Fox Rothschild LLP
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TAX & ESTATES DEPARTMENT

ALERT

IMPORTANT INCOME TAX OPPORTUNITIES UNDER THE 2010 TAX RELIEF ACT

In December 2010, we issued an alert informing you of the passage of the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, which had a wide impact on estate planning strategies. Fox Rothschild attorneys are issuing specific alerts on a number of issues relating to the Act. This is the fourth in the series.

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the 2010 Act) provides, among other things, a number of important income tax extensions and changes that offer relatively short-lived opportunities. Taxpayers should consider these changes as they devise an income tax strategy for the next two years.

Probably the most well-known among the changes made by the 2010 Act is the two-year extension of the Bush-era tax cuts. The 2010 Act retains for 2010 and 2011 the top marginal tax rate for individuals (35 percent) and the preferential rate (15 percent) on long-term capital gains and qualified dividends. Qualified dividends include those received from domestic corporations or qualified foreign corporations as well as from regulated investment companies, real estate investment trusts and other qualified pass-thru entities. In addition, 100 percent of the gain realized on the disposition of small business stock held for more than five years and acquired prior to January 1, 2012, may be excluded from gross income.

The 2010 Act also includes important tax benefits for business such as:

- One hundred percent of the cost of qualified property placed in service after September 8, 2010, and before January 1, 2012, may be claimed as depreciation in the first-year in which the property is placed in service. The bonus depreciation is reduced to 50 percent of the cost of qualified property placed in service after December 31, 2011, and before January 1, 2013.
- Qualified leasehold improvements, restaurant building and improvements and retail improvements placed in service prior to January 1, 2012 are classified as 15-year property for depreciation purposes.
- The new markets tax credit, directed at promoting investments in low-income communities, was retroactively extended for two years through 2011. This credit is available with respect to qualified equity investments to acquire stock in a community development entity and is capped at $3.5 billion for 2010 and 2011. No amounts may be carried over beyond 2016.
- Production costs incurred in 2011 with respect to qualified television and film productions in the United States may be expensed. Up to $15 million of such costs for each qualifying production may be expensed, and the limit is increased to $20 million for certain low-income communities. Costs in excess of these limits must be capitalized.
- Qualified environmental remediation expenses must generally be capitalized and are not currently deductible. However, the 2010 Act extends through 2011 the ability for taxpayers to elect to deduct

expenses paid or incurred in connection with the abatement or control of hazardous substances at qualified containment sites.

- Certain taxpayers may elect to currently deduct, instead of depreciate, the cost of new or used tangible personal property placed in service during the tax year in the taxpayer's trade or business. For 2011, the expensing limit is $500,000 (with an investment limit of $2 million) while for 2012, the expensing limit is $125,000 (with an investment limit of $500,000). The 2010 Act increased the expensing and investment limits for 2010, which were scheduled to revert to levels in effect prior to enactment of the 2010 Small Business Jobs Act. As part of these provisions, the 2010 Act characterized off-the-shelf computer software as property that may be expensed under the foregoing provisions if placed in service prior to 2013.
- The look-through rule that excluded from treatment as personal holding company income dividends, interest, royalties and rents received by a controlled foreign corporation (i.e., controlled by U.S. persons) from a related controlled foreign corporation is extended retroactively for two years and scheduled to expire on December 31, 2011. In order to qualify for the exclusion, the income must not be attributable or allocable to passive income of the paying corporation. This exclusion eliminates current U.S. taxation on income that would otherwise be currently taxed because of its passive nature in the hands of the recipient.
- Also extended through 2011 is the exclusion from subpart F income certain income from the active conduct of a banking, financing or similar business (or insurance business). As with the look-through rule, this exclusion prevents income from being characterized as passive income subject to current U.S. taxation.

The 2010 Act extended numerous income tax benefits for both individuals and businesses, but there are specific requirements taxpayers must meet or comply with in order to qualify for these incentives. In light of the relatively short amount of time these incentives will remain in effect, it is advisable for taxpayers to review their individual and business investment strategies to devise a plan that maximizes available tax incentives.

Please Call Us With Your Questions

We encourage you to contact your relationship lawyer at Fox Rothschild or a member of the firm's Tax and Estates Department in the state in which you maintain your permanent residence to discuss the potential impact of the Tax Relief Act of 2010 on your current estate plan and evaluate whether appropriate changes should be made.

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