

# **J W Enterprises, LLC:**

## **2009 Year-End Tax Planning Tips For Business**

Dear Client:

Tax planning for year-end 2009 presents new opportunities and new challenges for business taxpayers to reduce or defer federal income tax liability. Although traditional planning techniques remain fundamentally important considerations this year, there are new opportunities with recent legislation and changes in the tax laws. In addition, tax planning is complicated with the anticipation of tax laws that may be put to a vote in Congress before year's end and the unknown status of those provisions that are scheduled to expire this year.

The bonus depreciation deduction, increased section 179 dollar and investment limitation, and the election to accelerate credits in lieu of bonus depreciation are a few tax incentives that expire during the remainder of 2009 and require action by you in the coming months in order to take advantage of them.

### **Bonus Depreciation and Code Sec. 179 Expensing**

As a trade or business, you have the option of depreciating an additional 50 percent of the cost of an asset in the first year if it is acquired and placed in service through 2009. The types of property eligible for bonus depreciation include tangible property with a recovery period of 20 years or less, purchased computer software, water utility property and qualified leasehold improvement property.

For bonus depreciation purposes, the regular dollar cap for new vehicles placed in service in 2009 is raised by \$8,000 if bonus depreciation is claimed. For example, the dollar cap for passenger vehicles placed in service in 2009 is \$10,960 if bonus depreciation is claimed and \$2,960 if it is not claimed. Similarly, the depreciation cap for trucks and vans placed in service in 2009 is \$11,060 if bonus depreciation is claimed and \$3,060 if it is not claimed.

In lieu of claiming any bonus depreciation, you are allowed to claim any accumulated AMT and research credits. However, like bonus depreciation, the election only applies to property that is placed in service through 2009.

Alternatively, Code Sec. 179 allows you an election to expense, rather than capitalize and depreciate, assets placed in service. This expensing deduction has been temporarily increased to \$250,000, with a phaseout investment amount of \$800,000, for qualifying property placed in service for tax years beginning in 2008 or 2009. This extension may enable you to write off more equipment purchased in 2009 for use in your trade or business. For example, a calendar-year taxpayer has until December 31, 2009, to place property in service in order for it to be eligible for the Code Sec. 179 deduction.

### **Research Credit for Increasing Research Activities**

The research credit was provided to encourage taxpayers to increase their research expenditures. This credit was extended to apply to amounts paid or incurred before December 31, 2009. In addition, effective for tax years ending after December 31, 2008, the rates to compute the credit using the alternative simplified method are increased, and a taxpayer's election to use the alternative incremental method for qualified research expense is terminated.

### **Federally Declared Disaster Relief for Businesses**

Taxpayers affected by a federally declared disaster before January 1, 2010 may benefit from a special five-year carryback period for net operating losses attributable to the disaster; a deduction for qualified

disaster expenses; an additional depreciation allowance; and increased deduction and limitation amounts under Code Sec. 179.

Other provisions that may offer opportunities that should be evaluated as part of your year-end tax planning include:

- Deferral of discharge of indebtedness income resulting from reacquisition of business debt. At the election of the taxpayer, income from the discharge of debt in connection with the reacquisition before January 1, 2011, of business debt instrument is includable in gross income ratably over a five tax years.
- Work Opportunity Tax Credit. The work opportunity tax credit was designed to provide an incentive for employers to hire individuals from disadvantaged groups that have a particularly high unemployment rate. The credit is equal to 40% of the first \$6,000 of wages paid to the individual during the first year of employment.
- Reduced recognition period for S corporation built-in gains tax. For tax years beginning in 2009 and 2010, no tax is imposed on an S corporation's net unrecognized built-in gains if the seventh tax year in the corporation's 10-year recognition period preceded its 2009 or 2010 tax year.
- Book inventory contributions. For C corporations only, an enhanced deduction for donations of book inventory is allowed when made to public schools, or a qualified charity or private operating foundation for use in the care of the ill, the needy or infants before January 1, 2010.
- 15-year MACRS recovery period for restaurant improvements and buildings. The 15-year recovery period for improvements to a restaurant building is extended to apply to restaurant buildings placed in service in 2009.
- Energy efficient commercial buildings deduction. A deduction is available for certain energy efficiency improvements installed before January 1, 2014 on, or in, a depreciable building located in the United States. This deduction applies to property installed as part of a building's interior lighting systems; heating, cooling, ventilation, and hot water systems; or envelope, as part of a plan to reduce total energy and power costs of the system as least 50 percent. The deduction is limited to \$1.80 times the total square footage of the building.
- Alternative minimum tax. The alternative minimum tax (AMT) is not a challenge reserved solely for individual taxpayers. A corporation that is not a "small corporation" may be required to pay AMT if the corporation claims tax preference items or certain credits.
- Extended Net Operating Loss Carryback Period. The Worker, Homeownership, and Business Assistance Act of 2009 allows businesses of all sizes to elect to carryback a net operating loss to more than two and less than six years for 2008 and 2009, subject to limitations.

Sole proprietors, partners and S corporation shareholders have additional unique tax planning considerations because business planning opportunities must be viewed in conjunction with personal tax planning.

For example, estimated tax payments of qualified individuals for tax years beginning in 2009 may be based on 90 percent of the individual's prior year's tax liability. An individual is a qualified individual if their adjusted gross income shown on the individual's return for the preceding tax year is less than \$500,000 and more than 50 percent of the gross income shown on the return for the preceding tax year is from a business which employed less than 500 employees on average.

In addition, small employers and the self-employed may benefit from a review of the independent contractor vs. employee classification because it affects both the worker and the employer. A worker's classification determines who is liable for employment taxes. Misclassification can have serious tax consequences.

Overall, a key element of tax planning is a careful review of these incentives and provisions, and how best to take advantage of them in the current tax year. However, there have been proposals to increase the income and capital gains tax on single individuals with income of more than \$200,000, and married couples with income exceeding \$250,000. Therefore, following the traditional year-end planning

maxim of deferring income into next year may not be a positive strategy. Deferring too much income into 2010 could result in income taxed at a higher rate.

Regardless of your tax entity, your state's treatment of these and many other provisions may be a more significant issue this year than in prior years. Although a state may wish to boost its economy by adopting some of the 2009 Recovery Act provisions, they cannot afford to create deeper revenue shortfalls. Therefore, what may be treated as a deduction for federal purposes may be an adjustment to income as computed by the state. This is especially true regarding a state's treatment of bonus depreciation and the increased section 179 deduction, which also impacts a decision to accelerate AMT and investment credits.

Business tax planning involves not only planning for the current year, but also making wise tax decisions that will benefit your business for years to come. A further review of your options now could identify what you can do over the next couple months to save money on your 2009 tax bill and plan for the future. Please call our office to arrange an appointment at your convenience. (702) 658-9535

Sincerely yours,

Jake Worline

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