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**TO: Business Clients**

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**SUBJECT: 2012 American Taxpayer Relief Act -- Businesses**

On January 1, 2013, Congress passed, and President Obama signed the next day, the American Taxpayer Relief Act. The new law includes some valuable business tax incentives. Many of these business tax incentives are temporary so taxpayers have a limited window in which to maximize their potential tax savings.

### **Tax rates**

Depending on how a business activity is structured, it may be taxed as a corporation or its owners may pay taxes at the individual rates. The American Taxpayer Relief Act permanently extends the Bush-era income tax cuts except for single individuals with taxable income above \$400,000; married couples filing joint returns with taxable income above \$450,000; and heads of household with taxable income above \$425,000. Income above these thresholds will be taxed at a 39.6 percent rate, effective January 1, 2013. The \$400,000/\$450,000/\$425,000 thresholds, which will be adjusted for inflation after 2013, are also used to determine the point at which the maximum tax rate on capital gains and dividends for an individual rises from 15 percent to 20 percent.

### **Bonus depreciation**

In recent years, bonus depreciation has reached 100 percent, which gave taxpayers the opportunity to write off 100 percent of qualifying asset purchases immediately. For 2012, bonus depreciation remained available but was reduced to 50 percent. The American Taxpayer Relief Act extends 50 percent bonus depreciation through 2013 (through 2014 in the case of certain period production property and transportation property). The American Taxpayer Relief Act also provides that a taxpayer otherwise eligible for additional first-year depreciation may elect to claim additional research or minimum tax credits in lieu of claiming depreciation for qualified property.

While not quite as attractive as 100 percent bonus depreciation, 50 percent bonus depreciation is valuable. For example, a \$100,000 piece of equipment with a five-year MACRS life would qualify for a \$60,000 write-off: \$50,000 in bonus depreciation plus 20 percent of the remaining

\$50,000 in basis as “regular” accelerated depreciation, taking into account a half-year convention.

Bonus depreciation also relates to the vehicle depreciation dollar limits under Code Sec. 280F. This provision imposes dollar limitations on the depreciation deduction for the year in which a taxpayer places a passenger automobile/truck in service within a business and for each succeeding year. Because of the new law, the first-year depreciation cap for passenger automobile/truck placed in service in 2013 is increased by \$8,000.

Bonus depreciation, unlike Code Sec. 179 expensing (discussed below), is not capped at a dollar threshold. However, only new property qualifies for bonus depreciation. Code Sec. 179 expensing, in contrast, can be claimed for both new and used property and qualifying property may be expensed at 100 percent.

## **Expensing**

The American Taxpayer Relief Act enhances or extends several expensing provisions. These include Code Sec. 179 small business expensing, 15-year recovery period for qualified leasehold and retail improvements and restaurant property, special expensing rules for film and television productions, and a seven-year recovery for motorsports complexes.

**Code Sec. 179 expensing.** In recent years, Congress has repeatedly increased dollar and investment limits under Code Sec. 179 to encourage spending by businesses. For tax years beginning in 2010 and 2011, the Code Sec. 179 dollar and investment limits were \$500,000 and \$2 million, respectively. The American Taxpayer Relief Act boosts the dollar and investment limits for 2012 and 2013 to their 2011 amounts (\$500,000 and \$2 million) and adjusts those amounts for inflation. Keep in mind that the increase is temporary. The Code Sec. 179 dollar and investment limits are scheduled, unless changed by Congress, to decrease to \$25,000 and \$200,000, respectively, after 2013. The new law also provides that off-the-shelf computer software qualifies as eligible property for Code Sec. 179 expensing. The software must be placed in service in a tax year beginning before 2014. Additionally, the American Taxpayer Relief Act allows taxpayers to treat up to \$250,000 of qualified leasehold and retail improvement property as well as qualified restaurant property, as eligible for Code Sec. 179 expensing.

**Leasehold, retail and restaurant property.** The American Taxpayer Relief Act extends for 2012 and 2013 the special treatment of qualified leasehold and retail improvement property and qualified restaurant property as eligible for a 15-year recovery period. Otherwise, this property generally is depreciated over a 39-year recovery period. To take advantage of this enhanced expensing, the qualified property must be placed in service before January 1, 2014.

**Film and television.** A special expensing rule allows taxpayers to elect to deduct certain costs of a qualified film or television production in the year the costs are paid or incurred. The American Taxpayer Relief Act extends this rule through 2013.

## **Work Opportunity Tax Credit**

The WOTC expired after 2011 with an exception for employers that hire qualified veterans. The American Taxpayer Relief Act extends the WOTC (including the special rules for veterans) through 2013. Each new employee hired from a targeted group generally entitles an employer to a credit equal to 40 percent of first-year wages, up to \$6,000.

## **Research tax credit and other incentives**

The American Taxpayer Relief Act extends through 2013 the Code Sec. 41 research tax credit. The credit had expired after 2011. The new law, however, does not make the credit permanent as had been proposed by President Obama and some lawmakers.

Along with the research tax credit, the American Taxpayer Relief Act also revives through 2013 many other expired incentives, including:

1. Employer wage credit for activated military reservists
2. Reduced recognition period for S corporation built-in gains tax
3. Indian employment credit and accelerated depreciation for business property on Indian reservations
4. Code Sec. 45 production tax credit for renewable energy
5. Credits for biodiesel and ethanol
6. Incentives for manufacturers of energy-efficient new homes and appliances
7. Railroad track maintenance credit
8. Mine rescue team training credit

## **Planning opportunities**

Unlike many of the individual incentives in the American Taxpayer Relief Act, many of the business tax benefits are not made permanent. As a result, planning to maximize tax savings under these extended incentives takes on a new urgency. Please contact our office and we can discuss how the American Taxpayer Relief Act can help maximize your tax savings.