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2011 Year-End Tax Planning for Businesses

Dear Client:

Business taxpayers, like all taxpayers this year, are confronted with uncertainty in year-end tax planning as 2011 ends. A number of business tax incentives are scheduled to expire after December 31, 2011 unless extended by Congress. These incentives include widely-popular and utilized ones, such as 100 percent bonus depreciation, enhanced small business expensing, real property expensing, and many more. Other provisions, such as the small business health insurance credit and the Code Sec. 199 domestic production activities deduction, while not expiring, appear to be under-utilized. As 2011 draws to a close, it is a valuable time to review some of these tax incentives and how they may be able to help your business' bottom line.

Form 1099 Reporting

Business who pay someone who is not the business's employee \$600 or more for services provided during the year must file Form 1099-MISC with the IRS by February 28 and supply a copy to the service provider by January 31. Form 1099-MISC is generally not required for payments made to corporations, tax-exempt organizations, or government entities. Penalties for not filing with the IRS and supplying to providers the proper forms can range from \$30 to \$250 *per* Form 1099-MISC.

Bonus depreciation

Taxpayers are allowed to recover the cost of certain property used in a trade or business or for the production of income through annual depreciation deductions. The amount of the allowable depreciation deduction for a tax year is generally determined under the modified accelerated cost recovery system (MACRS), which assigns applicable recovery periods and depreciation methods to different types of property.

An additional first-year depreciation deduction equal to 100 percent of the adjusted basis of the property is available for 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). This additional depreciation deduction, known as "100 percent bonus depreciation" is temporary (unless extended by Congress). As a result, 2011 year-end tax planning should take into account 100 percent bonus depreciation as well as its scheduled drop to 50 percent for qualified property acquired after December 31, 2011 and before January 1, 2013 (or before January 1, 2014 for certain longer-lived and transportation property).

These dates are important in year-end planning. Let's look at an example. ABC Co. acquires a qualified asset on November 1, 2011 and places it in service on December 1, 2011. The 100 percent rate of bonus depreciation applies. However, if ABC Co. acquires a qualified asset on November 1, 2011 and places it in service on January 1, 2012, the 50 percent rate of bonus depreciation applies. The rules for determining the acquisition date of an asset are different for the 100 percent and 50 percent rates. Special rules apply to self-constructed property.

Taxpayers may elect out of bonus depreciation. An election out of 100 percent bonus depreciation in 2011 will spread the depreciation deductions for the cost of an asset into future years measured by the asset's depreciation period. Electing out of 100 percent bonus depreciation may be a valuable strategy for certain taxpayers. Our office can help you determine the best strategy for applying bonus depreciation.

Business vehicles

Special consideration should be paid to the interaction of 100 percent bonus depreciation and the so-called "luxury vehicle" caps. In Rev. Proc. 2011-26, the IRS set out a safe harbor method of accounting for businesses nominally entitled to 100 percent bonus depreciation but still limited by the maximum luxury vehicle depreciation caps (\$11,060 for passenger autos for 2011 and \$11,160 for light trucks in 2011). The effect of the safe harbor is generally to allow the taxpayer under the 100 percent bonus depreciation regime to claim exactly the same amount of depreciation during each year of the vehicle's recovery period as would have been allowed if a 50 percent bonus depreciation rate had originally applied. The safe harbor method may be used for qualifying new vehicles placed in service after September 8, 2010 and before January 1, 2012 for which a 100 percent bonus depreciation rate applies.

Code Sec. 179 expensing

Business taxpayers are allowed to expense up to a certain dollar amount in annual investment expenditures for qualified property. The maximum amount that can be expensed is reduced by the amount by which the taxpayer's cost of qualified property exceeds a certain investment limit. For tax years beginning in 2010 and 2011, the Code Sec. 179 dollar limit is \$500,000 and the investment limit is \$2 million. The dollar limit is scheduled to fall to \$125,000 (indexed for inflation at \$139,000) and the investment limit is scheduled to fall to \$500,000 (\$560,000 indexed for inflation) after 2011. As a result, business taxpayers contemplating qualified purchases should weigh the benefits of accelerating those purchases into 2011. Keep in mind that Code Sec. 179 expensing is also allowed for off-the-shelf computer software placed in service in tax years beginning before 2012.

Some targeted special expensing provisions are scheduled to expire after December 31, 2011 (unless extended by Congress). Expiring for qualified property placed in service after December 31, 2011 are special expensing rules for film and television production costs; brownfields remediation costs; and qualified advanced mine safety equipment.

Real property expensing

Real property generally is excluded from Code Sec. 179 expensing. However, tax legislation in 2010 provided that qualified leasehold property, qualified restaurant property, and qualified retail improvement property placed in service before January 1, 2012 are eligible for special expensing rules. However, the special expensing provision is temporary and is scheduled to expire after 2011 (unless extended by Congress).

A taxpayer that places qualified leasehold improvement property, qualified restaurant property or qualified retail improvement property in service in a tax year that begins in 2010 or 2011 may elect to treat the property as Code Sec. 179 property and expense up to \$250,000 of the cost of the property. There are some important limitations. While qualified leasehold improvement property is eligible for bonus depreciation, qualified restaurant property and qualified retail improvement property are generally ineligible for bonus depreciation unless they meet the definition of qualified leasehold improvement property. Additionally, current law does not provide for a carryover of an unused real property expensing election for qualified property placed in service in 2011. If you are considering a real property improvement, please contact our office before the window of opportunity for this special expensing rule closes.

Work Opportunity Tax Credit (WOTC)

Employers that have taken advantage of the popular Work Opportunity Tax Credit (WOTC) in past years may be surprised to learn the credit is scheduled to expire after December 31, 2011 (unless extended by Congress). The WOTC is designed as an incentive to encourage employers to hire individuals from nine targeted groups, which have historically, experienced higher than average unemployment rates and other barriers to employment. The WOTC generally is 40 percent of the qualified worker's first-year wages up to \$6,000 (with higher and lower amounts for certain groups). Under current law, the WOTC applies to wages paid to qualified individuals who begin work for the employer before January 1, 2012. Wages paid to qualified individuals who begin work for the employer after December 31, 2011 (under current law) are ineligible for the WOTC.

Payroll taxes

Employers should remind employees that effective January 1, 2012, the employee-share of OASDI taxes is scheduled to revert to 6.2 percent (unless the 2011 payroll tax holiday is extended by Congress). Under the 2011 payroll tax holiday, employees paid OASDI taxes at a rate of 4.2 percent rather than 6.2 percent. A similar benefit was provided to self-employed individuals. The employer-share of OASDI taxes for 2011, however, remains at 6.2 percent.

An employer's FUTA tax liability did change mid-year in 2011. The 0.2 percent FUTA surtax expired after June 30, 2011. As a result, the FUTA tax rate falls to 6.0 percent for the remaining six months of 2011 before any state unemployment tax credits are taken into account. The IRS has indicated it will provide guidance for employers. Our office will keep you posted of developments.

Small business health insurance tax credit

According to the IRS, many small businesses are overlooking the Code Sec. 45R small employer health insurance tax credit. Small employers that provide health care coverage to their employees and that meet certain requirements ("qualified employers") generally are eligible for the Code Sec. 45R tax credit for health insurance premiums they pay for certain employees. The employer must have fewer than 25 full-time equivalent employees (FTEs) for the tax year; average annual wages of its employees for the year must be less than \$50,000 per FTE; and the employer must pay the premiums under a qualifying arrangement. For tax years beginning in 2010 through 2013, the maximum credit is 35 percent of the employer's premium expenses that count towards the credit (25 percent for tax-exempt employers). If the number of FTEs exceeds 10 or if average annual wages exceed \$25,000, the amount of the credit is reduced until it phases-out.

Code Sec. 199 deduction

Another under-used tax incentive, according to the IRS, is the Code Sec. 199 domestic production activities deduction. The Code Sec. 199 deduction generally allows taxpayers to receive a deduction based on qualified production activities income (QPAI) resulting from domestic production. The deduction effectively reduces the income tax rate on domestic production activities. Qualifying domestic production includes the manufacture of tangible personal property; the production of computer software, sound recordings and certain films; the production of electricity, natural gas, or water; and construction, engineering, and architectural services. One deterrent to greater use of the deduction is its complexity. Our office can help you navigate the deduction's rules and calculations.

Energy tax incentives

Energy tax incentives are a mixed bag for businesses. A number of tax credits for alcohol fuels and biodiesel/renewable diesel will expire after December 31, 2011 (unless extended by Congress). Tax credits for construction of new energy efficient homes and manufacture of energy efficient appliances will also expire after December 31, 2011 (unless extended by Congress). Other energy tax incentives, including the deduction for energy efficient commercial buildings, do expire until after 2013 or subsequent years.

If you have any questions about the tax incentives we have reviewed and your 2011 year-end tax plans, especially if your personal or business tax circumstances have significantly changed from last year, please contact our office prior to December 31 to determine if a planning meeting is necessary. Also, visit our website at www.jenningsclouse.com for more information throughout the year!

Sincerely yours,

Jennings & Clouse, PLC