2020 Year End Tax Planning Tips

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In a year that has forced many business owners to be reactionary, tax planning offers an opportunity to be proactive about the health of your business. The CARES Act created a number of new tax benefits that are available for one year only, and these benefits have largely been lost in the sea of various stimulus programs (and compliance with those programs). This article summarizes a few tax opportunities available to your business. Due to the fact that these tax benefits are only available for 2020, **it is more important than ever to begin your tax planning before the end of the year**.

Tax Impact of Forgiven PPP Loans

The CARES Act clearly states that forgiven PPP loans will not be considered taxable income (contrary to the default rule about discharged indebtedness). However, the IRS has issued Revenue Ruling 2020-27 and Notice 2020-32, both of which provide that PPP borrowers are not eligible to claim tax deductions for expenses paid from PPP loan proceeds. It is increasingly unlikely that Congress will reverse this position.

The takeaways for PPP borrowers are:

- If you have not submitted your PPP loan, you should submit it soon. We have seen few new rules regarding forgiveness eligibility and it is highly unlikely the deduction disallowance rule will be reversed.
- If you can allocate the entire PPP amount to payroll, do it. Not only will this make the forgiveness application paperwork simpler, it will also only require you to adjust one line on your tax return for reduced wage deductions.
- Know that your deductions will be reduced by your loan amount. For example, if you have a $100,000 PPP loan that you used entirely for wages, your wage deduction will be reduced by $100,000. You should be planning proactively now to determine whether you should generate additional deductions to offset this reduction.

Other CARES Act Changes

Many of the onerous rules introduced in the Tax Cuts and Jobs Act (TCJA) have been suspended for 2020. This creates a one year only tax planning opportunity to use the benefits of the TCJA without the corresponding restrictions.

Specific examples include:

- The Employee Retention Tax Credit was created.
  - Available to nearly all employers and creates a tax credit equal to 50% of up to $10,000 in qualified wages ($5,000 per employee) paid by an employer.
  - To be eligible, employers must have either: (a) been closed due to a governmental order, or (b) experienced a drop in gross receipts in any 2020 quarter of 50% or more compared to the same quarter in 2019.
  - There are nearly 100 FAQs on this tax credit – proceed with caution.
- Net Operating Loss (NOL) limitations are suspended for 2020.
  - The TCJA limited NOLs to 80% of a taxpayer's taxable income, while eliminating the ability to carry back NOLs (except for farmers) and creating an unlimited carry-forward.
  - The CARES Act eliminated the 80% limitation for tax years 2018, 2019, and 2020. It also permits a 5 year carry-back.
  - Taxpayers impacted by the limit in 2018 and 2019 may seek a refund for the difference, and can use NOLs on a dollar-for-dollar basis in 2020.
- The Excess Business Loss Rule (EBL) is suspended.
  - The EBL rule applies to all non-corporate tax payers and effectively limits the deductibility of business losses to $500,000 for married filing jointly tax payers. Losses over this amount become NOLs.
  - The CARES Act suspends the EBL rule until 2021. Just like NOLs, if the EBL rule limited your deductions in 2018 and 2019, you can seek a refund. The rule also does not apply for 2020.
- The "Retail Glitch" under Bonus Depreciation was fixed.
  - The TCJA (erroneously) characterized "qualified improvement property," defined as improvements to the interior of non-residential buildings, as 39 year property. That classification made those expenses ineligible for Bonus Depreciation.
  - The CARES Act categorized qualified improvement property as 15 year property, making it eligible for bonus depreciation.

The governmental response to the pandemic created an extensive and disjointed impact on the tax code. More than any other year, it is especially important to talk with your tax attorney and CPA about your tax situation before the end of the year. Contact your Foster Swift business and tax attorney to learn more about how these changes impact your business.