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The Uncertain Future of Section 179

GENEROUS TEMPORARY TAX DEDUCTIONS HELP SMALL BUSINESSES OFFSET THE COST OF NEW EQUIPMENT

BY ERIK GUNN

Will Congress renew higher limits under Section 179 of the U.S. tax code for 2015? It's a question that has dogged small-business owners annually as they contemplate using generous temporary deductions expanded to stimulate the economy during recessionary times.

Section 179 is a great deal, and most contractors know it. The rule lets small-business owners take an immediate federal tax deduction on the full purchase price of certain new equipment the year it is purchased. Before its implementation, business owners were required to take the deduction piecemeal over several years, factoring in its depreciating value in the process.

The section has been around a long time, and no one's talking about terminating it. That's not the issue. What no one knows for sure is whether the value for the deduction will stay as high as it's been in the recent past. And if past patterns offer any clue, we won't know until the year is almost out. That doesn't offer much reassurance to contractors looking into big-ticket items like a new vacuum truck.

EXPANDING THE BENEFITS

Section 179 has traditionally capped the cost of the equipment eligible for the deduction at \$25,000. Also, for businesses that spent more than \$125,000 on equipment in a year, the cap itself went down. So the measure tended to be targeted at really small businesses.

More than a decade ago, however, Congress passed a temporary provision that boosted the cap. For the last few years, a business could qualify for the immediate deduction on equipment costing up to \$500,000. The temporary

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Eva Rosenberg

change also boosted the ceiling on total annual equipment purchases that a company could make and still qualify for the full deduction to \$2 million.

Those changes were made as part of an economic stimulus program under President George W. Bush after the recession that followed the 9/11 attacks. But they were always written as temporary adjustments. Since then, the temporary adjustments have continued to be renewed from year to year.

That sets up an annual cliffhanger, with Congress deciding at the proverbial 11th hour every year to extend the higher deduction limit and the higher spending ceiling to qualify for the provision. Sure enough, in December 2014, the lawmakers did it once again, approving an extension so the provision is much more generous than it used to be.

When it comes to those annual extensions, "Congress has been quite consistent for the last several years about not passing legislation until after the year ends," says Eva Rosenberg, the proprietor of TaxMama.com, a website that fields visitors' tax questions.

In fact, she points out, 2014 lawmakers acted a bit sooner than usual, voting to extend the provision back on Dec. 16.

(In the past, when the extension hasn't been granted until after the new year has begun, lawmakers have simply made it retroactive to the year just concluded.)

Even with the earlier activity, by the time Congress finally acted, "there simply wasn't time to order the heavy-duty equipment, have it delivered and set up, and put it into use in 2014," Rosenberg says.

TAX LAW TEA LEAVES

That doesn't mean businesses didn't get the break. But Mathias Weber, tax principal at the California-based accounting firm Haskell & White, says that for those businesses it was a lucky extra. They could not include Section 179 as part of their decision-making process.

So while many businesses have probably benefited from the more generous rule when tax time rolled around, they were flying blind at the time of the purchase itself.

Last year, businesses that waited until Congress acted before pulling the trigger on buying a piece of equipment "had less than two weeks to make decisions on new purchases," Weber says. Furthermore, he points out, for a business to qualify for the break, the new equipment or technology "must be 'placed in service' in the year you take the deduction."

So what's the forecast for 2015?

Weber takes a cautious approach as he looks ahead: "There are no guarantees that the deduction will be renewed for 2015 or that it will be enacted with enough notice to truly look at software or equipment purchases strategically," he says.

That alone is a good reason to deepen your relationship with the CPA who works with your business. (You do have one, right?)

"The best bet is for business owners and company executives to discuss

their business plans with their certified public accountant on an ongoing basis," he continues. Weber likes to be in on the ground floor as a consultant to his clients so he can advise them on the best tax benefit strategies *before* a purchase, "rather than just recording the transaction after the fact."

A CONFIDENT FORECAST

Rosenberg is perhaps a bit more willing to go out on a limb. She reports that most tax professionals are confident the higher limits will once again be extended.

But even if Rosenberg's right, Congress probably won't act until very late in the year. So, once again, if you are relying on lawmakers to help you decide whether to buy that new service truck or trailer jetter, you're probably out of luck. You'll need to decide *without* knowing if you'll get the higher deduction.

So it's understandable if you hesitate.

'LIVING WITH REALITY'

"It's time to live with reality," Rosenberg says. "Last year, too many businesses put off major purchases because of the uncertainty of recouping their costs as significant tax deductions. Frankly, this kept them from buying much-needed new equipment."

So, don't wait for Congress. "Get the vital equipment you need to grow your business and serve your customer base," Rosenberg concludes.

But, she says, it might be possible to hedge your bets so that you can help your tax bottom line whether or not the higher limits stay in force: See if a supplier will agree to a lease-purchase arrangement conditioned on the section.

"It will take some rewriting of boilerplate contracts," Rosenberg acknowledges. But here's how it would work: Work out an agreement that lets you lease the equipment but also can be converted right away to a conventional purchase loan in the event Congress renews the higher limits for the 2015 tax year.

A conventional lease-to-own contract comes with a nominal buyout price at the end of the leasing period — the part of the purchase cost that is over

and above what is built in to your monthly lease payment. With this deal, Rosenberg says your purchase price at the lease conversion would instead cover most of the product's cost — and ensure you get the tax deduction.

Meanwhile, if the tax pros are wrong, the extension does finally expire and the deduction limit falls back to \$25,000, "the buyer can count on deducting the lease payments," Rosenberg says. "It's a little complicated. But if someone needs to spend \$50,000 or \$150,000 for equipment, you need a certain level of assurance that you'll be able to recoup some of that outlay quickly via tax benefits."

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