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2017

NEW DEVELOPMENT
Short Format

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2017 NEW DEVELOPMENTS LETTER

INTRODUCTION

For months, President Trump and Republican Congressional leaders have been calling for major tax reform. Finally, on November 2, 2017, the House Ways and Means Committee released its initial draft of proposed Tax Reform legislation, which kicks off the legislative process between the House and the Senate in their attempt to pass a single tax reform bill that President Trump will sign into law. We have included in this letter a general overview of key provisions in this recently-released proposed legislation. Caution! The status of this legislation continues to be fluid, and it is not possible to predict with precision what changes will be included in any *"final"* tax bill, when it will be passed, or even whether final tax reform legislation will be passed at all. Moreover, as the proposed legislation works its way through Congress, it is very likely that new proposals will be added and certain current proposals will be modified or even eliminated altogether. *W*e are ***closely monitoring the status of this proposed tax legislation*** in Congress, so ***feel free to call our firm*** if you need a ***status report.***

Although recent Press coverage has been dominated by potential tax reform legislation, we should not overlook other ***Major Tax Developments*** that have occurred during 2017 resulting from: ***Recent Targeted Tax Legislation*** that has been enacted; ***Recent Court Cases*** addressing various tax issues; and Various ***Recently-Released IRS*** regulations, rulings, and announcements. Keeping up with these fast-paced developments is challenging! Consequently, in addition to providing a general overview of the recent proposed tax legislation, this letter provides highlights of selected other tax developments that we believe will have the greatest impact on our clients.

We highlight only *selected* tax developments. If you have heard about other tax developments not discussed in this letter, and you need more information, please call our office for details. Also, ***we suggest that you call our firm before implementing any tax planning technique discussed in this letter.*** You cannot properly evaluate a particular planning strategy without calculating your overall tax liability (including the alternative minimum tax and any state income tax) with and without that strategy. This letter contains ideas for Federal income tax planning only. ***State income tax issues are not addressed.***

We have grouped these tax developments discussed below into two categories:

1) TAX DEVELOPMENTS IMPACTING PRIMARILY "INDIVIDUALS"

2) TAX DEVELOPMENTS IMPACTING PRIMARILY "BUSINESSES"

TAX DEVELOPMENTS IMPACTING PRIMARILY INDIVIDUALS

PROPOSED TAX REFORM LEGISLATION RELEASED NOVEMBER 2, 2017 – GENERAL OVERVIEW

As noted in the Introduction, on ***November 2, 2017*** the House Ways and Means Committee released its initial proposed tax reform bill titled ***"The Tax Cuts And Jobs Act of 2017"*** (the ***"Act"***). As this proposed legislation works its way through Congress, it is very likely that new proposals will be added and certain current proposals will be modified or even eliminated altogether. Moreover, it is still up in the air whether and when this proposed tax reform legislation will actually be enacted. However, this initial bill provides us with the most detailed guidance to date regarding the types of tax changes Congress and President Trump will be debating. Caution! Over the upcoming weeks, there will likely be reports of proposed tax changes that we do not discuss below. However, we are closely monitoring this proposed tax legislation. So, feel free to call our firm if you have questions about proposals not discussed below or you simply need a status report.

The ***Act*** contains over 400 pages of detailed legislative proposals. It is well beyond the scope of this letter to provide a detailed discussion of this mammoth bill. Therefore, we highlight below only selected provisions in the ***Act*** that we believe, if enacted, could likely have a significant impact on ***"Individual"*** taxpayers.

Unless stated otherwise, the proposals listed below *would not be effective until 2018*!

Lower Tax Rates. The *Act* would generally reduce the current seven tax-rate brackets to four (12%, 25%, 35%, and 39.6%). The lowest 12% rate would apply to the first $90,000 of taxable income for joint filers ($45,000 for singles), and the top 39.6% rate would apply to taxable income exceeding $1,000,000 for joint filers (exceeding $500,000 for singles). The tax rate on long-term capital gains (and presumably qualified dividends) would generally be consistent with current law.

Increased Standard Deduction And The Elimination Of Personal And Dependancy Exemptions. The *Act* would eliminate the personal and dependancy exemptions altogether, and replace them with a much larger standard deduction ($24,400 for joint filers; $18,300 for unmarried individuals with a qualifying child; and $12,200 for singles).

Targeted Family Tax Credits. The *Act* would increase the child credit to $1,600 (up from the current $1,000) per qualifying child, and create a new $300 credit for each individual and each dependent of that individual (other than a qualifying child).

Repeal Of Certain Deductions And Credits. The *Act* would repeal the following deductions: State and local ***"income"*** tax; Personal casualty losses; Alimony; Medical expenses; Moving expenses; and, several others. The Act would also repeal several individual tax credits, including the *"Adoption Credit"* and the credit for *"Plug-in Electric"* cars.

Certain Deductions Would Be Retained. The *Act* would generally retain deductions for: Home mortgage interest (However, would lower loan amounts and make other changes for loans after November 2, 2017); State and local ***"property"*** tax (up to $10,000); and Charitable contributions.

Education Tax Relief Provisions. The *Act* would eliminate many of the tax breaks for education costs, including: Student loan interest deduction; Life-Time Learning Credit; Deduction (up to $4,000) for qualified tuition; and several others. However, the *Act* would retain and expand: the *"American Opportunity Tax Credit,"* and tax-favored 529 College-Savings Plans.

Exclusions For Home-Sale Gains. Effective for ***sales or exchanges after 2017,*** the *Act* would make the following changes to the home-sale gain exclusion rules: **1)** Require an individual to own and use a home as the individual's principal residence for ***5 out of the previous 8 years*** (instead of 2 out of the previous 5 years) to qualify for the up to $500,000 or $250,000 home-sale exclusion, **2)** Allow the taxpayer to use the home-sale exclusion ***only once every five years*** (instead of once every two years as under current law), and **3)** ***Reduce the exclusion for*** each dollar of an individual's ***average AGI*** (average of the current and prior two years) ***in excess of $500,000*** ($250,000 for single filers).

Elimination Of The Alternative Minimum Tax And Estate Tax. The Act would repeal the *"Alternative Minimum Tax"* (AMT). It would also repeal the *Estate Tax* for ***individuals dying after 2023.*** The Gift Tax would be retained.

Caution! We have highlighted only *selected* tax changes contained in the *Act* that would impact individuals, there are many more! If you have heard about other proposed tax changes not discussed above, and you need more information, please call our office.

LEGISLATIVE AND ADMINISTRATIVE TAX RELIEF FOR HURRICANE VICTIMS

On September 29, 2017, President Trump signed the ***"Disaster Tax Relief and Airport and Airway Extension Act of 2017"*** (*"Disaster Relief Act"*) providing temporary tax relief to victims of Hurricanes Harvey, Irma, and Maria. The IRS has also released a series of ***Announcements*** providing additional administrative relief for taxpayers impacted by the hurricanes. The relief generally applies to individuals and businesses located in Florida, Georgia, certain counties in Texas, certain counties in South Carolina, certain parishes in Louisiana, parts of Puerto Rico, and the Virgin Islands. In some situations, taxpayers not located in those disaster areas may qualify for relief (e.g., Where business records are located in the designated disaster areas; For taxpayers that own an interest in an S corporation or partnership with primary business operations in the designated disaster areas). Tax relief under the ***Disaster Relief Act*** generally includes: Loosened restrictions for claiming personal casualty losses; Expanded options to take tax-favored withdrawals or loans from retirement plans; Option of using current or prior year's income for purposes of claiming the earned income and child tax credits; New *"employee retention tax credit"* of 40% of up to $6,000 of *"qualified wages"* paid by certain affected employers; and Elimination or loosening of certain charitable contribution limitations for qualifying contributions to the hurricane relief effort.

IRS administrative relief includes automatic extensions for various IRS deadlines. ***For example,*** the IRS has extended ***until January 31, 2018*** the deadlines for filing various returns, including: Individual, corporate, and estate and trust income tax returns; partnership returns, and S corporation returns that were ***otherwise due***: **1)** On or after ***August 23, 2017*** for ***qualifying Texas taxpayers,*** **2)** On or after ***September 4, 2017 for Florida taxpayers,*** **3)** On or after ***September 6, 2017 for qualifying South Carolina taxpayers,*** and **4)** On or after ***September 7, 2017 for Georgia taxpayers.*** Caution! This automatic extension generally applies to ***individual filers*** with ***extensions of time to file until October 16, 2017,*** and to ***business returns*** with ***extensions until September 15, 2017.***

Planning Alert! These relief provisions are lengthy and detailed. Please call our firm if you think you, your business, or someone you know could benefit from this relief, and we will be glad to fill you in on the details.

RECENT COURT CASES AND IRS GUIDANCE

Recent Tax Court Cases Confirm That A Non-Qualifying Taxpayer Is Required To Pay Back Advance Premium Tax Credit

Payments. Two recent Tax Court cases held that a taxpayer who received ***Advance Premium Tax Credit*** (APTC) payments that were previously awarded by a State or Federal insurance exchange (Exchange), must repay the advance payments to the IRS if it is later determined that the taxpayer did not qualify for the *APTC* payments. Both decisions said that the fact the *Exchanges* were partially complicit in erroneously determining that the taxpayers qualified for the *APTC* payments did not change the taxpayer's obligation to pay back the improper *APTC* payments.

Recent Cases Illustrate How Easy It Is For A Taxpayer To Lose The Deduction For Alimony-Type Payments. In order for a divorced spouse to be able to deduct *"alimony,"* the payments must satisfy all of the technical requirements for tax-deductible alimony as outlined in the Internal Revenue Code (Code). For example, among other things, the Code requires that the *divorce or separation instrument* ***cannot designate*** the payments as ***"nondeductible"*** by the payor spouse and ***"nontaxable"*** to the payee spouse. A recent private letter ruling and a recent Tax Court case each addressed whether *the divorce or separation instrument* had designated the spousal-support payments as *nondeductible by the payor spouse, and nontaxable to the payee spouse*." In both situations, the taxpayer lost. These two cases illustrate how poorly-drafted language in a divorce or separation instrument can cause the payor spouse to unexpectedly lose his or her deduction for alimony. Planning Alert! If you are involved in divorce proceedings, anticipate making payments to your spouse, and are counting on a deduction for these payments - these cases illustrate that the agreement needs to be properly worded so that the payments meet each and every technical requirement for tax-deductible alimony.

Recent Court Case Holds That Taxpayers May Not Overstate Their Income In Order To Produce A Larger Refundable Earned Income Credit And/Or Child Tax Credit. Generally, the earned income credit (EIC) is *"refundable"* and, in certain situations, the Child Tax Credit (CTC) is also *"refundable*." This generally means that, to the extent that a *refundable* EIC and/or CTC exceeds the taxes that you would otherwise owe with your individual income tax return without the credit, the IRS will actually send you a check for the excess. In addition, in certain situations that generally apply to lower-income individuals, the amount of an individual's refundable EIC and/or CTC increases as the person's reported *earned* taxable income increases. Thus, for certain lower-income taxpayers, an *"increase"* in their *earned* taxable income will actually *"increase"* the amount the IRS will pay back to the taxpayer due to the increased *"refundable"* EIC and/or CTC. In a recent Tax Court decision, the Court held that a taxpayer may not report earned income that generates or increases the refundable EIC or CTC unless the taxpayer can properly document that the earned income actually existed.

IRS Warns That A Deceased Spouse's IRA Passing To A Surviving Spouse Could Get Caught Up In The "One-Rollover-Per-Year" Trap. Individuals generally may avoid paying tax on a qualifying IRA distribution by rolling over the distribution to the same IRA or to another IRA within the 60-day period beginning with the date the distribution is received. An individual is allowed only *"one"* 60-day, tax-deferred IRA rollover during the one-year (i.e., 12-month) period beginning on the day the Taxpayer received the distribution. If this ***One-Rollover-Per-Year Limitation*** is violated, the rollover amount is treated as a fully taxable distribution and is possibly subject to the 10% early distribution penalty (e.g., if the taxpayer is under 59½). The IRS says that this 1-year limitation applies ***as if all IRAs (including Roth IRAs) are one IRA***. For example, if an individual takes a distribution from an IRA and rolls that distribution into another IRA within 60-days from the date of receipt, the individual may not rollover another distribution from any IRA (including a Roth IRA) within the one-year period beginning with the date the qualifying rollover distribution was received. Tax Tip! There ***is no limit on the number of "direct" trustee-to-trustee IRA transfers***. Consequently, taxpayers may transfer IRA funds by means of direct trustee-to-trustee transfers as often as they wish.

Planning Alert! If an individual dies with an IRA and names the surviving spouse as the IRA beneficiary, the surviving spouse has 60 days from the date of the receipt of a distribution from the deceased spouse's IRA to roll the distribution over to the surviving spouse's IRA and avoid being taxed on the distribution. <u>**Caution!**</u> The IRS recently warned that if a deceased spouse dies with multiple IRAs with the surviving spouse as the beneficiary, the ***One-Rollover-Per-Year Limitation*** applies to distributions from the decedent's multiple IRAs that are rolled over to the surviving spouse's IRAs. To illustrate, let's assume that **1)** A deceased spouse dies with two separate IRAs, **2)** Each IRA names the surviving spouse as beneficiary, **3)** The surviving spouse takes a distribution from each IRA, and **4)** The surviving spouse rolls each distribution into the surviving spouse's IRA. The IRS says that if both of those rollovers occur within the one-year-rollover period, the second rollover would be taxed.

<u>**Proposed Regulations Clarify Certain Child-Related Tax Benefits.**</u> The rules allowing various tax benefits for children and dependents experienced various statutory changes in 2004 and 2008. Part of those changes involved certain tax-related benefits attributable to a *"Qualifying Child."* A *"Qualifying Child"* is a unified term that is used for the following five child-related tax benefits: **1)** The *Head-of-Household* filing status; **2)** The *Dependent Care Credit*; **3)** The *Child Tax Credit*; **4)** The *Earned Income Credit*; and **5)** The *Dependency Exemption*. The IRS recently released proposed regulations that, among other things, clarify and update existing regulations that deal with a *"Qualifying Child."* These proposed regulations are lengthy and technical, and a detailed discussion is well beyond the scope of this letter. However, the proposed regulations contain several pro-taxpayer changes and clarifications that are worth noting, including: **1)** For divorced or separated spouses, the proposed regulations provide guidance for potentially allowing a *noncustodial* parent to claim certain tax benefits for having a *"Qualifying Child"* even on an *"amended"* return (assuming that the custodial parent has executed a valid declaration of waiver [i.e., Form 8332]); **2)** Contrary to the IRS's previous position, the proposed regulations would allow a "*childless*" individual the *"Earned Income Credit"* if the individual was previously considered disqualified solely because of the tie-breaking rules; and **3)** The proposed regulations provide guidance on whether two or more taxpayers living in the same living quarters may each qualify to file as "Head-of-Household." Feel free to call us if you would like additional information.

<u>TAX DEVELOPMENTS IMPACTING PRIMARILY BUSINESSES</u>

<u>PROPOSED TAX REFORM LEGISLATION RELEASED NOVEMBER 2, 2017 – GENERAL OVERVIEW</u>

As discussed previously in this letter, on ***November 2, 2017,*** the House Ways and Means Committee released its initial proposed tax reform bill entitled ***"The Tax Cuts And Jobs Act of 2017"*** (the ***"Act"***). We highlight below selected provisions in the ***Act*** that we believe, if enacted, could have a significant impact on ***Corporate and Non-Corporate Business*** taxpayers. <u>**Caution!**</u> Over the upcoming weeks, there will likely be reports of proposed tax changes impacting businesses that we do not discuss below. We closely monitor major proposed tax legislation in Congress, so feel free to call our firm if you have questions about proposals not discussed below, you need more information on a specific proposal discussed below, or you simply need a status report.

Unless stated otherwise, the proposals listed below generally *would not be effective until 2018*!

<u>**Lower Tax Rates And Repeal Of AMT For Regular Corporations.**</u> The *Act* would lower the regular corporate income tax to a flat rate of 20% (down from the current maximum corporate rate of 35%). Personal service corporations would be subject to a flat rate of 25%. In addition, the corporate *"Alternative Minimum Tax"* (AMT) would be repealed.

<u>**Lower Taxes On "Small Businesses" Taxed As Pass-Through Entities.**</u> The *Act* contains a provision designed to ensure that qualified business income that passes through and is reported on an individual owner's tax return will not be

taxed at a rate higher than 25% (otherwise this business income could be taxed as high as 39.6% under the proposed individual income tax rates). The provision contains an anti-abuse rule that would make it difficult for most personal service businesses to obtain the benefit of the 25% cap. The personal-service businesses targeted by this anti-abuse rule, include businesses involved in the performance of services in the fields of: health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, and others.

<u>Enhanced First-Year 168(k) Bonus Depreciation.</u> For qualifying property placed-in-service ***after September 27, 2017*** (and before January 1, 2023), the *Act* would enhance the existing *First-Year* ***168(k) Bonus Depreciation*** as follows: **1)** ***Increase*** the immediate write-off percentage from the current ***50% to 100%;*** **2)** ***Increase*** the first-year depreciation cap generally imposed on passenger vehicles used primarily in business ***from the current $8,000 to $16,000;*** and **3)** Allow the ***100% 168(k) Bonus Depreciation*** to be taken on qualifying ***"used"*** business property (under current law, otherwise qualifying property must be ***"new"*** to qualify for the 168(k) Bonus Deduction). Property qualifying for the 168(k) Bonus Depreciation generally includes depreciable *personal* property (e.g., business equipment, computers, certain vehicles, etc.), and qualifying improvements to commercial buildings. <u>Please note that</u> a more detailed discussion of business property that qualifies for the *168(k) Bonus Depreciation* is provided later in this letter.

<u>Increase In The Caps Imposed On The 179 Deduction.</u> For qualifying *179 Property* ***placed-in-service in tax years beginning after 2017 and before 2023,*** the *Act* would generally enhance the existing ***179 Deduction*** as follows: **1)** Increase the current year deduction limitation ***to $5 million*** (it is $510,000 for 2017); and **2)** Increase the current year phase-out cap (currently $2,030,000) ***to $20 million.*** Qualifying ***179 Property*** generally includes business equipment, computers, certain vehicles, and qualifying capital improvements to certain commercial buildings. <u>Please note that</u> a more detailed discussion of business property that qualifies for the *179 Deduction* is provided later in this letter.

<u>Small Business Relief For Accounting Methods.</u> The *Act* would streamline various accounting rules for certain small businesses. For example, businesses with average gross receipts during the preceding three years of ***$25 million or less*** generally would: **1)** Be able to use the cash method of accounting even if the business has inventories; **2)** Be exempt from the UNICAP rules; and **3)** Be able to qualify for an exemption to the percentage-of-completion accounting method for qualifying long-term contracts.
<u>New Limitations On Like-Kind Exchanges.</u> ***Effective for exchanges completed after 2017,*** the *Act* would allow §1031 like-kind exchanges ***only with respect to real property*** (i.e., personal property such as business aircraft and artwork would no longer qualify). However, the *Act* would provide a transition rule to allow like-kind exchanges of personal property to be completed if the taxpayer has either ***disposed of the relinquished property*** or ***acquired the replacement property*** ***<u>on or before December 31, 2017.</u>***

<u>Caution!</u> We have highlighted only *selected* tax changes contained in the *Act* that would impact businesses, there are more! If you have heard about other proposed legislative tax changes not discussed above, and you need more information, please call our office.

<u>RECENTLY-ENACTED LEGISLATION</u>

<u>Congress Authorizes A New Option For Certain Employers That Are Considering A Health Reimbursement Arrangement.</u> Subject to certain safe harbor arrangements, under the current ACA requirements, any employer (regardless of size) that sponsors a stand-alone ***"Health Reimbursement Arrangement"*** (*HRA*) or an ***"Employer Payment Plan"*** (***EPP***)**,** could face a $100-a-day penalty for each covered employee. The penalty applies only if the employer covers ***at least 2 employees*** under the HRA or EPP. The IRS defines an ***"HRA"*** as an arrangement (funded solely by an employer) that

reimburses an employee for qualified medical care expenses incurred by the employee ***up to a maximum dollar amount*** for a coverage period. The IRS defines an ***"Employer Payment Plan"*** as an arrangement where the employer reimburses an employee's substantiated premiums for the employee's individual medical insurance coverage (i.e., non-employer sponsored medical insurance coverage), or the employer pays the premiums directly to the insurance company. Note! Generally, the payment or reimbursement of individual medical insurance premiums for more than 2% S corporation shareholder/employees is exempt from the $100-a-day penalty.

Good News! Last December, Congress passed legislation that now allows an *"Eligible Employer"* to sponsor an HRA or EPP without exposure to a penalty, provided certain requirements are met. These arrangements are called ***"Qualified Small Employer Health Reimbursement Arrangements"*** (QSEHRAs). Generally, an *"Eligible Employer"* that adopts a *QSEHRA* could reimburse up to a maximum of $4,950 ($10,000 if arrangement also covers family members) of a qualifying employee's individual medical insurance policy premiums and/or qualified medical expenses without incurring the $100-a-day penalty. An *"Eligible Employer"* is an employer that does not otherwise offer a group health plan and that has fewer than 50 full-time and full-time-equivalent employees during the preceding calendar year. Planning Alert! A *QSEHRA* must satisfy various technical requirements such as certain anti-discrimination and notification requirements. Please contact our firm if you would like additional information on these plans.

RECENT COURT CASES AND IRS GUIDANCE

Recent Cases Address Self-Employment Tax Treatment For Owners Of Limited Liability Companies (LLCs). *"General"* partners of businesses operating as partnerships are generally subject to Social Security and Medicare taxes (Self-Employment Tax or S/E tax) on their business income passing through from their partnership and reported on Schedule K-1. By contrast, *"limited"* partners are generally exempt from S/E tax on the partnership's Schedule K-1 pass-through business income (except for *"guaranteed payments"* they receive). However, it is not entirely clear whether and to what extent pass-through business income to the owner of a Limited Liability Company (LLC) is subject to S/E tax. In other words, it is not clear when an owner in an LLC is a limited partner only subject to S/E on his or her guaranteed payments. Unfortunately, recent cases addressing this issue do not resolve this issue. ***One Recent Tax Court Case*** ultimately held that attorney-owners of a law firm operating as an LLC were subject to S/E tax on the Firm's pass-through business income, even though the Law Firm paid each owner a *"guaranteed payment"* in an amount that was allegedly *"reasonable compensation"* for the value of the partner's services to the firm (the partners correctly reported the guaranteed payments as S/E income). ***Another Recent Tax Court Case*** dealt with a plastic surgeon who reported his income as a sole proprietor on a Schedule C and properly paid S/E tax on that income. The plastic surgeon also owned 12.5% of an LLC that operated a surgery center owned by an unrelated group of surgeons. The surgery center was operated by an outside professional management firm. Although the plastic surgeon performed some of his surgery at the surgery center, his patients would pay the surgery center directly for its use. In this case, the Tax Court held that the pass-through business income from the surgery center to the plastic surgeon (as an LLC Member) was not subject to S/E tax. Planning Alert! The law in this area continues to be unsettled, and the IRS has yet to issue specific guidance. If you have a situation impacted by this issue, our firm would be glad to evaluate your specific situation.

IRS Releases Its Latest Automatic Accounting Method Procedure. Keeping up with developments involving accounting method changes can be a challenge. It is critically important for anyone considering an accounting method change to be aware of the latest IRS Revenue Procedure containing the list of ***"Automatic"*** *Accounting Method Changes.* While there currently is an IRS user fee of $9,500 for filing a request for a ***"Non-Automatic"*** *Accounting Method Change,* there is ***no IRS user fee*** for filing for an ***"Automatic"*** accounting method change. On May 5, 2017, the IRS released

Revenue Procedure 2017-30 which contains the most recent ***list of accounting method changes*** which may be made ***"automatically"*** (i.e., without obtaining advance permission from the IRS). Planning Alert! ***Generally, Forms 3115 filed after April 18, 2017*** to implement an automatic accounting method change ***must follow the updated rules contained in Rev Proc 2017-30.***

IRS Issues Helpful Guidance On Recent Changes To The 179 Deduction And First-Year 168(k) Bonus Depreciation. In late 2015, Congress passed the *"PATH Act"* that made several pro-taxpayer changes to: **1)** The ***179 Deduction*** for the cost of depreciable personal property (e.g., business equipment, computers, certain vehicles, etc.) as well as for *"qualified real property,"* and **2)** The 50% First-Year ***168(k) Bonus Depreciation*** for qualifying depreciable property (e.g., new depreciable *personal* property and certain capital improvements to depreciable *real* commercial property). These legislative changes included: Making the temporary increases in the dollar caps to the *179 Deduction* permanent; Making the temporary expansion of the *179 Deduction* to *"Qualified Real Property"* permanent; Temporarily extending the first-year *168(k) Bonus Depreciation* that had previously expired; and Expanding the types of capital improvements to real property that could qualify for the *168(k) Bonus Depreciation*. Recent Development! Earlier this year, the IRS released detailed guidance on various aspects of these *PATH Act changes*, including: Clarifying that the ability *"to make"* the 179 election or *"elect out"* of a previous 179 election on an *"amended"* return is now permanent; Clarifying that the *PATH Act* did not provide that *all heating and air conditioning units* will now qualify for the *179 Deduction*, but instead only those *heating and air conditioner units* that otherwise meet the requirements of *179 property* will qualify; and additional details and examples as to when a building is *first placed-in-service* for purposes of determining whether building improvements qualify for the *168(k) Bonus Depreciation* as *"Qualified Improvement Property."* Caution! These rules relating to the *179 Deduction* and the *168(k) Bonus Depreciation* are, at times, extremely technical and complicated, and the preceding discussion provides only a general overview. Feel free to call our firm if you would like additional details.

Updated IRS Audit Guide Provides Valuable Insights On How IRS Agents Are Instructed To Review Cost Segregation Studies. Generally, the cost of a commercial building must be depreciated over 39 years using the straight-line method (over 27½ years for residential rental buildings). However, *"Cost Segregation Studies"* (*Cost Seg Studies*) are increasingly popular because, if effective, they allow a taxpayer to classify certain costs of a new or used building as non-structural components of the building qualifying for shorter recovery periods resulting in accelerated depreciation deductions. Also, in some situations, the costs broken out as depreciable *"personal"* property pursuant to an effective *Cost Seg Study* may also qualify for the *179 Deduction* and/or the *168(k) Bonus Depreciation* deduction. The IRS has recently posted an updated Cost Segregation *"Audit Techniques Guide"* (ATG) providing extremely detailed directives and guidance on how IRS Auditors and Examiners should approach an audit of a taxpayer's *Cost Seg Study*. The ATG should give taxpayers under audit: **1)** A good idea of what IRS Examiners will look for in reviewing a *Cost Seg Study*, **2)** Pointers on how to possibly minimize an Examiner's scrutiny, and **3)** A survey of the types of issues and situations that could be *"red flags"* to the IRS. If you would like more information on *Cost Segregation Studies* or on this new *ATG,* please call our firm and we will be glad to give you additional details.

FINAL COMMENTS

Please contact us if you are interested in a tax topic that we did not discuss. Tax law is constantly changing due to new legislation, cases, regulations, and IRS rulings. Our firm closely monitors these changes. In addition, please call us before implementing any planning ideas discussed in this letter, or if you need additional information. **Note!** The information contained in this letter represents a general overview of tax developments and should not be relied upon without an independent, professional analysis of how any of the items discussed may apply to a specific situation.

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