ROSENFIELD & Co. PLLC
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TAX CUTS & JOBS ACT – CORPORATE PROVISIONS

Unless noted otherwise, all of the corporate provisions included in the bill are permanent.

TAX RATE

The current graduated corporate tax rate system, with a top rate of 35%, will be replaced by flat 21% tax beginning January 1, 2018.

The bill also repeals the corporate alternative minimum tax (AMT).

Tax Planning Tip: If possible, defer income until 2018 or accelerate expenses into 2017. An expense deduction today is more beneficial than it will be in 2018 because of the lower applicable tax rate.

Tax Planning Tip: In some cases, creating a management company structured as a C-Corporation could provide an avenue for reallocating income from pass-through entities to an entity subject to the lower corporate tax rate. Rosenfield and Company will be touching base with clients to discuss specific tax planning strategies.

ACCOUNTING METHODS

The cash accounting method will now be available for any taxpayer that has average annual gross receipts of $25 million or less; thus, expanding the number of taxpayers who would qualify to use the simplified accounting method. This $25 million gross-receipts test will be index for inflation after 2018.

Exemption: The $25 million gross-receipts test can now also be used to exempt taxpayers from the inventory rules of §471 and the §263A UNICAP rules. All of the exemptions that are available under the current law will remain in effect.

INTEREST EXPENSE DEDUCTION

Beginning in 2018, the deduction for interest expense will be limited to the amount of:

1. Interest income, plus
2. 30% of the taxpayer's adjusted taxable income, plus
3. Floor plan financing interest expense.

The final bill explicitly defines floor plan financing indebtedness as "indebtedness used to finance the acquisition of motor vehicles held for sale or lease, and secured by the inventory so acquired."

Adjusted taxable income for purposes of calculating this limitation equals:

1. Trade or business income, less
2. Interest income, less
3. Any Net Operating Loss deduction allowed under §172, less
4. Any deduction allowed under the new 199A rules (20% deduction for pass-through income, see the Individual Provisions article for details), less
5. Allowable depreciation, amortization, or depletion expenses*.

*The exclusion of depreciation, amortization, or depletion income from the calculation of adjusted taxable income for purposes of this limitation expires after December 31, 2021.

The amount of interest expense that is disallowed may be carried forward indefinitely.

Exemption: Taxpayers who meet the $25 million gross-receipts test would be exempt from the interest deduction limitation rules. *See Accounting Methods, above.*

Caveat: Automotive dealers who expense floor plan interest will not be allowed to utilize the 100% bonus depreciation rules included in the final bill. *See Bonus Depreciation, below*.

BONUS DEPRECIATION

The final bill has adjusted the bonus depreciation rules under §168. Beginning in 2018, taxpayers may immediately expense 100% of the cost of qualified property placed in service. In addition to the increased bonus depreciation amount, §168 now also applies to used property, whereas it was previously only available for new property.

Exclusion: Qualified property **does not** include "any property used in a trade or business that has had floor plan financing indebtedness…, if the floor plan financing interest related to such indebtedness was taken into account under [the interest expense deduction limitation]." This means that if a company deducts floor plan interest as part of the allowed interest expense deduction, the company will not be permitted to utilize the 100% bonus deprecation allowed under this provision.

Phase Out: The increased bonus depreciation amount will be phased out over a period of four (4) years, beginning in 2023. The allowed deduction will be 80% in 2023, 60% in 2024, 40% in 2025, and 20% in 2026.

§179 EXPENSE DEDUCTION

The maximum amount of §179 expense allowed within a given tax year will be increased to $1 million with a phase out threshold of total assets placed in service of $2.5 million. This doubles the current expense amount allowed and increases the phase out threshold for total assets placed in service by $500,000. These amounts are indexed for inflation after 2018.

The bill also expands the definition of qualified property for purposes of §179 expense. Taxpayers may now elect to take §179 expense for qualified real property. Qualified real property includes:

1. Qualified leasehold improvements, so long as the improvement is made pursuant to a lease, is occupied exclusively by the lessee, and the improvement is placed in service more than three (3) years after the building was first placed in service; and

2. The following **nonresidential** improvements:
    a. Roofs;
    b. Heating, ventilation, and air-conditioning property;
    c. Fire protection and alarm systems; and
    d. Security systems.

Tax planning tip: Although automotive dealers will not be able to utilize the 100% bonus depreciation (as it is likely that the floor plan interest expense deduction would be more beneficial), the expanded §179 expense provision is still available.

NET OPERATING LOSSES

Net operating losses (NOL) will now be limited to 80% of taxable income within a given tax year. Current law allows taxable income to be fully offset by NOL carryforwards. The bill also allows NOLs to be carried forward indefinitely; however, with the exception of farming business, the two (2) year carryback provision has been repealed.

Tax planning tip: If a C-Corporation has large NOL carryforwards and has not had to pay corporate income tax in recent years, it is important that 2018 estimated tax payments are set up. Generally, if a C-Corporation pays 100% of the tax shown on their prior year tax return in the current year, they will not be subject to an underpayment penalty. However, if the prior year tax return had a zero-tax liability (for example, the company had a net operating loss or utilized a prior year carryforward), this safe harbor is not available. The company will be required to pay 100% of the current year tax liability in four (4) quarterly installments or be subject to an underpayment penalty equal to the federal short-term rate plus 5%.

LIKE KIND EXCHANGES

The like-kind exchange rules are amended to only include exchanges of real property. This means that the common tangible asset exchanges we see, such as airplane and vehicle exchanges, will no longer qualify for the tax deferral benefits under §1031 (like-kind exchange rules).

Exception: These rules are effective for exchanges completed after December 31, 2017. An exception was included to allow like-kind exchanges to be included in 2017 where:

1. The disposal property is disposed of on or before December 31, 2017, **or**

2. The property received is received on or before December 31, 2017.

Tax planning tip: Although the deferral of a gain may be beneficial, it may be more beneficial to wait until 2018 to dispose of certain assets (not through a like-kind exchange) because of the preferential bonus depreciation and §179 expensing rules that would apply to the replacement asset. Many of the tax provisions in the bill have expiration dates, so waiting to dispose of an asset that has a large deferred gain in a year where the replacement asset does not qualify for 100% expensing may cause a larger tax liability in a future year.

TAX CREDITS

Many of the credits that would have been repealed under the House bill were not included in the final bill.

Employer Credit for Paid Family or Medical Leave: A credit equal to 12.5% of the amount of wages paid to a qualified employee while out on family and medical leave is available so long as the program pays 50% of the employee's regular wages. The credit is increased by .25%, not to exceed 25%, for each percentage point the wages paid exceed 50%. The credit is available for 2018 and 2019, but can only be taken on 12 weeks of leave.

OTHER ITEMS

Luxury Automobile Depreciation: The depreciation limits for luxury automobiles was increased under the bill. The maximum amount of depreciation (for automobiles placed in service for which bonus depreciation is taken) in year one is increased to $10,000 for the first year, $16,000 for the second year, $9,600 for the third year, and $5,760 for the fourth and subsequent years. This provision more than doubles the allowable depreciation on luxury autos under current tax law.

Domestic Production Activity: §199 is repealed.

Meals & Entertainment Expenses: Currently, meals and entertainment expenses are limited to 50%. The bill disallows the full amount of entertainment expenses. However, the bill does allow the 50% deduction for meals that are provided on or near the business' premises. These rules are effective January 1, 2018. Additionally, the bill will allow a 50% deduction for expenses incurred after December 31, 2017 but before December 31, 2025 relating to an employer providing food and beverages to employees through an eating facility that meets the requirements for de minimis fringe benefits and for the convenience of the employer.

Meals Provided at the Convenience of the Employer: The bill disallows the full amount of expense related to meals provided at the convenience of the Employer; however, this provision applies to amounts incurred or paid after December 31, 2025.

Note: Meals consumed by employees on work travel are still deductible by the business up to 50%. Free snacks provided to employees during working hours would be limited to 50% until the expense is fully disallowed in 2025.

Tax Planning Tip: It is important that accounting staff properly segregates all expenses relating to meals and entertainment so that the tax adjustments can be properly calculated.

Partnership Technical Terminations: The provision under §708(b)(1)(B) which states that a partnership technically terminates anytime there is a sale or exchange of 50% or more of the total interest in the partnership capital and profits within a 12-month period has been repealed. §708(b)(1)(A), which states that a partnership technically terminates when it ceases business operations will remain in place.

Tax Planning Tip: If a sale or exchange of partnership interests is scheduled to occur before year-end and that sale or exchange would trigger a technical termination, it would be beneficial to postpone the transaction until 2018.

INTERNATIONAL TAXATION

A deemed repatriation tax will be imposed on US shareholders of specified foreign corporations. A pro-rata share of accumulated post-1986 deferred foreign income of the corporation will be required to be included in income. A specified foreign corporation is any foreign corporation in which a US person owns a 10% voting interest. This rule excludes Personal Foreign Investment Companies (PFICs) that are not also Controlled Foreign Corporations (CFCs).

The applicable tax rate on the included income is dependent on if the deferred earnings are held in cash or other assets. Cash and cash equivalents will be taxed at 15.5% while all other earnings will be taxed at 8%.

The increased tax liability will be incurred in 2018 but may be paid over an eight-year period.