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2010 TAX RELIEF ACT: BENEFITS FOR BUSINESSES

Business planning for 2011 and beyond just got more certain with passage of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (H.R. 4853). The multi-billion dollar new law extends, renews or enhances a large number of business tax incentives. This letter highlights the key business tax incentives in the new law. As always, please contact our office for more details.

Business spending. During past economic slowdowns, Congress has used bonus depreciation and enhanced Code Sec. 179 small business expensing to help jumpstart business spending. The new law provides for 100 percent bonus depreciation. The 100 percent bonus depreciation rate applies to qualified property acquired after September 8, 2010 and before January 1, 2012 and placed in service before January 1, 2012 (or before January 1, 2013 for certain longer-lived and transportation property). Additionally, 50 percent bonus depreciation is available for qualified property placed in service in 2012. Moreover, certain corporations may be able to elect to accelerate any alternative minimum tax (AMT) credit in lieu of bonus depreciation.

Along with bonus depreciation, the new law extends enhanced Code Sec. 179 expensing for 2012 but not at the 2010 and 2011 dollar and investment limits. For 2010 and 2011, the Code Sec. 179 dollar limit is \$500,000 and the investment limit is \$2 million. The new law makes no changes to these limits for 2010 and 2011. However, the dollar limit will fall to \$125,000 (indexed for inflation) and the investment limit will fall to \$500,000 (indexed for inflation) for tax years beginning in 2012 (and sunsetting after December 31, 2012). The 2012 amounts, while reduced from 2010 and 2011, are still above the amounts that would have been in place for 2012 absent the new law (\$25,000/\$200,000 respectively).

For 2010 and 2011, special rules apply to qualified real property. Taxpayers can elect up to \$250,000 of the \$500,000 dollar limit for qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property. The new law does not extend these special rules beyond 2011. The new law does renew a 15-year recovery period for qualified leasehold improvement property, qualified restaurant property and qualified retail improvement property for 2010 and 2011.

Payroll tax cut. The new law reduces an employee's share of Social Security taxes (the OASDI portion) from 6.2 percent to 4.2 percent up to the taxable maximum amount of \$106,800 for calendar year 2011. The new law does not reduce the employer's share, which remains at 6.2 percent for 2011. Self-employed individuals, including independent contractors with which a business may contract, are also entitled to a 2 percentage point reduction in payroll taxes, from 12.4 percent to 10.4 percent.

The IRS has instructed employers to start using new withholding tables and reducing the amount of Social Security tax withheld as soon as possible in 2011 but no later than January 31, 2011. The IRS also instructed employers to make any offsetting adjustments in an employee's pay for Social Security over-withheld during January as soon as possible but no later than March 31, 2011.

The new law does not extend payroll tax forgiveness for qualified new hires. This incentive was part of the Hiring Incentives to Restore Employment (HIRE) Act of 2010 and will expire, as scheduled, after 2010. Under the HIRE Act, qualified employers do not have to pay their share of OASDI for a covered employee's employment from the day after March 18, 2010 through December 31, 2010. The HIRE Act also provides for a worker retention credit, which qualified employers may be able to claim if the covered employee works a certain number of weeks and meets other requirements. If you have any questions about the interaction between the HIRE Act and the new law, please contact our office.

Tax brackets. Businesses owners, such as sole proprietors, who are taxed at the individual tax rates will benefit from an extension of reduced individual tax rates. The new law extends for two years (2011 and 2012) the current individual tax rates of 10, 15, 25, 28, 33, and 35 percent). Absent the new law, all of the rates would have risen with the top two rates increasing from 33 and 35 percent to 36 and 39.6 percent respectively.

Estate tax. Under the new law, the federal estate tax will again apply to the estates of decedents dying after December 31, 2009 and before January 1, 2013. The new law sets a maximum estate tax rate of 35 percent with a \$5 million exclusion (\$10 million for married couples). Additionally, executors of estates of individuals who died in 2010 can elect out of the estate tax (and apply modified carryover basis rules) or can elect to have the estate tax apply.

Research tax credit. In recent years, Congress has come close to making the Code Sec. 41 research tax credit permanent but the cost of a permanent credit has been prohibitive. The new law renews the credit, which expired at the end of 2009, for 2010 and 2011.

Work Opportunity Tax Credit. The Work Opportunity Tax Credit (WOTC) rewards employers that hire economically-disadvantaged individuals and individuals from groups with historically high rates of unemployment. The WOTC was scheduled to expire after August 31, 2011. The new law extends the WOTC through the end of 2011. However, the new law does not extend two groups that were added to the credit in 2009 (unemployed veterans and disconnected youth).

Energy. Recent laws have used the Tax Code to encourage the development and production of alternative fuels, such as energy from wind and biomass. Many of these incentives are temporary. The new law extends, renews or enhances some of the incentives, including:

1. Grants for certain alternative energy property in lieu of tax credits
2. Tax credits for biodiesel and renewable diesel fuel
3. Tax credit for refined coal facilities
4. Percentage depletion for oil and gas from marginal wells
5. Special tax incentives for builders of energy-efficient homes
6. And more

Business tax extenders. A package of business tax incentives, known as extenders because they regularly expire and are regularly extended, is renewed by the new law. They include:

1. Differential wage credit
2. New Markets Tax Credit (with modifications)
3. Brownfields remediation
4. Tax treatment of certain dividends of RICs and certain investments of RICs
5. Active financing exception/look-through treatment for CFCs
6. Tax incentives for empowerment zones and the District of Columbia
7. Indian employment credit
8. Railroad track maintenance credit
9. Mine rescue training credit
10. Code Sec. 199 deduction for Puerto Rico
12. Accelerated depreciation for business property on an Indian reservation
13. And more

What's not included. Despite significant support in Congress, the new law does not repeal a controversial expansion of information reporting. The Patient Protection and Affordable Care Act of 2010 requires businesses to report payments for property and payments to corporations aggregating \$600 or more in a calendar year made after December 31, 2011. Congress may revisit this requirement before the effective date. The new law also does not lower the corporate tax rate, another proposal that could be addressed in the future.

The new law extends, renews or enhances a large number of tax incentives targeted to businesses. Please contact our office if you have any questions about the provisions we have discussed or any of the measures in the new law. Our office can help you plan a strategy that maximizes your tax savings.

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