



Select “Bush Tax Cut” Provisions Expiring in 2011 and 2012 Affecting Small Businesses

Without Congressional action, a large number of tax provisions will expire on December 31, 2012. Referred to as the “Bush Tax Cuts,” many of these expiring provisions were enacted in tax legislation in 2001 and 2003 that reduced marginal income tax rates, marriage penalty rates, and the estate tax. The expiration of the following individual provisions will greatly affect small business owners whose businesses are organized as “pass-through” entities, where their business gains or losses are reflected on their individual tax returns. The following are some of the “Bush Tax Cut” provisions most commonly utilized by small business owners:

Expiring “Bush Tax Cuts” That Will Harm Small Businesses

<u>Expiring Provision (IRS Code Section)</u>	<u>Law</u>	<u>Status</u>	<u>Effect if Not Extended</u>
Increased AMT Exemption Amount (Sec. 55(d)(1))	Enacted in P.L. No. 107-16; most recently extended by P.L. No. 111-312	Expired on 12/31/2011	Thresholds for maintaining an AMT exemption reduced from \$74,450 to \$45,000 for married couples and from \$48,450 to \$33,750 for individuals.
Increase in size of 15% Rate Bracket for Married Couples to Double that of Unmarried Filers (Sec. 1(f)(8) and Sec. 901 of P.L. No. 107-16)	Enacted in P.L. No. 107-16; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	The current 15% rate bracket for married couples filing jointly (200% of the deduction for unmarried individuals) will be reduced to 167% of the deduction for unmarried individuals.
Reduced Capital Gain Rates for Individuals (Sec. 1(h); 55(b); 57(a)(7); 1445(e)(1); 7518(g)(6)(A) and Sec. 303 of P.L. No. 108-27)	Enacted in P.L. No. 108-127; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	Capital gains will be taxed at a 20% rate (increased from the current 15% rate).

<u>Expiring Provision (IRS Code Section)</u>	<u>Law</u>	<u>Status</u>	<u>Effect if Not Extended</u>
Dividends of Individuals Taxed at Capital Gain Rates (Sec. 1(h)(11); 163(d)(4)(B); 854(a) and (b); 857(c) and Sec. 303 of P.L. No. 108-27)	Enacted in P.L. No. 108-127; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	Dividends received by individuals will be treated as ordinary income (higher rates) rather than as a capital gain, currently 15%.
10% Individual Income Tax Rate (Sec. 1(i) and Sec. 901 of P.L. No. 107-16)	Enacted in P.L. No. 107-16; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	The regular income tax bracket of 10% will be removed; the lowest income tax rate bracket will then be 15%.
Tax Rates in Top Four Brackets (Sec. 1(i)(2) and Sec. 901 of P.L. No. 107-16)	Enacted in P.L. No. 107-16; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	Tax rates in the top four brackets will be increased to (from current rate): 39.6% (35%), 36% (33%), 31% (28%), 28% (25%).
Increase in Standard Deduction for Married Couples (Sec. 63(c)(2)(A) and Sec. 901 of P.L. No. 107-16)	Enacted in P.L. No. 107-16; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	The standard deduction for married couples (currently 200% of the deduction for singles) will be reduced to 167%.
Repeal of Overall Limits on Itemized Deductions (the "Pease Limitation") (Sec. 68(g) and Sec. 901 of P.L. No. 107-16)	Enacted in P.L. No. 107-16; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	Limits on itemized deductions will be restored (currently, there is no limit on allowable deductions). The total amount of itemized deductions will be reduced by 3% of the amount by which a taxpayer's AGI exceeds a certain threshold.
Repeal of Personal Exemption Phase Out ("PEP") (Sec. 151(d)(3)(F) and Sec. 901 of P.L. No. 107-16)	Enacted in P.L. No. 107-16; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	Under present law, the amount of a taxpayer's personal exemption is not phased out. A phase out of personal exemptions will be restored in 2013 for taxpayers above a certain threshold.
Reduced Rates Under Accumulated Earnings Tax and Personal Holding Company Tax (Sec. 531 and 541 and Sec. 901 of P.L. No. 107-16)	Enacted in P.L. No. 108-127; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	Small businesses with undistributed taxable income will no longer be taxed at the current rate on dividends (currently 15%), but rather will be taxed at the highest individual tax rate (up to 39.6%).

<u>Expiring Provision (IRS Code Section)</u>	<u>Law</u>	<u>Status</u>	<u>Effect if Not Extended</u>
Decreased Estate, Gift, and Generation-Skipping Transfer Tax (Sec. 901 of P.L. No. 107-16)	Enacted in P.L. No. 107-16; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	The estate and gift tax exemption level will be decreased from \$5 million to \$1 million, while the top tax rate will increase from 35% to 55%.

Sources: Joint Committee on Taxation, Legislative Background of Expiring Federal Tax Provisions 2011-2022 (JCX-6-12), January 27, 2012.

U.S. Congressional Research Service, An Overview of Tax Provisions Expiring in 2012 (R42485) (April 17, 2012).

Prepared by Small Business Committee Republican staff. For questions, please contact the Committee at (202) 225-5821.