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Tax Tips for Agribusiness

On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "2010 Act"), which extended the so-called "Bush Tax Cuts" through 2012, thereby maintaining the current federal income tax rates, capital gain rates and dividend rates through 2012. In addition, the 2010 Act contained the following provisions which may be of interest to businesses in the agricultural community:

Estate and Gift Tax Planning

This two (2) year window creates many planning opportunities! You should think about initiating your planning efforts now so you can maximize all of the available opportunities.

1) **Planning Opportunities for Agribusiness**. Considering the potentially temporary nature of the federal gift, estate and generation-skipping transfer tax relief provided by the 2010 Act, families and businesses in the agricultural community should seriously consider taking advantage of the increased exemptions and reduced rates applicable to transfers in 2011 and 2012. A properly structured estate and business plan that takes advantage of the 2010 Act, and other planning techniques (including the Section 2032A special use valuation election to reduce the value of qualified real property used in farming operations or other closely-held small businesses, the Section 6166 election to pay estate tax in installments over a period of up to 14 years, and the application of any appropriate valuation discounts), it is possible to achieve the transfer of family agricultural businesses having a value in excess of $20 million to subsequent generations with little, if any, estate, gift or generation-skipping transfer tax.

Transfer Tax Provisions. The 2010 Act also provides much anticipated, albeit temporary, relief and opportunities in the areas of federal gift, estate and generation-skipping transfer taxes. The 2010 Act provides for a combined $5 million exemption from gift tax (tax imposed on transfers made during life) and estate tax (tax imposed on transfers made at death), and provides a $5 million exemption that can be allocated to generation-skipping transfers (transfers made during life or at death that are to or for the benefit of a person more than one generation below the generation of the donor/grantor). Additionally, the 2010 Act reduces the tax rate applicable to transfers in excess of the $5 million exemption to a flat rate of just 35%.

Keep in mind, however, that these increased exemptions and reduced tax rates only apply for the period from January 1, 2011 through December 31, 2012 (unless extended by Congress).

2) Increase of Section 179 Expensing and Expansion to Certain Real Property. Under the 2010 Small Business Act, for taxable years beginning in 2010 and 2011, taxpayers may write off up to $500,000 of capital expenditures, subject to a phase-out once these expenditures exceed $2 million. Additionally, taxpayers may expense up to $250,000 of the cost of qualified leasehold improvement property, qualified restaurant property, and qualified retail improvement property. The 2010 Act then went on to raise the Section 179 expensing limit to $500,000, still subject to the $2 million phase-out. In 2012, the limits will be a $125,000 deduction with a $500,000 phase-out, and in 2013 the limitations will revert back to $25,000 deduction with a phase-out at $200,000.

3) Bonus Depreciation. Under the 2010 Act, bonus depreciation was increased from 50% to 100% for qualifying assets placed in service between September 9, 2010 and December 31, 2011. For assets placed in service during 2012, the 50% depreciation rules will again apply.

4) Energy Incentive Credits. The 2010 Act extended a number of energy incentive credits for businesses, including credits for biodiesel and renewable diesel fuel, credits for refined coal facilities, new energy efficient home credit, excise tax credits/outlay payments for alternative fuel and fuel mixtures, and grants for certain energy property in lieu of tax credits.

5) Payroll Tax Holiday. In 2011, individuals would have been required to pay a social security tax of 6.2% of their wages up to $106,800. The employer is required to pay a matching amount. The Medicare rate is 1.45% for employers and employees on an unlimited amount of taxable earnings. Under the 2010 Act, the employee (not employer) portion of the Social Security tax is temporarily reduced from 6.2% to 4.2% for 2011 only. Individuals subject to the self-employment tax will also receive the 2% tax reduction (rate will be a combined 13.3% instead of 15.3%).

Please note that the tax changes in the 2010 Act are in addition to those enacted in the Small Business Jobs Act of 2010, which was signed into law on September 27, 2010 (the "2010 Small Business Act"). The 2010 Small Business Act contained the following provision, which was modified by the 2010 Act as discussed below:

In addition to raising the exemptions and reducing the tax rates, the 2010 Act also introduces a new concept referred to as "Portability". Portability allows the personal representative of a deceased spouse's estate to make an election on a timely filed federal Estate Tax Return to transfer the deceased spouse's unused estate tax exemption to the surviving spouse. The surviving spouse can then use the unused exemption of the deceased spouse to make additional gifts during life or at death that are exempt from gift or estate tax. Note, however, that the deceased spouse's generation-skipping transfer tax exemption is not portable and that Portability is only available for the period from January 1, 2011 through December 31, 2012 (unless extended by Congress).

Without further action by Congress, the Bush Tax Cuts will sunset and the exemptions and rates in effect prior to the Bush Tax Cuts will again become effective on January 1, 2013.

This means that the gift and estate tax exemptions will revert to only $1 million, the generation-skipping transfer tax exemption will decrease to $1 million, but will be indexed for inflation since 1997, and the maximum tax rates will increase to 55%. Additionally, the opportunity to take advantage of Portability will expire, and married couples will again be required to engage in tax planning to take advantage of the marital deduction upon the death of the first spouse.

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