



NATHAN WECHSLER & COMPANY
PROFESSIONAL ASSOCIATION
CERTIFIED PUBLIC ACCOUNTANTS & BUSINESS ADVISORS

CONSTRUCTION INDUSTRY TAX UPDATE

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Principal

Agenda

1. Depreciation & Tax Deductions
2. Credits
3. Payroll Taxes
4. Gift Taxes

Depreciation

- ▶ 2011 was a very good year for writing off purchases of equipment and other depreciable assets:
 - 100% Bonus depreciation on qualified assets, which generally includes all new, non-real property assets purchased and placed in service in the 2011 calendar year, with no limit on the amount of assets placed in service; and
 - Historically large maximum § 179 expense.

2011 Section 179 Expensing

- ▶ \$500,000 maximum expense for tax years beginning in 2011.
 - Bonus depreciation → calendar year
 - § 179 → fiscal year
 - Gives additional opportunity for fiscal year taxpayers
- ▶ \$2,000,000 investment ceiling (amount by which the total assets placed in service before the total maximum § 179 expense that can be taken is reduced).

Section 179, Continued

- ▶ Coordinate election of bonus depreciation and § 179 expense for optimum impact on taxable income.
- ▶ All states refuse to allow bonus depreciation, but some states accept Federal § 179:
 - Allow: Massachusetts, Vermont
 - Disallow: New Hampshire (\$20,000 max expense) and Maine (\$25,000 max expense)(both have \$200,000 investment ceiling).
 - Factor in state impact when election a method(s).

2012, Not as Good a Year

- ▶ Bonus Depreciation: Drops to 50% for assets acquired and placed in service in 2012 calendar year.
- ▶ §179 Expense: \$139,000 maximum expense with \$560,000 investment ceiling.

Much Better Than 2013

- ▶ § 179: \$25,000 maximum expense (\$200,000 investment ceiling) for tax years beginning after 2012.
- ▶ Bonus Depreciation: None.

Depreciation Takeaways

- ▶ Planning Opportunities: Accelerate purchases of equipment into a year that will generate the maximum tax benefit.
- ▶ Bonus can be used to generate a Federal NOL (carryback 2 years and carryforward 20 years), but § 179 cannot.

Maximum Deduction for Vehicles Placed in Service in 2011

- ▶ Car – GWV (unloaded) \leq 6,000 lbs:
 - Qualifies for bonus depreciation: maximum deduction \$11,060
 - Elects out of bonus or doesn't qualify: maximum deduction \$3,060
- ▶ Truck, Van (including SUVs and Minivans on truck chassis) \leq 6,000 lbs:
 - Qualifies for bonus depreciation: maximum deduction \$11,260
 - Elects out of bonus or doesn't qualify: maximum deduction \$3,260
- ▶ Car, Truck, Van, SUV, Minivan – GWV $>$ 6,000 lbs and \leq 14,000 lbs:
 - Maximum deduction \$25,000*
 - Delivery trucks, Pick-ups with full-sized beds, Vans for 9+ people \$500,000**
- ▶ Truck or Van – GWV 14,000 lbs:
 - Maximum deduction \$500,000**

Note: * per vehicle

** maximum aggregate § 179 limit, and does not factor in 100% bonus depreciation

Maximum Deduction for Vehicles Placed in Service in 2012

- ▶ Amounts not yet released but should be substantially similar to 2011 except:
 - 50% bonus depreciation, not 100%,
 - \$139,000 maximum § 179 expensing.
- ▶ 2012 will still be a good time to acquire company vehicles, although not as good as 2011 but far better than 2013 is as of now.

Trading in Vehicles or Other Equipment and Assets

- ▶ Affected by Like-Kind Exchange Rules.
 - Can take bonus on both the exchange basis (tax basis on the vehicle traded in) and the excess basis (the amount additional that you need to pay).
 - Can only take § 179 on the excess basis, the exchange basis will need to be written off (depreciated) over time.
 - Take Away: Although limited somewhat in comparison to outright purchases, there are some favorable depreciation provisions for assets traded in during 2011 and 2012.

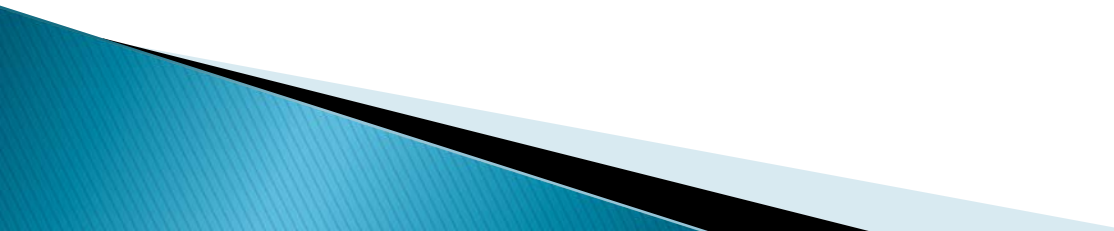
Deductions Expiring After 12/31/2011

- ▶ Congress may retroactively reinstate some or all for 2012:
 - Election to expense environmental remediation costs
 - Enhanced deduction for corporate contributions of computer equipment for educational purposes

Tax Extenders Expiring 12/31/12

- ▶ Bush-era reduced income tax rates.
- ▶ Bush-era reduced capital gains/dividends rates.

Credits – Agenda

1. Work Opportunity Credit
 2. Retained Worker Tax Credit
 3. R&D Credit
 4. Credits Expiring 12/31/2011
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Work Opportunity Credit – 2011

- ▶ Federal tax credit incentive that the Congress provides to private-sector businesses for hiring individuals from nine target groups who have consistently faced significant barriers to employment. Target groups include TANF recipients, certain veterans, and other specified groups.
- ▶ Generally credit is 40% of up to \$6,000 of qualified first year wages, yielding a maximum credit of \$2,400.

Work Opportunity Credit – 2012

- ▶ The WOTC generally can't be claimed for an individual who begins work for the employer after Dec. 31, 2011.
- ▶ However, the WOTC continues to be available for employers that hire qualified veterans who began work for the employer before Jan. 1, 2013.

Retained Worker Tax Credit (part of the 2010 HIRE Act)

- ▶ Employers may be able to claim a tax credit of 6.2% of eligible wages, up to \$1,000, for retaining workers that were hired in 2010 & that work for at least 52 consecutive weeks
- ▶ The credit applies for the first tax year in which the retained worker satisfies the 52-week test
- ▶ The credit is a General Business Credit generally reported on Form 3800 with the employer's annual tax return


Qualified Employee for Retained Worker Credit

1. Employee (who is not related to the employer) that began employment with a qualified employer after February 3, 2010, and before January 1, 2011;
2. certify, by a signed Form W-11 under penalties of perjury, that they were not employed for more than 40 hours during the 60-day period ending on the date their employment with the qualified employer began;
3. are not hired to replace another employee of the qualified employer, unless the other employee voluntarily quit or was fired with cause; and
4. whose wages for the employment during the last 26 weeks of the 52-week period are equal to at least 80 percent of the wages for the first 26 weeks

Research and Development Credit

- ▶ Significant opportunities exist in many industries, even ones that don't perform traditional "lab coat" R&D.
- ▶ Utilizing the R&D Tax Credit can provide an immediate source of cash for many companies as well as a significant reduction to current and future years' federal and state tax liabilities.

R&D Credit, Continued

- ▶ The R&D tax credit regulations allow eligible taxpayers to “look back” to all open tax years (typically 3 years plus the current year) for potential R&D credits that were never claimed.
 - ▶ Many contractors conduct extensive activities to design and develop the engineering processes themselves to achieve specific project requirements or to stay ahead of competitors in the marketplace.
 - ▶ All these activities may require time and money both in the engineering department and on the job site itself, which may be captured as qualified research expenditures leading to significant tax benefits.
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R&D Credit, Qualifying Activities for Construction Contractors

- ▶ Means, methods and construction techniques development
- ▶ Structure and facility design for constructability
- ▶ Construction equipment development and improvement
- ▶ Structural steel detailing
- ▶ Building Information Modeling
- ▶ Design for LEED/Green Initiatives
- ▶ HVAC design
- ▶ BIM modeling for sub-system coordination
- ▶ System detailing for constructability
- ▶ Mechanical fittings and routing
- ▶ Mechanical equipment sizing
- ▶ Pipe material selection and approvals process
- ▶ Mechanical and electrical system design and testing
- ▶ Request for Information Process (RFI's)
- ▶ Value engineering
- ▶ Voltage drop calculation
- ▶ Electrical conduit bending specifications
- ▶ Aluminum or copper wire determinations
- ▶ Electrical insulation
- ▶ Conduit wire overheating calculations
- ▶ Cable tray support and configuration
- ▶ Electrical installation means and methods
- ▶ Temporary services design and testing
- ▶ Installation means and methods
- ▶ Pipe design and testing

Credits Expiring After 12/31/11

- ▶ Congress may retroactively reinstate some or all for 2012:
 - Research and development tax credit,
 - Income tax credits for biodiesel and renewable diesel,
 - Alternative fuel and fuel mixture tax credits,
 - Credit for construction of new energy efficient homes.

Payroll Tax Issues

- ▶ 2012 Social Security wage base: \$110,100
- ▶ 2009 through 2011 was \$106,800

Temporary 2 Month Extension of the Payroll Tax Cut

- ▶ Extends the 2011 employee Social Security rate of 4.2% through February 29, 2012
- ▶ Becomes 6.2% thereafter (unless the payroll tax cut is further extended by Congress)
- ▶ Employer social security rate remains: 6.2%
- ▶ There are special provisions in place to take away the potential tax savings of front-loading wages into the first two-months of the year.

New 401(k) Deferral Limit

- ▶ Employee elective deferrals into a 401(k) plan have increased from \$16,500 in 2011 to \$17,000 in 2012.
- ▶ The catch-up contribution for those employees age 50 and older remains unchanged at \$5,500.

Gift Taxes for Family Owned Businesses

- ▶ Now really is the time to start and implement a succession plan for your business.
- ▶ Key changes were made to estate and gift tax laws in 2011 and 2012 that are very favorable.
- ▶ Unfortunately, those favorable changes are set to expire at the end of 2012.
- ▶ It is anyone's guess as to what will happen after 2012.

Key Changes

- ▶ Unified the Estate and Gift Taxes, allowing you to make greater lifetime transfers tax free than ever before.
- ▶ Increased lifetime tax-free transfer exemption: \$5,000,000 lifetime gifting exclusion for 2011 which increased to \$5,120,000 for 2012.
- ▶ New portability feature: Any applicable estate and gift tax exclusion that remains unused as of the date of death of a spouse can now be used by the surviving spouse, in addition to the surviving spouse's remaining unused exclusion.

Key Changes, Continued

- ▶ Set to decrease back to \$1,000,000 for 2013+ unless new legislation is enacted (don't expect anything on this soon, especially in an election year in the current political climate).
- ▶ Many estate planning attorneys are recommending utilizing the increased lifetime exclusion to make substantial gifts in 2011 and 2012 in case the exclusion is reduced after 2012.

Annual Gifting Exclusion

- ▶ Give \$13,000 per person to any number of recipients per calendar year without depleting lifetime gifting exclusion.
- ▶ Married couple can give \$26,000 per person per year without depleting lifetime exclusion.
- ▶ Annual exclusion gifts can be an effective way to transfer business interests, and can be used in conjunction with other more sophisticated techniques.
 - The earlier you start, the more you can achieve.

Gifts Fractional Interest in a Business

- ▶ May be able to reduce the value of the gift (and therefore transfer an even greater % of the ownership interest) by periodic gifting of fractional interests in a company.

- ▶ Discount the value of the gift of a fractional interest for:
 - Lack of Marketability
 - Lack of Control (a.k.a. Minority Interest)

- ▶ Combined discounts of 30% are not uncommon.

Sophisticated Estate Planning Techniques

- ▶ For appreciating businesses with a steady income and cash flow stream, certain trusts may be an ideal way to transfer tax-free certain ownership interests over time:
 - Intentionally Defective Grantor Trust (IDGT)
 - Grantor Retained Annuity Trust (GRAT)
- ▶ These trusts allow the transferor to retain control of company interests in the trust and the receipt of income stream throughout the life of trust while excluding trust assets from transferor's estate and "freezing" the value of the company interests transferred to the trust.

Other Sophisticated Techniques

- ▶ Consider other techniques that may be right for you under the right circumstances:
 - Irrevocable Life Insurance Trust (ILIT)
 - Qualified Personal Residence Trust (QPRT)
 - Charitable Remainder Trusts (CRTs)



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Thank you for your time today!

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