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Tax Benefits In the New Recovery Law

It is expected that the new economic recovery law—officially titled the American Recovery and Reinvestment Act of 2009—will provide a boost to the construction industry (see *How to Secure Government Contracts*). The new law also contains a passel of tax breaks that can benefit construction firm owners and other small- to medium-sized businesses. Here are several key provisions that may result in reduced tax liability.

Section 179 deductions: The new law preserves enhanced Section 179 tax breaks for another year. Previously, a business could write off up to \$250,000 of qualified assets placed in service in 2008 (up from \$125,000 for 2007). Deductions were reduced to the extent that the total cost exceeded \$800,000 (up from \$500,000). Now these tax breaks have been extended for assets placed in service in 2009.

Bonus depreciation: In conjunction with the Section 179 deduction, a business can claim 50% bonus depreciation for new assets placed in service in 2009. This tax break applies through 2010 to property with a cost recovery period of 15 years or less, transportation property and certain aircraft. *Note:* A business may benefit from certain tax credits in lieu of claiming bonus depreciation for assets placed in service in 2009.

Net operating losses: Normally, a business can carry back net operating losses (NOLs) only for two years. For tax years beginning or ending in 2008, the new law authorizes a carryback period of three, four or five years for certain qualified small businesses (see *New Tax-saving Opportunity for NOLs*).

Built-in gains tax: A built-in gains (BIG) tax applies if an S corporation disposes of appreciated assets acquired when it was a C corporation. Normally, the BIG tax applies to assets sold within ten years of converting to S corporation status. But the new recovery law shortens the holding period to seven years for gains realized in tax years beginning in 2009 and 2010.

Work Opportunity Tax Credit (WOTC): A business may claim a WOTC for each worker hired from one of several disadvantaged “target groups.” The new law creates two new groups eligible for the credit. For workers hired and starting work in 2009 and 2010, the WOTC is also available for unemployed veterans and “disconnected youth” between the ages of 16 and 24.

Health insurance: Under the new law, a worker who is involuntarily separated from service between September 1, 2008, and December 31, 2009, can elect to continue health insurance coverage by paying 35% of the required COBRA premiums. The employer must pay the 65% balance but will be credited for that amount against income tax withholding and employment taxes otherwise required.



Energy incentives:

The new law extends the energy credit available to businesses for electricity produced by renewable sources through 2012 or 2013 (depending on the source), eliminates the cap on the energy investment credit for qualified small wind energy property and includes other technical changes designed to promote energy efficiency.

This is only an overview of the key tax changes in the new recovery law. To find out all of the implications, consult with a professional tax adviser.

Inside Word: *Outside Advisory Boards*

Many construction companies are family owned and operated. If this formula has been successful in the past, the owners may see no reason to deviate from the script. But if a single family continues to call all the shots—without exception—it could eventually result in ineffective management and dwindling profits.

Now may be a good time for some firms to seek outside direction. One time-tested method is to establish an advisory board of directors. By using this technique, open-minded owners are acknowledging the need for input in this changing environment. They can draw upon the wealth of experience and innovation from board members to help move the company forward.

Typically, such an advisory board is comprised of professionals who are not family members or related in any way. They may be associates or others who have demonstrated business acumen. Each person should bring something special to the table. Keep the board diverse to ensure varying ideologies.

The meetings of this group do not have to be formal, but it helps to provide some basic guidelines. Set up a regular schedule of meetings—perhaps the first Monday of every quarter—and keep a time limit of two to three hours. While serving on the board does not have to be (nor should it be) a lifelong commitment, advisers should still sign on for a fixed term of at least one year.

An advisory board of directors including outsiders has some distinct advantages over family-controlled boards. Outsiders can more easily sidestep family politics, rivalries and conflicts. They can bring a fresh perspective to solving problems. Most of the time these advisers function like consultants, offering advice and support on a wide range of matters.



Of course, it does not hurt if some board members have construction expertise on their resumes. But do not exclude people merely because they are not connected to the industry. Since the main objective is to create a different approach, individuals from other industries or professions may provide new insights. The best directors are often people who have been successful running other types of companies. Others who might help are marketing directors, information technology (IT) specialists and human resource experts.

Also consider retired executives from other industries, especially if they have gone through labor difficulties, rising material costs and recessionary concerns themselves. Finding a good mix of advisers will take extra effort, but it is usually worthwhile.

How much board members should be paid, or whether they should be paid at all, can be a sensitive issue. In any event, make sure the company policy is understood at the time an adviser is asked to join the board. Have the board member agree to the terms in writing.

Final words: Even when this action is contemplated, do not expect miracles. For instance, if the company has already been dragged into a downward spiral, it may be too late for a board to have a positive impact. A better approach is to be proactive and set up the board before problems escalate.

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