Reduction in Payroll Tax.** For 2011, the Act reduces the social security tax rate on wages and self-employment income by two percentage points, to 4.2% (for employees) and 10.4% (for self-employed individuals).

**R&D Credit.** The Act extends, for 2011 and retroactively for 2010, the Section 41 research credit.

**Energy-Related Tax Benefits and Renewable Energy Grants.** The Act temporarily extends several energy-related tax benefits, including the so-called "Section 1603" grant program for renewable energy investments, which now applies to eligible property placed in service during 2009, 2010 and 2011, and to property placed in service after 2011 if construction began during 2009, 2010 or 2011 and the property is placed in service before the relevant "credit termination date" for the property.

**100% Expensing for Certain Business Property.** The Act contains a new temporary tax benefit that permits immediate expensing for 100% of the cost of qualified business property purchased after September 8, 2010, and before January 1, 2012, if such property is placed in service before January 1, 2012 (or January 1, 2013, in the case of certain property). This new 100% expensing allowance is separate from the existing "small business expensing" allowance, which permits an immediate deduction for 100% of the cost of certain business property purchased during the year, up to designated dollar limits. For 2012, the Act increases the small business expensing limit to \$125,000. This limit remains at \$500,000 for 2011, and reverts to \$25,000 for years after 2012. The small business expensing limit in each year is reduced for businesses which purchase larger amounts of business property during the year.

**Other Accelerated Depreciation Benefits.** The Act also extends the special 50% "bonus depreciation" allowance to qualified property placed in service during 2012 (or both 2012 and 2013, in the case of certain property).

**New Markets Tax Credit.** The Act allocates \$3.5 billion for new markets tax credits in 2010 and 2011.

**Empowerment Zones.** The Act extends through 2011 certain tax incentives for investment in so-called "empowerment zones" (including DC empowerment zones).

## **No "carried interest" tax provision**

The Act does *not* contain previously proposed legislation that would have imposed ordinary income tax rates on allocations from and gains on partnership profits interests held by investment fund service providers.

## **Other tax legislation**

**No Repeal of Expanded 1099 Reporting (Yet).** In separate legislative action on December 15th, Congress failed to repeal the expanded Form 1099 reporting for business purchases of \$600 or more (scheduled to take effect in 2012). However, Congress is expected to revisit these rules during 2011.

**Mutual Fund Reform Legislation.** Also on December 15th, the House passed the "Regulated Investment Company Modernization Act," an attempt to update and simplify the tax rules applicable to mutual funds and their investors. The Senate has previously passed this legislation, and the President is expected to sign the bill shortly. Among other things, the new rules provide additional relief for mutual funds that temporarily fail to satisfy certain gross income and asset diversification requirements.

If you have questions about the new tax laws or other tax legislation described above, please contact one of our tax attorneys or your regular Cooley contact.

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