

JOBS AND GROWTH TAX RELIEF RECONCILIATION ACT OF 2003

Signed May 28, 2003

The House and Senate passed the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTA), tax legislation designed to provide tax cuts to individuals and to businesses as an incentive for greater investment and economic activity. The bill (HR 2) passed on mostly party-line votes of 231 – 200 in the House and 51-50, with the Vice President casting the tiebreaker vote, in the Senate.

Most provisions go into effect immediately on enactment, but all will expire, some as soon as 2005. The provisions are as follows:

Tax Rate Cuts and AMT Relief:

Legislation enacted in 2001 provided a series of phased-in tax cuts that gradually reduced the top tax rate to 35% and made corrections to mitigate the so-called “marriage penalty.” JGTA accelerates the phase-in schedule as follows:

- The maximum rate drops from its current level of 38.6% to 35%
- Middle brackets are reduced to 25%, 28% and 33%
- The 10% bracket is expanded, so that more of an individual’s income is taxed at this lowest rate.
- The impact of the marriage penalty is reduced by expanding the size of the 15% bracket for married couples so that it is twice as great as the 15% bracket for singles.
- The amount of income excluded from Alternative Minimum Tax (AMT) computations is significantly increased. Thus, fewer middle-income individuals will be subject to the AMT.

The tax rate cuts are retroactive to January 1, 2003. The IRS is preparing new withholding tables that will go into effect on July 1, 2003. These changes are expected to satisfy the President’s goal of “putting more money in people’s pockets.”

When the rate reductions and AMT relief expire, the rates will revert to their pre-enactment levels of 10% - 38.6%. The AMT exemption amount will revert to \$49,000.

Reduced Capital Gains Tax Rates

JGTA reduces the capital gains tax rate from 20% to 15%. Unfortunately, however, the depreciation recapture rate remains at 25%, notwithstanding the combined efforts of many real estate organizations. A special 5% rate applies to lower-bracket (i.e., 10% and 15%) individuals. As in the past, assets must be held for more than one year to qualify for the reduced rate. REIT capital gains eligible for the reduced rate are capital gains on the sale of REIT stock and REIT capital gains distributions (except to the extent of depreciation recapture).

The provision generally applies to sales, exchanges or installment payments received on or after May 6, 2003. The 5% bracket is reduced to zero in 2008.

When this provision expires, the capital gains rates will revert to 20% (10% for lower brackets).

Additional Bonus Depreciation – Leasehold Improvements

A temporary 30% bonus depreciation provision was enacted in March 2002 that applies to all equipment and to leasehold improvements. That provision was scheduled to expire on September 11, 2004. The recovery period for leasehold improvements remains at 39 years. Thus, for the duration of this provision, a taxpayer making leasehold improvements may deduct 50% of the cost of the improvement plus 1/39th of the remaining amount of the investment. The so-called “close out” provisions of current law remain in effect, so remaining balances may be deducted at the termination of a lease.

JGTA increases the bonus to 50% for property acquired and placed in service after May 5, 2003 and before January 1, 2005. To be eligible for the 50% allowance, any binding contracts (or an agreement to purchase) must have been entered into after May 5, 2003. Property subject to a contract before May 6, 2003 will continue to qualify for the 30% bonus.

Both the 30% and 50% bonus provisions will expire January 1, 2005. (This has the effect of extending the 30% bonus from its original expiration of September 11, 2004 through to the end of 2004.) In limited circumstances, property will remain eligible for bonus depreciation until January 1, 2006, so long as a binding contract was in place before January 1, 2005.

The special allowance for depreciating cars is increased from \$4600 to \$7650.

When the bonus rules expire, the depreciable life for leasehold improvements will remain at its current level of 39 year.

Increased Expensing for Small Business

When tangible property is used in a trade or business, its cost is recovered under a prescribed term of years using straight-line depreciation. Some property (not real estate) is also eligible for accelerated depreciation. A special rule permits small businesses to deduct up to \$25,000 of the costs of business property (other than real estate) in the year of purchase, rather than capitalize the cost and apply depreciation allowances. This provision phases out when business investment exceeds \$200,000.

JGTA increases the amount that may be expensed to \$100,000. The phase-out begins when investment reaches \$400,000. The legislation also resolves ongoing IRS disputes by providing that so-called “off the shelf” software used in a trade or business is eligible for the expensing rules.

When this provision expires, the eligible amount will revert to \$25,000.

Taxation of Dividends

Historically, dividend income has been included in adjusted gross income and taxed at ordinary rates. JGTA departs dramatically from this treatment. All dividend income will be taxed at 15% (5% for lower-bracket individuals). REIT distributions eligible for this lower rate are REIT dividends attributable to dividends received by the REIT from non-REIT corporations such as taxable REIT subsidiaries and REIT dividends attributable to income that was subject to tax by the REIT at the corporate level (e.g., "built-in gains" or when a REIT distributes less than 100% of its taxable income).

When this provision expires, dividend income(including REIT dividends) will be treated as ordinary income at taxed at the rates in effect at that time.

Child Credit

Families with less than \$110,000 of income (or \$75,000 for single parents) are eligible to take a tax credit of \$600 per child for each child below age 17. The amount of the credit is increased to \$1000 per child during the period 2003 – 2004.

When this provision expires, the credit reverts to \$600 per child.

Table of Effective Dates

Provision	Becomes Effective	Expires
Tax Rate Cuts/AMT Relief	1/1/2003	12/31/2005
Capital Gains Cuts (15%, 5%)	5/6/2003	12/31/2008
Capital Gains Cuts (Zero Rate for Lower Brackets)	1/1/2008	12/31/2008
50% Bonus Depreciation	5/6/2003	12/31/2005 (Binding contract transition rule to 12/31/2006)
Small Business Expensing	1/1/2003	12/31/2005
15% Tax Rate for Dividends	1/1/2003	12/31/2008
Increased Child Credit	1/1/2003	12/31/2004

