

**TAX RELIEF, UNEMPLOYMENT
INSURANCE
REAUTHORIZATION, AND
JOB CREATION ACT OF 2010**

**MP&S TAX ALERT
DECEMBER 2010**

TABLE OF CONTENTS

PROVISIONS FOR INDIVIDUALS 3

Introduction	3
Payroll tax rates	4
Ordinary income tax rates	5
Long-term capital gains rates	6
Qualified dividend tax rates	6
Increased exclusion on small business stock gains	7
Itemized deduction and personal exemption phaseouts	7
Deduction for state and local sales taxes	8
Dependent care credit	8
Alternative minimum tax	9
An expansive act	10

PROVISIONS FOR BUSINESSES 11

Introduction	11
Bonus depreciation	12
Sec. 179 expensing	13
Leasehold improvement, restaurant and retail-improvement property	14
Research credit	14
Work Opportunity credit	14
Inventory donations	15
Transit benefits	15
Payroll tax	16
Many opportunities to save	16

TABLE OF CONTENTS

PROVISIONS FOR ESTATE TAX AND CHARITABLE GIVING 17

Introduction 17

Estate tax 18

Generation-skipping transfer tax 19

Gift tax 19

Election for 2010 20

More flexibility for married couples 21

Charitable giving 21

Other estate, GST and gift tax changes 22

Time to review your estate plan 23

MP&S ONLINE TAX GUIDE 24

FOR MORE INFORMATION 25

TAX RELIEF ACT

PROVISIONS FOR INDIVIDUALS

Introduction

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 extends and expands a wide variety of valuable tax breaks. Many of the extended breaks were set to expire after 2010 and have now been extended through 2012. Others expired at the end of 2009 and have been extended only through 2011. The Tax Relief act also provides a few new tax breaks, most notably a payroll tax reduction for 2011. This section examines the income tax provisions most relevant to higher-income taxpayers.

The Tax Relief act offers many income tax-saving opportunities for individuals.

The extension of the lower income and capital gains tax rates that were set to expire on Dec. 31, 2010 along with significant reductions to the estate tax, has probably received the most media coverage. But the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 passed by Congress extends and expands a wide variety of valuable tax breaks.

Many of the breaks were set to expire after 2010 under the “sunset” provision of the Economic Growth and Tax Relief Reconciliation Act of 2001 and have now been extended through 2012. Other breaks expired at the end of 2009 and have been extended only through 2011. But they’ll provide welcome relief for many taxpayers when they file their 2010 returns.

Finally, the 2010 Tax Relief act provides a few new tax breaks, most notably a payroll tax reduction for 2011.

TAX RELIEF ACT

PROVISIONS FOR INDIVIDUALS

Payroll tax rates

For 2011 only, the 2010 Tax Relief act reduces the employee portion of the Social Security tax on earned income from 6.2% to 4.2%. The self-employed pay both the employee and employer portions of Social Security tax, and the Tax Relief act also reduces their rate by two percentage points for 2011, from 12.4% to 10.4%.

For 2011, the maximum taxable wage base for Social Security taxes is \$106,800 (the same as for 2010). So the maximum tax savings from this break is \$2,136.

TAX RELIEF ACT

PROVISIONS FOR INDIVIDUALS

Ordinary income tax rates

Because of the 2001 tax act sunset, ordinary income tax rates (except for the 15% rate) were scheduled to increase for 2011. There was much talk about extending the lower rates for only the lower and middle tax brackets or for only one year, but the 2010 Tax Relief act extends the lower rates for all brackets for two years. So income tax rate increases now aren't scheduled to occur until 2013:

Ordinary income tax rates	
2003 - 2012	2013
10%	15%
15%	15%
25%	28%
28%	31%
33%	36%
35%	39.6%

Tip: If you've been planning to accelerate income into 2010 to take advantage of lower tax rates, such a step is no longer necessary. Rather, you may want to defer income to 2011 to defer the tax liability.

TAX RELIEF ACT

PROVISIONS FOR INDIVIDUALS

Long-term capital gains rates

Under the 2001 tax act, the 15% long-term capital gains rate was scheduled to increase to 20% in 2011. The 2010 Tax Relief act extends the 15% rate through 2012. If you have children or other loved ones in one of the bottom two ordinary income tax brackets, note that the 0% rate will generally apply to their long-term gains through 2012. (Beware of the “kiddie” tax, however.)

Tip: If you’ve been considering selling appreciated assets by year end to take advantage of the 15% rate, you now can hold off until 2011 or even 2012. Of course, if a sale will help you achieve other goals, you shouldn’t hesitate simply because there’s no longer a tax reason to sell this year.

Qualified dividend tax rates

The 2010 Tax Relief act extends taxation of qualified dividends at the 15% long-term capital gains tax rate through 2012 (0% for those in the bottom two brackets). Without Congressional action, dividends would have gone back to being taxed at ordinary income rates in 2011, with a top rate as high as 39.6%.

Tip: If you hold dividend-producing investments and have been considering whether you should make adjustments to your portfolio in light of their potentially higher tax cost, you no longer need to worry about making a decision before year end.

TAX RELIEF ACT

PROVISIONS FOR INDIVIDUALS

Increased exclusion on small business stock gains

To make investing in certain small businesses more attractive, the Small Business Jobs Act of 2010 (SBJA), signed into law in September, temporarily increased the qualified small business (QSB) stock gain exclusion to 100% for stock acquired at original issuance after Sept. 27, 2010, and before Jan. 1, 2011, that's held for at least five years. Additionally, the SBJA eliminated the alternative minimum tax (AMT) preference item on such gain, making it tax free for AMT purposes as well.

The 2010 Tax Relief act extends the acquisition deadline for 100% gain exclusion and elimination of the AMT preference item to Dec. 31, 2011.

Tip: QSB stock can help diversify your portfolio while providing additional potential tax benefits. So purchasing it by the end of 2011 may be worth considering. (To be a QSB, the company can't hold gross assets exceeding \$50 million at the time the stock is issued and must be engaged in an active trade or business.)

Itemized deduction and personal exemption phaseouts

The 2001 tax act reduced the adjusted gross income (AGI)-based reductions on itemized deductions and personal exemptions for 2006 through 2009 and eliminated them for 2010. The 2010 Tax Relief act extends this elimination through 2012.

Tip: If you've been planning to accelerate deductions into 2010 to take advantage of elimination of the phaseout, such a step is no longer necessary. However, accelerating deductible expenses into the current tax year is often a smart strategy, because it defers tax. So you may want to do so anyway. But beware of the AMT.

TAX RELIEF ACT

PROVISIONS FOR INDIVIDUALS

Deduction for state and local sales taxes

For the last several years, taxpayers have been allowed to take an itemized deduction for state and local *sales* taxes in lieu of state and local *income* taxes. This break can be valuable to those residing in states with no or low income tax rates or who purchase major items, such as a car or boat. But this break expired after 2009.

Now the 2010 Tax Relief act has extended it for 2010 and 2011 (but not for 2012).

Dependent care credit

The 2001 tax act increased the maximum amount of eligible expenses for the dependent care credit from \$2,400 to \$3,000 for one qualifying dependent and from \$4,800 to \$6,000 for more than one qualifying dependent through 2010. The 2010 Tax Relief act extends these higher limits through 2012.

The maximum credit is generally 20% of eligible expenses, which is \$600 for one dependent and \$1,200 for more than one dependent. There's no upper AGI limit for claiming the credit, but taxpayers with AGIs of \$43,000 or less are eligible for a larger maximum credit.

TAX RELIEF ACT

PROVISIONS FOR INDIVIDUALS

Alternative minimum tax

The alternative minimum tax (AMT) is a separate tax system that limits some deductions and credits, doesn't permit others and treats certain income items differently. If your AMT liability is greater than your regular tax liability, you must pay the AMT.

Unlike the regular tax system, the AMT system isn't regularly adjusted for inflation. Instead, Congress must legislate any adjustments. Typically, it has done so in the form of a "patch" — an increase in the AMT exemption. The 2010 Tax Relief act establishes patches for 2010 and 2011:

	AMT exemption		
	Single or Head of household	Married filing jointly or surviving spouse	Married filing separately
Without patch	\$33,750	\$45,000	\$22,500
2010 patch	\$47,450	\$72,450	\$36,225
2011 patch	\$48,450	\$74,450	\$37,225

Note: Consult an MP&S tax professional for AMT exemptions for children subject to the kiddie tax.

For 2010 and 2011, the Tax Relief act also allows you to offset your AMT liability with certain nonrefundable personal credits (such as the dependent care credit and certain energy-related credits) you're otherwise eligible for.

TAX RELIEF ACT

PROVISIONS FOR INDIVIDUALS

An expansive act

We've been focusing on provisions that will help higher-income taxpayers to reduce their individual income tax liability. But the 2010 Tax Relief act provides many additional opportunities:

- If you have loved ones in the middle or lower tax brackets, they may benefit from extensions of breaks that you won't qualify for, such as various education- and child-related credits and deductions.
- If you're a business owner or executive, there are many business breaks that could reduce your business's taxes (and your own, if you're an owner of a flow-through entity).
- If estate taxes are a concern, you'll want to review your estate plan in light of the Tax Relief act's temporary estate tax relief.
- If you're interested in reducing energy consumption, you may want to take advantage of extensions of various energy-related breaks.
- If you're currently unemployed, you may benefit from the act's extension of unemployment benefits.

TAX RELIEF ACT

PROVISIONS FOR BUSINESSES

Introduction

While the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 may be best known for extending lower income and capital gains tax rates for individuals, it also extends and enhances many breaks for businesses. In particular, it provides incentives for businesses to invest in assets, research and people. In this section of the tax alert, we examine these and other provisions that are most relevant to businesses.

The Tax Relief act provides businesses with enhanced investment incentives and more

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, passed by the Senate Dec. 15 and the House Dec. 16, may be best known for extending lower income and capital gains tax rates for individuals. But the act also extends and enhances many breaks for businesses. In particular, it provides incentives for businesses to invest in assets, research and people.

TAX RELIEF ACT

PROVISIONS FOR BUSINESSES

Bonus depreciation

One way in which the 2010 Tax Relief act encourages businesses to invest is by significantly enhancing bonus depreciation. The act temporarily increases this additional first-year depreciation allowance to 100% and then provides a 50% allowance for 2012.

The Small Business Jobs Act (SBJA), signed into law in September, had previously extended 50% bonus depreciation to 2010. Here's an overview of the bonus depreciation allowance:

Qualified assets placed in service	Bonus depreciation
Jan. 1, 2010, through Sept. 8, 2010	50%
Sept. 9, 2010, through Dec. 31, 2011	100%
Jan. 1, 2012, through Dec. 31, 2012	50%
After Dec. 31, 2012	None

Note: Later deadlines apply to certain long-lived and transportation property.

Qualified assets include *new* tangible property with a recovery period of 20 years or less (such as office furniture and equipment), off-the-shelf computer software, water utility property and qualified leasehold improvement property.

The Tax Relief act also extends the provision allowing corporations to accelerate certain credits in lieu of claiming bonus depreciation for qualified assets placed in service through Dec. 31, 2012 (Dec. 31, 2013, for certain long-lived and transportation property).

TAX RELIEF ACT

PROVISIONS FOR BUSINESSES

Sec. 179 expensing

Section 179 is another tax law provision that encourages investment. It allows smaller businesses to immediately write off the full price of qualifying asset purchases rather than depreciating them over several years. The deduction is reduced by \$1 for every \$1 of expenses in excess of a phaseout threshold, which is why the break primarily benefits smaller businesses. The expensing election can be claimed only to offset net income, not to reduce net income below zero.

Before the 2010 Tax Relief act, the Section 179 expensing limit was scheduled to drop to \$25,000 in 2012, with a phaseout threshold of \$200,000. The act increases the 2012 limits to \$125,000 and \$500,000, respectively, and both amounts will be indexed for inflation.

It's important to note, however, that these higher limits will be a significant drop from the 2010 and 2011 limits. Under the SBJA, the limits for assets placed in service in those years are \$500,000 and \$2 million, respectively.

Also, the Tax Relief act didn't extend the SBJA provision that expanded the *types* of assets that qualify for expensing to include certain leasehold-improvement, restaurant and retail-improvement property. Under the SBJA, up to \$250,000 of such property placed in service in 2010 or 2011 is eligible for Sec. 179 expensing.

Sec. 179 may be less important while 100% bonus depreciation is available. Depending on the type of asset, 100% bonus depreciation may provide the same tax savings — with no limit on asset purchases. But you'll also want to consider state tax consequences.

TAX RELIEF ACT

PROVISIONS FOR BUSINESSES

Leasehold improvement, restaurant and retail-improvement property

For 2009, accelerated depreciation was available for qualified leasehold-improvement, restaurant and retail-improvement property. The 2010 Tax Relief act extends it to 2010 and 2011.

Specifically, the provision allows a shortened recovery period of 15 years — rather than 39 years — for such property.

Research credit

For many years, the research credit (also commonly referred to as the “research and development” or “research and experimentation” credit) has provided an incentive for businesses to invest in research. But the credit expired at the end of 2009.

The 2010 Tax Relief act extends the credit to 2010 and 2011. The credit is generally equal to a portion of qualified research expenses. It’s complicated to calculate, but the tax savings can be substantial.

Work Opportunity credit

The Work Opportunity credit, designed to encourage hiring from certain disadvantaged groups, was scheduled to expire after Aug. 31, 2011. The 2010 Tax Relief act extends the credit to qualifying hires made through Dec. 31, 2011.

Examples of disadvantaged groups for purposes of the credit include food stamp recipients, disabled or unemployed veterans, “disconnected” youth and ex-felons. The credit generally equals 40% of the first \$6,000 of wages paid to qualifying employees (\$12,000 for wages paid to qualified veterans).

TAX RELIEF ACT

PROVISIONS FOR BUSINESSES

Inventory donations

Enhanced deductions for certain inventory donations expired at the end of 2009:

- Food inventory,
- Book inventory to public schools, and
- Computer inventory for educational purposes.

The 2010 Tax Relief act extends the enhanced deductions for these donations through 2011. The rules are complex and vary somewhat for each type of inventory donation, so talk to your tax advisor to determine whether you're eligible for an enhanced deduction.

Transit benefits

Some fringe benefits aren't included in an employee's wages for income and payroll tax purposes, yet the employer is still allowed to deduct them. Until recently, the maximum transit benefit that could receive such treatment was higher for parking than for van-pooling and mass transit. Tax legislation in 2009, however, provided for the limits to be equal through 2010.

The 2010 Tax Relief act extends this parity through 2011. For 2010, the limit is \$230 per month. As of this writing, the 2011 inflation adjustment hasn't been released.

TAX RELIEF ACT

PROVISIONS FOR BUSINESSES

Payroll tax

For 2011 only, the 2010 Tax Relief act reduces the employee portion of the Social Security tax on earned income from 6.2% to 4.2%. The self-employed pay both the employee and employer portions of Social Security tax, and the act also reduces their rate by two percentage points for 2011, from 12.4% to 10.4%.

The employer portion of Social Security tax remains the same. But employers will have to work closely with their payroll companies to ensure the proper adjustments are made to their employees' paychecks in the new year.

Also note that the Tax Relief act doesn't extend the payroll tax forgiveness provided under the Hiring Incentives to Restore Employment (HIRE) Act of 2010. But remember that, if you hired workers in 2010 that qualified for payroll tax forgiveness, you may be eligible for a retention credit of up to \$1,000 per retained worker on your 2011 tax return.

Many opportunities to save

The 2010 Tax Relief act also extends through 2011 many other breaks for businesses that had expired after 2009. These breaks are too limited in applicability to cover here, but they can provide significant benefits to the taxpayers that qualify for them.

And the Tax Relief act isn't limited to tax breaks for businesses; it provides numerous additional tax-saving opportunities, including many that may help reduce your individual tax liability. If estate taxes are a concern, you'll want to review your estate plan in light of the act's temporary estate tax relief. Finally, if you're interested in reducing energy consumption, you may want to take advantage of the act's extensions of various energy-related breaks.

Please contact us with any questions you have about the 2010 Tax Relief act's business incentives or other provisions. We can help you determine which ones will provide you opportunities to save taxes and achieve your goals.

TAX RELIEF ACT

PROVISIONS FOR ESTATE TAX AND CHARITABLE GIVING

Introduction

There's been much speculation as to what Congress would do about the 2010 estate tax repeal and the scheduled 2011 return of the tax at higher rates and a lower exemption. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 gave us the answer. The act provides some good news for those concerned about estate tax liability. This section examines the estate, generation-skipping-transfer and gift tax law changes under the act.

How will the Tax Relief act affect your estate plan?

There's been much speculation as to what Congress would do about the 2010 estate tax repeal and the scheduled 2011 return of the tax at higher rates and a lower exemption. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 has finally given us our answer.

Signed into law on Dec. 17, the act provides some good news for those concerned about estate tax liability. Rather than simply extending the 2009 rates and exemptions, as many expected Congress would do, the act reduces rates and increases exemptions. It also provides some flexibility for the families of people who died in 2010.

But the outlook isn't completely rosy. The act provides only temporary relief, so we again face the prospect of much higher rates and lower exemptions in the near future.

TAX RELIEF ACT

PROVISIONS FOR ESTATE TAX AND CHARITABLE GIVING

Estate tax

The 2010 Tax Relief act retroactively brings back the estate tax for 2010, but with a \$1.5 million exemption increase (to \$5 million) and a 10 percentage point rate reduction (to 35%) compared to 2009. It extends these levels to 2011 and 2012, with an inflation adjustment on the exemption for the latter year. Then in 2013, the exemption and top rate will return to levels prescribed by pre-2001 tax law – the levels that would have gone into effect in 2011 without the 2010 Tax Relief act.

While what for 2010 is essentially a repeal of the estate tax repeal may sound unattractive, it actually may prove beneficial to many families with loved ones who died this year. Why? Because the estate tax repeal was accompanied by a limit on the step-up in basis, which could have caused many heirs to face significant income tax liability on the sale of the inherited assets.

Still, for some families the step-up in basis is less of an issue than the estate tax. So the Tax Relief act provides an option to elect the pre-act estate tax regime for 2010. (This is discussed further under “Election for 2010” on page 20.)

TAX RELIEF ACT

PROVISIONS FOR ESTATE TAX AND CHARITABLE GIVING

Generation-skipping transfer tax

The generation-skipping transfer (GST) tax was also repealed for 2010, and the Tax Relief act brings it back for 2010 as well, with the same exemption amounts as the estate tax through 2012. However, the act sets the GST tax rate for 2010 at 0%.

This is probably because, unlike the estate tax where the elimination of the step-up in basis limitation could be provided to essentially offset liability from the return of the estate tax, there was no such offset that could make up for tax liability due to the return of the GST tax in 2010. Such a retroactive tax would likely have brought lawsuits.

That's not an issue after 2010, so the GST tax rate goes back up to 35% to match the top estate tax rate in 2011 and 2012.

Gift tax

The gift tax was never repealed for 2010, so the 2010 Tax Relief act provides no change to the gift tax regime for 2010.

The exemption remains at \$1 million and the top rate at 35%. But, like the GST tax, the gift tax will follow the estate tax exemptions and top rates for 2011 and 2012.

TAX RELIEF ACT

PROVISIONS FOR ESTATE TAX AND CHARITABLE GIVING

Election for 2010

For anyone who dies in 2010, as mentioned above, the estate may either follow the new rules under the 2010 Tax Relief act or elect to follow the pre-act regime.

First some background on step-up in basis:

- Generally, the income tax basis of most inherited property is “stepped up” to its date-of-death fair market value. This means that recipients of the property can sell it immediately without triggering capital gains tax. Even if they hold on to it, they typically will pay less capital gains tax whenever they do sell it than they would have if the basis hadn’t been stepped up.
- Under the estate tax repeal, the automatic step-up in basis is eliminated. Instead, estates can generally allocate only up to \$1.3 million to increase the basis of certain assets plus up to \$3 million to increase the assets inherited by a surviving spouse.

So, if the estate of someone who dies in 2010 doesn’t exceed the new \$5 million exemption (less any gift tax exemption used during life), then following the new rules will likely be more beneficial: No estate tax will be due anyway, and the deceased’s heirs don’t have to worry about any limits on the step-up in basis.

If the estate exceeds the deceased’s available estate tax exemption, the decision becomes more complicated. Factors such as the extent of the possible estate tax liability, the extent to which assets have appreciated beyond the deceased’s basis and the extent to which the assets are going to a surviving spouse vs. other heirs will need to be considered.

Fortunately, the Tax Relief act does give families some time to make this decision. It extends the estate tax filing deadline for estates of those dying after Dec. 31, 2009, but before Dec. 17, 2010, generally to nine months after Dec. 17, 2010, or Sept. 19, 2011 since Sept. 17, 2011 is a Saturday.

TAX RELIEF ACT

PROVISIONS FOR ESTATE TAX AND CHARITABLE GIVING

More flexibility for married couples

The 2010 Tax Relief act includes a provision that will (temporarily) provide significant estate planning flexibility to married couples. If one spouse dies in 2011 or 2012 and part (or all) of his or her estate tax exemption is unused at his or her death, the estate can elect to permit the surviving spouse to use the deceased spouse's remaining estate tax exemption.

Similar results can be achieved by making asset transfers between spouses during life and/or setting up certain trusts at death. But making this election will be much simpler and provide flexibility if proper planning hasn't been done before the first spouse's death.

Still, this election is currently available for only two years unless Congress extends it. So married couples can't depend on the election being available to ensure that they take full advantage of both spouses' exemptions.

Also be aware that the provision doesn't allow the deceased spouse's remaining GST tax exemption to be used by the surviving spouse.

Charitable giving

Charitable giving is an important part of many people's estate plans, and the 2010 Tax Relief act extends a couple of valuable charitable giving breaks through 2011:

- 1. Tax-free IRA distributions for charitable purposes.** You can make a direct contribution from your IRA to a qualified charitable organization without owing any income tax on the distribution. If you're subject to required minimum distributions, the contribution can be used to satisfy that requirement. The maximum allowable distribution for charitable contribution purposes is \$100,000 per tax year. A special rule permits a taxpayer to elect to treat a qualified charitable distribution in January 2011 as having been made in 2010.
- 2. Contributions of capital gains real property for conservation purposes.** You can make such a contribution and take a larger deduction than is allowed for most other capital gains property contributions. Specifically, your deduction for a contribution of capital gains real property for conservation purposes generally can be up to 50% of your adjusted gross income (AGI) rather than the 30% of AGI limit that normally applies to contributions of capital gains property.

TAX RELIEF ACT

PROVISIONS FOR ESTATE TAX AND CHARITABLE GIVING

Other estate, GST and gift tax changes

The 2001 tax act that established the reductions in the estate, GST and gift taxes over the last several years, as well as the 2010 estate tax repeal, “sunsets” after 2010. This is why the significant estate, GST and gift tax increases were set to go into effect in 2011.

While the 2010 Tax Relief act defers those increases until 2013, there are several sun-setting provisions related to these taxes that it doesn’t address. Fortunately, the old provisions that will be going back into effect generally are beneficial, such as the return of the estate tax credit for state estate taxes paid.

TAX RELIEF ACT

PROVISIONS FOR ESTATE TAX AND CHARITABLE GIVING

Time to review your estate plan

With the many changes going into effect and the uncertainty about what will happen with the estate, GST and gift taxes in 2013, it's critical to revisit your estate plan. If you don't, the changes could result in your assets not being distributed according to your wishes or your family paying unnecessary taxes.

The law is complex and there are many contingencies to consider. We'd be pleased to work with you and your attorney to review your estate plan and update it as needed in light of the 2010 Tax Relief act.

Transfer tax exemptions and rates for 2009-2013					
	2009	2010	2011	2012	2013
Gift tax exemption	\$1 million	\$1 million	\$5 million	\$5 million ²	\$1 million
Estate tax exemption¹	\$3.5 million	\$5 million ³	\$5 million	\$5 million ²	\$1 million
Generation-skipping transfer (GST) tax exemption	\$3.5 million	\$5 million	\$5 million	\$5 million ²	\$1 million ²
Highest gift and estate tax rates and GST tax rate	45%	35% ³ 0% for GST tax	35%	35%	55% ⁴

¹ Less any gift tax exemption already used during life. For 2011 and 2012, these amounts are "portable" between spouses.

² Indexed for inflation.

³ Estates can elect to follow the pre-2010 Tax Relief act regime (estate tax repeal + limited step-up in basis).

⁴ The benefits of the graduated gift and estate tax rates and exemptions are phased out for gifts/estates over \$10 million.

MP&S ONLINE TAX GUIDE

To facilitate ongoing access to the latest tax rules and regulations, Marks Paneth & Shron offers a web-based tax guide that is updated as changes occur.

The online tax guide can be accessed directly by going to <http://www.webtaxguide.net/markspaneth> or through the firm's website at www.markspaneth.com. A link to the guide appears at the end of the Tax section (under Core Services) on our website.

If you have questions about anything you read in this alert or in the tax guide, please contact one of our experienced practitioners. Biographies and contact information for the firm's partners, principals and directors can be found online at <http://www.markspaneth.com/ourpeople.php>.

FOR MORE INFORMATION

If you'd like to learn more about any of the provisions discussed in this tax alert or how they might affect your situation, please contact our knowledgeable professionals. Biographies and contact information for the firm's partners, principals and directors can be found online at <http://www.markspaneth.com/ourpeople.php>. You can also contact Steven Eliach, JD, LL.M., the Principal-in-Charge of the MP&S Tax Practice, by phone at 212.503.6388 or by email at seliach@markspaneth.com.

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