2013 NEW DEVELOPMENTS LETTER

INTRODUCTION

We have witnessed more tax changes and developments in 2013 than in any year in recent memory, and these changes impact virtually every individual and business taxpayer. For example, 2013 ushered in: **1)** the ***"American Tax Relief Act"*** (passed on January 1, 2013) that includes massive changes to income, estate, and gift taxes; **2)** the comprehensive ***"Affordable Care Act"*** (ACA) regulations explaining the rapidly-approaching health care mandates; **3)** extensive IRS guidance on the new ***3.8% Tax On "Net Investment Income"*** (3.8% NIIT) and the ***.9% "Additional Medicare Tax"*** on W-2 wages and self-employment income of higher-income individuals; and **4)** recently-released ***Final Capitalization Regulations*** establishing comprehensive rules for determining whether expenditures relating to business property (e.g., equipment, vehicles, buildings) must be capitalized and depreciated over time, or may be deducted immediately.

In addition, the IRS and the Courts have issued several landmark rulings and cases that could have a significant impact on both individual and business taxpayers. For example, in response to last summer's Supreme Court decision, the IRS has ruled that same-sex couples who were married in a state that authorizes same-sex marriages generally must be treated as "married" for all federal tax purposes.

Keeping up with these rapidly-changing tax provisions is extremely challenging. To help you with this task, we are sending this letter providing a summary of the key legislative, administrative, and judicial tax developments that we believe will have the greatest impact on our clients. **Caution!** 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.

Caution! Tax planning strategies suggested in this letter may subject you to the alternative minimum tax (AMT). For example, many deductions are not allowed for AMT purposes, such as: personal exemptions, the standard deduction, state and local income taxes, and real estate taxes. Also, the AMT can be triggered by taking large capital gains, having high levels of dividend income, or exercising incentive stock options. Therefore, **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 AMT and any state income tax) with and without that strategy. **Please Note!** This letter contains ideas for Federal income tax planning only. **State income tax issues are not addressed.**

To help you locate items of interest, we have grouped the developments into:

1) DEVELOPMENTS IMPACTING PRIMARILY "INDIVIDUALS"

2) DEVELOPMENTS IMPACTING PRIMARILY "BUSINESSES"

DEVELOPMENTS IMPACTING PRIMARILY INDIVIDUALS

AMERICAN TAX RELIEF ACT ("ATRA") OF 2012

On January 1, 2013, Congress passed the ***"American Tax Relief Act ("ATRA") Of 2012."*** This major tax legislation permanently retains the Bush-era tax rates for lower and moderate income individuals, while also permanently raising the highest tax rates on regular income, dividends, and capital gains for individuals with higher incomes; establishes a permanent lifetime gift and estate tax exemption amount of $5 million as adjusted for inflation ($5.25 million for 2013) and sets a top estate and gift tax rate of 40%; and locks in alternative minimum tax (AMT) relief with no sunset dates. In addition, the legislation retroactively extended (or made permanent) ***a long list of tax breaks*** for both individuals and businesses that had recently expired. **Planning Alert!** Our reference to ***"permanent"*** means that the provision ***has no sunset date*** after *ATRA* (Congress could always change these provisions with future legislation).

Income Tax Rates Increased For Certain Higher-Income Taxpayers. ***Beginning in 2013,*** *ATRA* permanently increases the highest ***"income tax"*** rates on individuals, estates, and trusts. **Planning Alert!** The tax increases discussed below ***do not include*** the new ***.9% Additional Medicare Tax*** or the new ***3.8% Net Investment Income Tax*** under the ***Affordable Care Act*** (discussed in more detail later in this letter), which also apply to higher-income taxpayers beginning in 2013.

- **Highest "Ordinary" Income Tax Rate For Individuals Increased To 39.6%.** Although ATRA permanently continues the Bush-era 10% to 35% income tax brackets, it added an additional 39.6% tax bracket for higher income individuals. ***Beginning in 2013,*** the new 39.6% tax rate applies to ***taxable income*** of an individual that ***exceeds*** the following thresholds: ***$450,000*** for married couples ***filing joint returns*** ($225,000 if married filing separate returns); ***$400,000*** for ***single filers;*** and ***$425,000*** for ***heads of households.*** These thresholds are adjusted for inflation after 2013.

- **Highest "Income Tax" Rate For Estates And Trusts Increased To 39.6%.** ***Beginning in 2013,*** *ATRA* permanently increases the highest income tax rate for income taxed to a trust or estate from 35% to 39.6%. For 2013, the 39.6% rate applies to trust or estate taxable income that ***exceeds $11,950.*** **Tax Tip!** The income threshold for taxing an individual at 39.6% (e.g., $400,000 if single) is substantially higher than the income level for taxing a trust or estate at 39.6% (i.e., $11,950 for 2013). Consequently, *ATRA* has created an additional tax incentive for distributing trust or estate income to an individual beneficiary where the beneficiary's income is taxed in a lower tax bracket.

- **Highest Long-Term Capital Gain And Qualified Dividend Rates Increased To 20%.** *ATRA* permanently retains the maximum long-term capital gain and qualified dividend rates at 15% for lower and moderate income individuals. *ATRA* also permanently retains the zero percent tax rate for long-term capital gains and qualified dividends where the capital gain or dividend income would otherwise (if ordinary income) be taxed in the 15% or 10% tax brackets (for 2013, taxable income up to $36,250 for single individuals and $72,500 for joint filers is taxed in the 15% bracket or below). However, ***beginning in 2013,*** for long-term capital gains or qualified dividends that would otherwise be taxed in the 39.6% bracket, *ATRA* increases the rate to 20%. For example, to the extent the ordinary income plus long-term capital gains and dividends of a single individual cause his or her taxable income to exceed $400,000 in 2013 (i.e., the income threshold for the 39.6% bracket), the capital gains and dividends will be taxed at 20%. **Trust And Estates.** For long-term capital gains and/or qualified dividends that would otherwise be taxed in the 39.6% bracket of a trust or estate (i.e., for 2013, where taxable income exceeds $11,950), *ATRA* permanently increases the rate to 20%. **Tax Tip.** The retention of the zero percent rate for long-term capital gains and qualified dividends is particularly important to lower-income retirees who rely largely on investment portfolios that generate dividends and long-term capital gains.

Personal Exemption And Itemized Deduction Phase-Outs Reinstated. During most of the past two decades, higher-income individuals were subject to an income phase-out provision that reduced their ***personal exemptions*** and ***itemized deductions*** as their income exceeded certain thresholds. All individuals were given a three-year reprieve from these phase-outs ***from 2010 through 2012.*** Under *ATRA*, ***beginning in 2013,*** these phase-out provisions are permanently reinstated for individuals with ***adjusted gross incomes***

exceeding the following threshold amounts: ***$300,000*** for married couples ***filing joint returns*** ($150,000 if married filing separately); ***$250,000*** for ***single filers;*** and ***$275,000*** for ***heads of households.*** These thresholds will be adjusted for inflation after 2013. **Tax Tip.** The phase-out provisions ***do not apply*** to the following itemized deductions: medical expenses, investment interest, gambling losses, casualty losses, and theft losses. **Planning Alert!** Individuals whose itemized deductions and/or personal exemptions are reduced by these phase-out provisions will have higher "effective" tax rates than listed in the published statutory-rate schedules discussed above.

Selected **Tax Breaks Scheduled To Expire After 2013!** *ATRA* ***retroactively*** extended ***through 2013*** the following popular tax breaks for ***individual*** **taxpayers: 1)** School Teachers' Deduction (Up to $250) for Certain School Supplies; **2)** Election to Deduct State and Local Sales Tax; **3)** Deduction (Up to $4,000) for Qualified Higher Education Expenses; **4)** Expanded Deduction and Carryover Limits for Charitable Contributions of Qualified Conservation Easements; **5)** Deduction for Mortgage Insurance Premiums as Qualified Residence Interest; **6)** Tax-Free Treatment of Qualifying Transfers from IRAs of Individuals Over Age 70 ½ Directly to Charities; **7)** Income Exclusion for Discharge of Qualified Principal Residence Indebtedness; and **8)** 10% Credit (with Lifetime Cap of $500) for Qualified Energy-Efficient Home Improvements. In addition, ATRA extended the up to $2,500 American Opportunity Education Credit through 2017.

THE NEW .9% ADDITIONAL MEDICARE TAX AND THE 3.8% NET INVESTMENT INCOME TAX

Starting in 2013, the ***Affordable Care Act*** (*ACA*) imposes a ***new .9% Additional Medicare Tax*** on the wages and self-employment income of higher-income individuals, as well as a *new* ***3.8% Net Investment Income Tax (3.8% NIIT)*** on their *net investment income*. These taxes are ***in addition to*** the tax rate increases under *ATRA* (discussed above).

.9% Additional Medicare Tax On "Earned Income" Of Higher-Income Individuals. The *Affordable Care Act* imposes a new ***.9% Additional Medicare Tax on W-2 wages and self-employment earnings received by individuals after 2012*** that exceed certain thresholds. This .9% Medicare tax is calculated on your individual income tax return and generally applies to the amount by which the ***sum of*** your ***W-2 wages*** and your ***self-employment earnings*** exceeds the following thresholds: ***$250,000*** if you are ***married filing jointly; $200,000*** if you are ***single;*** or ***$125,000*** if you are ***married filing separately*****.** For married individuals filing a joint return, the .9% Additional Medicare Tax applies to the extent *the sum of* both spouses' W-2 earnings and self-employment earnings exceeds the $250,000 threshold.

3.8% Tax On "Net Investment Income" Of Higher-Income Taxpayers. ***Beginning in 2013*****,** the *Affordable Care Act* imposes a new 3.8% tax 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, including "passive" 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 applies to individuals with modified adjusted gross income (MAGI) exceeding the following ***"thresholds": $250,000*** for ***married filing jointly; $200,000*** if ***single;*** and ***$125,000*** if ***married filing separately.*** The 3.8% NIIT is imposed upon ***the lesser of*** an individual's **1)** modified adjusted gross income (MAGI) in excess of the ***threshold,*** or **2)** net investment income. **Example.** For 2013, Mark (a single taxpayer) has MAGI of $210,000 comprised of W-2 compensation of $180,000 and "investment income" (e.g., capital gains, interest, dividends) of $30,000. Mark has $10,000 of deductible expenses allocable to investment income. Therefore, Mark's "net investment income" is $20,000. The 3.8% NIIT would be imposed on the ***lesser of*** **1)** ***$10,000*** (i.e., Mark's MAGI of $210,000 less the $200,000 threshold for a single individual), or **2)** ***$20,000*** (Mark's net investment income). Therefore, Mark would pay NIIT of $380 (i.e., $10,000 x 3.8%).

- **Trusts And Estates Are Subject To The 3.8% NIIT.** In 2013, ***trusts and estates*** are subject to the 3.8% NIIT on the **lesser of: 1)** the adjusted gross income of the trust or estate in excess of $11,950, or **2)** the undistributed net investment income of the trust or estate. **Planning Alert!** Timely distributions of *net investment income* from an estate or trust could reduce or eliminate the 3.8% NIIT at the trust or estate

level. However, the distributed NII would be NII to the beneficiary. But, the beneficiary would avoid the 3.8% tax on the distributed income if the beneficiary's MAGI is below the NIIT threshold (e.g., below $200,000 for a single individual beneficiary) after considering the income from the distribution.

- **<u>"Passive" Income.</u>** *Net investment income* also includes net income that you report from a business activity if you are a "passive" owner (unless the income constitutes *self-employment* income that is subject to the 2.9% Medicare tax). You will be deemed a "passive" owner if you do not "materially participate" in the business as determined under the traditional "passive activity loss" rules or if the income is otherwise deemed not to be passive. For example, under the *passive activity loss* rules, you may be deemed to be a *"passive"* owner unless you spend more than 500 hours working in the business during the year. Furthermore, subject to limited exceptions (e.g., qualified real estate professionals, rentals to a business in which you are not passive), *rental income* is generally deemed to be "passive" income under the *passive activity loss* rules, regardless of how many hours you spend working in the rental activity. If you believe that you may have income that could be classified as "passive" under these rules, please contact our firm. We will be glad to evaluate your situation to determine whether there are steps you could take to avoid "passive" income classification, and thus, minimize your exposure to the 3.8% NIIT.

<u>NEW EXCISE TAXES AND TAX CREDITS UNDER THE AFFORDABLE CARE ACT</u>

Last summer, the United States Supreme Court upheld the constitutionality of the ***"Affordable Care Act" (ACA)*** removing most of the ***"constitutional"*** issues surrounding health care reform. In addition to changing the rules for the health care industry, *ACA* contains several critically-important ***"tax provisions"*** that are designed to serve as the ***"enforcement mechanisms"*** for *ACA's* health insurance mandates. More specifically, **beginning in 2014,** these *ACA "tax provisions"* generally: **1)** require individuals to maintain qualified health insurance coverage, or pay an excise tax with their individual income tax returns (the ***"Individual Mandate"***); **2)** allow certain low-and-middle income individuals a refundable income tax credit that will also be reported on an individual's income tax return (the ***"Premium Assistance Credit"***) to help pay for health insurance premiums; and **3)** require employers that employ at least 50 employees to offer qualified health care coverage to employees or pay an excise tax ***if at least one full-time employee receives*** the premium assistance credit (the ***"Employer Mandate"***). <u>Planning Alert!</u> The *"Affordable Care Act"* states that these three *"tax provisions"* are to become effective in 2014. However, last July the IRS announced that it is **postponing** its enforcement of the ***"excise tax"*** under the ***"Employer Mandate"*** provisions of ACA **until *2015.*** As we complete this letter, although subject to much controversy, the IRS says that it does not intend to postpone the effective date of the ***"Individual Mandate"*** excise tax or the availability of the ***"Premium Assistance Credit"*** beyond 2014.

<u>Excise Tax On Uninsured Individuals (The "Individual Mandate").</u> ***Starting in 2014,*** you may have to pay an excise tax with your individual income tax return (Form 1040) if you or your dependents are not covered by a ***"qualified health plan,"*** unless you or your dependents qualify for a ***specific exemption.*** Also, unless an exemption applies, if you are married and file a joint return, you could owe an excise tax if either **you, your spouse,** or **your dependents** are not covered by a *"qualified health plan."* To avoid this excise tax, an individual generally must either: **1)** have ***"qualified health plan"*** coverage, or **2)** qualify for a specific ***"exemption"*** from the tax. Qualified health plan coverage includes (but is not limited to) a long list of government-sponsored plans (e.g. Medicare, Medicaid, TRICARE); most employer-sponsored group health plans; and health insurance purchased on the new state health insurance exchanges.

- **<u>Amount Of Excise Tax.</u>** ***Beginning in 2014,*** an excise tax will apply for ***each month*** that you, your spouse, or your dependents do not have *"qualified health insurance"* coverage (and do not otherwise meet an exemption). Although the excise tax is determined on a monthly basis, the ***maximum excise tax*** for the ***entire 2014 tax year*** is the ***<u>greater of:</u>*** **1)** ***$95*** per uninsured ***adult member*** of the household, plus ***$47.50*** per uninsured member of the household ***under age 18, not to exceed $285,*** or **2)** ***1% of "household income"*** in excess of the income threshold required for filing a Form 1040 return. However, the overall penalty under this formula cannot exceed the national average premium for "bronze" level health insurance offered through the state insurance exchanges.

- **Individuals "Exempt" From Excise Tax.** Individuals who are ***not covered*** under a ***"qualified health plan"*** will generally be ***exempt*** from the excise tax if included in any of the following groups: **1)** Individuals in the U.S. illegally; **2)** Members of certain religious sects; **3)** Members of Federally-recognized Indian tribes; **4)** Incarcerated individuals; **5)** Certain U.S. Citizens living abroad; **6)** Individuals with household **income below the threshold for filing an income tax return; 7)** Individuals who fail to have "qualified health plan coverage" for less than 3 months during a year; **8)** Individuals for whom health insurance is "unaffordable" based on the individual's household income; and **9)** Individuals who obtain an economic *"hardship exemption certificate"* from a state exchange. **Planning Alert!** Item 7 above (the exemption from penalty for individuals without coverage for less than three months) should enable individuals to obtain qualified insurance coverage on or before March 31, 2014 and avoid the penalty for 2014, if the coverage is maintained for the remainder of the year.

The Refundable "Premium Assistance Credit." ***Beginning in 2014,*** *ACA* provides for a tax credit (the ***"premium assistance credit"*** or ***"PAC"***) for eligible low-and-middle income individuals. The PAC is ***only available to individuals*** who purchase individual and family health insurance ***through a state exchange and is calculated on your income tax return.*** The *PAC* is "refundable." This generally means that to the extent the credit exceeds the taxes you would otherwise owe with your income tax return, the IRS will send you a check for the excess. However, unlike the classic refundable credit which is paid directly to the taxpayer, the *PAC* will generally be paid ***in advance directly to the insurer.*** An individual *generally* qualifies for the *"premium assistance credit"* (PAC) ***only if*** the individual's ***"household income"*** is ***at least 100%*** and ***not more than 400%*** of the Federal Poverty Line (FPL) for the individual's family size. ***For example,*** using the 2013 FPL, a family of four could qualify for some *PAC* ***up to $94,200 of household income!***

IRS ISSUES RULING ADDRESSING "SAME-SEX" MARRIAGES FOR TAX PURPOSES

Last June, in a landmark decision (Windsor), the U.S. Supreme Court held that ***Section 3 of the Defense of Marriage Act (DOMA),*** which ***required same-sex spouses to be treated as unmarried*** for purposes of federal law, was ***unconstitutional.*** The Court applied its ruling to "lawful marriages," essentially leaving it to the IRS to define "lawful marriages" for Federal tax purposes. In response to the *Windsor* decision, the IRS recently ruled that: **1)** it will ***recognize as married for Federal tax purposes*** same-sex couples who were married in a state, the District of Columbia, a U.S. territory, or a foreign country that authorizes "same-sex" marriages, **regardless of the couple's current domicile** (i.e., "state of celebration" rule), but **2)** it will ***not recognize as married for Federal tax purposes*** same-sex or opposite-sex couples who have entered into a *registered domestic partnership*, *civil union*, or other *similar formal relationship* recognized under state law ***"that is not denominated as a marriage under the laws of that state."*** **Practice Alert!** Under this ruling, legally-married same-sex couples will be treated as married for all Federal tax purposes, including for income, gift and estate tax purposes.

Filing Current Or Amended Returns. The IRS says that legally-married, same-sex couples who file an ***"original"*** income tax return ***after September 15, 2013*** must file as married filing jointly or married filing separately. If a legally-married, same-sex couple filed an ***"original"*** income tax return ***before September 16, 2013,*** the couple may choose (but is not required) to amend the return (generally by filing Form 1040X) and use married filing jointly or married filing separately status, assuming the statute of limitations for amending the return has not expired. The IRS also says that a same-sex spouse may file a **refund claim** for **gift or estate taxes** by filing **Form 843** ("Claim For Refund And Request For Abatement"). A taxpayer generally may file an amended return or other claim for refund within three years from the date the return was filed or two years from the date the tax was paid, whichever is later.

DEVELOPMENTS IMPACTING PRIMARILY BUSINESSES

AMERICAN TAX RELIEF ACT ("ATRA") OF 2012

As mentioned previously in this letter, the ***American Tax Relief Act (ATRA) Of 2012*** increased the highest income tax rate for individuals, trusts, and estates. However, ATRA did not change the general tax rates on regular "C" corporations. The top statutory "regular" corporate income tax rate remains at 35%. However, for ***tax years beginning after 2012,*** *ATRA* did permanently increase the *accumulated earnings* and *personal*

holding company tax rates ***from 15% to 20%.*** **Planning Alert!** Probably the most significant tax impact *of ATRA* on businesses is its temporary extension of a series of popular business tax breaks some of which are discussed below.

Selected* "Business" Tax Breaks Extended Through 2013.** *ATRA **retroactively extended ***through 2013*** the following tax breaks for ***businesses*** that had expired or had been reduced after 2011 or 2012: **1)** 15-year (Instead of 39-year) Depreciation Period for "Qualified" Leasehold Improvements, Restaurant Property, and Retail Improvement Property; **2)** 7-year Depreciation Period for Certain Motor Sports Racetrack Property; **3)** Research and Development Credit; **4)** Employer Differential Wage Credit for Payments to Military Personnel; **5)** Favorable S Corporation Charitable Contribution Provisions Involving Capital Gain Property; **6)** Temporary Exclusion of 100% of Gain on the Sale of Certain Small Business Stock for Both Regular Tax and AMT Purposes; **7)** a Host of Tax Benefits for Qualified Energy-Efficient Expenditures, and for Qualifying Investments in Empowerment Zones; **8)** ***5-Year (Instead of 10-year) Recognition Period*** for S Corporation Built-In Gains Tax; **9)** Election for C Corporations to Exchange Bonus Depreciation for Refundable AMT Credits; **10)** Parity Between Employer-provided Parking and Employee Transportation Fringe Benefits; **11)** Enhanced Charitable Contribution Rules for Qualifying Business Entities Contributing Food Inventory; **12)** *Work Opportunity Tax Credit* (Including the Expanded Credit for "Qualified Veterans"); **13)** 50% ***First-Year 168(k) Depreciation Deduction*** (Including the Additional First-year Depreciation of $8,000 for Passenger Vehicles); and **14)** Expanded ***Section 179 Deduction*** (e.g., $500,000 Cap and Expansion to "Qualified Real Property").

AFFORDABLE CARE ACT (ACA) DEVELOPMENTS

IRS Delays Effective Date Of Employer Mandate Excise Tax And Certain Health Insurance Information Reporting. ***ACA*** generally provides that ***"applicable large employers"*** (using a 50-employee threshold test) must offer an ***"eligible employer health plan"*** to its full-time employees, or face a ***nondeductible excise tax*** (the so-called *play-or-pay* penalty) **if at least one of its full-time employees** obtains insurance on the exchange and **receives a premium assistance credit.** Although *ACA* states that this provision becomes effective in 2014, last summer the ***IRS announced that it will not impose this excise tax on employers until 2015.*** The IRS also says that it will delay, ***from 2014 to 2015,*** the *ACA* requirement that employers must provide certain annual health insurance information to the IRS and to their employees. **Note!** This delay essentially gives employers an additional year to prepare for the health care mandate imposed by *ACA.* **Planning Alert!** The employer ***"excise tax"*** for failure to offer an *"eligible employer health plan"* to employees applies only to *"applicable large employers*." An ***"applicable large employer"*** is generally an employer that employed **on average** 50 or more employees (determined by adding together the number of "full-time employees" and the"full-time equivalent employees") during each month of the entire ***preceding calendar year.*** Under this rule, an employer would be classified as an "*applicable large employer"* for ***2015*** (i.e., the first year the IRS will enforce the employer mandate excise tax) if it employed a **monthly average** of at least 50 employees *("full-time employees"* plus *"full-time equivalent employees"*) during the ***entire 2014 calendar year.***

IRS ISSUES FINAL REPAIR VS. CAPITALIZATION REGULATIONS

One of the most significant "tax" issues confronting business taxpayers is whether they must capitalize or deduct (as a current "expense") expenditures for acquiring, maintaining, or repairing "tangible" business property (e.g., equipment, vehicles, buildings, supplies, etc.). In December 2011, the IRS released long-awaited ***"temporary"*** repair vs. capitalization regulations ("repair regulations") applicable to "tangible" business property which were originally scheduled to be effective for tax years beginning after 2011. However, in November 2012, the IRS announced that it planned to issue the ***"final"*** repair regulations during 2013, and that taxpayers ***were not required*** to apply either the "temporary" or the "final" repair regulations ***until tax years beginning after 2013.*** As promised, in September 2013, the IRS released its "final" repair regulations which are generally effective ***for tax years beginning after 2013.***

- **Generally Good News!** As compared to the earlier *"temporary*" regulations, the *"final"* expense regulations include significant taxpayer-friendly changes. For example, the *final* regulations contain: **1)** a new ***"elective"*** *de minimis safe harbor* generally allowing taxpayers that meet certain criteria to deduct

individual purchases of tangible business property not exceeding $500 (not exceeding $5,000 for certain businesses that have a qualifying financial statement); **2)** a new ***"elective"*** *de minimis safe harbor* generally allowing a business with average gross receipts of $10 million or less to deduct qualifying expenditures with respect to buildings that cost $1 million or less; **3)** a revised and simplified ***"routine maintenance"*** safe harbor that, if satisfied, allows taxpayers of any size to deduct qualifying expenditures with respect to personal property (e.g., business equipment, vehicles, etc.) and buildings; and **4)** clearer rules for identifying "incidental" materials and supplies that are deductible when paid for and "nonincidental" materials and supplies which are deductible when consumed. In addition, the IRS simultaneously released new *proposed* regulations that make several pro-taxpayer changes to the tax treatment for the disposition of depreciable property (including revised tax treatment for the disposition of a building component).

- **Planning Alert!** These new ***"final" regulations*** are long (approximately 200 pages), comprehensive, and are generally not effective until ***tax years beginning after 2013.*** However, the IRS ***gives us the option*** to apply either the "final" regulations, the "temporary" regulations (released in 2011), or the older pre-2011 regulations ***for tax years beginning in 2012 or 2013.*** Moreover, there are provisions in the final regulations that may make it advantageous for you to: **1)** have written "expensing" policies in place as early as January 1, 2014; **2)** amend your 2012 return to retroactively "elect" one or more of the *safe harbors* (discussed above) allowed under the final regulations; or **3)** apply for an accounting method change to apply the final regulations to prior years. Consequently, our firm is in the process of examining how these rules apply to various situations. After we have completed our review, we will help you evaluate how these regulations impact your business, and the steps you need to take to comply with the regulations beginning in 2014. In the meantime, if you need more information, feel free to call us.

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 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.

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