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**Subject: Review of Major Expiring Bush and Obama Tax Cuts**

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*We often refer to the fact that the "Bush Tax Cuts" - principally enacted in 2001 and 2003 as the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) - will sunset at the end of 2010 if no action is taken by Congress to extend them. One of the most prominent of the expiring provisions is the repeal of the federal estate and generation-skipping tax which is in place this year. (For a summary of the status of the estate tax at this time, see our Bulletin No. 10-37.) However, numerous other provisions will expire as a result of the sunset, as will certain provisions of the Obama stimulus bill tax cuts enacted last year.*

The following is a list, derived principally from The Tax Foundation website, of the major (but by no means all of the) expiring provisions. (We should point out that, although the 2001 and 2003 tax provisions taken as a whole, bear the vernacular designation of "Bush Tax Cuts" and did indeed in their totality result in a substantial "cut" or reduction in tax revenue (perhaps more accurately identified as a significant temporary reduction), a few of the individual provisions caused an increase in taxes before reversion in 2011 to the statutory provisions that were in place in 2000. No attempt is made here to calculate the amount of separately computed tax decrease (a relatively large portion of the whole tax change) or increase (a much smaller piece of the whole) respecting each Bush tax provision within the overall Bush Tax Cut designation.):

## 1. Bush Tax Cut Provisions Expiring on December 31, 2010

### Major Expiring Individual Income Tax Provisions Enacted as Part of the 2001 and 2003 Tax Cuts

- Increase in the size of the 15% rate bracket for married filers to double that of unmarried filers.
- Increase in the standard deduction for married filers to double that of unmarried filers.
- Reduced capital gain rates for individuals (from 20% to 15%)
- Taxation of dividends of individuals at capital gain rates (currently 15%)
- Addition of a ten% individual income tax rate (formerly 15%)
- Reduction in other individual income tax rates — size of 15% rate bracket was modified to reflect 10% rate, and 28%, 31%, 36% and 39.6% rates were reduced to 25%, 28%, 33% and 35%, respectively
- Increase in amount (from \$500 to \$1,000) and availability of child care credit
- Increase in beginning point of the phase-out range for joint returns for Earned income tax credit ("EITC"), and modification of other EITC provisions.
- Repeal of the personal exemptions phase-outs ("PEP") for high income taxpayers (in 2010, the phase-out limit was eliminated entirely)
- Repeal of overall limitation on itemized deductions - *i.e.*, 3% phase-out up to 80% of itemized deductions - (the "Pease limitation") (The 2001 tax act reduced Pease by 1/3 in 2006 and 2007 and 2/3 in 2008 and 2009, and repealed Pease entirely in 2010)
- Increase in creditable expenses of dependent care credit 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 phase-out range from \$10,000 to \$15,000
- Increases in adoption credit and adoption assistance exclusion
- Increase and indexation for inflation of the phase-out ranges for student loan interest deduction, and repeal of the limit on the number of months that interest payments are deductible, repeal of the rule that voluntary payments of interest are not deductible
- Increase in amount and availability of education IRAs (Coverdell education savings accounts)

### Expiring Estate Tax Provisions

- Modified carryover basis rules for property acquired from a decedent who dies during 2010
- Estate tax deduction for State death taxes paid
- Expansion and clarification of estate tax conservation easement rules
- Temporary repeal of the estate and generation-skipping transfer taxes

- Reduction in the maximum gift tax rate to 35%
- Treatment of certain transfers in trust as taxable gifts under section 2503
- Repeal of the qualified family-owned business deduction
- Modifications to generation-skipping transfer tax rules regarding deemed allocations of exemption to certain transfers in trust, severing of trusts, valuation, and relief for late elections
- Modifications to estate tax installment payment rules under IRC section 6166

#### **Other Expiring Bush Tax Cut Provisions**

- Expansion from 90 days to 120 days of the postponement of certain tax-related deadlines in the case of Presidentially declared disasters
- Credit for employer-provided child care
- Elimination of tax on awards under the National Health Service Corps Scholarship Program and the F. Edward Hébert Armed Forces Health Professions Scholarship and Financial Assistance Program
- Expansion of employer-provided educational assistance exclusion
- Liberalization and expansion of eligibility of rules relating to tax-exempt bonds for certain educational facilities
- Repeal of collapsible corporation rules
- Modified tax treatment of electing Alaska Native Settlement Trusts and their beneficiaries

## **2. Obama Stimulus Provisions Scheduled to Expire on December 31, 2010**

#### **Major Individual Income Tax Provisions**

- Making Work Pay credit
- Refundable child credit floor amount
- American Opportunity Tax credit
- Earned income tax credit: Credit percentage of 45% for three or more qualifying children; Phase-out threshold for marriage penalty relief
- Modification of AMT limitations on tax-exempt bonds

#### **Other Provisions**

- Increase in dollar limitations for expensing to \$125,000/500,000 (indexed)

- Credit for certain nonbusiness energy property
- Alternative fuel vehicle refueling property (non-hydrogen refueling property)
- Enhanced credit for health insurance costs of eligible individuals
- Election of investment credit in lieu of production tax credit
- Grants for specified energy property in lieu of tax credits
- Work opportunity tax credit targeted group status for unemployed veterans and disconnected youth
- Qualified school construction bonds – allocation of bond authority
- Authority to issue Build America Bonds
- Deferral and ratable inclusion of income from business debt discharged by reacquisition
- Parity for exclusion from income for employer-provided mass transit and parking benefits
- Expansion of availability of industrial development bonds to facilities manufacturing intangible property
- Modification of small issuer exception to tax-exempt interest allocation rules for financial institutions
- Computer technology and equipment allowed as a qualified higher-education expense for section 529 accounts
- Special rules for qualified small business stock
- Reduction in S corporation recognition period for built-in gains tax
- Authority to issue recovery zone economic development bonds and facility bonds

### 3. **Extenders**

In addition to the foregoing, as noted in our Bulletins Nos. 10-59, 10-52, 10-39, and 10-28, there are a number of tax provisions that expired on December 31, 2009. These include, among others, the IRA Charitable Rollover provision and the AMT “patch” legislation. These items could potentially be addressed retroactively by the “Extenders” bills summarized in the Washington Reports referenced above in this paragraph.

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