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Presidential election year politics likely to impact tax laws unless Congress takes action

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With a Presidential election on the horizon, you may think your business is safe from new taxes in 2012, since politicians are reluctant to make unpopular decisions during an election year. However, that's not necessarily the case. Several tax breaks have either expired, are scheduled to expire or will become less advantageous unless Congress takes action.

What this means is that business owners need to be aware of various scenarios which can impact their bottom line. Knowing what your options are is half the battle when it comes to making educated management decisions, as well as minimizing your tax liability. If you haven't done so already, you should be addressing your individual circumstances and know what changes could be in store.

Some time-sensitive issues to consider include depreciation-related changes such as:

- * Bonus depreciation rules. In 2011, businesses were allowed to take 100% depreciation on certain property. This year, bonus depreciation drops to 50%. Next year, unless Congress takes action, bonus depreciation will be eliminated.

- * Qualified leasehold improvements. In 2011, qualified leasehold improvements had a 15-year depreciable life. This year, depreciation for qualified leasehold improvements, which are improvements to the interior of commercial real property that meet certain qualifications, dropped to 39 years.

- * Section 179. In 2011, Section 179 allowed businesses to deduct up to \$500,000 toward the cost of machinery, equipment, vehicles, furniture and other qualifying property. This year, the deduction dropped to \$139,000 and in 2013 it is scheduled to drop to \$25,000.

The law also narrows eligibility for the deduction beginning this year. For example, empowerment zone property placed in service after Dec. 31, 2011 is ineligible for the deduction.

While it is impossible to predict the future, it is reasonable to expect certain behavior when it comes to politics. For example, if the economy does not show any strength, it would be reasonable to expect Congress and President Obama to restore some of these tax breaks before the election. Those who support extending tax breaks will likely have an opportunity to do so by amending legislation to extend the payroll tax break. That legislation is expected to be taken up this winter. Extending the payroll tax break for a year has wide support by both parties, but they were unable to reach an agreement before adjourning for the holidays and settled for a two-month extension.

At least two other tax changes that are significant to the real estate industry are scheduled to take place after the election:

- * Energy efficiency. Tax credits under Section 179D, which can be used for "green" development, are scheduled to continue through 2013, but could be extended further after the election. Architects and engineers, developers and contractors are all eligible for credits under the law.

- * Gifting limits. The current lifetime exemption of \$5 million per taxpayer drops to \$1 million, adjusted

for inflation, at the end of 2012. Strategies for gifting interests in real estate should be considered in the current year.

While the changes in the depreciation provisions will have a direct impact on real estate this year, what will happen after the election is difficult to predict-except that taxes are unlikely to go down.

Right now, a lot of things are up in the air. Democratic control of Congress and the White House could result in new, higher taxes, especially on those with significant wealth. Republican control could result in elimination of tax breaks. Split control could result in a stalemate, resulting in no significant changes, which would not necessarily be a bad thing from the taxpayer's perspective.

When it is all said and done, however, business owners who have done their homework and are prepared for any scenario will be able to take decisive action. They will have weighed the pros and cons of every option and be able to make smart choices for their businesses no matter who ends up in office.

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