

EXPIRING TAX PROVISIONS

Position

RILA supports legislation to extend many expiring tax provisions, ultimately making them permanent tax policy so that individuals and businesses can plan better for the future. In particular, RILA supports the following expiring provisions:

- The individual tax relief that is scheduled to expire at the end of 2010, including the expanded 10-percent tax bracket, the \$1,000 child tax credit, and marriage-penalty tax relief
- The increased exemption from the Alternative Minimum Tax (AMT) and inclusion of nonrefundable personal credits
- Deduction for state and local sales taxes
- Accelerated depreciation for retail space
- Research and development (R&D) tax credit
- Work opportunity tax credit (WOTC)
- Look-through treatment for controlled-foreign corporations (CFC) and exemption for active-financing income
- New Markets tax credit and renewal community and empowerment zone tax incentives
- Special rules for employment and depreciation of property in Native American communities

As retailers begin to recover from the lengthy recession that has gripped the nation since 2007, RILA also supports extension of the bonus depreciation and other stimulus provisions intended to encourage economic growth and job creation.

Recent Activity

With the enactment of the Emergency Economic Stabilization Act of 2008,¹ the AMT exemption was extended through 2008 and dozens of other temporary provisions were extended through 2009, including the state and local sales-tax deduction and the other business provisions listed above.

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009,² which further extended the AMT relief through 2009. By increasing the AMT exemption amount to \$70,950 for joint filers and \$46,700 for individuals, the legislation provides tax relief to more than 26 million families in 2009.

The Economic Stimulus Act of 2008³ and the Housing and Economic Recovery Act of 2008⁴ also provided important economic stimulus incentives for business investments – small business expensing, bonus depreciation, and an option to claim AMT and R&D credits in lieu of bonus depreciation. These incentives were extended through 2009 in the American Recovery and Reinvestment Act.

Last year with the extension of unemployment benefits in the Worker, Homeownership, and Business Assistance Act of 2009,⁵ Congress extended the net operating loss (NOL) relief under the tax code to allow businesses to carry back losses from 2008 or 2009 for five years. The legislation also expanded the NOL carryback provision to apply generally to all businesses.

The House and Senate continue efforts to enact legislation that would extend most of the tax provisions that expired at the end of 2009. Most recently, after the House passed modifications to the American Jobs and Closing Tax Loopholes Act of 2010, on May 28, 2010,⁶ the Senate was unable to reach agreement on a compromise package, primarily due to objections to the overall size of the bill and the fact that the non-tax provisions in the bill are not fully offset. Concerns also focused on problematic revenue offset – taxation of carried interest, new international tax changes, and imposition of employment taxes on distributions of certain S Corporations. As a result, the Senate tabled consideration of the legislation on June 24, 2010, with no date set for further consideration.

Action Needed

RILA urges Congress to enact legislation to extend retroactively the temporary tax provisions that expired at the end of 2009. In addition, to encourage economic growth and job creation after a lengthy recession, RILA urges Congress to consider extending the business investment incentives (e.g., bonus depreciation) enacted in the 2008 stimulus legislation.

When Congress considers fundamental tax reform, as both tax-writing chairmen have indicated they intend to do in the 111th Congress, RILA will continue to advocate for permanent tax policy with respect to the individual tax relief signed into law by President Bush as well as important business tax relief provisions enacted in recent years. Additionally, RILA believes that tax reform legislation should permanently repeal the AMT to provide additional tax relief, especially to moderate-income earners.

Background

Since the tax code was last reformed in 1986, Congress has enacted dozens of important tax provisions for American businesses to encourage:

- Job creation (e.g., WOTC, renewal community and empowerment zone tax incentives, Indian employment tax credit),
- Investment (e.g., New markets tax credit, accelerated depreciation for improvements to leased and retail-owned property),
- Research (e.g., R&D tax credit), and
- International competitiveness (e.g., CFC look-through rule and exemption for active-financing income).

Unfortunately, due to budgetary and political constraints, too many of these provisions were enacted on a temporary basis, requiring repeated extensions (occasionally even retroactively). The uncertainty resulting from such temporary tax policy makes it difficult for American businesses, which rely on five- and ten-year business strategies, to plan effectively for the future and remain competitive in an increasingly global economy.

During economic downturns, such as the recent recession, Congress has also enacted temporary tax provisions to help stimulate the economy and job growth. For example, in the Economic Stimulus Act of 2008, Congress expanded the amount of new equipment purchases that small businesses could immediately expense and allowed all businesses to claim 50-percent bonus depreciation on qualifying assets placed in service during 2008. For businesses unable to utilize the bonus-depreciation incentive (e.g., businesses with net operating losses), the Housing and Economic Recovery Act of 2008 allowed companies in 2008 to claim unused corporate AMT credits or R&D credits in lieu of the bonus depreciation and receive a refund to invest in new property or equipment. With the enactment of the American Recovery and Reinvestment Act of 2009, these provisions, designed to stimulate business investments, were extended through 2009. As the economic recovery takes hold, these provisions need to be extended into 2010 to ensure economic growth does not falter.

For individuals and families, the temporary nature of much of the tax code also makes it increasingly difficult for them to plan for the future, especially in terms of saving for education and retirement. Beginning in 2001 with the Economic Growth and Tax Relief Reconciliation Act,⁷ substantial tax relief was provided for individuals, including owners of pass-through businesses (e.g., S corporations, partnerships, and sole proprietorships), ranging from lower tax rates, expanded child tax credit, and marriage penalty relief to expanded expensing of equipment, lower rates on capital investments, and estate-tax relief. Through subsequent legislation – Jobs and Growth Tax Relief Reconciliation Act of 2003,⁸ Working Families Tax Relief Act of 2004,⁹ and Tax Increase Prevention and Reconciliation Act of 2005¹⁰ – these temporary provisions were generally aligned to expire at the end of 2010.

Making the tax relief enacted since 2001 permanent will help stimulate the nation's economy. By enabling American taxpayers, especially low- and moderate-income earners, to retain more of their earnings, the tax relief will stimulate savings, investment and spending on retail purchases. Moreover, permanent extension of this tax relief will make it easier for families to plan their financial future by eliminating the uncertainty about whether and when their taxes will increase should these temporary tax provisions expire.

Another temporary provision affecting a growing number of individuals is the AMT. Under current law, individual taxpayers are generally required to pay either the regular tax or the AMT, whichever is greater.

Unlike the regular tax, however, the various aspects of the AMT were never indexed for inflation. As a result, it now affects several million taxpayers, with millions more at risk each year (and affecting increasingly lower amounts of taxable income) if the exemption amount is not extended and adjusted for inflation.

Originally established in 1969 to ensure that the top income earners in the United States (which numbered a few hundred) did not entirely escape taxation, the AMT has grown far beyond its intended purpose and now threatens millions of Americans and a growing number of moderate-income earners. In past years, Congress has annually enacted legislation to constrain the AMT's expansion by increasing the exemption amount from the alternative tax. Permanent repeal of the AMT will provide much-needed certainty as well as critical tax relief to the middle-income earners and families.

Contact

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Additional References

- RILA Issue Brief: Accelerated Depreciation for Retail Space
- RILA Issue Brief: Work Opportunity Tax Credit (WOTC)
- RILA Issue Brief: Research and Experimentation Tax Credit

¹ Public Law 110-343, Division C (Oct. 3, 2008) – available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ343.110.pdf.

² Public Law 111-5, §§ 1011 & 1012 (Feb. 17, 2009) – available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_public_laws&docid=f:publ005.111.pdf.

³ Public Law 110-185, §§ 102 & 103 (Feb. 13, 2008) – available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ185.110.pdf.

⁴ Public Law 110-289, § 3081 (Jul. 30, 2008) – available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ289.110.pdf.

⁵ Public Law 111-92 (Nov. 6, 2009) – available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ092.111.pdf.

⁶ American Jobs and Closing Tax Loopholes Act of 2010, H.R. 4213, 111th Cong., 2d Sess. (May 28, 2010) – available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4213eah.txt.pdf.

⁷ Public Law 107-16 (Jun. 7, 2001) – available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=107_cong_public_laws&docid=f:publ016.107.pdf.

⁸ Public Law 108-27 (May 28, 2003) – available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ027.108.pdf.

⁹ Public Law 108-311 (Oct. 4, 2004) – available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ311.108.pdf.

¹⁰ Public Law 109-222 (May 17, 2006) – available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ222.109.pdf.