



Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 H.R. 4853

On December 17, 2010, President Obama signed the long awaited *Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010*. The Act not only extends the Bush tax cuts that were set to expire at the end of 2009, it provides an AMT patch, creates incentives for businesses and individuals, and retroactively reinstates the estate tax.

This summary briefly outlines the major changes and extensions enacted under the new law.

Individuals	
Extenders	<p>The following Bush tax cuts that expired for tax years beginning after December 31, 2009, under the <i>Economic Growth and Tax Relief Reconciliation Act of 2001</i> (EGTRRA), are extended for two years (2010 and 2011):</p> <ul style="list-style-type: none"> • No personal exemption phase-out for taxpayers whose AGI exceeds certain thresholds. • Standard deduction for married taxpayers filing a joint return will be twice that of a single filer. • No overall limitation on itemized deductions. • Election to claim itemized deduction for state/local sales taxes. • Interest deduction for mortgage insurance premiums. • Up-to-\$250 above-the-line deduction for teachers' out-of-pocket

	<p>classroom-related expenses.</p> <ul style="list-style-type: none"> • Tax-free donation of up to \$100,000 of required minimum distributions from an IRA. • Special rules for qualified conservation easements contributed by individuals (including ranchers and farmers). <p>NOTE: The additional standard deduction for real property taxes, net disaster losses, and sales tax on new car purchases, all of which expired for tax years beginning after 2009, was not extended.</p>
Tax Credits	<p>Changes to certain tax credits enacted under the <i>Economic Growth and Tax Relief Reconciliation Act of 2001</i> (EGTRRA) that were set to expire for tax years beginning after December 31, 2010 have been extended for two years (2011 and 2012) unless otherwise noted.</p> <ul style="list-style-type: none"> • \$1,000 per child tax credit and extension of the earned income formula for determining the refundable portion of the credit. A taxpayer's child tax credit remains refundable to the extent of 15% of the taxpayer's earned income in excess of \$3,000. • Extension of expanded dependent care credit. The maximum credit remains at \$1,050 (35% × \$3,000) for one qualifying individual, and \$2,100 (35% × \$6,000) for two or more. • Extension of earned income tax credit (EITC) simplification; (1) a simplified definition of earned income; (2) a simplified relationship test; (3) use of AGI instead of MAGI; (4) a simplified tie-breaking rule; and (5) the repeal of the prior-law provision that reduced an individual's EITC by the amount of his AMT liability. <ul style="list-style-type: none"> ○ Extension of increased EITC phase-out threshold for joint filers. ○ Extension of increased EITC for families with three or more qualifying children. • Extension of expanded EGTRRA adoption credit rules. However, the credit is refundable for only two years (2010 and 2011) as enacted under the <i>Patient Protection and Affordable Care Act of 2010</i>. For 2012, the maximum

	<p>per-child adoption credit will be \$12,170 (indexed for inflation after 2010).</p> <ul style="list-style-type: none"> • The nonbusiness energy property credit is extended for one year (2011 only) for certain energy efficient property installed in a taxpayer's personal residence located in the U.S. The amount of the allowable credit and dollar caps revert to pre-2009 levels. The lifetime limit is \$500 (\$200 for windows. Credits claimed in 2006 and 2007 must be considered. The credit allowed for residential energy property expenditures can't exceed: <ul style="list-style-type: none"> ○ \$50 for each advanced main air circulating fan; ○ \$150 for each qualified natural gas, propane, or oil furnace or hot water boiler; and ○ \$300 for each item of energy-efficient building property. • For 2011 only exterior windows, skylights, and exterior doors: <ul style="list-style-type: none"> ○ Can qualify for the nonbusiness energy property credit by meeting the Energy Star program requirements. ○ Are no longer required to meet the prescriptive criteria established by the IECC. ○ Are no longer required to have a U factor and SHGC of 0.30 or below. • For 2011 only efficiency standards for purposes of the nonbusiness energy property credit for furnaces, boilers, and stoves revert to pre-2009 rules. A natural gas, propane, or oil furnace or hot water boiler must achieve an annual fuel utilization efficiency rate of 95 or more. A biomass fuel stove must have a thermal efficiency rating of at least 75%. • Expenditures from subsidized energy financing don't qualify for nonbusiness energy property credit. • The credit for first-time DC homebuyers is retroactively restored and extended for property purchased before January 1, 2012.
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Tax Rates	<p>Individuals' 10% income tax bracket and top four reduced tax rates (25%, 28%, 33%, and 35%) are extended through 2012.</p> <p>Expansion of married-filing-jointly 15% rate bracket to provide marriage penalty relief is extended through 2012.</p> <p>Reduced rates for kiddie tax and some withholding (each tied to the reduced individual rates) are extended through 2012.</p>
Qualified Dividends, Capital Gains and Losses	<ul style="list-style-type: none"> • 0% and 15% capital gain rates are extended through 2012. • 0% and 15% rates on qualified dividend income of noncorporate taxpayers are extended through 2012. • 100% gain exclusion for qualified small business stock (QSBS) is extended through December 31, 2011. • 15% accumulated earnings tax rate and 15% personal holding company tax rate are extended through 2012. • Exclusion of qualified dividend income from investment income is extended through 2012. • Qualified dividend income treatment for ordinary income on disposition of §306 stock extended through 2012. • Long-term capital loss treatment on stock to the extent extraordinary dividends were taxed as capital gain is extended through 2012. • 15% tax rate on nonqualifying capital gain withdrawals from capital construction funds is extended through 2012.
Payroll Tax Relief	<ul style="list-style-type: none"> • The employee's share of the social security tax (OASDI) for 2011 is reduced from 6.2% to 4.2%. • A self-employed individual's social security tax rate for 2011 is reduced from 12.4% to 10.4%.

Alternative Minimum Tax	<ul style="list-style-type: none"> • 2010/2011 AMT exemption amounts are retroactively increased to \$47,450/\$48,450 for unmarried taxpayers and \$72,450/\$74,450 for joint filers. • 0% and 15% AMT capital gain rates are extended through 2012. • Nonrefundable personal credits can offset AMT through 2011. • Child tax credit can offset AMT through 2012. • 7% AMT preference for excluded gain on qualified small business stock is extended through 2012.
Education	<ul style="list-style-type: none"> • American Opportunity Tax Credit (AOTC) for higher education expenses is extended through 2012. • The \$2,000 contribution limit and other enhancements to Coverdell ESAs made under EGTRRA are extended through 2012. • Qualified tuition deduction is retroactively extended through 2011. <ul style="list-style-type: none"> ○ \$4,000 for an individual whose adjusted gross income (AGI), with certain modifications, doesn't exceed \$65,000 (\$130,000 for a joint return), ○ \$2,000 for an individual whose modified AGI exceeds \$65,000 (\$130,000 for a joint return), but doesn't exceed \$80,000 (\$160,000 for a joint return), or ○ Zero for other taxpayers. • \$2,500 deduction for student loan interest and other rules under EGTRRA are extended through December 31, 2012. • Exclusion for employer-provided educational assistance, and restoration of the exclusion for graduate-level courses, extended through 2012. • Exclusion for scholarships awarded under the National Health Service Corps and Armed Forces Health Professions programs, is extended through 2012.

Depreciation and Cost Recovery	
Bonus Depreciation	<p>Generally, the §168(k) 50% bonus depreciation allowance is extended two additional years to apply to qualifying property acquired by a taxpayer after December 31, 2007, and before January 1, 2013, and placed in service before January 1, 2013 (or before January 1, 2014, in the case of property with a longer production period and certain noncommercial aircraft).</p> <p>The bonus depreciation rate is increased from 50% to 100% in the case of qualifying property acquired after September 8, 2010, and before January 1, 2012, and placed in service before January 1, 2012 (or before January 1, 2013, in the cases of property with a longer production period and certain noncommercial aircraft).</p> <ul style="list-style-type: none"> • There is no limit on the total amount of bonus depreciation that may be claimed in any given tax year. • The amount of the bonus depreciation deduction is not affected by a short tax year. • The bonus depreciation deduction is allowed in full for alternative minimum tax (AMT) purposes. • The regular depreciation deductions claimed on property on which bonus depreciation is claimed are also allowed in full for AMT purposes [§168(k)(2)(G)]. • A taxpayer may elect out of the bonus depreciation allowance for any class of property for the tax year. • Bonus depreciation can create a net operating loss (NOL). • There are no income thresholds attributable to claiming bonus depreciation.
Section 179 Deduction Election and Revocation	<p>Prior to enactment of this law, the deductible §179 expense could not exceed:</p> <ul style="list-style-type: none"> • \$250,000 in the case of a tax year beginning in 2008 or 2009, or • \$500,000 in the case of a tax year beginning in 2010 or 2011. <p>The maximum deductible expense had to be reduced (i.e., phased out, but not</p>

	<p>below zero) by the amount by which the cost of §179 property placed in service during a tax year beginning in 2008 or 2009 exceeded \$800,000, and during a tax year beginning in 2010 or 2011, exceeded \$2,000,000 (beginning-of-phase-out amount). Absent any legislation, the deduction under §179 was to decrease to \$25,000 and the phase-out amount was to be \$200,000 beginning in 2012.</p> <p>For tax years beginning after December 31, 2011, the §179 will increase (from \$25,000) to \$125,000 with the phase-out to begin at \$500,000. This new legislation did not extend the temporary extension of the definition of qualifying property to include qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property that applied for tax years beginning in 2010 or 2011.</p> <p>The election to revoke the §179 deduction without IRS consent and eligibility is extended to include tax years beginning in 2012.</p> <p>The election to treat “off-the-shelf” computer software as qualifying §179 property is extended for one year through 2012.</p>
Qualifying 15-year MACRS Property	<p>The 15-year general depreciation system (GDS) recovery period and 39-year alternative depreciation system (ADS) recovery period continue to apply for qualified leasehold improvement property, qualified retail improvement property and qualified restaurant property placed in service before January 1, 2012.</p> <p>A 39-year GDS recovery period and 40-year ADS recovery period will apply to qualified leasehold improvement property, qualified retail improvement property and qualified restaurant property placed in service after December 31, 2011.</p>
Miscellaneous Extenders	<ul style="list-style-type: none"> • The increase in first-year depreciation for cars that are “qualified property” is extended through 2012 (through December 31, 2013, for the aircraft and long-production-period property). • The expensing rules for qualified film and television productions are retroactively extended to productions commencing before January 1, 2012. • Election to expense qualified environmental remediation expenditures is extended to include expenditures paid or incurred before January 1, 2012. • Election to expense cost of qualified advanced mine safety equipment

	<p>property is extended two years to property placed in service through 2011.</p> <ul style="list-style-type: none"> • Suspension of net income limit on percentage depletion from marginal wells is retroactively extended to tax years beginning before Jan. 1, 2012. • Seven-year recovery period for motorsports entertainment complexes extended to facilities placed in service through 2011.
Businesses	
Extenders	<ul style="list-style-type: none"> • Research credit is retroactively extended to apply to amounts paid or incurred before January 1, 2012. • Work opportunity credit is extended for individuals from most targeted groups who begin work for an employer through December 31, 2011. • Differential wage payment credit (for employees who are active duty members of the uniformed services) is retroactively restored and extended to apply to payments made before January 1, 2012. • Energy efficient appliance credit is extended and modified for certain appliances manufactured in 2011. The credit is awarded, on a per-item-produced basis, to manufacturers of "qualified energy efficient appliances." • Income and excise tax credits/refunds for biodiesel and renewable diesel are extended retroactively through 2011. • Alcohol fuel mixture excise tax credit and refund are extended to apply for sales, uses, and removals through 2011. • Alternative fuel and alternative fuel mixture excise tax credits and refund rules are retroactively extended through 2011. • Alcohol fuels income tax credit is extended through December 31, 2011.
Charitable Contributions	<ul style="list-style-type: none"> • Enhanced charitable deduction rules are retroactively extended for qualified computer contributions made by corporations in tax years beginning before January 1, 2012. C corporations that contribute certain computer technology or equipment to exempt educational organization may claim a deduction equal to the lesser of (a) the contributor's basis plus half of the

	<p>property's appreciation, or (b) twice the property's basis.</p> <ul style="list-style-type: none"> • Above-basis deduction rules are retroactively extended for charitable contributions of food inventory made before January 1, 2012. • Corporate above-basis deduction rules are retroactively extended for book inventory donated to schools before January 1, 2012. • Special rules are retroactively extended for qualified conservation easements contributed by corporate farmers or ranchers in tax years beginning before 2012. Contributions are allowed up to 100% of the corporation's taxable income, after taking into account other allowable charitable contributions. To qualify, more than 50% of the corporation's gross income for the tax year has to be from the trade or business of farming and the corporation cannot be publically traded.
Employee Benefits	<ul style="list-style-type: none"> • Employer-provided child care credit is extended through 2012. • Parity between the exclusion for employer provided parking and the monthly exclusion for employer-provided transit passes and vanpooling benefits continues through 2011. The exclusion for 2010 is \$230. The exclusion for 2011 has not been determined. • The adoption assistance exclusion enhanced under EGTRRA is extended through 2012.
Pass-through Entities	<ul style="list-style-type: none"> • The rule that limits an S corporation shareholder's basis reduction for charitable contributions made by the corporation to the shareholder's pro-rata share of the adjusted basis of the contributed property is extended for two years. in other words, the extension applies to contributions made in tax years beginning in 2010 and 2011. • Each partner's distributive share of qualified dividend income received by the partnership is treated as qualified dividend income in the partner's hands and thus can be taxed at the maximum 0% or 15% maximum rates. This rule was set to expire for tax years beginning after December 31, 2010, at which time qualified dividend income would be taxed at ordinary income rates. The pass-through of qualified dividend income by

	partnerships (including RICs and REITs) and the favorable tax rates are extended through 2012.
Estate and Gift Tax	
Retroactive Reinstatement	<p>EGTRRA repealed the estate and generation skipping transfer tax (GST) for decedents dying and transfers made after December 31, 2009 and then reinstated it for decedents dying and transfers made after December 31, 2010. This Act reinstates the estate and GST taxes for decedents dying, and transfers made, after December 31, 2009 by amending EGTRRA as if the provision were never enacted. This means that the stepped up basis rules are also reinstated.</p> <p>The estate tax applicable exclusion amount is increased to \$5 million with a maximum tax rate of 35%.</p> <p>Estates of decedents dying after December 31, 2009 are subject to tax unless the executor elects to have the modified carryover basis rules apply instead.</p>
Executor Election	<p>In the case of a decedent dying after December 31, 2009, and before January 1, 2011, the executor may elect to apply the Code as though the retroactive rules were not enacted. In other words, instead of applying the estate tax and the basis step-up rules, the executor can elect to have the rules as enacted under EGTRRA apply. If the election is made, the estate is not subject to estate tax, and the basis of assets acquired from the decedent is determined under the modified carryover basis rules under §1022. Once this election is made, it is irrevocable absent IRS consent. This election has no effect on the applicability of the generation-skipping transfer tax.</p>
Exemption Amount	<p>For estates of decedents dying after December 31, 2009, the applicable exclusion amount is the sum of (1) \$5 million and (2) in the case of a surviving spouse, the deceased spousal unused exclusion amount.</p> <p>This exclusion amount is only effective through 2012. Absent further legislation, the \$5 million exclusion amount (indexed for inflation) for estates of decedents dying after 2012, and the GST exemption for transfers after 2012, will revert to the pre-EGTRRA threshold of \$1 million.</p>

<p>Portability of Exclusion Amount Between Spouses</p>	<p>Any applicable exclusion amount that remains unused as of the death of a spouse who dies after December 31, 2010, generally is available for use by the surviving spouse, as an addition to such surviving spouse's applicable exclusion amount. An unused exclusion amount is available to a surviving spouse only if an election is made on a timely filed estate tax return (including extensions) of the predeceased spouse regardless of whether the estate of the predeceased spouse otherwise is required to file an estate tax return. The election, once made, is irrevocable.</p> <p>If a surviving spouse is predeceased by more than one spouse, the amount of unused exclusion that is available to the surviving spouse is limited to the lesser of \$5 million or the unused exclusion of the last such deceased spouse.</p> <p>The last deceased spouse limitation applies whether or not the last deceased spouse has any unused exclusion or the last deceased spouse's estate makes a timely election.</p> <p>The applicability of the deceased spousal unused exclusion amount expires for decedents dying after December 31, 2012.</p>
<p>Extension of Time to File for 2010</p>	<p>For estates of decedents dying after December 31, 2009, and before December 17, 2010, the due date for filing an estate tax return, paying the estate tax, and making a disclaimer of an interest in property passing by reason of the decedent's death, is no earlier than nine months after December 17, 2010 (September 17, 2011).</p> <p>A similar due date applies for making for generation-skipping transfers.</p>
<p>Tax Rates</p>	<p>The top estate and gift tax rate is 35% in 2010, 2011, and 2012 for estates in excess of \$5 million. Absent further legislation, the maximum estate and gift tax rate for estates of decedents dying, and gifts made, after 2012 will be 55%. The benefits of the graduated estate and gift tax rate schedule will be phased out for taxable transfers exceeding \$10 million.</p>

Gift Tax Exemption	<p>For gifts made after December 31, 2010, the gift tax is reunified with the estate tax, with an applicable exclusion amount of \$5 million.</p> <p>For gifts made in 2010, the gift tax exclusion remains at \$1 million.</p>
Extension of EGTRRA Provisions	<p>Certain estate and gift tax provisions that were repealed under EGTRRA were set to be reinstated after 2010. The following provisions will be extended for two years for 2011 and 2012:</p> <ul style="list-style-type: none"> • The state death tax credit is repealed, and a deduction for state death taxes paid is allowed; • The qualified family owned business interest (QFOBI) deduction is repealed; and • The modifications to the rules regarding (i) qualified conservation easements, (ii) installment payment of estate taxes, and (iii) various technical aspects of the GST tax continue to apply.
Reporting Requirements	<p>Since the estate tax was retroactively reinstated (unless an election is made by the executor), the related reporting requirements and applicable penalties also no longer apply. Instead, the normal Form 706 filing rules apply.</p> <p>The requirement that an executor file an information return with IRS if the value of property (other than cash) acquired from a decedent exceeds \$1.3 million continues to apply in the event the executor makes the election to apply the Code as if this legislation had not been enacted.</p>
Transfers in Trust	<p>The rule treating any post-2009 transfer to a non-grantor trust as a gift is retroactively repealed. Prior to enactment of this legislation, for gifts made after 2009, a transfer in trust was treated as a transfer of property by gift, unless the trust was treated as wholly owned by the donor or the donor's spouse under the grantor trust rules. Because the estate tax was retroactively reinstated and the gift tax continues to be computed using the rates in the unified rate schedule, there is no need for this rule.</p>

Miscellaneous Provisions	
Tax Refunds	Any refund or advance payment of a refundable credit made to an individual in 2010, 2011, Or 2010, under the Code is not treated as income, and is not taken into account as resources for a period of 12 months from receipt, in determining the eligibility of the recipient or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any federal program or any state or local program financed in whole or part with federal funds.
Refund Offset	The <i>2010 Claims Act</i> expanded the authority of the IRS to collect state covered unemployment compensation debt using offsets of federal tax refunds. The IRS's authority to offset refunds for covered unemployment compensation debt has been made permanent (and won't expire for refunds payable after September 30, 2018, as under pre-2010 Claims Act law).