

GORDON J. MAIER & COMPANY, LLP

CERTIFIED PUBLIC ACCOUNTANTS

845 WISCONSIN AVENUE
RACINE, WISCONSIN 53403

262-634-7108
262-634-5069 (Fax)
cpa@gjmlp.com (E-mail)
www.gjmlp.com (Web)

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JOSEPH L. NIXA, CPA
JULIE A. CRAIG, CPA

JOHN B. SCHUESMANN, CPA
GEORGE L. GISELL, CPA
FRANKLIN M. TRESCH, CPA

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. 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's bottom line. Also, in this newsletter we will review some of the key factors in determining whether a worker is an independent contractor or an employee.

Bonus Depreciation

- 100 percent bonus depreciation
 - 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).
- 50 percent bonus depreciation
 - qualified property acquired after December 31, 2011 and before January 1, 2013 (or before January 1, 2014 for certain longer-lived and transportation property).

Code Sec. 179 Expensing

- For tax years beginning in 2010 and 2011
 - Code Sec. 179 dollar limit is \$500,000 and the investment limit is \$2 million.
- For tax years beginning after 2011
 - Code Sec. 179 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).

Wisconsin Tax Updates

- Job Creation Tax Deduction
 - Deduction equaled to \$4,000 for each increase in the number of full-time equivalent employees hired by the taxpayer in Wisconsin during the taxable year for a business with gross receipts of no greater than \$5,000,000 in the taxable year, deduction is \$2,000 for a business with gross receipts greater than \$5,000,000.
- Health Insurance Benefits for Adult Children Under Age 27
 - Employers no longer need to add the fair market value for the health insurance benefit to an employee's income, and parents will not need to report the additional income on their state income tax return. This change is retroactive to January 1, 2011.
- Health Savings Accounts (HSA)
 - Wisconsin adopted federal law provisions related to HSAs. Contributions to HSAs are deductible for WI beginning on January 1, 2011.

Independent Contractor vs. Employee

One of the steps we recommend to clients that use independent contractors and, therefore, face a heightened risk of a costly IRS payroll tax or benefits audit, is a quick review of some of the key things the IRS tells its agents to look at in determining whether a worker is an independent contractor or an employee.

The primary inquiries fall into three categories. Who has financial control of the job? Who can exercise control over how the worker performs the specific task? And how do the parties themselves view the relationship? When reviewing the checklist, keep in mind that the IRS will make its decision based on the whole picture, not just a single factor.

Workers are more likely to be classified as independent contractors if they:

- Make a significant investment in business property, such as tools;
- Pay their own business expenses;
- Receive a flat fee that is not based on an hourly or similar rate;
- Are not prohibited from doing work for other companies;
- Can pay subcontractors to get the job done;
- Are not performing services as an integral part of your regular business;
- Have a contract with an enforceable liquidated damages provision;
- Can make a profit or suffer a loss.

Workers are more likely to be classified as employees if they:

- Are given specific instructions and on-going training in how to get the work done;
- Cannot work for others;
- Have expenses paid by your company;
- Are paid with a salary or hourly wage;
- Do not have a significant investment in their trade or business;
- Are an integral part of your regular business;
- Receive direct reimbursement for all, or almost all, expenses;

Other factors are:

- Whether or not the work is performed on the business's premises;
- Whether the worker has flexibility in setting hours;
- Whether the relationship is temporary or short-term;
- Whether the work is full or part-time;
- Whether the worker performs services for one or more businesses.

If you have any questions about the determination of a worker's status as an independent contractor and/or the business tax incentives we have discussed in this letter, please contact our office.

Sincerely,



Gordon J. Maier & Company, LLP
Certified Public Accountants