

November 30, 2011

TO: Clients and Friends of the Firm

RE: **Tax Provisions Set to Expire in 2011**

Some 59 federal tax provisions are set to expire on Dec. 31, 2011. The recent failure of the “Super Committee” to agree upon budget and tax legislation increases the likelihood that these provisions will not be renewed. **Accordingly, this might be a good time to consider whether the pending expiration of these provisions should prompt or accelerate actions in December 2011.**

The expiring provisions are listed in the attached excerpt from a staff report for the Joint Committee on Taxation. Many of them relate to very specialized businesses, industries or investments. However, the following seem noteworthy:

For Businesses:

1. Increased \$500,000 expensing election under Code Sec. 179, with \$2 million investment ceiling (reduced to \$139,000 with a \$560,000 ceiling for 2012, and further reduced to \$25,000 with a \$200,000 ceiling for tax years beginning after 2012).
2. Election to expense environmental remediation costs under Code Sec. 198(h).
3. Research credit under Code Sec. 41(h)(1)(B).
4. Enhanced charitable deduction for contributions of food inventory under Code Sec. 170(e)(3)(C), contributions of book inventories to public schools under Code Sec. 170(e)(3)(D), and corporate contributions of computer equipment for educational purposes under Code Sec. 170(e)(6)(G).
5. Opportunity to purchase stock covered by exclusion of 100% of gain on certain small business stock under Code Sec. 1202(a)(4).

For Individuals:

6. One-year payroll tax holiday which for 2011 reduced by two points employees' payroll taxes on up to \$106,800 in compensation, and self-employed persons' share of Social Security self-employment taxes on up to \$106,800 in self-employment income.
7. Election to deduct State and local general sales taxes under Code Sec. 164(b)(5) in lieu of a state and local income tax deduction.
8. Allowance of personal tax credits against regular tax and alternative minimum tax (AMT) under Code Sec. 26(a)(2).
9. Increased AMT exemption amount under Code Sec. 55(d)(1).
10. Exclusion of 100% of gain on certain small business stock under Code Sec. 1202(a)(4).
11. Special rules to encourage contributions of capital gain real property for conservation purposes under Code Sec. 170(b)(1)(E) and Code Sec. 170(b)(2)(B).

12. Tax-free distributions (up to \$100,000 annually for taxpayers 70-1/2 and older) from individual retirement plans for charitable purposes under Code Sec. 408(d)(8).

For Charities: See items 4 and 10-12 above.

We would be pleased to provide more information or answer questions about these expiring tax provisions.

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**LIST OF EXPIRING FEDERAL TAX PROVISIONS
2010-2020**

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



January 21, 2011
JCX-2-11

B. Provisions Expiring in 2011

Provision (Code section)	Expiration Date
1. Enhanced credit for health insurance costs of eligible individuals (sec. 35(a))	2/13/11
2. Airport and Airway Trust Fund excise taxes:	
a. All but 4.3 cents-per-gallon of taxes on noncommercial aviation kerosene and noncommercial aviation gasoline (sec. 4081(d)(2)(B))	3/31/11 ⁷
b. Domestic and international air passenger ticket taxes (sec. 4261(j)(1)(A)(ii))	3/31/11
c. Air cargo tax (sec. 4271(d)(1)(A)(ii))	3/31/11
3. First-time homebuyer credit for individuals on qualified official extended duty outside the United States (sec. 36(h)(3))	4/30/11 ⁸
4. FUTA surtax of 0.2 percent (sec. 3301(1))	6/30/11

⁷ The 4.3-cents-per-gallon rate is permanent.

⁸ In the case of a written binding contract entered into before May 1, 2011, to close on the purchase of a principal residence before July 1, 2011, the purchase must close before July 1, 2011. The related provision for other individuals requires the written binding contract to be entered into before May 1, 2010.

Provision (Code section)	Expiration Date
5. Highway Trust Fund excise tax rates:	
a. All but 4.3 cents-per-gallon of the taxes on highway gasoline, diesel fuel, kerosene, and alternative fuels (secs. 4041(a) and 4081(d)(1))	9/30/11
b. Reduced rate of tax on partially exempt methanol or ethanol fuel (sec. 4041(m))	9/30/11 ⁹
c. Tax on retail sale of heavy highway vehicles (sec. 4051(c))	9/30/11
d. Tax on heavy truck tires (sec. 4071(d))	9/30/11
e. Annual use tax on heavy highway vehicles (sec. 4481(f))	9/30/11
6. Leaking Underground Storage Tank Trust Fund financing rate (secs. 4041(d)(4) and 4081(d)(3))	9/30/11
7. Credit for certain nonbusiness energy property (sec. 25C(g))	12/31/11
8. Personal tax credits allowed against regular tax and AMT (sec. 26(a)(2))	12/31/11
9. Credit for electric drive motorcycles, three-wheeled vehicles, and low-speed vehicles (sec. 30(f))	12/31/11
10. Conversion credit for plug-in electric vehicles (sec. 30B(i)(4))	12/31/11

⁹ After September 30, 2011, in the case of fuel none of the alcohol in which consists of ethanol, the rate is 2.15 cents-per-gallon. In any other case, the rate is 4.3 cents-per-gallon.

Provision (Code section)	Expiration Date
11. Alternative fuel vehicle refueling property (non-hydrogen refueling property) (sec. 30C(g)(2))	12/31/11 ¹⁰
12. Expansion of adoption credit and adoption assistance programs (secs. 36C and 137 and sec. 10909(c) of Pub. L. No. 111-148)	12/31/11
13. Incentives for alcohol fuels	
a. Alcohol fuels income tax credit (alcohol fuel, alcohol used to produce a qualified mixture, and small ethanol producers) (secs. 40(e)(1)(A), (h)(1), and (h)(2))	12/31/11 ¹¹
b. Alcohol fuel mixture excise tax credit and outlay payments (secs. 6426(b)(6) and 6427(e)(6)(A))	12/31/11

¹⁰ The related provision of section 30C for hydrogen refueling property expires December 31, 2014.

¹¹ The income tax credit expires earlier if the tax rate on gasoline and other motor fuels drops to 4.3 cents-per-gallon for any period before January 1, 2011. The rates are currently scheduled to be reduced October 1, 2011. See sections 40(e)(1)(B) and 4081(d)(1).

Provision (Code section)	Expiration Date
14. Incentives for biodiesel and renewable diesel:	
a. Income tax credits for biodiesel fuel, biodiesel used to produce a qualified mixture, and small agri-biodiesel producers (sec. 40A)	12/31/11
b. Income tax credits for renewable diesel fuel and renewable diesel used to produce a qualified mixture (sec. 40A)	12/31/11
c. Excise tax credits and outlay payments for biodiesel fuel mixtures (secs. 6426(c)(6) and 6427(e)(6)(B))	12/31/11
d. Excise tax credits and outlay payments for renewable diesel fuel mixtures (secs. 6426(c)(6) and 6427(e)(6)(B))	12/31/11
15. Tax credit for research and experimentation expenses (sec. 41(h)(1)(B))	12/31/11
16. Placed-in-service date for facilities eligible to claim the refined coal production credit (other than refined coal facilities that produce steel industry fuel) (sec. 45(d)(8))	12/31/11
17. Indian employment tax credit (sec. 45A(f))	12/31/11
18. New markets tax credit (sec. 45D(f)(1))	12/31/11
19. Credit for certain expenditures for maintaining railroad tracks (sec. 45G(f))	12/31/11
20. Credit for construction of new energy efficient homes (sec. 45L(g))	12/31/11

Provision (Code section)	Expiration Date
21. Credit for energy efficient appliances (sec. 45M(b))	12/31/11
22. Mine rescue team training credit (sec. 45N)	12/31/11
23. Employer wage credit for activated military reservists (sec. 45P)	12/31/11
24. Grants for specified energy property in lieu of tax credits (sec. 48(d) and sec. 1603 of Pub. L. No. 111-5)	12/31/11
25. Work opportunity tax credit (sec. 51(c)(4))	12/31/11
26. Qualified zone academy bonds – allocation of bond limitation (sec. 54E(c)(1))	12/31/11
27. Increased AMT exemption amount (sec. 55(d)(1))	12/31/11
28. Deduction for certain expenses of elementary and secondary school teachers (sec. 62(a)(2)(D))	12/31/11
29. Parity for exclusion from income for employer-provided mass transit and parking benefits (sec. 132(f))	12/31/11
30. Treatment of military basic housing allowances under low-income housing credit (sec. 142(d))	12/31/11
31. Premiums for mortgage insurance deductible as interest that is qualified residence interest (sec. 163(h)(3))	12/31/11

Provision (Code section)	Expiration Date
32. Deduction for State and local general sales taxes (sec. 164(b)(5))	12/31/11
33. 15-year straight-line cost recovery for qualified leasehold improvements, qualified restaurant buildings and improvements, and qualified retail improvements (secs. 168(e)(3)(E)(iv), (v), (ix), 168(e)(7)(A)(i) and (e)(8))	12/31/11
34. Seven-year recovery period for motorsports entertainment complexes (sec. 168(i)(15))	12/31/11
35. Accelerated depreciation for business property on an Indian reservation (sec. 168(j)(8))	12/31/11
36. Additional first-year depreciation for 100 percent of basis of qualified property (sec. 168(k)(5))	12/31/11 ¹²
37. Special rules for contributions of capital gain real property made for conservation purposes (secs. 170(b)(1)(E) and 170(b)(2)(B))	12/31/11
38. Enhanced charitable deduction for contributions of food inventory (sec. 170(e)(3)(C))	12/31/11
39. Enhanced charitable deduction for contributions of book inventories to public schools (sec. 170(e)(3)(D))	12/31/11

¹² December 31, 2012, for certain longer-lived and transportation property. The 50 percent additional first year depreciation deduction (which is effective after December 31, 2011) expires December 31, 2012 (December 31, 2013 for certain longer-lived and transportation property).

Provision (Code section)	Expiration Date
40. Enhanced charitable deduction for corporate contributions of computer equipment for educational purposes (sec. 170(e)(6)(G))	12/31/11
41. Increase in expensing to \$500,000/\$2,000,000 and expansion of definition of section 179 property (secs. 179(b)(1) and (2) and 179(f))	12/31/11 ¹³
42. Election to expense advanced mine safety equipment (sec. 179E(a))	12/31/11
43. Special expensing rules for certain film and television productions (sec. 181(f))	12/31/11
44. Expensing of “brownfields” environmental remediation costs (sec. 198(h))	12/31/11
45. Deduction allowable with respect to income attributable to domestic production activities in Puerto Rico (sec. 199(d)(8))	12/31/11
46. Above-the-line deduction for qualified tuition and related expenses (sec. 222(e))	12/31/11
47. Tax-free distributions from individual retirement plans for charitable purposes (sec. 408(d)(8))	12/31/11

¹³ The expensing limits of \$125,000/\$500,000 effective after December 31, 2011 expire December 31, 2012.

Provision (Code section)	Expiration Date
48. Special rule for sales or dispositions to implement Federal Energy Regulatory Commission (“FERC”) or State electric restructuring policy (sec. 451(i))	12/31/11
49. Modification of tax treatment of certain payments to controlling exempt organizations (sec. 512(b)(13)(E)(iv))	12/31/11
50. Suspension of 100 percent-of-net-income limitation on percentage depletion for oil and gas from marginal wells (sec. 613A(c)(6)(H)(ii))	12/31/11
51. Treatment of certain dividends of regulated investment companies (“RICs”) (secs. 871(k)(1)(C) and (2)(C), and 881(e)(1)(A) and (2))	12/31/11
52. RIC qualified investment entity treatment under FIRPTA (sec. 897(h)(4))	12/31/11
53. Exceptions under subpart F for active financing income (secs. 953(e)(10) and 954(h)(9))	12/31/11
54. Look-through treatment of payments between related controlled foreign corporations under the foreign personal holding company rules (sec. 954(c)(6))	12/31/11
55. Special rules for qualified small business stock (sec. 1202(a)(4))	12/31/11
56. Basis adjustment to stock of S corporations making charitable contributions of property (sec. 1367(a))	12/31/11

Provision (Code section)	Expiration Date
57. Reduction in S corporation recognition period for built-in gains tax (sec. 1374(d)(7))	12/31/11
58. Empowerment zone tax incentives: ¹⁴	
a. Designation of an empowerment zone and of additional empowerment zones (secs. 1391(d)(1)(A)(i) and (h)(2))	12/31/11
b. Increased exclusion of gain (attributable to periods through 12/31/16) on the sale of qualified business stock of an empowerment zone business (secs. 1202(a)(2) and 1391(d)(1)(A)(i))	12/31/11
c. Empowerment zone tax-exempt bonds (secs. 1394 and 1391(d)(1)(A)(i))	12/31/11
d. Empowerment zone employment credit (secs. 1396 and 1391(d)(1)(A)(i))	12/31/11
e. Increased expensing under sec. 179 (secs. 1397A and 1391(d)(1)(A)(i))	12/31/11
f. Nonrecognition of gain on rollover of empowerment zone investments (secs. 1397B and 1391(d)(1)(A)(i))	12/31/11

¹⁴ The empowerment zone tax incentives may expire earlier than December 31, 2011 if a State or local government provided for an expiration date in the nomination of an empowerment zone, or the appropriate Secretary revokes an empowerment zone's designation. The State or local government may, however, amend the nomination to provide for a new termination date.

Provision (Code section)	Expiration Date
59. Tax incentives for investment in the District of Columbia (“DC”):	
a. Designation of DC Zone, employment tax credit, and additional expensing (sec. 1400(f)(1))	12/31/11
b. DC Zone tax-exempt bonds (sec. 1400A(b))	12/31/11
c. Acquisition date for eligibility for zero percent capital gains rate for investment in DC for gains through 12/31/16 (secs. 1400B(b)(2)(A)(i), (b)(3)(A), (b)(4)(A)(i), (b)(4)(B)(i)(I), (e)(2), and (g)(2))	12/31/11
d. Tax credit for first-time DC homebuyers (sec. 1400C(i))	12/31/11
60. Definition of gross estate for RIC stock owned by a nonresident not a citizen of the United States (sec. 2105(d))	12/31/11
61. Disclosure of prisoner return information to certain prison officials (sec. 6103(k)(10))	12/31/11
62. Incentives for alternative fuel and alternative fuel mixtures (other than liquefied hydrogen). ¹⁵	
a. Excise tax credits and outlay payments for alternative fuel (secs. 6426(d)(5) and 6427(e)(6)(C))	12/31/11
b. Excise tax credits and outlay payments for alternative fuel mixtures (secs. 6426(e)(3) and 6427(e)(6)(C))	12/31/11

¹⁵ The related provisions for liquefied hydrogen fuel expire September 30, 2014.

Provision (Code section)	Expiration Date
63. Temporary increase in limit on cover over of rum excise tax revenues (from \$10.50 to \$13.25 per proof gallon) to Puerto Rico and the Virgin Islands (sec. 7652(f))	12/31/11
64. American Samoa economic development credit (sec. 119 of Pub. L. No. 109-432)	12/31/11
65. Temporary payroll tax cut (sec. 601 of Pub. L. No. 111-312)	12/31/11