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## Provisions in the Senate's Tax Cut Extension Bill

DECEMBER 10, 2010

Senate Majority Leader Harry Reid, D-Nev., introduced legislation late Thursday that would postpone the sunset of the 2001 and 2003 tax cuts, reduce the estate tax, and extend a number of expired provisions, as well as extending unemployment benefits. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Senate Amendment 4755 to HR 4853, incorporates elements of the deal struck by congressional and Obama administration negotiators on Dec. 6, but also incorporates many provisions that were not reported to be part of that deal.

The bill has provisions from four of the five tax areas that were considered to be important for Congress to address during its current "lame duck" session: the estate tax, expiring tax cuts, expired tax provisions, and an alternative minimum tax (AMT) patch. The bill as introduced does not address the expanded Form 1099 reporting requirements.

In 2001, when Congress enacted the Economic Growth and Tax Relief Reconciliation Act (EGTRRA, PL 107-16), it included a sunset provision, under which most EGTRRA changes would expire after 2010. This was designed to keep the costs of the bill small enough to ensure widespread support in Congress. HR 4853 would amend EGTRRA to postpone that sunset until after 2012.

Reid will reportedly seek to file a cloture motion on the bill on Monday. This would clear the way for a vote on the bill in the Senate. The bill's prospects in the House of Representatives are unclear because on Dec. 9, House Democrats voted to oppose consideration of any tax bill based on the deal struck on Dec. 6.

### Extension of EGTRRA Tax Cuts

The EGTRRA introduced a new 10% tax bracket for individuals and reduced the tax brackets above the 15% bracket to 25%, 28%, 33% and 35%. Those changes were scheduled to sunset after 2010, so that in 2011 the 10% rate would disappear (with income in that bracket reverting to the 15% bracket) and the other rates would revert to 28%, 31%, 36% and 39.6%, respectively. With the bill's postponement of the EGTRRA sunset, those rates would continue through 2012.

The EGTRRA also lowered the capital gains tax rate to 15% (0% for taxpayers in the 10% and 15% tax brackets), which is also scheduled to expire after 2010. The bill's postponement of the EGTRRA sunset would continue the lowered capital gains tax rate through 2012.

The EGTRRA's repeal of the itemized deduction phaseout and the personal exemption phaseout also sunset in 2011, but would be extended by the bill for two years.

For 2011 only, the legislation would also reduce the rate for the Social Security portion of payroll taxes to 10.4%, by reducing the employee rate from 6.2% to 4.2% (the employer's portion remains at 6.2%).

### AMT Patch

The AMT exemption amount has been temporarily increased by legislative action several times in recent years. The most recent patch was for 2009; for 2010 the AMT exemption amount has reverted to its statutory amount: \$45,000 for married individuals filing jointly, less 25% of alternative minimum taxable income exceeding \$150,000; \$33,750 for unmarried individuals, less 25% of alternative minimum taxable income exceeding \$112,500.

The bill includes an AMT patch for 2010 and 2011. For 2010, the AMT exemption amounts would be \$47,450 for unmarried individuals and \$72,450 for married individuals filing jointly. For 2011, the amounts would be \$48,450 and \$74,450, respectively.

The bill would also extend through 2011 the ability to use nonrefundable personal credits to offset AMT (under IRC § 26(a)).

### Bonus Depreciation and Section 179 Expensing

The bill would allow taxpayers to deduct 100% of the cost of business property acquired after Sept. 8, 2010, and before Jan. 1, 2012, and placed in service before Jan. 1, 2012 (or before Jan. 1, 2013, in the case of certain property). The bill would also extend the election to accelerate

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AMT credits in lieu of bonus depreciation through 2012, although property manufactured, constructed or produced during 2010 would not be eligible for the election.

The bill would also set the expensing limitation under IRC § 179 at \$125,000 and the phaseout threshold amount at \$500,000 for 2012. The bill would then reduce these amounts to \$25,000 and \$200,000 for tax years beginning after 2012.

#### Estate Tax

The EGTRRA enacted a slow repeal of the estate and generation-skipping transfer (GST) taxes. Under the EGTRRA provisions, the estate and GST tax rates gradually declined until the estate and GST taxes were eliminated in 2010. Under the EGTRRA sunset provision, the estate tax repeal was to be in effect for 2010 only. After that, the estate and GST regime in place before the passage of the EGTRRA would spring back to life, as if the EGTRRA had never been enacted. This means that starting Jan. 1, 2011, the estate tax exemption would be \$1 million (adjusted for inflation), the tax rate would be 55%, and the state death tax credit would be revived.

The EGTRRA also repealed the step-up in basis for assets passing at death. Instead, inherited assets are subject to a modified carryover basis rule in 2010. Under this rule, a recipient's basis in property acquired from a decedent will be the lesser of the adjusted basis of the property at death or the fair market value (FMV) on the date of death. The carryover basis provision also sunset after Dec. 31, 2010.

HR 4853 would temporarily reinstate the estate tax, with an estate tax rate of 35% and an estate tax exemption of \$5 million (adjusted for inflation after 2011). For estates of decedents dying in 2010, an election will be available either to be subject to the reinstated estate tax or to be subject to the modified carryover basis rule. Estates of decedents dying in 2010 would be given an extension to file an estate tax return until nine months after the date of enactment of HR 4853.

The bill would also reinstate the generation-skipping transfer tax, and the due date for filing a return would be extended to nine months after the date of enactment of HR 4853. However, for generation-skipping transfers made during 2010, the tax rate will be zero.

The bill would also restore the unified credit against gift tax for gifts made after 2010.

#### Extension of Expired Provisions

A variety of temporary tax provisions, often referred to as "extenders," expired at the end of 2009; more are scheduled to expire at the end of 2010. These expired provisions include tax credits, deductions and various tax incentives. The bill would extend many of these expired provisions, including:

- The increased standard deduction for married taxpayers filing jointly, scheduled to expire after 2010, would continue for two years;
- The \$1,000 child tax credit amount would continue for two years, instead of reverting to \$500;
- The increased starting and ending points for the earned income credit would continue for two years;
- The \$3,000 amount for the child and dependent care credit, which is scheduled to revert to \$2,400 after 2010, would continue for two years;
- The American opportunity tax credit would continue for two years;
- The temporary 100% exclusion of gain from the sale of certain small business stock under IRC § 1202, enacted by the Small Business Jobs Act of 2010, would be extended through 2011.

#### Tax Credits

The following temporary tax credits would also be extended through 2011 by the bill:

- IRC § 25C credit for nonbusiness energy property (which would also be returned to the limitations and standards applicable before amendment by the American Recovery and Reinvestment Act of 2009, PL 111-5);
- IRC § 30C alternative fuel vehicle refueling property credit;
- IRC § 40 credit for alcohol used as fuel;
- IRC § 40A credit for biodiesel and renewable diesel fuel;
- IRC § 41 research and development credit
- IRC § 45(d)(8) credit for refined coal facilities;
- IRC § 45A Indian employment tax credit;
- IRC § 45D new markets tax credit;
- IRC § 45G credit for certain railroad track expenditures;
- IRC § 45L new energy-efficient home credit;
- IRC § 45M energy-efficient appliance credit;
- IRC § 45N mine rescue team training credit;
- IRC § 45P employer wage credit for active duty members of the uniformed services;
- IRC § 51 work opportunity credit;
- IRC § 54E qualified zone academy bonds (but not the section 1397E credit for holders of qualified zone academy bonds, and the section 6431 refundable credit is repealed);
- IRC § 1400C credit for first-time D.C. homebuyers;
- IRC §§ 6426 and 6427 excise tax credits for alternative fuels; and
- American Samoa economic development credit under the Tax Relief and Health Care Act of 2006.

#### Deductions

The following expired and expiring temporary deductions would also be extended through 2011 by the bill:

- IRC § 632(a)(2)(D) deduction for elementary and secondary school teachers;

- IRC § 62(a)(2)(D) deduction for elementary and secondary school teachers;
- IRC § 163(h)(3)(E) treatment of mortgage insurance premiums as interest;
- IRC § 164 state and local sales tax deduction;
- IRC § 168(e)(3)(E) 15-year straight-line cost recovery for qualified leasehold improvements and for qualified restaurant improvements;
- IRC § 168(i)(15)(D) seven-year cost recovery period for motor sports entertainment complexes;
- IRC § 168(j) accelerated depreciation for property on Indian reservations;

- IRC § 170(b)(1)(E) contributions of capital gain real property made for conservation purposes;
- IRC § 170(e)(3)(C) enhanced deduction for contributions of food inventory;
- IRC § 170(e)(3)(D) enhanced deduction for contributions of book inventory to public schools;
- IRC § 170(e)(6) enhanced deduction for corporate contributions of computer equipment for educational purposes;
- IRC § 179E(g) election to expense advanced mine safety equipment;
- IRC § 181(f) expensing treatment for certain film and television productions;
- IRC § 198(h) expensing of environmental remediation costs;
- IRC § 199(d)(8) deduction for income attributable to domestic production activities in Puerto Rico;
- IRC § 222 deduction for tuition and related expenses; and
- IRC § 1367(a)(2) basis adjustment to stock of S corporations making contributions to charity.

#### Other Extended Provisions

Other expired and expiring provisions that would be extended through 2011 by the bill include:

- IRC § 132 parity for exclusion from income for employer-provided mass transit passes and parking benefits;
- IRC § 168(n) expensing and special depreciation allowance for qualified disaster assistance property (extended through 2012);
- IRC § 408(d)(8) allowance for tax-free distributions from individual retirement plans for charitable purposes;
- IRC § 451 special rule for sales or dispositions to implement FERC or state electric restructuring policy for qualified electric utilities;
- IRC § 512(b)(13) special rules for certain amounts received by tax-exempt organizations from controlled entities;
- IRC § 613A(c) suspension of limitation on percentage depletion for oil and gas from marginal wells;
- IRC § 871(k) treatment of regulated investment company dividends and assets;
- IRC § 897(h) qualified investment entity treatment of regulated investment companies under the Foreign Investment in Real Property Tax Act of 1980;
- IRC §§ 953(e) and 954(h) exceptions for active financing income;
- IRC § 954(c) look-through treatment of payments between related controlled foreign corporations;
- IRC § 2105(d) look-through of certain regulated investment company stock in determining gross estate of nonresidents;
- IRC § 1367(a) basis adjustment to stock of S corporations making charitable contributions of property;
- IRC § 1391 empowerment zone incentives;
- IRC §§ 1400, 1400A and 1400B District of Columbia Enterprise Zone incentives;
- IRC § 1400L(b) New York Liberty Zone bonus depreciation;
- IRC § 1400N Gulf Opportunity Zone incentives; and
- IRC § 7652(f) "cover over" of tax on distilled spirits to Puerto Rico and the U.S. Virgin Islands;
- Grants under the American Recovery and Reinvestment Act of 2009 for specified energy property in lieu of tax credits.

#### Provisions Not Extended

A few expired provisions that were contained in earlier proposed extenders legislation but that do not appear in HR 4853 include:

- IRC § 30B credit for alternative motor vehicle credit for advanced lean burn technology motor vehicles, qualified hybrid motor vehicles, and qualified alternative fuel vehicles;
- IRC § 165(h) deduction for personal casualty losses in federally declared disasters;
- IRC § 172(j) carryback of net operating losses attributable to federally declared disasters; and
- IRC § 1400E renewal community tax incentives.

#### Refunds and Federal Assistance

Under the bill, any refund made to an individual would not be taken into account as income for purposes of determining eligibility for any federal assistance or assistance under a state or local program financed by federal funds (new IRC § 6409).

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