Dear Clients,

This year saw numerous tax developments that affect businesses, many of which deserve special scrutiny for year-end planning in an effort to minimize your 2014 tax bill.

No development is more important than the Tax Increase Prevention Act of 2014 (TIPA), which was signed into law by the President on December 19. TIPA retroactively extends numerous tax breaks for the 2014 tax year. With this legislation in place, we have a narrow window of time to take advantage of higher expensing limits under Code Section 179, or alternatively 50% bonus depreciation for property placed in service before the end of the year. TIPA also extended several other tax breaks creating last-minute planning opportunities, which are discussed below.

Another major development for businesses in 2014 which may require certain actions before December 31 is the IRS's overhaul of the tangible property rules. These rules affect any business that owns property and may require some modifications to your fixed asset policies so that you can take advantage of, and even comply with, the new rules. Depending on your current policies, refunds may be available for prior years.

The following is a discussion of the more significant 2014 tax planning opportunities that you may want to consider even at this late date.

Section 179 Deduction

For tax years beginning in 2014, you can now expense up to $500,000 of qualified property placed into service by December 31. Had this tax break not been extended, the maximum amount you could expense for 2014 would have been $25,000. Note that the total amount of property that you can place into service before having to reduce your Section 179 deduction is $2,000,000. The amounts that may be expensed can include up to $250,000 of the cost of qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property.

Bonus Depreciation

As you know, businesses can recover the cost of capital expenditures over time through depreciation. In 2012 and 2013, you were entitled to take 50 percent bonus depreciation for investments placed in service during those years. TIPA extends the 50 percent bonus depreciation provision for qualifying property purchased and placed in service before January 1, 2015 (before January 1, 2016, for certain longer-lived and transportation assets) and also allows you to elect to accelerate some AMT credits in lieu of taking the bonus depreciation.

Research Tax Credit

TIPA has extended the popular research tax credit through 2014. The research credit allows qualifying startup businesses to claim unused research tax credits against payroll taxes after applying the credit to income tax liability. And, it is worth noting that, in 2014, two taxpayer-favorable court cases rejected IRS attempts to rein in taxpayers' ability to take full advantage of this credit. If you've taken research tax credits in the past couple of years, it may be worthwhile to review the calculation of those credits in light of these cases to see if additional expenses can be claimed based on the court holdings.

Tangible Property Rules

Safe Harbor Election for Expensing Items

One of the more favorable rules in the tangible property regulations is the $5,000 de minimis safe harbor election for expensing an item rather than capitalizing it. In order to take advantage of this election, you must have had written accounting procedures in place at the beginning of the year and have been following those rules for book and tax accounting purposes. If such procedures were in place at the beginning of 2012 or 2013, the election can be made for these years as well but will require amended returns. If you did not have such procedures in place, it's not too late to put implement them for 2015, but it must be done by the end of this year.

In addition, you must have an applicable financial statement (AFS) to rely on the $5,000 de minimis safe harbor. If you do not have an AFS, you may rely on the de minimis safe harbor only if the amount paid for property does not exceed $500 per invoice, or per item as substantiated by the invoice. If the cost exceeds $500 per invoice (or item), then you cannot use the de minimis safe harbor. Alternatively, if you do not qualify for the $5,000 safe harbor, you may still be able to deduct amounts over $500 or even over $5,000, if you have a written policy in place, follow it for book purposes, and can prove that it meets materiality thresholds. Various types of statements qualify as an AFS so if you don't currently have an AFS, we should evaluate whether one of the available options will work for your business.

Finally, the de minimis rule also applies to amounts paid for property having a useful life less than a certain period of time.

Partial Disposition Election

Another favorable item in the final property regulations that may save you some money this year is the partial disposition election. While initially the election could only be made for tax years beginning before January 1, 2014, the IRS recently extended the time frame to any tax year beginning before January 1, 2015. Using this election, you can claim a loss on the disposition of a structural component of a building or on the disposition of a component of any other asset without needing to make a general asset account election. The partial disposition rule also minimizes circumstances in which an original part and any subsequent replacements of the same part must be simultaneously capitalized and depreciated. Thus, for example, if you replaced an engine in a truck, you would generally continue to depreciate the old engine as part of the truck while also depreciating the new engine. Under the partial disposition rule, you can now retire the old engine and recognize a loss on that disposition.

Deductions Available for Rehabilitation of Buildings and other Property

The final rules contain a routine maintenance safe harbor that allows the expensing, rather than capitalizing, of costs of performing certain routine maintenance activities for buildings or the structural components, as well as other property. If you have done any such maintenance this year or plan to do so next year, we should discuss whether the maintenance falls under the "routine" safe harbor and review any changes to maintenance routines going forward to ensure that such costs qualify for immediate expensing.

Deductible Repair and Maintenance Expenses

Under the new tangible property rules, certain repair and maintenance expenses that were previously capitalized can now be expensed. For prior years, this will require amended returns and making certain retroactive elections. Depending on your current tax situation, we should run the numbers to see if amended returns make sense.

S Corporations

In 2014, the IRS loosened the rules relating to S corporation shareholder debt. Under the new rules, it is easier for such debt to give the shareholder basis against which to deduct losses coming from the S corporation. The rules generally eliminated the "actual economic outlay" doctrine replacing it with a clearer "bona fide debt" requirement, and made the changes retroactive. Thus, if a shareholder previously could not deduct losses because the actual economic outlay doctrine wasn't met, amended returns may be in order.

Real Estate Developers

For real estate developers, two court cases this year drew a bright line between the type of contracts that will qualify as home construction contracts eligible for the completed contract method and those that will not. As a result of the decisions in these cases, one pro-taxpayer and one pro-IRS, it is worth taking a second look at whether the method being used to account for income from such contracts can be reported under the completed contract method.

Affordable Care Act ('Obamacare')

The Affordable Care Act includes several provisions that may affect you as an employer, including the shared responsibility provisions, also known as the "employer mandate." Under the employer mandate, which is effective January 1, 2015, a penalty is imposed on certain large employers that do not offer health insurance coverage, offer health insurance coverage that is unaffordable, or offer health insurance coverage that consists of a plan under which the plan's share of the total allowed cost of benefits is less than 60 percent.

It is important to note that this provision only applies to an employer who employed an average of at least 50 full-time employees on business days in the preceding calendar year. Additionally, subject to certain requirements, no employer shared responsibility payments will apply during 2015 for employers with fewer than 100 full-time employees.

The penalty is assessed for any month in which a full-time employee is certified to the employer as having purchased health insurance through an Exchange with respect to which a premium tax credit or cost-sharing reduction is allowed or paid to the employee. However, it is worth noting that currently there are multiple ongoing court battles over whether insurance purchased on a federally established Exchange qualifies for the subsidies, which then triggers the tax on the employer. The issue will most likely not be resolved until sometime later next year.

Small Employer Credit

With respect to health insurance, your business may be eligible for a credit for contributions to purchase health insurance for employees. The amount of the credit increased this year to 50 percent (35 percent for tax-exempt organizations) of premiums paid. The tax credit is subject to a reduction if you have more than 10 full-time employees or if average annual full-time employee wages exceed $25,000.

Mass Transit Benefits

TIPA has increased, retroactive for 2014, the monthly exclusion from income for employer-provided transit and vanpool benefits from $130 to $250, so that it will be the same as the exclusion for employer-provided parking benefits. In order for the extension to be effective retroactive to January 1, 2014, employers may reimburse expenses incurred by employees before enactment for vanpool and transit benefits on a tax-free basis to the extent the expenses exceed $130 per month and are not more than $250. Thus, the benefits that are excludible from income will not be includible in the employee's income on Form W-2 and are deductible by employers as fringe benefits.

Please call me at your convenience so we can set up an appointment to estimate your business's tax liability for the year and discuss options available for reducing your business's taxes in light of the passage of TIPA, the new tangible property rules, and other important 2014 developments.

Sincerely,

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