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Business Tax Credits & Deductions Scheduled to Expire at Year-End

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Several key business tax breaks are set to expire at year end unless Congress acts. Businesses should be aware of these expiring tax provisions and should consult with their tax advisors to determine whether they should take action necessary to take advantage of these tax breaks and/or to plan for the effects of the expiration of others of which they have taken advantage in the past.

Tax Credits Set to Sunset on December 31, 2011:

- Research Credit. The research credit of up to 20% of qualifying research expenditures applies for amounts paid or accrued before January 1, 2012.
- Work Opportunity Tax Credit ("WOTC"). The WOTC allows a credit to employers who hire members of certain targeted groups of a percentage of up to 40% of first-year wages up to $6,000 per employee ($12,000 for qualified veterans; and $3,000 for qualified summer youth employees). Where the employee is a long-term family assistance ("LTFA") recipient, the WOTC is a percentage of first and second year wages, up to $10,000 per employee.
- New Markets Tax Credit ("NMTC"). A taxpayer who holds a qualified equity investment in a qualified community development entity ("CDE") may be entitled to a NMTC of 39% of the qualified equity investment during a seven-year credit period. Under current law, the last NMTC dollar limitation is for 2011.
- Differential Wage Payment Credit for Employers. Eligible small business employers that pay differential wages can claim a credit equal to 20% of up to $20,000 of differential pay made to an employee during the tax year. Differential wages are payments to employees for periods that they are called to active duty with the U.S. uniformed services (for more than 30 days) that represent all or part of the wages that they would have otherwise received from the employer. This credit will not be available for differential wages paid after December 31, 2011.
- New Energy Efficient Home Credit. An eligible contractor can claim a credit of $2,000 or $1,000 for each qualified new energy efficient home either constructed by the contractor or acquired by a person from the contractor for use as a residence during the tax year. The credit will not apply to homes acquired after December 31, 2011.

Tax Deductions Set to Sunset on December 31, 2011

- 100% Bonus Depreciation. The 100% bonus depreciation allowance applies for qualified property acquired and placed in service after September 8, 2010 and before January 1, 2012 (placed in service before January 1, 2013 for certain aircraft and long-production-period property). For qualified property acquired and placed in service after December 31, 2011 and before January 1, 2013 (placed in service after December 31, 2012 and before January 1, 2014 for certain aircraft and long-production-period property), only a 50% bonus depreciation allowance will apply.
- Expensing Allowance. The maximum amount of otherwise capital expenditures that may be expensed under Code Section 179 for tax years beginning in 2010 or 2011 is $500,000 ($250,000 for qualified real property). For tax years beginning in 2012, the maximum amount will be $125,000 (indexed for inflation with 2006 as the base year). For tax years beginning in 2010 and 2011, the maximum annual expensing amount generally is reduced dollar-for-dollar by the amount of section 179 property placed in service during the tax year in excess of $2,000,000 (the investment ceiling). For tax years beginning in 2012, the investment ceiling will be $500,000 (indexed for inflation with 2006 as the base year) and $0 for qualified real property.
- 15-Year Write off for Specialized Realty Assets. Qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property placed in service after December 31, 2011, will no longer be eligible for a 15-year depreciation write-off under MACRS. Instead, such property will have to be depreciated over 39 years.
- Enhanced Charitable Contribution Deductions. The following C corporation enhanced charitable deductions equal to the lesser of: (a) basis plus half of the property's appreciation, or (b) twice the property's basis for: contributions of food inventory that is apparently wholesome food, i.e., meant for human consumption and meeting certain quality and labeling standards, qualified contributions of book inventory to certain public schools if certain donee certification requirements are met, or certain contributions of computer technology or equipment (software, computer or peripheral equipment, and fiber optic cable) to schools or libraries for use in the U.S. for educational purposes that are related to the donee's purpose or function will not apply to contributions made after December 31, 2011.
- Lower Shareholder Basis Adjustments for Charitable Contributions by S Corporations. A temporary tax incentive to encourage S corporations to make charitable donations of appreciated assets is available for contributions made in tax years beginning before January 1, 2012. Generally, an S corporation's charitable contribution of property provides its shareholders with a fair market value (FMV) deduction for gifts of property. In association with the charitable gift, however, shareholders must reduce their basis of shares in the corporation, thus

effectively reducing the value of that deduction. Under the temporary incentive, shareholders reduce their basis in the stock of the S corporation by their pro rata share of the adjusted basis of the contributed property, rather than by the FMV of the charitable contribution that flows through to the shareholder.

- Expensing Election for Costs of Film and TV Production. Taxpayers may elect to expense certain production costs of qualified film and television productions in the U.S., but only for productions commencing before January 1, 2012.
- Expensing of Environmental Remediation Costs. Taxpayers may elect to treat qualified environmental remediation expenses that would otherwise be chargeable to a capital account as deductible in the year paid or incurred, but only if the expenses are paid or incurred before January 1, 2012.
- Empowerment Zone Tax Breaks. The designation of an economically depressed census tract as an "Empowerment Zone" makes businesses and individual residents within such a Zone eligible for special tax incentives, including: the 20% wage credit under Code Section 1396; liberalized Code Section 179 expensing rules ($35,000 extra expensing and the break allowing only 50% of expensing eligible property to be counted for purposes of the investment-based phaseout of expensing); tax-exempt bond financing under Code Section 1394; and deferral under Code Section 1397B of capital gains tax on sale of qualified assets sold and replaced. Empowerment Zone designations expire on December 31, 2011.

Foreign Provisions Set to Expire on December 31, 2011

- Subpart F Exception for Active Financing Income. Certain income from the active conduct of a banking, financing or similar business, or from the conduct of an insurance business is temporarily excluded from the definition of Subpart F income, but only for tax years of foreign corporations beginning after December 31, 1998 and before January 1, 2012, and for tax years of U.S. shareholders with or within which any such tax year of the foreign corporation ends.
- Look-through Rule for Payments Between Related CFCs under Foreign Personal Holding Company Income Rules. For tax years of a foreign corporation before January 1, 2012, and tax years of U.S. shareholders with or within which such tax years of foreign corporations end, dividends, interest, rents, and royalties received by one controlled foreign corporation ("CFC") from a related CFC are not treated as foreign personal holding company income to the extent attributable or properly allocable to non-subpart-F income, or income that is not effectively connected with the conduct of a U.S. trade or business of the payor (look-through treatment).
- Treatment of Regulated Investment Company ("RIC") as Qualified Investment Entity. Gain from the disposition of a U.S. real property interest ("USRPI") by a foreign person is treated as income effectively connected with a U.S. trade or business and is subject to tax and to Code Section 1445 withholding under Foreign Investment in Real Property Tax Act provisions. A USRPI does not include an interest in a domestically controlled "qualified investment entity." A

RIC is included within the definition of a “qualified investment entity” only through 2011.