

B.O.S.S. Workshops

(Business Owner Strategy Sessions)

Taxes:

Are you paying more than your fair share?

December 15, 2010

Blue Benefits Consulting, Inc.

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ATTORNEYS AT LAW

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Speaker: Ken Barton, CPA



Director

Blue Benefits Consulting, Inc.

December 15, 2010

A Discussion of:

2010 Tax Law Changes and Year End Planning

By:

Blue & Co.

Ken Barton, Director

CPAs / ADVISORS



The Small Business Jobs Act of 2010

- *Depreciation Incentives*
- *Tax Provisions for Small Business*
- *Other Important Provisions of the Act*
- *Increased Access to Capital*
- *Closing and Questions*

Depreciation Incentives Provide Planning Opportunities

- ***The Act includes provisions to encourage businesses to make purchases in the next two years including:***
 - *Section 179 expensing allowances increased*
 - *Certain types of real property temporarily included in Section 179*
 - *50% bonus depreciation allowance extended through the end of 2010*

Section 179 Allowances Increased

- Annual expense allowance **increased** from \$250,000 to \$500,000
- Phase-out amount **increased** from \$800,000 to \$2,000,000
- Increases effective for 2010 and 2011
- Statutory limits set to decrease back to \$25,000 and \$200,000 in 2012
- Automobiles have a statutory limit per vehicle placed in service based on the size and use of the vehicle
- New or used property is eligible



How Section 179 can benefit business

- ◀ A business that purchased \$1,000,000 of qualifying Section 179 property in 2009 would have been eligible for a \$250,000 deduction which would have been reduced dollar for dollar for every dollar over \$800,000. The section 179 expense would have been $\$250,000 - \$200,000 = \mathbf{\$50,000}$.
- ◀ If the same business purchased another \$1,000,000 of qualifying Section 179 property in **2010 or 2011**, they will be eligible for a \$500,000 expense allowance. The phase-out amount is now \$2,000,000, so they will have no reduction of their allowable expense. The same purchase that yielded a \$50,000 expense in 2009 would create a **\$500,000** expense in 2010.
- ◀ Barring another act of Congress, the same \$1,000,000 purchase in 2012 will create **NO** Section 179 expense.

Certain real property now eligible for Section 179

- ***Qualified leasehold improvements, qualified restaurant property, and qualified retail improvements are temporarily eligible for Section 179***
 - *Qualifying real property can be included as Section 179 property up to \$250,000 which counts towards the total cap of \$500,000*
 - *Businesses considering these types of improvements or purchases in the next few years should consider the benefits of making the investments before the end of 2011*
 - *Taxpayers may elect to exclude qualifying real property from the definition of qualifying property if the overall limitation of \$2,000,000 is exceeded*

50% Bonus Depreciation Extended through 2010

- *Previous provision expired on December 31, 2009*
- *Taxpayers are provided with the ability to take a 50% first-year depreciation deduction on qualified assets **placed in service** from January 1, 2010 through the end of 2010*
- *Qualified investments include tangible property with a recovery period of 20 years or less, water utility property, certain computer software, and qualified leasehold improvement property*
- *Only **new** property qualifies for bonus depreciation*

Tax Planning Opportunities from Depreciation Provisions

- *Taxpayers can utilize both the Section 179 expense allowance and the 50% bonus depreciation*
- *Property must be **placed in service** to be eligible*
- *Provisions may have significant effect on the timing of planned purchases or expansions by providing substantial incentive to push these decisions into the next 13 months*

Small Business Tax Provisions

◀ What is a Small Business?

- ◀ A business (or individual) must have average annual revenues of less than 50 million dollars for the prior three years*
- ◀ The business also cannot be publically traded*

Small Business Tax Provisions - General Business Credits

◀ What is a General Business Credit?

- ◀ *General business credits are those credits defined in Section 38. They are credits against tax (not deductions) which can directly reduce tax liability. They include the R&D Tax Credit, the Work Opportunity Tax Credit, the Low Income Housing Credit, Empowerment Zone Credits, and many others.*

◀ What do they do?

- ◀ *General business credits offset federal income tax liability. They are applied after the calculation of federal income tax and provide a dollar for dollar reduction in tax liability.*

◀ Who can take them?

- ◀ *General business credits are available to both corporations and flow-through entities such as S-Corps and Partnerships.*

Small Business Tax Provisions - General Business Credits

◀ Historical Limitations – Why they haven't always helped

- ◀ *Taxpayer must have tax liability--taxpayers in loss positions or utilizing net operating losses from other years can generate credits, but cannot use them until they have tax to offset.*
- ◀ *Credits could not offset the alternative minimum tax (AMT)--many taxpayers have been affected by AMT in recent years. AMT is an alternate tax calculation that serves as a floor for tax liability. It affects both corporations and individuals. Prior to the Act, most general business credits could not offset alternative minimum tax, greatly reducing their usefulness to many taxpayers.*
- ◀ *Credits could only be carried back one year*

Small Business Tax Provisions - General Business Credits

- ***Beginning with credits generated in 2010, general business credits can offset both regular tax and AMT***
 - *This provision will provide an enormous benefit to many businesses and individuals*
 - *Credits carried forward from years prior to 2010 will not be grandfathered into this provision*
 - *Carry forward credits cannot offset AMT, but can still be carried forward to offset regular tax liability*

Small Business Tax Provisions - General Business Credits

- ***Beginning with credits generated in 2010, general business credits may be carried back to the previous five taxable years***
 - *This provision may present immediate refund opportunities for certain taxpayers*
 - *Taxpayers ability to utilize credits will increase with this longer carry back period*

Does this affect my business?

- Your tax advisor can help you evaluate what credits may apply to your business*
- You may be eligible for credits which you did not pursue in the past because they could not offset AMT*
- Previously, the tax benefit may not have justified the cost to compute and document the credits*

Other Small Business Provisions

◀ Startup deduction limit increased

- ◀ *Limit increased from \$5,000 to \$10,000*
- ◀ *The phase-out threshold was also increased from \$50,000 to \$60,000*
- ◀ *Increases apply for 2010 only*

◀ Exclusion for 100% of gain on certain small business stocks for window period

- ◀ *Applies to § 1202 stock*
- ◀ *Applies to stock acquired after September 27, 2010 and prior to January 1, 2011*
- ◀ *Prior law already provided for an increase in the exclusion from 50% to 75% for stock acquired after February 7, 2009 and prior to January 1, 2011*
- ◀ *Stock must be held longer than five years to qualify*

Other Tax Provisions of the Act

- ◀ ***Temporary reduction in recognition period for built-in gains tax for S-Corporations***
 - ◀ *Prior law shortened the usual 10 year holding period to 7 years*
 - ◀ *This Act further reduced the holding period to 5 years, if the 5th year precedes the tax year beginning in 2011*
 - ◀ *This may affect S-Corporations with C-Corporation built-in gains*
- ◀ ***The Act allows self employed persons to deduct health insurance premiums when calculating self-employment income***
- ◀ ***Cellular phones removed from the definition of listed property***
 - ◀ *Lifts the strict substantiation requirements of use and the additional limits placed on depreciation deductions*
 - ◀ *Relief applies to tax years beginning after December 31, 2009*



Other Tax Provisions of the Act

◀ Changes to Section 457 plans and Rollovers to Roth Accounts

- ◀ Beginning in 2011 eligible state and local government plans can allow participants to contribute deferred amounts to designated Roth accounts*
- ◀ 401(k), 403(b) and 457(b) plans to allow pre-tax account balances into a designated Roth account within their plans*
 - ◀ Rollover is taxable (except any after-tax contributions)*
 - ◀ 2010 rollover amounts are included in taxable income in equal amounts over 2011 and 2012*
 - ◀ Taxpayer can elect to report entire amount as taxable in 2010*



Other Tax Provisions of the Act

- ◀ ***1099 reporting extended to recipients of rental income***
 - ◀ *Requires qualified individuals to report to IRS payments received for rental income from real property and to service providers reporting payments of \$600 or more during the year for rental property expenses*
 - ◀ *New information reporting requirement applies to payments made after December 31, 2010*
- ◀ ***Increased penalties for failure to file information returns***



Health Care Reform and HIRE Act Provisions

- **Small Business Health Care Tax Credit**
 - Employer must have fewer than 25 employees
 - Average annual wages less than \$50,000
 - Owners and family members excluded from above tests
 - Credit refundable
 - Based on amount paid by employer for employee health premiums

Health Care and HIRE (con't)

- Payroll tax exemption on qualified new hires
 - Employees hired after Feb 3, 2010
 - Who worked less than 40 hours in 60 days prior to hire
 - No employer Social Security tax (6.2%) on wages paid from March 19 – December 31, 2010.
 - Can amend 941s to claim – need W-11

Health Care and HIRE (con't)

- Beginning in 2011, over the counter drugs NOT eligible for FSA or HSA reimbursement unless prescribed.

2010 Year End Planning

- Establish/Fund retirement plans
- ROTH conversion?
- Must take RMD's – waiver was only for 2009.
- Estate tax – NONE for 2010
- Energy credits – must install by Dec. 31



Reid Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010

- NOT LAW YET
- Individual income tax rates stay where they are
- Social Security tax rate (employee share) cut for 2011 from 6.2% to 4.2%

Reid Tax Relief Act (con't)

- 50% bonus depreciation (discussed earlier) increased to 100% for qualified investments after 9/8/10 and before 12/31/11.
- Extends tax free distributions from IRA for charitable contributions through 2011 (Jan 2011 count as 2010)

Reid Tax Relief Act (con't)

- Estate tax top rate set at 35% for 2011 with exemption of \$5 million per person.

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Q & A