

## **2016 YEAR-END INCOME TAX PLANNING FOR BUSINESSES**

### **INTRODUCTION**

It's that time of year again. The time for businesses to consider year-end planning strategies. Year-end planning is particularly important this year given the large number of recent tax law changes that offer new tax savings opportunities, in addition to the many "time-tested" tax savings techniques that continue to apply.

**Planning Alert!** It seems every year we are faced with a long list of business tax breaks that have either recently expired, or are scheduled to expire in the near future. Fortunately, the ***Protecting Americans From Tax Hikes Act Of 2015 (the PATH Act)*** has made many (but not all) of these business tax breaks permanent. For example, the following tax breaks that were previously scheduled to expire are now permanent: Expanded Section 179 deduction; 15-year (instead of 39-year) depreciation period for "qualified" leasehold improvement property, retail improvement property, and restaurant property; Research and experimentation credit; 5-year (instead of 10-year) *waiting period* for an S Corporation to avoid the built-in gains tax; 100% exclusion of gain on the sale of qualified small business stock for both regular tax and AMT purposes.

In this letter, we identify and discuss those business tax breaks that are now permanent, as well as the remaining expiring business tax breaks that are currently scheduled to ***expire after 2016***.

We are sending you this letter to help you navigate *new* tax planning opportunities available to businesses because of recent law changes. We also remind you of the *traditional* year-end tax planning strategies allowing businesses to save taxes (whether the business operates as a regular "C" corporation, an "S" corporation, a partnership, an LLC, or as a self-employed individual).

**Caution!** Although this letter contains many planning ideas, you cannot properly evaluate a particular planning strategy without calculating the overall tax liability of the business and its owners (including the alternative minimum tax) with and without the strategy. In addition, this letter contains ideas for Federal income tax planning only. ***State income tax issues are not addressed.*** However, you should also consider any State income tax consequences of a particular planning strategy. We recommend that ***you call our firm before implementing any tax planning technique*** discussed in this letter, or if you need more information.

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## **RECENT LEGISLATION IMPACTS TAX PLANNING FOR BUSINESSES**

Over the last year, Congress has been busy passing legislation containing a variety of tax provisions that impact businesses. Congress passed several new laws between June 29, 2015 and February 24, 2016 containing new tax provisions that are **first effective in 2016**. These new laws include the Defending Public Safety Act, the Trade Preference Extension Act, the Surface Transportation Act, the Protecting Americans From Tax Hikes Act (the PATH Act), and the Consolidated Appropriations Act. The *PATH Act* is sometimes referred to as an “extenders bill,” because, among other things, it extended many tax provisions that had expired at the end of 2014. Unfortunately, many of the provisions extended by the PATH Act were only extended through 2016. The following is a discussion of selected business provisions contained in these new tax laws, including those expiring after 2016.

### **MONITOR STATUS OF BUSINESS TAX BREAKS EXPIRING AFTER 2016**

The following business tax breaks were previously scheduled to expire after 2014, but the PATH Act retroactively extended them **through 2016**: Deductions for Certain Energy-Efficient Commercial Buildings; Credit for Certain Energy-Efficient New Homes; 7-Year Depreciation Period for Certain Motor Sports Racetrack Property; Tax Benefits for Qualified Energy-Efficient Expenditures and for Qualifying Investments in Empowerment Zones; and 3-Year Depreciation Period for Certain Race Horses.

**Caution!** Although Congress has traditionally extended these expiring tax breaks, there is no guarantee that it will do so in the future. **Tax Tip.** Whether or not these provisions are extended beyond 2016, there may be real tax savings available if you take advantage of these provisions **before the end of 2016**.

### **SELECTED BUSINESS TAX BREAKS EXPANDED AND EXTENDED THROUGH 2019**

The PATH Act extends certain business tax breaks **through 2019**. For example, the 30% business credit for certain **solar energy property** is extended fully through 2019, but begins phasing **out after 2019**. In addition, the \$8,000 increase in the first-year depreciation deduction limitation for qualifying new passenger vehicles used in your business is extended fully through 2017 (i.e., for qualifying vehicles placed-in-service in 2016 the cap is \$11,160, and \$11,560 for trucks and vans). This \$8,000 increase begins phasing out after 2017, and is phased out completely after 2019. The Act also allows businesses to “*elect*” to accelerate the date the 168(k) deduction can be taken with respect to **certain trees, vines, and plants** bearing fruit or nuts to the tax year the trees, vines, and plants **are planted or grafted** (if planted or grafted after 2015), rather than the tax year they are placed-in-service. Moreover, the PATH Act extends the Work Opportunity Credit through 2019, and also expands it to include a new group of targeted workers – “*qualified long-term unemployment recipients*.”

**Planning Alert!** One of the most popular and frequently-used business tax breaks extended by the PATH Act is the first-year 168(k) bonus depreciation deduction.

- **First-Year 168(k) Bonus Depreciation Deduction Expanded And Extended Through 2019.** The 50% first-year 168(k) bonus depreciation deduction was previously scheduled to expire for qualifying property placed-in-service after 2014. The PATH Act extends the 168(k) deduction for *qualifying* “new” business property placed-in-service **through December 31, 2019** (through December 31, 2020 for certain long-production-period property and qualifying noncommercial aircraft), as follows: **1) A 50% bonus depreciation allowance for qualified property placed-in-service in 2015 through 2017; 2) A 40% bonus depreciation allowance for qualified property placed-in-service in 2018** (2019 for certain long-production-period property and qualifying noncommercial aircraft); and **3) A 30% bonus depreciation allowance for qualified property placed-in-service in 2019** (2020 for certain long-production-period property and qualifying noncommercial aircraft). Property qualifying for the 168(k) bonus depreciation deduction generally includes new business property that has a depreciable life for tax purposes of **20 years or less** (e.g., machinery and equipment, furniture and fixtures, business vehicles, sidewalks, roads, landscaping, depreciable computer software, farm buildings, and qualified motor fuels facilities).

- **“Qualified Leasehold Improvement Property” Replaced With “Qualified Improvement Property.”** For property placed-in-service **before 2016**, “*Qualified Leasehold Improvement Property*” (QLIP) qualified for the 168(k) bonus depreciation deduction. QLIP generally includes capital improvements to the interior portion of a commercial (nonresidential) building that is at least three years old, and the **improvements are made pursuant to a lease – provided the lease is not between related parties**. Thus, any improvements to an otherwise qualifying building pursuant to a “*related-party*” lease **did not** qualify for the 168(k) bonus depreciation deduction.

For **property placed-in-service after 2015**, the PATH Act provides that the 168(k) bonus depreciation deduction applies to “*Qualified Improvement Property*.” “**Qualified Improvement Property**” (QIP) is generally an improvement to the interior portion of an existing commercial building (provided the improvement is not attributable to an enlargement of the building, elevators or escalators, or the internal structural framework of the building). **Planning Alert!** The definition of *QIP* largely follows the definition of *QLIP* – except that building improvements constituting *QIP* do not have to be made pursuant to a *lease* and the improvements only have to be placed-in-service “*after*” the building was initially placed-in-service (i.e., the improvement no longer has to be made more than “3 years” after the building was first placed-in-service). Therefore, an otherwise qualifying improvement to a building where the improvements are placed-in-service after 2015, may qualify for the 168(k) bonus depreciation deduction **1) Where the property is not subject to a lease, or 2) Where the property is subject to a lease and the lease is between related parties or unrelated parties**. Thus, for property **placed-in-service after 2015**, otherwise qualifying improvements to a commercial building under a related-party lease may qualify for the 168(k) bonus depreciation – even though the very same improvements would not have qualified if placed-in-service before 2016! **Planning Tip!** Qualified Leasehold Improvement Property should continue to qualify for the 168(k) depreciation deduction since property meeting the definition of “*Qualified Leasehold Improvement Property*” will also be “*Qualified Improvement Property*.”

- **New Tax Considerations For Businesses Needing To Purchase Or Construct A Commercial Building.** The types of building improvements that could qualify for the newly-expanded 168(k) bonus depreciation deduction offer new tax planning opportunities for businesses seeking to purchase or construct a commercial building. In light of these changes, there may be a significant tax advantage in certain situations for a business to buy a “**used**” building and **renovate it**, rather than purchasing or constructing a “**new**” building that will not require any renovation. **For example**, let’s assume that your business purchased a “**new**” commercial building for use as the businesses manufacturing facility (which needs no renovation to meet the needs of your business) **for \$10 million** and placed it in service on June 1, 2016. For tax purposes, you would be required to depreciate the building under the straight-line depreciation method over 39 years using the mid-month convention. Therefore, **your depreciation deduction on the building for 2016 would be \$138,889**.

**Alternatively**, assume you decided to **1) Buy a “used” building for \$7 million, 2) Spend an additional \$3 million** to renovate it to meet the manufacturing needs of your business (i.e., your total cost for the building is still \$10 million), and **3) The building is placed-in-service on June 1, 2016**. In that event, the \$3 million renovation cost could qualify as “*qualified improvement property*” (assuming that **all of the improvements are to the interior portion** of the building, the improvements are **not attributable to an enlargement** of the building, **elevators or escalators, or the internal structural framework** of the building). Your depreciation deduction for 2016 attributable to the initial **\$7 million** cost **would be \$97,222** (i.e., straight-line depreciation using a 39-year life and the mid-month convention). Assuming the **\$3 million renovation** satisfies the new definition of “*qualified improvement property*,” the renovation would qualify for a 50% 168(k) first-year depreciation deduction of **\$1.5 million** (i.e., \$3 million x 50%). The remaining **\$1.5 million** cost of the renovation would also generate an additional depreciation deduction for 2016 of **\$20,833** (i.e., straight-line depreciation using a 39-year life and the mid-month convention). So, **for 2016 your total depreciation deduction would be \$1,618,055** (i.e., \$97,222 plus \$1.5 million plus \$20,833). This results in **\$1,479,166 more depreciation** (i.e., \$1,618,055 less \$138,889) in 2016 because your business purchased an existing building and renovated it – as opposed to purchasing or constructing a new building that needed no renovation.

**Planning Alert!** In each of the above examples, the taxpayer may be able to obtain additional tax benefits by conducting a “cost segregation study.” A cost segregation study might effectively identify for tax purposes nonstructural components of the building and/or renovation costs that constitute tangible personal property that can be depreciated over a much shorter life using the 200% declining balance depreciation method. The above examples do not reflect the possible tax impact of such a cost segregation study.

### **SELECTED BUSINESS TAX BREAKS MADE PERMANENT**

The PATH Act retroactively reinstates the following provisions which had expired at the end of 2014 and makes the provisions **permanent** for future years: **1)** 15-Year (Instead of 39-year) Depreciation Period for “Qualified” Leasehold Improvement Property, Restaurant Property, and Retail Improvement Property; **2)** Enhanced Charitable Contribution Rules for Businesses Contributing Food Inventory; **3)** Favorable S Corporation Provisions for Charitable Contributions of Capital Gain Property; **4)** Parity Between Employer-Provided Parking and Transportation Fringe Benefits; **5)** 5-Year (instead of 10-year) Waiting Period for S Corporations to Avoid the Built-In Gains Tax; **6)** Exclusion of 100% of Gain on the Sale of “Qualified” Small Business Stock for Both Regular Tax and AMT Purposes; and **7)** 20% Differential Wage Credit for Qualifying Differential Wages Paid to Employees Called to Active Duty with the U.S. Military (**Note!** Employers of any size may now qualify for the differential wage credit).

**In addition**, the PATH Act not only made the following business tax breaks **permanent**, it also **expanded these tax breaks** to make them more beneficial:

- **Research & Experimentation Credit Made Permanent And Expanded For Certain Small Businesses.** For **taxable years beginning after 2015**, the **PATH Act** not only made the R&E Credit permanent, but also expanded it by: **1)** Allowing a “**eligible small business**” (generally a business that meets a \$50 million or less average gross receipts threshold) to use the R&E Credit to offset both “regular” tax and the “**alternative minimum tax (AMT)**,” and **2)** Allowing a “**qualified small business**” to elect to offset its R&E credit against its employer portion of the OASDI payroll tax liability. A “**qualified small business**” is generally a business **1)** With **gross receipts of less than \$5 million** for the taxable year, **and 2)** That **did not have gross receipts** for any taxable year **before the five-taxable-year period – ending with the current taxable year.** **Practice Alert!** In August, the IRS released a draft copy of new Form 8974 to be used by “**qualified small businesses**” to claim the R&E credit against the employer’s share of OASDI liability.
- **Section 179 Deduction Expanded And Made Permanent.** For tax years beginning in 2010 through 2014, the maximum Section 179 deduction for the cost of qualifying new or used depreciable tangible personal property (e.g., business equipment, computers, etc.) was temporarily increased to \$500,000. During that same period, the phase-out threshold of the Section 179 deduction for qualifying Section 179 property acquisitions was temporarily increased to \$2,000,000. In addition, for purchases in 2010 through 2014, taxpayers were temporarily allowed to treat up to \$250,000 of “**qualified real property**” (discussed below) as Section 179 property.

The **PATH Act makes these “expanded” Section 179 provisions permanent** (i.e., the \$500,000 Section 179 cap; the allowance of a Section 179 deduction for “qualified real property;” and the \$2,000,000 phase-out threshold). The PATH Act also permanently allows taxpayers to take the Section 179 deduction for off-the-shelf computer software and to make or modify the Section 179 election on an amended return. In addition, for property placed-in-service in tax years beginning **after 2015**, the Act permanently indexes the Section 179 caps for inflation. The PATH Act also makes the following taxpayer-friendly modifications to the Section 179 deduction **for tax years beginning after 2015.**

- **Separate \$250,000 Cap For “Qualified Real Property” Eliminated.** For tax years beginning in 2010 through 2015, the Section 179 deduction for “**Qualified Real Property**” was capped at \$250,000. For **Qualified Real Property placed-in-service in tax years beginning after 2015**, the PATH Act removes the \$250,000 cap. Thus, **Qualified Real Property** is now subject to the overall Section 179

cap of \$500,000 (as indexed for inflation). **Caution!** The \$500,000 overall cap is reduced by any Section 179 deduction taken for *Qualified Real Property*.

**“Qualified Real Property”** includes property within any of the following three categories: **1) Qualified Leasehold Improvement Property** (generally capital improvements to the interior portion of certain leased buildings that are used for nonresidential purposes); **2) Qualified Retail Improvement Property** (generally capital improvements made to certain buildings which are open to the general public for the retail sale of tangible personal property); and **3) Qualified Restaurant Property** (generally capital expenditures for the improvement, purchase, or construction of a building, if more than 50% of the building’s square footage is devoted to the preparation of, and seating for, the on-premises consumption of prepared meals).

### **TRADITIONAL YEAR-END PLANNING WITH PURCHASES OF DEPRECIABLE EQUIPMENT, ETC.**

As discussed above, the **full 50% 168(k) first-year depreciation deduction is available through 2017** for “qualifying” 168(k) property (described in more detail below). In addition, the expanded Section 179 deduction is now permanent. **Tax Tip.** Neither the 50% bonus depreciation nor the Section 179 deduction requires any proration based on the length of time that an asset is in service during the tax year. Therefore, your business would get the benefit of the **entire 50% 168(k) deduction** and/or the **entire Section 179 deduction** for 2016 purchases, even if the qualifying property **were placed-in-service as late as December 31, 2016!**

- **“Placed-In-Service.”** Generally, if you are purchasing “personal property” (equipment, computer, vehicles, etc.) – “placed-in-service” means the property is **ready and available** for use. To be safe, qualifying property should be **set up and tested** on or before the **last day of your 2016 tax year**. If you are dealing with building improvements (e.g., qualified leasehold improvement property; qualified improvement property; non-structural components of a building), a **certificate of occupancy** will generally constitute placing the building improvements in service.
- **Property Qualifying For The 50% 168(k) Bonus Depreciation Deduction.** Generally, property qualifies for the 50% 168(k) bonus depreciation deduction if it is **new** and is **1) “Qualified improvement property”** (discussed previously), **2) Property with a depreciable life for tax purposes of 20 years or less** (e.g., machinery and equipment, furniture and fixtures, business vehicles, sidewalks, roads, landscaping, depreciable computer software, farm buildings, and qualified motor fuels facilities), or **3) Water utility property**.
- **Property Qualifying For The Section 179 Deduction.** Generally, property qualifies for the Section 179 deduction if it is purchased new or used and is either “qualified real property” (discussed previously), off-the-shelf computer software, or tangible personal property (e.g., machinery and equipment, furniture and fixtures, business vehicles). **Planning Alert!** Generally (subject to limited exceptions), if your business **is not a corporation**, any property **it leases** to others **will not qualify** for the Section 179 deduction (however it may qualify for the 168(k) bonus depreciation deduction). Also, property used in **connection with lodging** (other than hotels, motels, etc.) **does not qualify** for the Section 179 deduction, but may qualify for the 168(k) bonus depreciation deduction. **Tax Tip.** Previously, heating and air conditioning units did not qualify for the Section 179 deduction. However, **starting in 2016**, the PATH Act allows such units to qualify for the Section 179 deduction provided the units are not structural components of a building (e.g., a window AC unit in a building should now qualify).
- **Reconditioning Used Property.** Although property qualifying for the 50% 168(k) depreciation deduction must generally be “new” property, the IRS regulations provide that capital expenditures incurred to recondition or rebuild used property may qualify. **For example**, let’s assume that your business purchases a **used** machine during 2016 for \$50,000. Also during 2016, you pay \$20,000 to recondition the machine. The \$50,000 cost of the used machine does not qualify for the 50% 168(k) depreciation deduction. However, the \$20,000 expenditure to “recondition” the machine would qualify for the 50% deduction. **Tax Tip.** Assuming that you have not exceeded the various caps for the Section 179 deduction, both the initial cost (\$50,000) and the reconditioning cost (\$20,000) would qualify for the Section 179 deduction.

- **Buildings And Cost Segregation Studies.** Components of buildings that are not “structural components” may qualify for faster depreciation. For example, nonstructural components of **“newly-constructed”** buildings or older buildings that are purchased which are properly classified as depreciable *personal* property under a **cost segregation study**, are generally depreciated over 5 to 7 years. If the building is a new building, these assets should also qualify for the 50% 168(k) bonus depreciation for 2016 – if the building is **placed-in-service in 2016. Planning Alert!** As noted previously, obtaining a certificate of occupancy for the building **by December 31, 2016** will generally constitute placing the building and its components in service by that date. **Tax Tip.** Assuming that you have not exceeded the various caps for the Section 179 deduction, these properly segregated non-structural components should also qualify for the Section 179 deduction – whether the building is new or used.
- **Purchase Of “Heavy” Truck Or SUV For Business Use.** The maximum annual depreciation deduction (including the Section 179 deduction) for most *business automobiles* is capped at certain dollar amounts. For a business auto first placed-in-service in **calendar year 2016**, the maximum first-year depreciation deduction is generally capped at \$3,160 (\$3,560 for trucks and vans not weighing over 6,000 lbs). **For 2016**, if these vehicles are “new” and otherwise qualify for the 168(k) bonus depreciation, this overall cap is increased to \$11,160 (\$11,560 for trucks and vans not weighing over 6,000 lbs). **Planning Alert!** Trucks and SUVs with loaded rated vehicle weights **over 6,000 lbs** are generally exempt from these annual depreciation caps. These “heavy vehicles,” **if used more than 50% in business**, will also qualify for the Section 179 deduction (limited to \$25,000). **For example**, let’s assume that in 2016 you purchase and place-in-service a new “over-6,000 lb” SUV **for \$50,000** used **entirely for business**. For 2016, you could deduct: **1)** Up to \$25,000 under Section 179, **2)** 50% of the remaining balance as 168(k) first-year bonus depreciation, and **3)** 20% of the remaining cost as regular depreciation for the first year. Thus, for a \$50,000 new heavy SUV placed-in-service in 2016, you could generally write-off \$40,000 in 2016 (assuming 100% business use and the half-year depreciation convention applies). **Tax Tip!** Pickup trucks with loaded vehicle weights over 6,000 lbs are exempt from the \$25,000 limit under §179 (imposed on SUVs) if the truck bed is at least six feet long. **Planning Alert!** If you take the Section 179 deduction and/or the 50% 168(k) first-year bonus depreciation on your business vehicle, and your business use percentage later **drops to 50% or below**, you will generally be required to bring into income a portion of the deductions taken in previous years.
- **Judicious Targeting Of Section 179 Property.** Taxpayers must specify the items of Section 179 property which they elect to expense under Section 179. When selecting property for the Section 179 election, it is generally preferable to select qualifying property that has the **longest depreciable life**. This is particularly important if the taxpayer has aggregate purchases of Section 179 property in excess of the annual cap (for 2016 the overall cap is \$500,000). In that situation, taxpayers that have purchased both *qualifying personal property* (e.g., equipment, business vehicles) and “*qualified real property*” (i.e., qualified leasehold improvement property, qualified restaurant property, or qualified retail improvement property) that exceed \$500,000 in the aggregate, should consider taking the maximum Section 179 deduction with respect to the *qualified real property* (having a depreciable life of 15 years), before taking the Section 179 deduction with respect to other qualifying personal property (which typically have depreciable lives of 5-7 years). **Planning Alert!** If your aggregate purchases of “*qualified real property*” for 2016 exceed \$2,010,000 (the phased-out threshold indexed for inflation), electing to treat *qualified real property* as Section 179 property could cause you to lose all or a portion of your overall \$500,000 Section 179 deduction. The rules with regard to “qualified real property” can be complex and tricky – please call our firm if you need additional details.
- **Businesses Should Factor In Section 179 Limits Before Making Large Year-End Equipment Purchases.** Since businesses may not take a Section 179 deduction in excess of \$500,000 for 2016, making a large equipment purchase near the end of 2016 that causes the year-to-date purchases to exceed \$500,000, would generally cause the taxpayer to lose the Section 179 deduction for the purchases in excess of \$500,000. However, the taxpayer may be able to preserve the Section 179 deduction for those excess purchases by splitting the purchases between 2016 and 2017. **For example**, assume a calendar-year corporation bought and placed-in-service \$400,000 of business equipment (qualifying for the Section 179 election) earlier in 2016. Near the end of 2016, the corporation plans to buy additional business equipment costing \$500,000. If feasible and consistent with the corporation’s business needs, the corporation should consider placing-in-service no more than \$100,000 of the additional equipment in

late 2016, and placing the remaining \$400,000 of assets in service in early 2017. This would allow the corporation to fully expense \$500,000 of the assets in the 2016 tax year, while expensing the remaining \$400,000 of equipment purchases in the 2017 tax year.

- **Planning With The Section 179 “Taxable Income Limitation.”** A taxpayer’s Section 179 deduction for any tax year is limited to the taxpayer’s “*trade or business*” taxable income (determined without the Section 179 deduction). Any excess Section 179 deduction is carried forward to later years until the taxpayer generates enough business taxable income to fully deduct it. This “*taxable income limitation*” will not limit the taxpayer’s Section 179 deduction for a tax year so long as the taxpayer has aggregate net income from all trades or businesses at least equal to the Section 179 deduction elected for that tax year. For this purpose, an individual taxpayer’s *trade or business* income includes W-2 wages reported by the individual or the individual’s spouse (if filing a joint return). **For example**, assume Jane is employed as an accountant with a salary of \$65,000. On the side, Jane also operates a small one-person furniture refurbishing business (operating as a sole proprietorship) and expects to earn \$3,000 of net revenue from the furniture refurbishing business in 2016. She would like to purchase a high-end wood lathe before the end of 2016 costing \$7,000 for use in her side business. Since her \$65,000 salary counts for purposes of the “*taxable income limitation*,” if she buys the \$7,000 lathe and places it in service by December 31, 2016, she will qualify for a Section 179 deduction of \$7,000 for 2016.
- **Planning Alert!** There is no “taxable income limitation” with respect to the 168(k) bonus depreciation deduction. Therefore, the 168(k) depreciation deduction could generate a tax loss for a taxpayer. This in turn could generate a current year “*net operating loss*” (NOL) which the taxpayer could carry back and offset taxable income generated in the preceding 2 years, and carry forward any excess for up to 20 years.
- **Don’t Overlook The Recently-Increased “De Minimis Safe Harbor” For Writing Off Tangible Business Property!** The recently-released capitalization regulations allow taxpayers with “*applicable financial statements*” (i.e., financial statement filed with the SEC, certified audited financial statement, or financial statement required to be provided to the Federal or a State government – other than a tax return) to make a “*de minimis safe harbor*” election. This election allows a taxpayer an immediate deduction for purchases of **individual items** of tangible business property (including materials and supplies) not exceeding \$5,000 each. For taxpayers **without** “*applicable financial statements*” (most small and mid-size businesses), the *de minimis safe harbor* amount was initially capped at \$500 for each item of tangible business property. However, **generally effective for tax years beginning after 2015**, the IRS increased this safe harbor limit for taxpayers **without** “*applicable financial statements*” **from \$500 to \$2,500**. The threshold for taxpayers with an “*applicable financial statement*” was not changed, and remains at \$5,000. **Planning Alert!** Unlike the Section 179 deduction, there is no overall aggregate dollar limit or trade or business income limit on the total amount of deductions taken under this safe harbor. In addition, assets expensed under the *de minimis safe harbor* should not affect the amount of the §179 deduction available for a tax year. **For example**, assume for 2016 a business (with no *applicable financial statement*) properly elects the safe harbor and expenses all qualifying purchases of \$2,500 or less, and the total amount expensed equals \$150,000. The \$150,000 should not enter into the calculation of the Section 179 limits (i.e., the \$500,000 limitation or the \$2,010,000 phase-out threshold indexed for inflation).
- **De Minimis Safe Harbor Election.** This election is made annually (by attaching a statement to a timely filed—including extensions—original Federal income tax return). To qualify for the safe harbor, the taxpayer generally must have an **accounting procedure** (as of the beginning of the year) to expense the cost of assets costing less than a specified amount for “*nontax*” purposes as well as for tax purposes. If the taxpayer has an “*applicable financial statement*,” the accounting procedure **must be in writing**. For taxpayers that do not have an “*applicable financial statement*,” the “*beginning of the year*” accounting procedure referred to above does not have to be in writing. However, having a written procedure may better document your “expensing procedure” in case of an IRS audit.



## **OTHER RECENT LEGISLATIVE CHANGES IMPACTING TAX PLANNING FOR BUSINESSES**

In addition to the *PATH ACT*, other recent legislation included the following changes that could impact tax planning for businesses starting in 2016:

**Revised Due Dates For Various Tax Returns.** For *tax years beginning after 2015*, the Transportation Act revises the initial due dates and/or the extended due dates for various tax returns including: **Form 1065** (partnership return) and **Form 1120** ("C" corporation tax return). **Planning Alert!** Since these new due date provisions are effective for *tax years beginning after 2015*, the new deadlines **will first apply to 2016 returns** – which are filed **after 2016**.

The following are just a few examples of the new due dates and extended due dates provided by the Transportation Act for **returns for tax years beginning after 2015**:

- **Partnership Returns (Form 1065).** The **"Initial"** due date for a **Partnership Return** (Form 1065) will be the 15<sup>th</sup> day of the **"third"** month following year-end (i.e., March 15 of the following year for a calendar-year partnership). Previously, partnership returns were due the 15<sup>th</sup> day of the **"fourth"** month (i.e., April 15 of the following year for a calendar-year partnership). However, the **"Extended"** due date for partnership returns will not change (i.e., it is the 15<sup>th</sup> day of the ninth month of the following year under both old and new law - September 15 for calendar-year partnerships).
- **Calendar-Year "C" Corporation Returns (Form 1120).** The **"Initial"** due date for a calendar-year "C" corporation return will be April 15 of the following year (previously the initial due date was March 15 of the following year). However, the **"Extended"** due date for calendar-year "C" corporation returns will be September 15 of the following year which is the same as the extended due date for calendar-year C corporation returns under prior law.
- **Due Dates For "S" Corporation Returns Remain Unchanged (Form 1120S).** The Transportation Act does not change the initial due date or the extended due date for "S" corporation tax returns.
- **W-2s And 1099s.** In order to cut down on identity theft, for **information returns filed after 2016** (e.g., 2016 forms filed in 2017), the PATH Act requires Forms W-2, W-2AS, W-2CM, W-2GU, W-2VI, W-3 and W-3SS to be filed with the Social Security Administration (SSA) **by January 31** (i.e., the same date these forms are due to be filed with the recipient of the compensation). **Caution!** In addition, there is no longer an extended filing date for forms filed electronically. Furthermore, **extensions of time to file Forms W-2 with the SSA are no longer automatic**. For filings due on or after January 1, 2017, employers may **request one 30-day extension to file Form W-2** by submitting a complete application to the IRS **on Form 8809**, including a detailed explanation of why additional time is needed. The instructions to Forms W-2 and W-3 say that an extension will only be granted **in extraordinary circumstances or catastrophe**.

The Act also provides that **Forms 1099-MISC which report nonemployee compensation** must be filed with the IRS **on or before January 31** of the following year beginning with 2016 Forms 1099-MISC whether or not the forms are filed electronically. If the Form 1099-MISC does not show nonemployee compensation in Box 7, the Form continues to be due with the IRS by February 28<sup>th</sup> of the following year or by March 31<sup>st</sup> of the following year if filed electronically.

- **Other Returns.** In addition to the Forms listed above, the Transportation Act changes the due dates and/or the extended due dates for several other forms for tax years beginning after 2015, including: "C" Corporation Returns With Fiscal Years; Form 990 (Return For Exempt Organizations); and Form 4720 (Return For Certain Excise Taxes).

**Failure To Timely File Certain "Information" Returns Has Become More Costly.** Effective for returns **required to be filed after 2015**, the Trade Act significantly increases the monetary penalties for failing to file certain information returns (e.g., the Form 1099 series, and the new Affordable Care Act Forms 1095-B and 1095-C). For example, the penalty for failing to file a Form 1099 with the payee is increased from \$100 in 2014

to \$260 for 2016 (as indexed for inflation) for each Form 1099. In addition, the failure to file a Form 1099 with the IRS is also increased from \$100 to \$260 for 2016. Therefore, failure to file a 2016 Form 1099 **required to be filed in 2017** with both the payee and the IRS would generally trigger a total **penalty of \$520** (\$260 for failing to file with the payee, plus \$260 for failing to file with the IRS).

**Temporary Suspension Of 2.3% Medical Device Tax – For 2016 And 2017 Only!** Effective **for sales after 2015**, the PATH Act temporarily suspends the 2.3% medical device excise tax for a period of two years (i.e., suspended for sales **on or after January 1, 2016 and before January 1, 2018**).

## **SELECTED TRADITIONAL YEAR-END PLANNING CONSIDERATIONS FOR BUSINESSES**

**Year-End Planning For Personal Service Corporations.** If you own a “C” corporation that is a personal service corporation (PSC), all income retained in that corporation is taxed at a flat rate of 35%. Your C corporation is a PSC if its business is primarily in the areas of health, law, accounting, engineering, actuarial sciences, performing arts, or consulting. Furthermore, in order to be classified as a PSC, substantially all of your corporation’s stock must be held by employees who are performing those services. **Tax Tip.** Generally, it is preferable from a tax standpoint to leave as little taxable income in a PSC as possible. This may be accomplished by paying reasonable salaries and compensation to the stockholders/employees **by year-end**.

**Salaries For S Corporation Shareholder/Employees.** For 2016, an employer generally must pay FICA taxes of 7.65% on an employee’s wages up to \$118,500 and FICA taxes of 1.45% on wages in excess of \$118,500. In addition, an employer must withhold FICA taxes from an employee’s wages of 7.65% on wages up to \$118,500 and 1.45% of wages in excess of \$118,500. Generally, the employer must also withhold an additional medicare tax of .9% for wages paid to an employee in excess of \$200,000.

If you are a stockholder/employee of an S corporation, this FICA tax generally only applies to your W-2 income from your S corporation. Other income that passes through to you or is distributed with respect to your stock is generally not subject to FICA taxes or to self-employment taxes.

- **Compensation Must Be “Reasonable.”** If the IRS determines that you have taken unreasonably “low” compensation from your S corporation, the Service will generally argue that other amounts you have received from your S corporation (e.g., distributions) are disguised “compensation” and should be subject to FICA taxes. Determining “reasonable compensation” for S corporation shareholder/employees is a hot audit issue, and the IRS has a winning record in the Courts. Over the years, the IRS has been particularly successful in reclassifying distributions as wages where S corporation owners pay themselves **no wages** even though they provided significant services to the corporation. However, more recently, there have been several cases where the S corporation owners paid themselves **more than de minimis wages**, but the Court still held that an additional portion of their cash “distributions” should be reclassified as “wages” (subject to payroll taxes). **Caution!** Determining “reasonable” compensation for an S corporation shareholder is a case-by-case determination, and there are no rules of thumb for determining whether the compensation is “reasonable.” However, recent Court decisions make it clear that the compensation of S corporation shareholders should be supported by independent data (e.g., comparable industry compensation studies), and should be properly documented and approved by the corporation.
- **Planning Alert!** Keeping wages low and minimizing your FICA tax could also reduce your Social Security benefits when you retire. Furthermore, if your S corporation has a qualified retirement plan, reducing your wages may reduce the amount of contributions that can be made to the plan on your behalf since contributions to the plan are based upon your “wages.”

**S Corporation Shareholders Should Check Stock And Debt Basis Before Year-End.** If you own S corporation stock and you think your S corporation will have a tax loss this year, you should contact us as soon as possible. These losses will not be deductible on your personal return unless and until you have adequate “basis” in your S corporation. Any pass-through loss that exceeds your “basis” in the S corporation will carry over to succeeding years. You have basis to the extent of the amounts paid for your stock (adjusted for net pass-through income, losses, and distributions), **plus** any amounts you have personally loaned to your S corporation. **Planning Alert!** If an S corporation anticipates financing losses through borrowing from an

outside lender, the best way to ensure the shareholder gets **debt basis** is to: **1)** Have the shareholder personally borrow the funds from the outside lender, and **2)** Then have the shareholder formally (with proper and timely documentation) loan the borrowed funds to the S corporation. It also may be possible to **restructure** (with timely and proper documentation) an existing outside loan directly to an S corporation in a way that will give the shareholder debt basis, however, the loan must be restructured before the S corporation's year ends. **Caution!** A shareholder cannot get debt basis by merely guaranteeing a third-party loan to the S corporation. **Please do not attempt to restructure your loans without contacting us first.**

**Making Payments On S Corporation Shareholder Loans May Trigger Income.** Let's assume you have previously loaned funds to your S corporation which, in turn, created basis that you have used to deduct pass-through losses from prior years. If all or a portion of the loan is paid back after the loan's basis has been reduced by pass-through losses, you will recognize a gain on the repayment. The amount, character, and timing of the gain is dependent on several factors, including: **1)** When during the tax year the payment is made, **2)** Whether the loan is an "open account" advance, or evidenced by a written promissory note, and **3)** The amount of the unpaid balance on an "open account" advance as of the end of the tax year. For example, if the loan is an "open account" (i.e., not evidenced by a written promissory note), any gain triggered by a payment on the loan will generally be taxed at ordinary income tax rates. However, if the loan is evidenced by a written promissory note and has been outstanding for over one year, any gain triggered on the payback may qualify for favorable long-term capital gains treatment. **Tax Tip.** It may save you taxes in the long run if you postpone principal payments on the depleted-basis loan until the loan's basis has been restored by subsequent S corporation profits. **Please consult with us before your S corporation repays a shareholder loan.** We will help you structure the loans and any loan repayments to your maximum tax advantage.

**Recent IRS Release Explains 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 has never been 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 a recently-released IRS Chief Counsel Advisory (CCA), the IRS ruled that a majority owner (Member/Owner) of an LLC that owned and operated a group of franchise restaurants should be treated as a "general" (not "limited") partner and, therefore, should be subject to S/E tax on all pass-through business income from the LLC reported on his Schedule K-1. The Member/Owner was actively involved in the LLC's business operations – serving as Operating Manager, President, and Chief Executive Officer. The CCA generally concluded that an owner of an LLC could possibly qualify for the "limited partner" exception to the S/E tax *only if* the LLC owner was a "**mere investor**" who did not "**actively participate**" in the business operations of the LLC. Since the Member/Owner in this situation was not a "mere investor" and "actively participated" in the LLC's restaurant operations, the CCA concluded that the S/E tax should be imposed on the entire amount of his business income from the LLC. **Planning Alert!** The CCA **did not provide a specific definition** of the terms "**mere investor**" or "**actively participate**." Presumably, the IRS intends to apply these critical terms on a case-by-case, facts-and-circumstances basis.

The following are several other important observations and conclusions contained in the CCA:

- The Member/Owner's wife also owned an interest in the LLC, however she had no active involvement in the operations of the LLC. The CCA concluded that the LLC's Schedule K-1 business income that passed through to her was not subject to S/E tax because the IRS determined on these facts that she was a "mere investor" and did not "actively participate" in the LLC's operations.
- The Member/Owner was paid "guaranteed payments" on which he paid S/E tax. He argued that since his "guaranteed payments" reasonably compensated him for the services he provided to the LLC, he should not be required to pay S/E tax on his share of the LLC's pass-through K-1 business income. The IRS rejected this argument entirely, and ruled that the existence of "guaranteed payments" had no bearing as to whether the Husband would be treated as a "limited partner" for S/E tax purposes.

- The Member/Owner also argued that the income he received from the LLC other than the “guaranteed payments” represented a return on his capital investment in the LLC and should not be subject to S/E tax. Again, the IRS completely rejected this argument and said that the S/E tax provision “***provides an exclusion for limited partners, not for a reasonable return on capital, and does not indicate that a partner’s status as a limited partner depends on the presence of a guaranteed payment or the capital-intensive nature of the partnership’s business.***” [Emphasis added].

**Employers Sponsoring “Health Reimbursement Arrangements” Or “Employer Payment Plans” May Be At Risk.** Any employer, regardless of size, that sponsors a “***Health Reimbursement Arrangement***” (HRA) or an “***Employer Payment Plan***” (EPP) could face a \$100 per day penalty for each covered employee. The IRS defines an “***HRA***” as an arrangement (funded solely by an employer) that reimburses an employee for qualified medical expenses incurred by the employee up to a maximum dollar amount for a coverage period. The IRS defines an “***Employer Payment Plan***” (EPP) 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 where the employer pays the premiums directly to the insurance company. The IRS has provided several “*safe harbors*” for certain HRAs and for EPPs that could protect employers from this harsh \$100 a day penalty in certain situations. For example, the IRS says an HRA that only covers employees who are also covered by an ACA compliant employer-sponsored health plan, will generally be exempt from the \$100 a day penalty. The IRS also says that an ***Employer Payment Plan*** will be exempt from the \$100 a day penalty, where an “S” corporation reimburses or pays the premiums for individual health insurance coverage for one or more shareholder/employees who own more-than-2% of the S corporation – ***until the IRS announces otherwise.*** As we finalize this letter, the IRS ***has made no announcement*** changing this exemption for more-than-2% S corporation shareholders.

- **Planning Alert!** In order for the payments by the S corporation to the more-than-2% shareholder to qualify for this exemption, the premiums 1) Should be reimbursed or paid by the S corporation by ***December 31, 2016***, and 2) Must be properly included in the S corporation shareholder’s W-2. In addition, if this is handled properly, the shareholder is allowed an above-the-line deduction for the insurance premiums included in his or her W-2.

**Strategies For Business Owners To Avoid The 3.8% Net Investment Income Tax.** A 3.8% tax is imposed on the ***net investment income*** (3.8% NIIT) of ***higher-income taxpayers***. With limited exceptions, “***net investment income***” generally includes the following types of income (less applicable expenses): interest, dividends, annuities, royalties, rents, “passive” income (as defined under the traditional “passive activity” loss rules), long-term and short-term capital gains, and income from the business of trading in financial securities and commodities. **Planning Alert!** Income ***is not “net investment income”*** (and is therefore exempt from this new 3.8% NIIT), ***if the income is “self-employment income”*** subject to the 2.9% Medicare tax. The 3.8% NIIT only applies to individuals with modified adjusted gross income (MAGI) exceeding the following “***thresholds***”: ***\$250,000 if married filing jointly; \$200,000 if single; and \$125,000 if married filing separately.***

- **Passive Owners Should Consider Taking Steps To Avoid The 3.8% Net Investment Income Tax (3.8% NIIT).** For purposes of this 3.8% NIIT, ***net investment income*** includes ***operating*** business income that is taxed to a “***passive***” owner (unless the operating income constitutes ***self-employment*** income to the owner that is subject to the 2.9% Medicare tax). This could include income from an S corporation in which you do not “materially participate,” income as a limited partner, and rental income. For this purpose, an owner is considered “***passive***” in a business activity if the owner is “passive” under the ***passive loss limitation*** rules that have been around for years. For example, you are deemed to ***materially participate*** (i.e., you’re not “passive”) if you spend ***more than 500 hours*** during the year working in the business. **Observation.** Traditionally, business owners have focused on the passive activity rules largely in the context of ***avoiding*** the rigid passive “***loss***” restrictions. Now that passive “***income***” can be subject to the ***3.8% NIIT***, business owners are seeking ways to ***avoid*** passive “***income***” classification.
- **“Passive” S Corporation Shareholders Should Take Steps To “Materially Participate.”** If you are an ***S corporation shareholder***, and you ***materially participate*** in the business, your pass-through business income will generally be ***exempt*** from the 3.8% NIIT. **Note!** The pass-through income is also

generally exempt from Social Security and Medicare taxes on earned income. However, if you are currently a “**passive**” S corporation shareholder and your MAGI exceeds the thresholds for the 3.8% NIIT (e.g., exceeds \$250,000 if married filing jointly; \$200,000 if single), you could possibly avoid the tax by taking steps **before the end of 2016** to establish that you “**materially participate**” in the business. For example, one way to **materially participate** in the business would be to devote **over 500 hours** during the year working in the business. **Tax Tip.** There may be other ways you can *show that you “materially participate”* in the business without working more than 500 hours. **Please call our firm** if you need additional details. **Planning Alert!** If you have other “**passive**” activities generating losses, you may prefer to remain *passive as to an activity producing income* so that the activity’s income may be used to absorb the *passive* losses. **Caution!** These rules are complicated and require a thorough review of your particular situation to develop the most tax-wise strategy.

- **Planning Alert!** Because of this potential double benefit afforded owners that *materially participate* in the business activities (i.e., the owner’s net business “*losses*” are deductible and the net business “*income*” is generally exempt from the 3.8% NIIT), the “**material participation**” test is attracting much more scrutiny from the IRS and the Courts. We have recently seen a significant uptick in the number of cases the IRS is taking to Court contesting whether an owner has *materially participated* in the activities of his or her business. In these cases, IRS commonly argues that the owner’s activities were passive because the owner could not properly document that he or she met one of the “**material participation**” tests. These cases typically involve an owner who is not working for the business full-time (e.g., retired owners, a side business, remote owners). Although the Courts generally did not strictly require these individuals to produce daily logs of time spent on the activity, the Courts rarely accepted “*after-the-fact ballpark estimates*” of the time spent. To minimize exposure to IRS attacks, where “**material participation**” could be an issue, owners should contemporaneously document their hours worked in their business activities (e.g., by recording their hours in a daily or weekly calendar).

**Deductions For Business Expenses Paid By Partners And Shareholders May Be Limited.** Historically, the IRS has ruled that a partner may deduct business expenses **paid on behalf** of the partnership **only if** there is an agreement (preferably in writing) between the partner and the partnership providing that those expenses are to be paid by the partner, and that the expenses will not be reimbursed by the partnership. **Tax Tip.** If you are a partner paying unreimbursed expenses on behalf of your partnership, to be safe, you should have a written agreement with the partnership providing that those expenses are to be paid by you, and that the expenses will not be reimbursed by the partnership. **Planning Alert!** The Courts continue to hold that a corporate shareholder may not deduct expenses the shareholder pays on behalf of the corporation **unless** the shareholder is employed by the corporation, the shareholder is required to incur the expenses as a part of his or her duties as an employee, and there is an agreement or understanding that the corporation will not reimburse the expenses. Even if the expenses are deductible by the shareholder-employee, they are classified as *miscellaneous itemized deductions* which are subject to the 2% reduction rule, and are not deductible at all for *alternative minimum tax* purposes.

- **Please note** that these rules **apply to both S corporation and C corporation** shareholders. **Tax Tip.** If business expenses paid by a shareholder for an S corporation or C corporation are reimbursed to the shareholder under a qualified “*accountable plan*,” the corporation can take a full deduction and the shareholder may exclude the reimbursement from taxable income.

**Establishing A New Retirement Plan For 2016.** Calendar-year taxpayers wishing to establish a qualified retirement plan for 2016 (e.g. profit-sharing, 401(k), or defined benefit plan) **generally** must adopt the plan **no later than December 31, 2016**. However, a SEP may be established by the due date of the tax return (including extensions), but a **SIMPLE plan** must have been established **no later than October 1, 2016**.

**Self-Employed Business Income.** If you are self-employed, it continues to be a good idea to defer income **into 2017**, if you believe that your marginal tax rate for 2017 (including the new .9% Additional Medicare Tax and the 3.8% tax on Net Investment Income) will be equal to or less than your 2016 marginal tax rate. If deferring 2016 income to 2017 will save you overall taxes, and you use the cash method of accounting, consider delaying year-end billings until 2017. **Planning Alert!** If you have already received the check in 2016, deferring the deposit does not defer the income. Also, you may not want to defer billing if you believe this will increase your risk of not getting paid.

**Be Careful Before You Trade In A Business Vehicle.** If you are considering trading your business auto for another business auto, please call us first. If the tax basis of the old vehicle is significantly greater than the fair market value at the date of the trade (due to annual depreciation limits), a sale of the old auto (and a purchase of the new one) could produce a deductible tax loss that will be deferred if you trade. However, the sales tax implications of a sale, rather than a trade, must also be considered. **Personal Use Of Company Cars.** If your company provides employees with company-owned cars, the company is required to include the value of the personal use of the car in the employees' W-2 income. However, this is not required if the employee reimburses the company for the personal use. **Planning Alert!** If your company does not report the employee's personal use as W-2 income and the employee does not reimburse the company for the personal use, the IRS says the company's deductions (for depreciation, gas, tires, insurance, etc.) are lost to the extent of the personal use. In addition, the IRS will include any unreimbursed personal use in the employee's income even if the company is not allowed a deduction for the personal use portion. **Tax Tip.** If the employee chooses to reimburse the company for personal use of the car, the obligation for reimbursement should be established ***on or before December 31<sup>st</sup>*** so the employee will not have income in one year and a deduction in the next. This can be accomplished by establishing a published policy for reimbursement of personal use. Furthermore, your company should obtain signed statements from employees listing their business and personal mileage for the company car.

**Year-End Accruals To Employees.** Generally, if an accrual-basis business accrues year-end compensation to its rank-in-file employees (non-shareholder employees), the accrual must be paid no later than the 15th day of the third month after year-end to be deductible for the year of the accrual. Otherwise, the accrual is not deductible until paid. **Planning Alert!** These rules also apply to accrued vacation pay, and to accruals for services provided by independent contractors (e.g., accountants, attorneys, etc.).

**Accruals To "Related Parties."** Year-end accruals to certain cash-basis recipients must satisfy the following rules in order for an accrual-basis business to deduct the accruals. **These rules apply to fiscal year as well as calendar year businesses:**

- **Regular "C" Corporations.** If a C corporation accrues an expense (e.g., compensation, interest, etc.) to a cash basis stockholder owning ***more than 50%*** (directly or indirectly) of the company's stock, the accrual is not deductible by the corporation until the ***"day"*** it is includable in the stockholder's income. **Tax Tip.** If the corporation's tax rate for 2016 is significantly greater than the more-than-50% stockholder's individual rate for 2016, the accrued amount should be paid by the ***end of 2016.***
- **S Corporations And Personal Service Corporations.** If your S corporation or personal service C corporation accrues an expense to any shareholder (regardless of the amount of stock owned), the accrual is not deductible until the ***day*** it is includable in the shareholder's income.
- **Partnerships, LLCs, LLPs.** If your business is taxed as a partnership, its accrual of an expense to ***any owner*** will not be deductible until the ***day*** it is includable in the owner's income.
- **Other Related Entities.** Generally, an expense accrued by one related partnership or corporation to another ***cash-basis*** related partnership or corporation is not deductible until the ***day*** it is includable in the cash-basis entity's income.

**Planning For C Corporation Estimated Tax Requirements.** If your C corporation had less than \$1 million of taxable income for ***each*** of the past three tax years, it qualifies for the ***"small corporation safe harbor"*** for estimated taxes. This safe harbor allows the corporation to base its current year quarterly estimated tax payments on 100% of its ***"prior" year*** tax liability. If your corporation does not qualify for this safe harbor (i.e., it had \$1 million or more of taxable income in any of the prior three tax years), it must generally base its quarterly estimated tax payment (after the first installment) on 100% of its "current" year tax liability, or 100% of its annualized tax liability. **Planning Alert!** Even if your corporation otherwise qualifies for the ***small corporation safe harbor***, but it had no income tax liability in the prior tax year (e.g., it incurred a tax loss for the prior year or was not in existence last year), it must pay 100% of the "current" year tax or 100% of the annualized tax to avoid an estimated tax underpayment penalty. **Tax Tip.** If your corporation currently qualifies for the ***"small corporation safe harbor"*** and anticipates showing a small tax loss in 2016, you may want to

accelerate income (or defer expenses) in order to generate a ***small income tax liability in 2016***. This will preserve the corporation's ability to use the "100% of last year's tax" safe harbor for 2017 estimates. **Caution!** This technique may not be advisable if your corporation anticipates a 2016 net operating loss that can be carried back to previous years that would generate a sizeable refund. **Planning Alert!** If your corporation expects taxable income of more than \$1 million for the first time in 2016, consider ***deferring income into 2017 or accelerating deductions into 2016*** to ensure the corporation's 2016 taxable income does not exceed \$1 million, so that it retains the *small business safe harbor* for 2017.

### **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 of the planning ideas discussed in this letter, or if you need additional information. **Note!** The information contained in this material 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.

**Disclaimer:** Any tax advice contained in the body of this material was not intended or written to be used, and cannot be used, by the recipient for the purpose of promoting, marketing, or recommending to another party any transaction or matter addressed herein. The preceding information is intended as a general discussion of the subject addressed and is not intended as a formal tax opinion. The recipient should not rely on any information contained herein without performing his or her own research verifying the conclusions reached. The conclusions reached should not be relied upon without an independent, professional analysis of the facts and law applicable to the situation.