

US TAX NEWS - 2012

What's new for 2012 - A roundup of tax changes effective this year

There are many important tax changes taking effect in 2012, as well as some that took effect late last year and thus are "new." They are the result of tax legislation enacted in prior years, or are triggered by effective dates in regs, rulings and other guidance, or will occur by default in 2012 absent Congressional action.

This newsletter highlights key non-inflation-indexed tax changes, categorized by those affecting businesses and individuals. In addition, a list of provisions that expired at the end of last year is provided.

Business and retirement plan changes taking effect in 2012 and late 2011. Business changes effective in 2012 (or went into effect in December of 2011 and is thus "new"), include the following:

*... **New guidance on deduction vs. capitalization of tangible property costs.*** IRS has issued temporary regs, generally effective in tax years beginning after 2011, on the application of [Code Sec. 162\(a\)](#) and [Code Sec. 263\(a\)](#) to amounts paid to acquire, produce, or improve tangible property. Among other things, these new regs clarify and expand the standards in the current regs; provide certain new bright-line tests for applying these standards; provide guidance under [Code Sec. 168](#) regarding the accounting for, and dispositions of, property subject to that section; and amend the general asset account regs

*... **Longer write off period for certain property.*** For specialized realty assets (qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property) placed in service after 2011, a 39-year (up from 15-year) write off period generally applies.

*... **Reduced bonus depreciation allowance for qualified property.*** For qualified property acquired and placed in service after 2011 and before 2013 (after 2012 and before 2014 for aircraft and certain long-production period property), a 50% (down from 100%) bonus first-year depreciation allowance applies under [Code Sec. 168\(k\)](#).

*... **Reduced expensing.*** For a tax year beginning in 2012, the [Code Sec. 179](#) expensing election is reduced to \$139,000, with a \$560,000 investment-based ceiling (down from \$500,000/\$2 million). For tax years beginning after 2012, it will be further reduced to \$25,000 with a \$200,000 investment-based ceiling. Additionally for a tax year beginning after 2011, expensing can no longer be claimed for qualified real property.

... Estimated taxes for large corporations. For a corporation with assets of at least \$1,000,000,000 (determined as of the end of the previous tax year), the amount of any required installment of corporate estimated tax which is otherwise due in July, Aug. or Sept. of 2012 is 100.5% of that amount, and the amount of the next required installment after the installment due in July, Aug. or Sept. of 2012 is appropriately reduced to reflect the amount of the 0.5% increase. (P.L. 112-43, Sec. 502, [P.L. 112-41, Sec. 505](#))

... Use of smartcards or other electronic media to provide qualified transportation fringes. Beginning in 2012, after numerous postponements, the rules under which employers can provide their employees with qualified mass transit fringe benefits (such as travel expense of the employee between residence & place of employment, transit passes, qualified parking expenses etc) through the use of employer-provided credit cards, debit cards, smartcards, or other electronic media officially go into effect (although employers could rely on the guidance before 2012).

... Lump-sum payouts from defined benefit plans. Some defined benefit plans offer participants the option of receiving a lump-sum distribution (e.g., at age 65) instead of an annuity. For plan years beginning after 2007, the Pension Protection Act of 2006 (PPA, [P.L. 109-280](#)) amended [Code Sec. 417\(e\)\(3\)](#) to require defined benefit plans to compute the minimum lump-sum value of an annuity using blended corporate bond rates instead of 30-year Treasury bond rates, which were the benchmark under prior law. Because corporate bond rates generally are higher than long-term Treasury bond rates, the change had the overall effect of reducing lump-sum distributions. Under [Code Sec. 417\(e\)\(3\)](#), this new rule was phased in over 2008 through 2011 and will be fully in effect for plan years beginning after 2011.

... Work opportunity tax credit (WOTC) not available except for hiring qualified veterans. The WOTC under [Code Sec. 51](#) generally can't be claimed for an individual who begins work for the employer after Dec. 31, 2011. However, the WOTC continues to be available for employers that hire qualified veterans who began work for the employer before Jan. 1, 2013.

... Disregarded entities included in rules for conduit financing arrangements. Effective for payments made after Dec. 8, 2011, transactions that a disregarded entity enters into are taken into account in determining whether a financing arrangement exists and should be recharacterized under [Code Sec. 7701\(l\)](#) and [Reg. § 1.881-3](#).

Individual changes taking effect in 2012. Individual changes that apply in 2012 include the following. Note that Congress may retroactively amend one or more of these rules:

... Reduced alternative minimum tax (AMT) exemption amounts. Absent another AMT "patch," the AMT exemption amounts for tax years beginning after 2011 revert to the significantly lower "permanent" amounts of \$33,750 for unmarried taxpayers, \$45,000 for joint filers, and \$22,500 for marrieds filing separately.

... Reporting foreign assets. Beginning in 2012, U.S. taxpayers who have an interest in certain specified foreign financial assets with an aggregate value exceeding \$50,000 must report those assets to IRS on Form 8938, Statement of Specified Foreign Financial Assets, with their tax return.

Provisions that expired on Dec. 31, 2011. The following business and individual provisions expired at the end of last year. But note that Congress may retroactively reinstate some or all of these rules:

- ... **Research credit under** Code Sec. 41(h)(1)(B).
- ... **Indian employment credit under** Code Sec. 45A(f).
- ... **Enhanced deduction for corporate contributions of computer equipment for educational purposes under** Code Sec. 170(e)(6)(G).
- ... **Lower shareholder basis adjustments for charitable contributions by S corporations under** Code Sec. 1367(a).
- ... **Reduced S corporation recognition period for built-in gains tax under** Code Sec. 1374(d)(7).
- ... **Election for itemizers to deduct State and local general sales taxes under** Code Sec. 164(b)(5) in lieu of a state and local income taxes.
- ... **Allowance of personal tax credits against regular tax and AMT under** Code Sec. 26(a)(2).
- ... **Exclusion of 100% of gain on certain small business stock under** Code Sec. 1202(a)(4).
- ... **Tax-free distributions (up to \$100,000 annually for taxpayers 70- 1/2 and older) from individual retirement plans for charitable purposes under** Code Sec. 408(d)(8).

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