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IT IS OFFICIAL

On September 27, 2010, the President signed the “Small Business Jobs Act” (SBJA) into law as Public Law 111-240. It includes two of our top priorities. Unfortunately, both of them are extended temporarily.

The “direct expensing” allowance or “Section 179 expensing” for the tax code section that permits it, has been increased and extended – temporarily. The new law increases the thresholds to \$500,000 and \$2,000,000 for the taxable years beginning in 2010 and 2011. At the end of 2011, the amounts will revert to \$25,000 and \$200,000, respectively.

The new law also extends the additional, first-year 50 percent depreciation bonus for qualifying property purchased and placed in service in 2010.

SBJA removes cell phones and similar devices from the list of items that require taxpayer business purpose substantiation, so now their cost can be deducted or depreciated like other business property, without onerous recordkeeping requirements.

Under existing law, “pass-through” business entity owners (sole proprietors and some partners and S Corporation shareholders) are not permitted to deduct the cost of health insurance for themselves and their family members for purposes of calculating self-employment tax. The new law allows business owners to deduct the cost of health insurance incurred in 2010 for themselves and their family members in the calculation of their 2010 self-employment tax.

The new law also creates a Small Business Lending Fund to provide the U.S. Department of the Treasury with the ability to purchase preferred stock and other debt instruments from eligible financial institutions that have less than \$10 billion in total assets. The program is structured to provide incentives to community banks to make loans to smaller businesses.

FORM 1099

One item the SBJA did not address is the repeal of the provision enacted earlier this year that requires a business to issue tax information reports, known as Forms 1099, for all vendors of goods or services to which the business paid at least \$600 in a year. We tried to add an amendment in the Senate to SBJA to repeal it, but for a variety of reasons we were not able to get

the 60 votes needed to have it repealed. For the moment, the provision remains “on the books” and we will pursue repeal during the remainder of this Congress and in the next one if necessary.

Unfortunately, the new law increases the penalties for inadvertent filing errors when filing Form 1099. The penalties double. This provides an additional reason to secure repeal of the Form 1099 requirement.

THEY ARE COMING BACK

Congress will return after the election for a lame duck session. They have no choice - Congress failed to fund the government for the fiscal year that began on October 1st. As a result, Congress passed a “continuing resolution” which funds the government on a short-term basis. Before leaving to campaign, Congress passed a “CR” funding the government until December 3rd.

I cannot remember a time with so many open tax issues on the table. The list of expired and expiring tax provisions is unbelievable.

Congress did not renew the Research and Development Credit for this year before going home. It did not renew the temporary increases in the income thresholds at which the Alternative Minimum Tax applies. If Congress does not act during the lame duck session, these have 2010 tax liability ramifications.

But those are small potatoes compared to the other open tax issues.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) created a new 10 percent regular income tax bracket for a portion of taxable income that was previously taxed at 15 percent. EGTRRA also reduced the other regular income tax rates. The regular income tax rates of 28 percent, 31 percent, 36 percent, and 39.6 percent were reduced to 25 percent, 28 percent, 33 percent, and 35 percent, respectively. Other items, including a child care credit, family and education expenses deductions, and marriage rate penalty relief, will expire at the end of the year. The reduced capital gains rate and the reduced dividends tax rate also expire at the end of the year. The estate tax is currently repealed. It returns in 2011 with a top marginal rate of 55 percent and an individual exemption of \$1 million.

Until we see how the election plays out, speculating about what Congress will do during the lame duck is mostly a parlor game. Nevertheless, if I had to bet, I am going with the theory that Congress will do something about the individual rate cuts and adjustments that are to expire at the end of the year. The real question is the scope of the renewal. The President and some Democrats favor renewing only those that would affect middle and lower income levels (i.e. under \$250,000 in income) but there is a significant block of Democrats and almost all Republicans who favor renewing all of the individual-related tax relief provisions. Just before the House adjourned, a group of Democrats engaged in a “protest” vote that gave the leadership some idea of how widespread the “renew all” sentiment exists. It suggests there are probably enough votes to renew them all.

Renewal of the capital gains, dividends and estate tax relief are “longer” shots.