October 31, 2011 – Business and Energy Provisions Set to Expire at Year End 2011 Unless Congress Acts

We previously wrote about the individual income tax provisions expiring at the end of 2011. Here, we discuss the business income tax and energy provisions expiring at the end of 2011.

Businesses

Temporary Payroll Tax Cut. The *2010 Tax Relief Act* reduced the employee-share of the OASDI portion of Social Security taxes from 6.2 percent to 4.2 percent for wages earned during the payroll tax holiday period covering calendar year 2011 up to the taxable wage base of $106,800. At an estimated price tag of $110 billion for 2011, the fate of extending this benefit, or a similar provision, into 2012 remains uncertain.

100 Percent Bonus Depreciation. In the case of qualified property acquired by the taxpayer after September 8, 2010, and before January 1, 2012, and which is placed in service by the taxpayer before January 1, 2012, Code Sec.168(k)(5) provides for 100 percent bonus depreciation. 50 percent bonus depreciation applies for 2012, with the exception of long-lived property, which is given another year of 100 percent depreciation, before January 1, 2013.

Enhanced Section 179 Expensing. For tax years beginning in 2010 or 2011, Code Sec. 179(b)(1)(B) provides for an aggregate expensing limitation of $500,000. For 2012, the cap is lowed to $125,000, with a reduction to $25,000 scheduled for tax years beginning after 2012. Further, allowable expensing starts to be phased out, dollar for dollar, when aggregate qualifying property placed in service in 2010 or 2011 exceeds $2 million; this phase-out amount drops to $500,000 in case of tax years beginning in 2012 and $200,000 in tax years beginning after 2012.

Also sunsetting for property placed in service after December 31, 2011, are special expensing rules for:

- Qualified advanced mine safety equipment property under Code Sec. 179E(a);
- Certain films and television productions under Code Sec. 181(f); and
- Brownfield environmental remediation costs under Code Sec. 198(h).

Expensing Certain Section 1250 Property. For tax years beginning in 2010 and 2011 only, up to $250,000 of qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property may be expensed even though such property is section 1250 property (generally only tangible property subject to MACRS that is Section 1245 property may be expensed under section 179).

Small Business Stock Exclusion. In the case of a taxpayer other than a corporation, gross income does not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than 5 years (60 percent for enterprise zones), except 100 percent for stock acquired for certain periods within 2010 and before January 1, 2012.

R&D Credit. The 20 percent credit for excess qualified research expenses under Code Sec. 41(h)(1)(B) is scheduled to end for amounts paid or incurred after December 31, 2011.

Work Opportunity Tax Credit. The credit available to employers under Code Sec. 51 equal to 40 percent of qualified first-year wages earned by individuals within specified targeted groups sunsets in connection with amounts paid to an individual who begins work for the employer after December 31, 2011.

S Corp Built-In Gain. A special reduction in the S corp recognition period for built-in gain under Code Sec. 1374(d)(7), pursuant to which no tax is imposed on the net recognized built-in gain of the S corp in the case of any taxable year beginning in 2011 only, if the 5th year in the recognition period preceded such taxable year.

Special Charitable Deduction Treatment. Contributions of the following property will no longer be given special treatment when made during any tax year beginning after December 31, 2011:

- Capital gain real property made for conservation purposes under Code Secs 170(b)(1)(E) and 170(b)(2)(B);
- Food inventory under Code Sec. 170(e)(3)(C);
- Book inventories to public schools K through 12 under Code Sec 170(e)(3)(D); and
- Computer equipment under Code Sec. 170(e)(6)(G).

Charitable Contributions/S Stock Adjustment. The basis adjustment under Code Sec. 1367(a) to stock of an S corporation making charitable contributions of property sunsets after December 31, 2011.

Energy

Nonbusiness Energy Credit. The Code Sec. 25C credit for nonbusiness energy property that meets the requirements for qualified energy efficiency improvements (building envelope components) and residential energy property expenditures (furnaces, central air conditioners, water heaters, certain heat pumps, biomass stoves) will end for property placed in service after December 31, 2011.

Electric-drive Vehicles and Plug-in Conversions. The Code Sec. 30(f) credit of 10 percent not to exceed $2,500 plug in electric vehicle credit (for motorcycles, three-wheel vehicles, etc) and the Code Sec. 30B plug-in conversion credit of up to $40,000 ends for acquisitions or conversions after December 31, 2011.

Biodiesel and Renewable Diesel Incentives. Income tax credits under Code Sec. 40A and excise tax credits under Code Secs. 6426(c)(6) and 6427(e)(6)(B) sunset for any sale or use after December 31, 2011.

Energy-Efficient Home Construction Credit. The new energy efficient home credit under Code Sec. 45L available to eligible contractors of up to $1,000 or $2,000 depending upon the type of dwelling unit sunsets for homes acquired after December 31, 2011.

Energy Efficient Appliance Credit. The energy credit available to producers of energy efficient appliances (dishwashers, clothes washers and refrigerators) ranging from $25 to $225 per appliance ends for appliances manufactured after December 31, 2011.

Additional Energy Sunsets. Also scheduled to sunset at the end of 2011 are the suspension of the 100 percent-of-net–income limitation on percentage depletion for oil and gas from marginal well under

Code Sec. 613A(c)(6)(H)(ii); the alcohol fuels mixture excise tax credit and outlay payments under Code Sec. 6426(b)(6) and 6427(e)(6)(A); the placed-in-service date for the refined coal production credit under Code Sec. 45(d)(8); the mine rescue team training credit under Code Sec. 45N; and energy grants under Code Sec. 48(d) for specified energy property in lieu of tax credits.