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Changes to Section 179 Deductions and Bonus Depreciation Provisions Offer Potential Boost to Construction Industry

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He authored West Virginia's design-build legislation, which authorizes the use of design-build services in the state. Because of his experience and knowledge of the process, Monteleone was appointed chair of the West Virginia Design-Build Review Board by former Governor Cecil Underwood and served in that capacity until 2018.

Monteleone was elected President of the Independent Oil & Gas Association of West Virginia for the 2017-2018 term. He currently serves as in-house counsel to a large independent oil and gas producer, where his duties include overseeing Marcellus Shale exploration, negotiation of gas sales contracts and supervising mineral acquisitions.

Monteleone received his bachelor's in business administration, *summa cum laude*, with an emphasis in accounting, from West Virginia University. He earned his law degree from West Virginia University and his masters of law in taxation from New York University.

The Tax Cuts and Jobs Act ("Act") was signed into law on January 2, 2018. It potentially contains some of the largest tax cuts in United States history and businesses in every sector can benefit from the changes contained in this Act. The decrease in tax rates is probably the most talked about change in the Act; however, another significant change for businesses occurred to the Section 179 deductions and bonus depreciation provisions. By maximizing the benefits of these changes, a business could pay substantially less tax from its operations when compared to previous years.

Section 179

Internal Revenue Code Section 179 provides an income tax deduction to businesses for the acquisition of equipment by treating the cost as an expense in the year of acquisition. Without the use of Section 179, the cost of the equipment would be written off proportionately over a number of years in the form of depreciation. Since businesses are allowed to expense the acquisition costs of equipment in one year, they are encouraged to purchase more equipment because they are doing so through the use of after-tax dollars.

The deduction limits under the Act for Section 179 were doubled from $500,000 per year to $1,000,000 per year. In addition, the phaseout threshold limit on equipment purchases was increased from $2,000,000 to $2,500,000. Keep in mind that Section 179 only applies to qualifying property, so best to consult your tax advisor to ensure your equipment will qualify for Section 179 treatment.

The Act also modified the definition of qualified property eligible for Section 179 expensing and expanded the definition to include the following:

- Roofs
- Heating
- Ventilation
- Air-conditioning
- Fire protection
- Alarm systems
- Security systems (installed after building was placed in service)

The purpose of the changes set forth above is to encourage the investment in constructing or renovating buildings. This should provide a boost to the commercial construction industry, which in turn should provide additional jobs in the construction industry. Projects that were not economically feasible under the old laws may be worth a second look under the new Act.

Bonus Depreciation

In addition to the changes set forth above, the Act also made substantial changes to the bonus depreciation rules. Bonus depreciation is an accelerated depreciation method that can be used once the Section 179 limitations set forth above come into play. Under the prior law, a business could deduct up to 50 percent of the acquisition costs of new equipment in the year of acquisition. Under the Act, bonus depreciation was increased to 100 percent of the acquisition cost and it applies to both the purchase of new and used equipment.

The new bonus depreciation rules went into effect for purchases made from September 27, 2017 and will remain in effect through 2022. After 2022, bonus depreciation begins to phase out in accordance with the following timeframes:

- 80 percent for property placed in service during 2023
- 60 percent for property placed in service during 2024
- 40 percent for property placed in service during 2025
- 20 percent for property placed in service during 2026

Property that is classified as "listed property" under the revised law must be used more than 50 percent in the business in order to qualify for bonus depreciation. However, computers were removed from the definition of listed property, so under the Act a business may use bonus depreciation for computers even if they are used less than 50 percent of the time in the business.

Understanding the changes to Section 179 and Bonus Depreciation will save you a substantial amount of money in the form of a reduced tax bill. In addition, and if used correctly, the changes in the Act should stimulate businesses to purchase more equipment and construct or renovate more buildings, which will strengthen our economy. V

Business Court Overrules Excessive Property Tax on Natural Gas Operating Properties

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In January, the Business Court Division of the Circuit Court of Ritchie County held, in the case of Antero Resources Corporation v. The Honorable Dale Steager, W. Va. State Tax Commissioner, et al. (Case No. 17-AA-1), that the property tax assessments of that taxpayer's operating natural gas properties in that county were in excess of the values mandated by law. In its ruling, the Court struck down the taxable values of those properties as initially set by the State Tax Commissioner, approved by the County Assessor and affirmed by the Ritchie County Commission sitting as a Board of Assessment Appeals.

Specifically, the Court held, in a well-reasoned opinion, that the Tax Commissioner's appraisal practices of using a maximum fixed dollar amount for allowable operating expenses, and his omission of many categories of those expenses incurred to bring the produced gas to the point of sale, had the effect of significantly overvaluing the subject properties. Moreover, since the Court found that because the Commissioner's use of those valuation practices for the taxpayer's horizontally drilled natural gas wells was intentional and systematic, they violated both the Equal and Uniform Taxation provision of the West Virginia Constitution and the Equal Protection clause of the United States Constitution.

This case represents not only a highly favorable outcome for similarly situated taxpayers in the oil and gas industry, but is an example of the very complex business tax issues that the West Virginia Supreme Court of Appeals contemplated when it established the Business Court Division and included them within the scope of its jurisdiction. Now, as a result of the Tax Commissioner, Assessor and (despite its purported role as an independent forum initially adjudicating the case) the County Commission's appeal of the Business Court ruling in this case (and in a number of other similar cases), the Supreme Court is being asked to review the same.

Thus, that appeal not only involves the fundamental question of whether, from now on, a major West Virginia industry can expect its property to be objectively and fairly valued for tax purposes, but, in a real sense, the practical efficacy of the Business Court system itself will also be on the line.

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