SMALL BUSINESS LEGISLATIVE COUNCIL

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TAX RELIEF, UNEMPLOYMENT INSURANCE REAUTHORIZATION, AND JOB CREATION ACT OF 2010

Congress passed and the President signed into law on December 17, 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. (TRUIRJCA)

Surprisingly, it does ***not*** include a repeal of the Form 1099 requirement.

The new law includes dozens of temporary renewals of expired and expiring credits and deductions. The following are the ones of most interest to small business.

Temporarily extend the 35 percent bracket. Under prior law, the temporary 35 percent individual income tax bracket was set to expire at the end of 2010. Upon expiration, the rate would have become 39.6 percent. The new law extends the 35 percent individual income tax bracket for an additional two years, through 2012.

Temporarily extend the capital gains and dividend rates. Under prior law, the capital gains and dividend rates for taxpayers below the 25 percent bracket is equal to zero percent. For those in the 25 percent bracket and above, the capital gains and dividend rates were 15 percent. These rates were set to expire at the end of 2010. Upon expiration, the rates for capital gains would have become 10 percent and 20 percent, respectively, and dividends are subject to the ordinary income rates. The new law extends the temporary capital gains and dividends rates for all taxpayers for an additional two years, through 2012.

Two-year Alternative Minimum Tax (AMT) patch. Under prior law, taxpayer would have received an exemption of $33,750 (individuals) and $45,000 (married filing jointly) under the AMT for 2010. The new law increases the exemption amounts for 2010 to $47,450 (individuals) and $72,450 (married filing jointly) and for 2011 to $48,450 (individuals) and $74,450 (married filing jointly).

Deduction of State and local general sales taxes. TRUIRJCA extends for two years (through 2011) the election to take an itemized deduction for State and local general sales taxes in lieu of the itemized deduction permitted for State and local income taxes.

Temporary estate, gift and generation skipping transfer tax relief. *There is a two-year extension of estate tax relief, and it comes with a couple of positive twists. But it is not permanent*! *On January 1, 2013, the state of the law reverts to the pre-2001 structure with a 55 percent top marginal rate and an individual exemption of $1 million – not inflation indexed.*

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) phased-out the estate and generation-skipping transfer taxes so that they were fully repealed in 2010, and lowered the gift tax rate to 35 percent and increased the gift tax exemption to $1 million for 2010. The new law sets the exemption at $5 million per person and $10 million per couple and a top tax rate of 35 percent for the estate, gift, and generation skipping transfer taxes for two years, through 2012. The exemption amount is indexed beginning in 2012. (*As a practical matter, given the new expiration date, this amounts to token inflation indexing, but the theory is having it in place might make it easier to secure as part of a permanent solution*.) The new law is effective January 1, 2010, but allows an election to choose no estate tax and modified carryover basis for estates arising on or after January 1, 2010 and before January 1, 2011. The new law sets a $5 million generation-skipping transfer tax exemption and zero percent rate for the 2010 year.

Portability of unused exemption. Under prior law, couples had to do complicated estate planning to claim value of their combined entire exemption. The new law allows the executor of a deceased spouse's estate to transfer any unused exemption to the surviving spouse without such planning. The new law is effective for estates of decedents dying after December 31, 2010.

Reunification. Prior to the EGTRRA, the estate and gift taxes were unified, creating a single graduated rate schedule for both. That single lifetime exemption could be used for gifts and/or bequests. The EGTRRA decoupled these systems. The new law reunifies the estate and gift taxes. The new law is effective for gifts made after December 31, 2010.

Extension of bonus depreciation. Under prior law, businesses were allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress allowed businesses, beginning January 1, 2008 through December 31, 2009, to take an additional depreciation deduction allowance equal to 50 percent of the cost of the depreciable property placed in service in those years. Under the Small Business Jobs Act of 2010, this temporary increase in the depreciation deduction allowance was extended through December 31, 2010. TRUIRJCA extends and temporarily increases this bonus depreciation provision for investments in new business equipment. For investments placed in service after September 8, 2010 and through December 31, 2011, TRUIRJCA provides for 100 percent bonus depreciation. For investments placed in service after December 31, 2011 *and* through December 31, 2012, TRUIRJCA provides for 50 percent bonus depreciation. The provision also allows taxpayers to elect to accelerate some AMT credits in lieu of bonus depreciation for taxable years 2011 and 2012.

Temporarily extend increase in the maximum amount and phase-out threshold under section 179. Under prior law, a taxpayer with a sufficiently small amount of annual investment may elect to deduct the cost of certain property placed in service for the year rather than depreciate those costs over time. The 2003 tax cuts temporarily increased the maximum dollar amount that may be deducted from $25,000 to $100,000. The tax cuts also increased the phase-out amount from $200,000 to $400,000. In 2007, tax cuts temporarily increased these thresholds to $125,000 and $500,000 respectively, indexed for inflation. These amounts have been further increased and extended several times on a temporary basis, including most recently as part of the Small Business Jobs Act which increased the thresholds to $500,000 and $2,000,000 for the taxable years beginning in 2010 and 2011. The new law extends the 2007 maximum amount and phase-out thresholds for taxable years beginning in 2012, at $125,000 and $500,000 respectively, indexed for inflation. (*Given the new expiration date, this amounts to one year of inflation indexing*.)The law is effective for taxable years beginning after December 31, 2011.

In 2013, the state of the law reverts to the original $25,000 allowance and $200,000 investment cap – not indexed.

Temporary reduction in employee-paid payroll taxes. Under prior law, employees pay a 6.2 percent Social Security tax on all wages earned up to $106,800 (in 2011) and self-employed individuals pay a 12.4 percent Social Security self-employment taxes of on all their self-employment income up to the same threshold. TRUIRJCA provides a payroll/self-employment tax holiday during 2011 of two percentage points. This means employees will pay only 4.2 percent on wages and self-employment individuals will pay only 13.3 percent on self-employment income up to the threshold.

R&D credit. Technically, there had been no R&D credit for 2010. It expired at the end of 2009. TRUIRJCA reinstates it for two years (for 2010 and 2011) credit.

Exclusion of small business capital gains. The new law extends the 100 percent exclusion of the gain from the sale of qualifying small business stock that is acquired before January 1, 2012 and held for more than five years. The provision covers a very narrow category of stock that meet some very specific conditions.

Tax benefits for certain retail improvements. TRUIRJCA extends for two years (through 2011) the special 15-year cost recovery period for certain leasehold improvements, restaurant buildings and improvements, and retail improvements.

Alternative fuels credit. TRUIRJCA extends through 2011 the $0.50 per gallon alternative fuel tax credit.

Energy-efficient new homes credit. TRUIRJCA extends through 2011 the credit for manufacturers of energy-efficient residential homes.

Energy-efficient existing homes. TRUIRJCA extends through 2011 the credit under Section 25C of the Code for energy-efficient improvements to existing homes, reinstating the credit as it existed before passage of the American Recovery and Reinvestment Act.

SBLC ANNUAL MEETING

The SBLC Annual Meeting with be held on Thursday, February 10, 2011 at 8 a.m. at a DC location to be announced.

WEEKLY

This is the last Weekly of the year. Best wishes to the small businesses in our economy and the trade associations that serve them for the New Year!