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HIGHLIGHTS AND LOWLIGHTS OF THE *AMERICAN JOBS CREATION ACT*

The *American Jobs Creation Act of 2004,* which President Bush signed on October 22, contains a variety of tax changes for businesses and individuals.

The *American Jobs Creation Act* is more than 600 pages long and includes hundreds of provisions. Many of the advantageous changes for taxpayers are estimated to cost the government $140 billion. However unlike most recent tax laws, the 2004 Jobs Act is "revenue-neutral." That means it raises enough taxes to cover the revenue lost from the new breaks. So in addition to the good news, there's $140 billion worth of bad news in the form of curtailed tax breaks. When does the law become effective? Some of the changes are retroactively effective while others kick in after the date of enactment. Still others don't take effect until 2005 and later.

Important Changes **AffectingBusinessDepreciation and SUVs**

Section 179 Deduction Rules Extended. Under Section 179 of the tax code, you can deduct the cost of qualifying business property in the year it is placed in service, rather than depreciating it over several years. The new law extends the current generous Section 179 deduction allowance (currently $102,000 with annual increases for inflation) for two more years — through tax years beginning in 2007. For years beginning in 2008 and beyond, the maximum deduction will fall back to $25,000 unless Congress takes further action. Other favorable Section 179 rules provided under current law are also extended (such as the right to claim the deduction for off-the-shelf software costs and the right to make or revoke Section 179 elections on amended returns).

Maximum Section 179 Deduction for SUVs Drastically Reduced. The *American Jobs Creation Act* places a lower $25,000 limit on Section 179 deductions for "heavy" SUVs with gross vehicle weight ratings of 14,000 pounds or less. Under prior law, SUVs with gross vehicle weight ratings of more than 6,000 pounds were eligible for the full $102,000 Section 179 allowance for tax years beginning in 2004.

The good news is the reduced deduction rule doesn't apply to vehicles that are not considered SUVs under the tax law. These include vehicles designed with a specified seating capacity, cargo area or integral enclosure.

Effective date and tax planning advice: The reduced $25,000 deduction applies to SUVs placed in service after the date the law is enacted. That means you get the larger deduction if you purchased one earlier this year.

It can still be a tax-smart move to buy a new "heavy" SUV for business use before the end of 2004. This is true even if the vehicle is placed in service after the date of enactment. Why? Because the combination of the $25,000 Section 179 deduction, plus the 50 percent first-year bonus depreciation deduction, plus the regular first-year depreciation deduction allows you to immediately deduct a high percentage of the vehicle's cost — even if it's placed in service right at the end of the year. After this year, however, the 50 percent first-year bonus depreciation break ends. So time is of the essence if you want to take advantage of the tax break before it's gone. Keep in mind that only new vehicles qualify for first-year bonus depreciation.

Important Change **for Corporate Donations**

Tougher Guidelines for Noncash Donations - The *American Jobs Creation Act* generally requires stricter reporting by donors contributing noncash items to charitable organizations — other than inventory and publicly traded securities. Specifically, all C corporations must now obtain qualified appraisals for noncash donations valued at more than $5,000. (This appraisal requirement has applied to individual taxpayers for years.)

If the deduction claimed for a contribution of noncash property other than inventory or publicly traded securities exceeds $500,000, a qualified appraisal must be attached to the donor's return. If the donor fails to properly substantiate a contribution, the deduction is denied unless the failure is due to reasonable cause and not willful neglect.

Appraisals are not required for charitable contributions of vehicles, boats, and planes if the charity sells the asset without significant intervening use or material improvement and provides the donor with an acknowledgment that satisfies the new substantiation rules for such donations.

Effective Date: These unfavorable changes apply retroactively to donations made after June 3, 2004 so tax returns for this year could be affected.

Important Change for Leasehold Improvements

New 15-Year Depreciation Rule For Leasehold Improvements. Under current law, leasehold improvements for nonresidential property generally must be depreciated over 39 years. Shorter depreciation periods are allowed for leasehold improvements that are properly classified as tangible personal property rather than as structural components. The 2004 Jobs Act provides greater certainty in depreciating leasehold improvement costs and a shorter depreciation period for structural components by establishing a new 15-year depreciation rule (using the straight-line method) for qualified nonresidential leasehold improvement property. Qualified leasehold improvement property is generally defined in the same fashion as under the rules for first-year bonus depreciation.

Effective date and tax planning advice: This favorable change applies to qualified leasehold improvement property placed in service after the October 22 date of enactment and before 2006. Therefore, 2004 tax returns could be affected.

Qualified leasehold improvement property placed in service before the end of 2004 also qualifies for the 50 percent first-year bonus depreciation break. So time is of the essence if you want to take advantage of first-year bonus depreciation before it's gone.

Important Change for Entrepreneurs

New Rules for Business Start-Up and Organizational Costs - Under current law, taxpayers are required to capitalize business start-up expenditures (also called pre-opening expenditures). Capitalized amounts can then be amortized over five years. The same rules apply to corporate and partnership organizational expenditures (including legal fees incurred to establish these entities).

The new law changes these longstanding rules. Under the new law, taxpayers can elect to immediately deduct up to $5,000 of start-up costs and up to $5,000 of organizational expenditures in the tax year in which the business begins operations. Each allowance is reduced dollar for dollar by the amount of cumulative expenditures in excess of $50,000. Separate $50,000 thresholds apply to start-up and organizational expenditures.

Expenditures that cannot be deducted when the business begins must be capitalized and amortized over 15 years on a straight-line basis. The same 15-year amortization rule applies to many other intangible assets under current law (called Section 197 intangibles).

Effective Date: The new rules apply to expenditures incurred after the date the law is enacted so 2004 tax returns could be affected. (Your business can still amortize start-up and organizational expenditures incurred on or before the October 22 date of enactment over five years.)

Important Change for Contingent Legal Fees

People who win their cases in court often get some bad news to go with the victories. That's because courts sometimes require them to include 100 percent of certain legal judgments and settlements in their taxable income, including contingent attorney fees and costs that are actually subtracted from the amount claimants receive. These claimants must treat the contingent attorney fees and expenses as miscellaneous itemized deductions. However, these deductions are limited for regular tax purposes and disallowed for AMT purposes, so the end result is that the claimants are forced to pay tax on most — or all — of the amount paid to their attorneys.
The *2004 Jobs Act* partially rectifies this situation by creating a new above-the-line deduction (meaning you don't have to itemize to benefit) for attorney fees and costs paid by, or on behalf of, claimants in legal actions involving claims of unlawful discrimination, certain claims against the federal government, and private causes of action under the Medicare Secondary Payer law.

Effective date: This favorable change applies to fees and costs paid after the date the law is enacted on judgments and settlements occurring after that date. Tax returns for 2004 could be affected.