

Business Year-End Tax Planning

Effective planning in any situation can make achieving goals much easier and more efficient. The same holds true for business year-end tax planning. Below are just a few items that Tonneson + Co wants to make sure all of our clients are thinking about as we approach the end of 2009.

Throughout the year, many beneficial tax provisions were either passed or extended that impact your business for 2009. For example, The American Recovery and Reinvestment Act of 2009 (ARRA) extended the first year 50% bonus depreciation deduction allowed for many capital expenditures. Capital additions that qualify include most machinery and equipment, computer and office equipment, furniture and fixtures, certain "over-the-counter" software, and certain leasehold improvements, among others. Qualifying additions must be placed in service no later than December 31, 2009 in order to take advantage of the bonus depreciation. In addition, qualifying property must be new property, and property purchased from a related party does not qualify. There are no dollar limitations, investment limitations, or business income limitations that affect the amount of 50% bonus depreciation that can be taken this year.

The Section 179 expensing limits were also extended by ARRA. Section 179 expense refers to the Internal Revenue Code section which allows businesses to elect to expense in the year of acquisition certain types of capital additions, rather than depreciating those additions over several years. Similar to the rules for Bonus Depreciation, most machinery and equipment, computer and office equipment, furniture and fixtures, and certain "over-the-counter" software qualifies for Section 179. For its 2009 tax year, a business can elect to expense up to \$250,000 of qualified capital expenditures, as long as the total purchases of qualifying Section 179 property does not exceed \$800,000 for the tax year. The expense election is reduced dollar for dollar for every dollar of qualifying purchases over the \$800,000 investment limitation. Furthermore, Section 179 expense can only be taken up to the total business taxable income of the company. In other words, Section 179 expense cannot be taken to the extent that this election would result in the business incurring a taxable loss, with some exceptions for partnerships and S-Corporations.

As of this date, the bonus depreciation provisions will expire at the end of 2009 and the Section 179 expense limitation in 2010 will be reduced to \$134,000, unless Congress acts to extend these favorable provisions of the Code.

Even if 2009 will be an unprofitable year for your business, year-end tax planning is important since the carryback rules for a Net Operating Loss (NOL) incurred by most businesses in 2009 have been eased. The Worker, Homeownership, and Business Assistance Act of 2009 provides that most businesses can carry a 2009 NOL back up to 5 years, rather than the standard 2 year carryback. Any NOL that is not utilized by the carryback provisions is still available to carryforward for 20 years to offset future taxable income. Partnerships, LLC's, S-Corporations and other Flow-Through Entities do not carryback or forward NOL's themselves, but rather if the owners of these entities have an NOL on their individual tax returns that is a result of the flow-through business, the owners can then take advantage of the ease in the NOL carryback rules. NOL rules are complex and should be discussed with your Tonneson + Co representative ahead of time to avoid any misunderstandings.

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Selling a non-inventory asset of your business, with multiple payments to be received in different tax years generally results in use of the installment method to recognize the gain on the sale. The installment method cannot be used for certain sales, specifically selling stock or securities that are traded on established markets, sales of depreciable property between related parties, and sales that result in a loss. The installment method calculates the gross profit percentage on the entire transaction, and then treats that percent of each payment received as taxable gain at the time the payment is received. As gains are recognized in subsequent years, they are taxed at the tax rates in effect for that tax year. This presents a planning opportunity as the current capital gain tax rates are at historical lows. If you expect that capital gain tax rates will increase during the term of your installment sale, then it may make sense to elect out of using the installment method, and taxing 100% of the transaction gain in the current year, at the low capital gain rates.

Of course any tax planning initiative must also be supported with sound business reasoning. A business should look at both economic and non-economic factors when making planning decisions, not just the tax implications. Please contact your Tonneson + Co representative, or any member of our Tax Department, if you would like to discuss these or any other tax planning opportunities for your business.