Tax Extender Update

December 22, 2015

As 2015 comes to an end, a new tax extender law has been passed, The Protecting Americans from Tax Hikes Act of 2015. The new law extends, expands, and, in some cases, makes certain tax provisions permanent that expired on December 31, 2014. With a time line now in place for these business tax incentives and with proper planning, businesses can truly benefit from this legislation. No longer will businesses have to worry about the same limited window in which to maximize their potential tax savings, especially with regard to the Section 179 Deduction.

Bonus Depreciation

Bonus depreciation is one of the most important tax benefits available to businesses, large or small. Since 2001, bonus depreciation has fluctuated between 30 percent and 100 percent, which has given taxpayers the opportunity to write off up to the corresponding year's threshold, that portion of qualifying asset purchases immediately. For 2015, bonus depreciation had expired, but will be retroactively reinstated for assets placed in service as of January 1, 2015 with the passage of The Protecting Americans from Tax Hikes Act of 2015. The Act extends 50% bonus depreciation for assets placed into service through 2017. It also provides for bonus depreciation for assets placed in service in 2018 and 2019, but the percentage is reduced to 40% and 30% respectively. Property eligible for bonus depreciation is newly constructed or original use, non-previously used property with a recovery period of 20 years or less. Additionally, tax-exempt use property and tax-exempt financed property does not qualify.

Bonus depreciation can be a larger benefit to small businesses than Section 179 expensing because tax payers do not need net income to take the applicable bonus depreciation. It also does not place a dollar value limit on the amount of assets placed in service. A current example of its benefit is 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% of the remaining $50,000 in basis as "regular" depreciation for the first year.

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 law, the first-year depreciation and Section 179 expense is capped for passenger automobile/truck placed in service in 2015. The limits are $11,060 for cars and $11,160 for trucks and vans. Different limits apply to vehicles with a GVWR over 6,000 pounds and meet certain conditions.

15-Year Straight Line Recovery Period for Qualified Leasehold, Restaurant, and Retail Property

Under the Protecting Americans from Tax Hikes Act of 2015, the 15-Year Recovery Period for Qualified Leasehold, Restaurant, and Retail Property is now permanent. In order for qualified restaurant and qualified retail improvement property to qualify for bonus depreciation, the improvement must fulfill the definition of qualified leasehold improvement property.

Property that qualifies as qualified leasehold improvement property is any improvement to an interior portion of a building that is nonresidential real property and placed in service more than three years after the date the building was first placed in service. Exclusions included, related parties and enlargements, elevators/escalators, common area work, and internal structural framework. The improvement may be made by either the lessee or by the lessor, but must be made in accordance to a lease.

To qualify as qualified restaurant property, 50 percent of a building's square footage is devoted to the preparation, seating for on-site consumption of prepared meals. It is any depreciable real property, including leaseholds that are subject to depreciation.

Lastly, qualified retail improvement property, are improvement made to an interior portion of a nonresidential real property placed in service more than three years after the date the building was first placed in service. A qualifying retail establishment include those open to the public and engaged primarily in the sale of goods, not services, to the general public.

Code Section 179 Expensing

The Protecting Americans from Tax Hikes Act of 2015 makes Code Sec. 179 small business expensing, permanent at the $500,000 level. Code Sec. 179 encourages spending by businesses and provides an opportunity for additional tax planning. Businesses may expense $500,000 out of $2 million in qualifying Section 179 purchases. Annual purchases totaling more than $2 million are phased-out dollar for dollar, thus completely eliminated when qualifying purchases reach $2.5 million annually.

It is important to note that off-the-shelf computer software qualifies as eligible property for Code Sec. 179 expensing. Additionally, as previously allowed, business can 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. Furthermore, the limits will be indexed for inflation in upcoming years. Lastly, Code Sec. 179 expensing, unlike bonus depreciation, can be claimed for both new and used property and qualifying property may be expensed at 100%.

Work Opportunity Tax Credit (WOTC)

The WOTC, which expired after 2014 has also been resurrected through 2019. It is available to all tax paying employers that hire qualified veterans and specific individuals. The Protecting Americans from Tax Hikes Act of 2015 allows a credit for each new employee hired from a targeted group generally entitles an employer to a credit that ranges from $2,400 up to $9,600 for each eligible new hire.

Research & Development Tax Credit and Other Incentives

The Protecting Americans from Tax Hikes Act of 2015 permanently extends the Code Sec. 41 research tax credit. The new law tweaks and expands the R&D Tax Credit. New in 2016, businesses with less than $50 million in gross revenue will be able to use the credit to offset the AMT. Furthermore, a provision will make it possible for startups to claim the credit. A business with less than $5 million in annual gross receipts will be able to take the credit against their payroll taxes, up to $250,000 for up to five years.

Reduced Recognition Period for S Corporation's Built-In-Gains (BIG) Tax

This provision of the tax extender bill provides for permanent built-in gains relief for C-Corporations to S-Corporations conversions and the tax efficiencies an S election provides. Historically, the recognition period for the BIG tax was 10 years, but had been continually reduced to five years in previous tax extender bills. With the passage of The Protecting Americans from Tax Hikes Act of 2015, shareholders will no longer have to worry about the uncertainty of the recognition period. Now, S-Corporation shareholders will only have to been concerned with assets sold for a gain within five years of the conversion.

Additional Items

In addition to the above credits, The Protecting Americans from Tax Hikes Act of 2015 also provides for the following incentives and more through 2016:

- Employer wage credit for activated military reservists
- Indian employment credit and accelerated depreciation for business property on Indian reservations
- Accelerated depreciation for business property on an Indian reservation
- Energy efficient commercial buildings deduction
- Incentives for biodiesel and renewable diesel
- Incentives for manufacturers of energy-efficient new homes
- Railroad track maintenance credit
- Mine rescue team training credit and election to expense mine safety equipment
- Section 1202 Qualifying Small Business Stock Exclusion
- Classification of certain race horses as 3-year property
- 7-year recovery period for motorsports and entertainment complexes
- Empowerment Zone tax incentives
- Suspension of the 2.3% excise tax on medical devices.

Planning Opportunities

With the recent passing and signing of The Protecting Americans from Tax Hikes Act of 2015, not much time remains to capitalize on its provisions for 2015. 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 Protecting Americans from Tax Hikes Act of 2015 can help maximize your tax savings.