



Select Tax Provisions Expiring in 2011 and 2012 Affecting Small Businesses

A large number of business tax provisions known as the “extenders,” temporary tax provisions which are routinely extended by Congress each year, (extenders which were originally enacted as part of the “Bush Tax Cuts” in 2001 and 2003 and extended in 2010 as part of the Tax Relief, Unemployment Insurance Reauthorization Job Creation Act of 2010 are included in the companion list) have expired or will expire on December 31, 2012. The expiration of the following “extender” provisions has, and will continue to, greatly affect small business owners:

Expired or Expiring “Extenders” That, If Not Renewed, Will Harm Small Businesses

<u>Expiring Provision (IRS Code Section)</u>	<u>Law</u>	<u>Status</u>	<u>Effect if Not Extended</u>
Personal Tax Credits Allowed Against Regular Tax and Alternative Minimum Tax (Sec. 26(a)(2))	Enacted in P.L. No. 105-277; most recently extended by P.L. No. 111-312	Expired on 12/31/2011	Small businesses lose the ability to use personal tax credits against the regular tax and AMT.
Credit for Research and Experimentation Expenses (Sec. 41(h)(I)(B))	Enacted in P.L. No. 97-34; modified by P.L. No. 109-432; most recently extended by P.L. No. 111-312	Expired on 12/31/2011	Small businesses lose a credit of up to 20% for qualified research and experimentation expenses which exceeds baseline expenses.
New Markets Tax Credit (Sec. 45D(f)(1))	Enacted in P.L. No. 106-554; most recently extended by P.L. No. 111-312	Expired on 12/31/2011	Investors lose a 39% tax credit received when investing in a qualified community development entity which in turn invests in a low-income community business.
Credit for Construction of New Energy Efficient Homes (Sec. 45L(g))	Enacted in P.L. No. 109-58; most recently extended by P.L. No. 111-312	Expired on 12/31/2011	Contractors and Manufacturers lose a \$1,000 or \$2,000 tax credit for each new home they build that is certified as energy efficient.

<u>Expiring Provision (IRS Code Section)</u>	<u>Law</u>	<u>Status</u>	<u>Effect if Not Extended</u>
Work Opportunity Tax Credit (Sec. 51(c)(4))	Enacted in P.L. No. 104-88; most recently extended by P.L. No. 111-312 and P.L. No. 112-56 (for unemployed veterans)	Expired on 12/31/2011; extended for veterans to 12/31/2012	Small businesses lose a credit provided for wages they pay to qualified members of a targeted group.
Premiums for Mortgage Insurance Deductible as Qualified Residence Interest (Sec. 163(h)(3))	Enacted in P.L. No. 109-432; most recently extended by P.L. No. 111-312	Expired on 12/31/2011	Small businesses are no longer able to deduct premiums for mortgage insurance as qualified residence interest if gross income is over \$100,000 (\$50,000 if married filing separately).
Straight-Line Cost Recovery for Leasehold, Restaurant, and Retail Improvements (Sec. 168(e)(3)(E)(iv), (v), (ix), and Sec. 168(e)(7)(A) and (e)(8))	Enacted in P.L. No. 108-357; most recently extended by P.L. No. 111-312	Expired on 12/31/2011	Small businesses lose a 15-year straight-line cost recovery for qualified leasehold improvements made to restaurant and retail properties.
Additional First-Year Depreciation on 100% of Basis of Qualified Property (Sec. 168(k)(5))	Enacted in P.L. No. 111-312; never extended	Expired on 12/31/2011	Small businesses are no longer able to depreciate the cost of qualified property on a 100% basis, but rather at 50%.
Increase in Expensing to \$500,000/\$2,000,000 and Expansion of Definition of Sec. 179 Property (Sec. 179(b)(1) and (2) and 179(f))	Enacted in P.L. No. 108-127; modified by P.L. No. 110-28, P.L. No. 110-185, P.L. No. 111-240; most recently extended by P.L. No. 111-312	Expired on 12/31/2011	Limits the amount of Sec. 179 property a small business can expense from \$125,000 in 2007-2010, to \$250,000 in 2008, and to \$500,000 in 2011. If not extended, the limit moves to \$25,000 in 2013.
Special Rules for Investing in Qualified Small Business Stock (Sec. 1202(a)(4))	Enacted in P.L. No. 103-66; modified by P.L. No. 111-5 and P.L. No. 111-240; most recently extended by P.L. No. 111-312	Expired on 12/31/2011	Investors in small business stock lose an incentive that allowed 50% or 100% exclusion of gain from sale of small business stock.
Basis Adjustment to Stock of S Corporations Making Charitable Contributions of Property (Sec. 1367(a))	Enacted in P.L. No. 109-280; most recently extended by P.L. No. 111-312	Expired on 12/31/2011	Small S Corporations lose the ability to adjust the basis of its stock contributed to charity.

<u>Expiring Provision (IRS Code Section)</u>	<u>Law</u>	<u>Status</u>	<u>Effect if Not Extended</u>
Reduction in S Corporation Recognition for Built-In Gains Tax (Sec. 1374(d)(7))	Enacted in P.L. No. 111-240; modified by P.L. No. 111-5; most recently modified by P.L. No. 111-240	Expired on 12/31/2011	Small S Corporations lose the benefit of reduced built-in gains attributable to a C corporation taxable to itself for the first 10 years and drops to 5 years.
Temporary Payroll Tax Cut (Sec. 101 of P.L. 112-78)	Enacted in P.L. No. 111-312; most recently extended by P.L. No. 112-96	Set to Expire on 12/31/2012	A reduced rate of tax of 4.2% will no longer apply to employees on their wages.
Additional First-Year Depreciation on 50% of Basis of Qualified Property (Sec. 168(k)(1) and (2))	Enacted at 30% in P.L. No. 107-47; modified to 50% in P.L. No. 108-127; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	Small businesses will no longer receive any additional first-year depreciation deduction ("bonus depreciation").
Election to Accelerate AMT Credits in Lieu of Additional First-Year Depreciation (Sec. 168(k)(4))	Enacted in P.L. No. 110-289; most recently extended by P.L. No. 111-312	Set to Expire on 12/31/2012	Small businesses will no longer be able to elect to claim an increased AMT tax credit in lieu of claiming bonus depreciation for qualified property.

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).

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