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BUSINESS NOTES
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AMERICAN JOBS CREATION ACT OF 2004 MAKES MANY TAX CHANGES

On October 22, 2004, the President signed into law the American Jobs Creation Act of 2004 (the "Act"). This is a very comprehensive tax law with many different provisions. Listed below is a summary of some of the tax provisions likely to impact most taxpayers.

New Itemized Deduction for State and Local General Sales Taxes

Individuals who itemize will be able to deduct either state and local income taxes or state sales taxes on their 2004 and 2005 Federal tax returns. Previously, only state and local income taxes were deductible by individuals. This change will primarily benefit individuals who reside in states without income taxes or with low individual income tax rates. However, this could benefit individuals in states with significant sales taxes if the individuals made significant taxable purchases. This could also create a planning opportunity for grouping taxable purchases in one year or another.

Increase in Number of Permissible S Corporation Shareholders

Effective for tax years beginning after 2004, the Act increases the maximum number of shareholders in an S corporation from 75 to 100. Furthermore, the Act allows family members to be counted as one shareholder for purposes of determining the maximum number of shareholders. The election to treat family members allows up to six generations of family members to be treated as one shareholder.

Limited Expensing Write-off for Heavy SUV's

Prior to the enactment of the Act, taxpayers could expense up to $100,000 of the cost of a "heavy SUV," those with a gross vehicle weight rating of more than 6,000 pounds, under Section 179 of the Code. Effective for vehicles placed in service after October 22, 2004, only $25,000 of the cost of a heavy SUV may be expensed under Section 179.

New Deduction for U.S. Production Activities

The Act creates a new tax deduction for domestic production activities. The deduction is a percentage of the net income from these activities subject to several limitations. The percentage will be 3% in 2005 and 2006, 6% in 2007 through 2009, and 9% after 2009. The new deduction is allowed for qualified production activities income which is the domestic production gross receipts of a business net of related expenses. The term "domestic production gross receipts" includes receipts from any lease, rental, license, sale, exchange, etc. of qualifying production property (*i.e.,* tangible personal property, any computer software and certain sound records) that was manufactured, produced, grown or extracted in whole or in significant part by the business within the U.S. Also included are receipts from construction in the U.S., engineering and architectural services performed in the U.S. for construction projects in the U.S. and the domestic production of certain films. Domestic production gross receipts does not include gross receipts from selling food or beverages at a retail establishment.

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This new deduction is a very comprehensive provision which will require complex allocations if only part of a business's gross receipts are domestic production gross receipts.

Extension of Section 179 Expensing

With the exception of the heavy SUV's discussed above, the Section 179 expense limitation of up to $100,000 has been extended through 2007. The increased expense amount of $100,000 was expected to expire after the 2005 year, but the Act extends it for two more years through 2007.

Non-qualified Deferred Compensation Plans

Under current rules, compensation deferred under a non-qualified deferred compensation plan (one that isn't subject to the usual tax rules that apply to pension plans) generally is taxed to the recipient when it is no longer subject to a substantial risk of forfeiture. Effective generally for amounts deferred in tax years beginning after 2004, a sweeping new set of rules will apply. Amounts deferred under a non-qualified deferred compensation plan will not be subject to a substantial risk of forfeiture (and thus will not produce income tax deferral) if distributions from the plan can be made for any reason other than passage of a certain period of time, termination of employment, death, disability or unforeseeable emergency (e.g., financial hardship resulting from illness), or change of control in the employer. There also won't be a substantial risk of forfeiture if funds are held in certain specialized vehicles called offshore rabbi trusts. Additionally, the plan will have to require that compensation for services performed during a tax year may be deferred only if the participant so elects no later than the close of the preceding tax year or at the time provided by IRS regulations. Anyone with one of these plans should have it reviewed to determine if any amendments are necessary.

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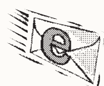

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