

Business Changes for 2009

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Over the past several months, Congress has been enacting legislation to stabilize the economy. At the urging of the incoming administration, Congress is working on yet another stimulus plan. As they make temporary changes to the tax code and extend expiring provisions, and with the phase-in phase-out provisions of earlier legislation, it becomes more difficult to keep track of what does and does not apply for the 2009 year.

The following are highlights of the provisions affecting small to medium-sized businesses for 2009:

The FUTA (Federal Unemployment Tax Act) tax rate had been scheduled to drop to 6% after 2008, but under the new law, it will remain at 6.2% through 2009 and will drop to 6% for 2010 and later.

• Section 179 Expense Deduction - This deduction dropped substantially for 2009. The maximum Sec. 179 deduction for 2009 is \$133,000 (\$66,500 if married filing separately). This is down from the \$250,000 allowance in 2008. For 2009, if more than \$530,000 is invested in Sec. 179 property, the maximum deduction is reduced. It is quite likely that the incoming Congress will revise this deduction again in its stimulus plan.

• 50% Bonus Depreciation - The special 50% first-year bonus depreciation for equipment purchased during the year was NOT extended past 2008. This is another area where the new Congress might make a change for 2009.

• Food & Book Inventory Contributions - A two-year extension through 2009 of enhanced charitable contribution deduction rules for gifts of certain types of food inventory, and corporate gifts of book inventory or computer equipment to schools was enacted.

• Environmental Remediation Expenses - The tax break that allows expensing of qualified environmental remediation expenses, namely cleanup of hazardous substances (including petroleum products) at qualified contaminated sites, was extended two years, through 2009.

• Energy-Efficient Commercial Building - The deduction for energy-efficient commercial building property has been extended so that it applies through 2013.

• Electric Drive Motor Vehicles - For purchases after 2008 and before 2015, taxpayers will be able to claim a tax credit for electric drive motor vehicles.

• Bicycle Commuting Fringe Benefit - After 2008, companies will be able to give employees who commute by bicycle a \$20 per month tax-free reimbursement for reasonable bicycle-related expenses.

• Disaster Area Clean Up - Through 2010, qualified disaster expenses, such as clean up (removal of debris, demolition of structures) and repairs, may be expensed.

• Disaster Loss Carryback - A 5-year net operating loss (NOL) carryback applies for losses resulting from a casualty within a disaster area instead of the usual 2- or 3-year carryback periods available for other types of business losses. This provision is valid through 2010.

• Section 179 Expense Increased in Disaster Areas - Through 2010, the otherwise maximum amount of machinery and equipment that may be expensed under Section 179 is increased by up to \$100,000 for qualifying assets, and the investment-based phase-out of the expensing deduction is increased by \$600,000.

• Through 2010 - A 50% first-year bonus depreciation allowance applies to most types of machinery and equipment bought to rehabilitate or replace damaged property. A number of conditions must be met, and certain types of property are excluded (including property eligible for the more widely applicable 50% first-year bonus depreciation allowance enacted as part of the Economic Stimulus Act of 2008).

• Farming - There is a 5-year quick depreciation write-off for most farm machinery and equipment placed in service after 2008 and before 2010.

• Real Estate, Retailers and Restaurants - The 15-year depreciation write-off for qualifying leasehold improvements and qualifying restaurant property has been extended through 2009. What's more, for property placed in service after 2008 and before 2010, (a) buildings as well as building improvements may qualify for the quick write-off for restaurant property; and (b) the 15-year depreciation write-off also applies to qualifying retail improvement property.

• Construction Companies - The \$2,000 tax credit for building energy-efficient homes (\$1,000 for manufactured homes) has been extended to apply to homes acquired through 2009. Note that construction companies also may benefit indirectly from the extended and enhanced tax breaks for real estate, restaurants and retailers.

• Reuse & Recycling Equipment - For property placed in service after

August 31, 2008, the new law permits 50% first-year bonus depreciation for qualified reuse and recycling property. In general, this is machinery and equipment (not including buildings or real estate), along with associated property, including software necessary to operate the equipment, which is used exclusively to collect, distribute, or recycle qualified reuse and recyclable materials. This break is not limited to businesses in the recycling industry.

• Film and TV - The option to expense up to \$15 million of qualifying film and TV productions (\$20 million if produced in certain low-income areas) is extended so that it applies for productions beginning before 2010; also, the qualified domestic production activities deduction has been liberalized in several ways for this industry, effective for tax years beginning after 2007.

• Motorsports Racing - The short 7-year write-off for land improvements and support facilities at motorsports entertainment complexes has been extended to apply for property placed in service before 2010.

• Oil and Gas - There are three significant changes:

(1) The otherwise available domestic production activities deduction for companies that have oil-related income will be reduced after 2009 (a complex reduction formula will apply);

(2) The rule providing that percentage depletion from marginal oil and gas wells isn't limited to 100% of income from

these properties is extended through 2009; and

(3) The rules relating to foreign tax credits for the oil and gas industry have been revised for tax years beginning after 2008.

Please keep in mind that the foregoing are only highlights of changes affecting businesses in 2009. If you would like more details, please call at your convenience.