SURVIVING BUSINESS DOWNTURNS

Wolters Kluwer

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When credit is tight, and profits down or nonexistent, a business will want to maximize cash flow so that it can continue to pay operating expenses. This booklet discusses some tax provisions that can be used to increase cash flow by reducing federal income taxes during a business downturn.

This guide highlights the rules for writing off assets, deducting losses and stretching certain payments. You will learn about:

- Deductions (and credits) for the cost of assets;
- Cancellation of indebtedness income;
- Losses, including net operating losses;
- Bad debts; and
- Legislative relief.

An effective tax strategy for a business downturn generally requires maximizing tax credits and deductions, to enable the business to reduce taxable income or even generate taxable losses (Note: In some cases, the business will want to defer expenses, even though deductible, to preserve cash flow). The business may also want to exclude or at least defer income, to accomplish the same goals of reducing taxable income (and tax liabilities) or increasing losses. Recognizing or even accelerating losses may be advantageous because they can be used to generate an immediate refund by offsetting prior year profits. Or they can be used to reduce taxable income in the future. In other words, there are many options to consider before deciding which combination is right for you.

This booklet highlights recent tax provisions targeted to help businesses during a downturn. Some of these provisions are temporary. Other provisions are available for longer periods or are permanent. The administration and Congress are exploring the extension of some tax benefits and the creation of new benefits, such as a small business tax credit. Other useful provisions allow the deferral of cancellation of indebtedness income, the carryback of net operating losses, reduced estimated tax payments, and reduced pension plan funding.

This booklet also highlights some additional tax incentives, which are either

new or recently enhanced, such as the new small employer health insurance tax credit. These incentives can help reduce a business's expenses during an economic slowdown.

DEPRECIATION AND EXPENSING

A business that uses an item of tangible property over a number of years generally must depreciate the property's cost over its period of use (its recovery period). Bonus depreciation allows the business to accelerate the amount of depreciation that can be deducted in the first year of use for new property (It does not increase the total amount of depreciation that can be deducted). Property converted to business use by the original purchaser also qualifies for bonus depreciation.

Under the Small Business Jobs Act of 2010, Congress provided for 50-percent bonus depreciation through December 31, 2010. The 2010 Tax Relief Act provided for 100 percent bonus depreciation for qualified property acquired after September 8, 2010 and before January 1, 2012 and placed in service before January 1, 2012. Additionally, the 2010 Tax Relief Act and the American Taxpayer Relief Act of 2012 (ATRA) provide for 50 percent bonus depreciation for 2012 and 2013. Bonus depreciation has expired for 2014 unless Congress acts.

Comment. A limited category of property with a longer production period qualifies for 100 percent bonus depreciation through December 31, 2012 and 50 percent bonus depreciation through December 31, 2014.

Planning Tip. Accelerating the depreciation deduction reduces the property's up-front tax cost and, many believe, stimulates business investment in depreciable property. There is no limit on the amount of bonus depreciation that can be taken on multiple properties.

Code Sec. 179 expensing (known as small business expensing) is also enhanced by recent legislation. The 2010 Small Business Jobs Act and the 2010 Tax Relief Act provide for enhanced dollar and investment limitations.

A dollar limit is placed on the maximum cost of Code Sec. 179 property a taxpayer may expense during the tax year. For tax years beginning in 2012 and 2013, the ATRA retained the dollar and investment limits at $500,000 and $2 million, respectively. For tax years beginning in 2014, the levels drop to $25,000 and $200,000, respectively, unless Congress intervenes.

Comment. For tax years beginning in 2010 and 2011 the dollar limitation was also $500,000 The annual dollar limitation is reduced dollar for dollar by the portion of the cost of Code Sec. 179 property placed in service during the tax year that is in excess of an investment limitation. The investment limitation was $2 million for tax years beginning in 2010 and 2011.

■ ***Planning Tip.*** Unlike bonus depreciation, however, expensing can be taken on new and used property.

For 2010 and 2011, the 2010 Small Business Jobs Act also allowed taxpayers to elect up to $250,000 of the $500,000 Code Sec. 179 deduction limit (subject to the $2 million investment limitation) for qualified real property which is depreciable and acquired by purchase for use in a trade or business. Qualified real property is leasehold improvement property, restaurant property and retail improvement property. The ATRA extended this special treatment for 2012 and 2013.

To maximize deductions, whatever the tax year, taxpayers should apply first-year expensing to property with the longest recovery period, because these assets have the lowest annual depreciation rate. For taxpayers who qualify, expensing should generally be taken before bonus depreciation.

A company with a net operating loss (NOL) (a taxable loss for the year) can carry back the loss to a prior year where the company had taxable income. It can then offset and reduce the prior year's income and obtain a refund for the reduction in tax liability. However, a company cannot use first-year expensing to generate an NOL. A company that does not use its total expensing allowance for the year can carry forward the excess and use it in the subsequent year.

Refundable credit for unused bonus depreciation

Companies experiencing losses may not be able to take advantage of bonus depreciation because they do not have taxable income against which to take the deductions. The American Recovery and Reinvestment Act of 2009 had first allowed businesses to be paid a refundable credit, in lieu of taking bonus depreciation, if they have accumulated alternative minimum tax (AMT) or research and development (R&D) credits from before 2006. This option was initially available for property that qualifies for bonus depreciation in 2009. The 2010 Tax Relief Act provided similar treatment through December 31, 2012, and the ATRA extended this provision through December 31, 2013. Congress has not yet extended this provision into 2014.

MAXIMIZING DEDUCTIONS

To reduce taxes, companies want to make sure that they are claiming all allowable deductions. This includes the manufacturing deduction, otherwise known as the domestic production activities deduction, which is an additional deduction that companies can claim. It is based on a percentage of their taxable income from manufacturing activities. "Manufacturing" is broader than the production of tangible products, applying to movies, for example, and computer software. The deduction is nine percent of "qualified production activities income."

Small business stock. To encourage investment in small businesses, a taxpayer (other than a corporation) may exclude from gross income a certain percentage of gain from the sale or exchange of qualified small business stock held for more than five years. For stock issued currently, the exclusion amount is 50 percent.

> **Comment.** The 2009 Recovery Act increased the exclusion from 50 to 75 percent from the sale or exchange of qualified small business stock acquired after February 17, 2009 and before January 1, 2011. The 2010 Small Business Act provided for a 100-percent exclusion from the sale or exchange of qualified small business stock acquired after September 27, 2010 and before January 1, 2011 and held for more than five years. The 2010 Tax Relief Act extended the 100 percent exclusion for one more year, and the ATRA extended the 100 percent exclusion to stock acquired before January 1, 2014.

There are some important rules to follow. For example, the stock must be issued by a C corporation that invests 80 percent of its assets in the active conduct of a trade or business and that has assets of $50 million or less when the stock is issued. Moreover, the qualified stock must be held for more than five years and the amount taken into account under the exclusion is limited to the greater of $10 million or 10 times the taxpayer's basis in the stock.

> **Planning Tip.** Any taxpayer, other than a C corporation, can take advantage of the exclusion.

Cost segregation. Another strategy worth considering is cost segregation. Components of a building that qualify as tangible personal property may be separately depreciated. This will greatly shorten the period and accelerate the rate of depreciation. Building components generally may be depreciated over five to seven years using the double declining balance method, whereas the building itself must be depreciated over 27.5 years (residential rental property) or 39 years (commercial property), using straight-line depreciation. Examples of

components include removable partitions, removable carpeting and wall tiling, counters, and appliances and machinery unrelated to the operation and maintenance of the building. The IRS has tightened the rules for the treatment of certain "building systems," requiring that replacements be capitalized.

LOANS

Your business probably has borrowed money, but it may have trouble paying back a loan. You may be able to obtain the lender's consent to reduce the amount of the loan or cancel the loan. This debt forgiveness creates ordinary income that is taxable. This income can be a particular problem since you didn't receive any additional cash (for paying taxes) at the time the "income" arose. But you may be able to exclude the income under several "exclusions" under the Internal Revenue Code.

Mortgage debt. A property owner may have a gain or loss on the surrender, foreclosure or abandonment of mortgaged property to the lender. The compromise of mortgage debt generates discharge of indebtedness income to the borrower. Through 2013, there is an important exclusion from income allowed for the forgiveness of debt that has been secured by a principal residence. Congress has not yet extended this provision into 2014.

Bankruptcy and insolvency. Debt canceled in a Title 11 bankruptcy case (business reorganization) is not income, but the debtor must reduce its tax attributes. Similarly, if the debtor is insolvent (total liabilities exceed value of assets), the canceled debt is not income.

Real property. Discharge of debt on real property used in a business can also be excluded from income, even if the debtor is solvent.

> ***Example.*** N borrows $1 million to build a factory. The loan is secured by the factory. Because N is having trouble making payments on the loan, the lender reduces the loan obligation to $800,000. N has discharge of indebtedness income of $200,000. This income is taxable as ordinary income unless N qualifies for an exclusion. Since the factory is real property used in a business, N can exclude the discharge of indebtedness from income.

Reduction of tax attributes. A debtor that can exclude canceled debt from income, however, must pay a price. The business must reduce its tax attributes

by the same amount, in the following order: NOLs, general business credits, minimum tax credits, capital losses, basis of assets, and so forth in a set order.

Taxpayers, however, can elect to reduce the basis of depreciable property before other attributes. In most cases, a reduction in tax attributes means that if your business turns a profit in the future, more of that income will be taxed because lower deductions and credits will be available.

If a lender acquires property to satisfy a debt, this is a sale or exchange on which the borrower may recognize gain or loss, irrespective of cancellation of indebtedness income. Your gain or loss depends on your tax basis in the property at the time you transfer it to the lender in repayment (or partial repayment) of your debt.

> ***Example.*** N borrows $1 million to build a factory. The loan is secured by the factory. N takes $100,000 of depreciation on the factory, reducing its basis to $900,000. N makes no payments and defaults on the loan. The lender forecloses on the loan and takes the factory. The foreclosure is treated as a sale of the property. N has taxable income of $100,000, equal to the amount realized (the principal amount of the loan) reduced by the property's basis ($1 million - $900,000).

OWNERSHIP INTEREST FOR DEBT

Special rules apply to the satisfaction of debt with corporate stock (of a C or S corporation) or a partnership interest. The latter can be a capital or profits interest. The corporation or partnership is treated as having satisfied the debt with cash equal to the fair market value of the stock or partnership interest.

Partnership rules. Final partnership regulations, however, deny a loss to the creditor who takes a partnership interest worth less than the amount of the debt. The creditor instead has a basis equal to the amount of the debt. When the creditor sells the interest, the loss is a capital loss, in contrast to the bad debt deduction, which would be an ordinary loss. These IRS rules would treat the value of the interest as its partnership liquidation value, which is generally lower than other values. Effective dates here are tricky and professional advice is essential.

Debt income deferred. The 2009 Recovery Act had allowed a business to elect to postpone cancellation of debt income incurred in 2009 or 2010 until 2014, and then to recognize the income over five years. This treatment applies when debt or proceeds from newly-issued debt are used to repurchase or reacquire "applicable" business debt issued in the form of a bond, debenture, note, certificate or any other debt instrument. If the election is made, the cancellation of indebtedness income exclusion rule and the attribute reduction rules no longer apply. The deferred income is accelerated if the business disposes of all its assets or ceases business.

Bad debts

If you are on the lender's end of a business loan gone sour, the "bad debt" deduction rules can offset some of your losses. Specifically, a taxpayer can deduct partially or totally worthless business bad debts as an ordinary loss. This can be used to offset other income or generate an NOL.

> ***Comment.*** A worthless nonbusiness bad debt is deductible as a short-term capital loss.

The amount that can be deducted is the taxpayer's basis in the debt, not the debt's fair market value or face value. If the business is a corporation, a debt not evidenced by a security can be a bad debt. If the business is not a corporation, a business bad debt can be a debt created as part of the business. The debt must be bona fide, there must be a valid debtor-creditor relationship, the obligation must be enforceable, and the amount of the debt must be fixed.

A business that cancels a debt owed by an insolvent debtor has a bad debt deduction, because the cancellation eliminates the debt. However, cancellation of a debt of a solvent debtor yields a loss, not a bad debt, because the settlement extinguishes the debt and leaves no balance that may be regarded as a bad debt.

Both losses and business bad debts can generate an ordinary loss. A debt, however, is not a bad debt if it is secured by collateral. If the business acquires property to satisfy a debt, the portion of the debt that is not satisfied is a bad debt. The acquisition is a taxable exchange of debt for property. A loan of property aside from cash that is not returned is a loss, not a bad debt.

> ***Example.*** L lends $1 million to N, who uses the loan to buy a factory. N makes no payments and defaults on the loan. At the time of the default, the factory is worth $800,000. L takes the factory to satisfy $800,000 of N's debt and cancels the other $200,000 of the debt. L has a bad debt deduction of $200,000.

Payment obtained after a debt has been written off as totally worthless is taxable. Payment on a partially worthless debt reduces the basis of the debt. Generally, a partially worthless debt cannot be written off until it becomes totally worthless. A partially worthless debt may be written off if it is unsecured and the taxpayer can demonstrate that part of the debt will not be recovered.

If a taxpayer guarantees another person's debt, the loss to the guarantor on a payment that cannot be recovered is a bad debt. The IRS says the loss is a nonbusiness bad debt; the Tax Court has treated the loss as a short-term capital loss deduction, subject to the $3,000 limit for deducting capital losses.

PROPERTY LOSSES

You can deduct property losses that are not reimbursed or covered by insurance. You must incur the loss in a trade or business, a transaction entered into for profit, or from a casualty loss, such as a fire or flood. You can deduct a trade or business loss when computing your business's adjusted gross income; thus, the loss in effect is an ordinary, not a capital loss. The determination whether the loss is incurred in the trade or business follows the standards for deducting an expense as an ordinary and necessary trade or business expense.

Losses on business property can be deducted when the property is sold, damaged, abandoned or becomes worthless. Paper losses due to a drop in value, absent one of these events, are not deductible. Losses from theft are deductible in the year discovered. The amount of loss for business property is limited to the basis (cost minus depreciation) of the property. Thus, a deduction for loss of inventory is limited to the cost of the inventory, not its sales price or fair market value.

Example. P buys a car for $15,000 and uses the car in its business. For its first year, P takes $7,000 of depreciation, reducing the car's basis to $8,000. At the end of the year, the car is worth $9,000, but through some bad advice, P sells the car for $5,000. P has a loss of $3,000 ($8,000 basis minus $5,000 amount realized). The value of the car does not affect the amount of the loss.

Losses from sales of securities are of course treated as capital losses, but their deduction is limited. Corporations can only deduct losses to the extent of gains. Other taxpayers can deduct up to an additional $3,000 of net capital losses each year against non-capital gain income. Any excess losses can be carried forward up to five years for a corporation and to succeeding years (until exhausted) for noncorporate taxpayers.

Code Sec. 1231

While most tangible business assets (aside from inventory) are capital assets, certain assets qualify for special treatment that is beneficial to a business. If, for the year, the taxpayer has a net gain from the sale of all "Code Sec. 1231 property," all gains and losses are treated as capital. On the other hand, if losses from Code Sec. 1231 property exceed gains, then all gains and losses are treated as ordinary. Thus, Code Sec. 1231 can provide a favorable "heads you win, tails you win," situation. Code Sec. 1231 property includes real estate and

other depreciable property used in the trade or business.

> ***Example.*** Q uses a car and a truck in its business. Both the car and the truck are Code Sec. 1231 property. After two years, Q sells the car for a loss of $1,000 and sells the truck for a gain of $2,000. Since the Code Sec. 1231 gains exceed the Code Sec. 1231 losses, all gains and losses are long-term capital amounts, and the net gain is a long-term capital gain. On the other hand, if the car was sold for a gain of $1,000 and the truck was sold for a loss of $2,000, all gains and losses would be ordinary (not capital) losses and the net loss is an ordinary loss.

Limitations on losses

Additional limits may prevent or reduce deductions for losses. For partnerships and other businesses that do not operate in corporate form, deductions that are passed through to their partners or owners are limited to the amount that the owner of the business has "at-risk." Amounts at risk include cash contributions, the basis of property contributions, and business loans, provided the borrower is personally liable for the loan or has pledged assets to secure the loan (such as a real estate mortgage).

An owner who is personally liable for a business's debts is at-risk for those debts. If the business losses exceed the amount at risk, the excess is not currently deductible but can be carried forward

to the following year, to take against amounts at-risk.

> ***Example.*** B and C each contribute $1,000 to a general partnership. The partnership borrows an additional $1,500. As general partners, B and C are personally liable for the loan. Although each partner contributed only $1,000, their amount at risk is $1,750 (the sum of their contribution and their share of the loan). If the partnership runs a loss of $2,500, each partner can deduct a loss of $1,250, which does not exceed their amount at risk.

Losses from passive activities can only be deducted against gains from passive activities. A passive activity is a business that the taxpayer does not materially participate in. Rental activities are also classified as passive activities. Any deductions, credits or losses that are disallowed can be carried forward and deducted against passive income in a future year. Any remaining deductions or losses can be written off when the taxpayer disposes of the passive activity.

> ***Example.*** D invests $50,000 in a partnership that owns, rents and manages real estate. D does not materially participate in the business. D incurs a $40,000 loss as his share of the partnership's business. Even though D was at-risk, the $40,000 loss is a passive activity loss and can only be deducted against income from another passive activity. D cannot deduct any of the $40,000 against his wages or other income.

Finally, the activity is not a trade or business unless it is carried on to make a profit. Losses from a "hobby" or other activity not engaged in for profit are only deductible against gains from the activity. The losses cannot be used as a deduction against other income of the taxpayer.

NET OPERATING LOSSES

No one who operates a business wants to lose money. However, a business with a net operating loss (NOL) for the year can use the loss to reduce net income from another year and, if "carried back," obtain a refund because of the reduced tax liability. A trade or business has an NOL when its deductions exceed its gross income for the tax year. A business can have an NOL whether it operates as a corporation, an unincorporated sole proprietorship, or another type of entity.

> ***Example.*** Entity R lost $1,000 in 2011 from its manufacturing business and thus has an NOL of $1,000. R can use the losses to offset net income earned in another year. If R reported $2,000 of income in 2010, it can carry back the $1,000 loss and consequently report income of only $1,000 for 2010. It can file an amended return for 2010 and claim a refund because of its reduced tax liability.

The NOL can generally be carried back two years and be carried forward for up to 20 years. This is the normal carry-over period. Longer carryback periods

are available for certain types of losses: a three-year period for casualty losses and theft; a five-year period for certain disaster losses occurring before January 1, 2010; and a 10-year period for "liability" losses, such as product liabilities and workplace liabilities.

> ***Example.*** Entity R lost $1,000 from its manufacturing business in 2013. It can carry back the loss two years, to 2011. If it had income of $700 in 2011, it can use $700 of the NOL to offset the 2011 income and claim a refund. It can then use the remaining $300 of NOL to offset income earned in 2012. If it had no income in 2012, it can carry forward the $300 NOL to 2013 and later years, until the NOL is exhausted. If R lost an additional $4,000 in 2013 because of damage caused by one of its products, it can carry back the $4,000 for 10 years, to offset income from 2003 and subsequent years.

A business can waive the carryback period (whatever its length) and choose to carry forward all of its NOLs. This waiver is important because an NOL is treated as used in a year to which it can be carried, even if the taxpayer failed to file an

amended return in time to take the NOL deduction. This has the effect of reducing the NOL available in later years.

Using the NOL

Because a corporation is a separate entity, its NOL cannot be used by the corporation's shareholders, and vice versa. The NOL must be used by the same corporation in another year. There are limits on "trafficking" in NOLs that limit the available NOL when one corporation acquires another corporation that has an NOL.

If a business is not a regular corporation, its losses flow through to its owners. A partnership or S corporation itself cannot use NOL deductions, but the current year losses can flow through to the partners or S corporation shareholders and be used to offset other income of the partners or S shareholders. Like the at-risk rules, a partner or S shareholder can only deduct losses up to the basis of his or her partnership or S corporation interest. The partner or S shareholder can carry forward any excess losses.

> ***Example.*** Individuals B and C each own a 50 percent interest in a partnership in which they materially participate. In 2013, the partnership incurs a loss of $2,500. The partnership cannot use this NOL to offset partnership income from another year. Instead, the $2,500 of losses flows through the partners. B and C each have a partnership loss of $1,250. They can use this loss to offset other income from 2013, such as wages.

If the business is operated as an individual sole proprietorship, the business's NOL can offset other income of the individual. Any excess can be used in another year against the business's income.

> ***Example.*** Individual E, an engineer, owns and manages rental property as an active participant. He incurs a loss of $1,000 from operating the property for 2013. He can use the loss to offset his earnings of $5,000 as an engineer for 2013. If he only earned $600 as an engineer for 2013, he can offset the $600 of income and carry forward the remaining $400 loss to offset his 2014 earnings.

To use an NOL, the taxpayer must file an amended return or a special form used to apply for a refund. A corporation can file Form 1120X, Amended U.S. Corporation Income Tax Return, or Form 1139, Corporation Application for Tentative Refund. An individual can file an amended Form 1040X or Form 1045, Application for Tentative Refund. Filing Form 1139 or 1045 means a quicker refund from the IRS, but the form must be filed by the end of the year for filing a return for the year the NOL is incurred (the "loss year"). The taxpayer must file the amended return within three years of the due date (including extensions)

for filing the return for the loss year, or within two years from the time the tax was paid, if later.

HEALTH CARE

Many employers are struggling to control health care costs. The Patient Protection and Affordable Care Act (PPACA) targets a special tax credit to small employers to help them pay for coverage.

Small employer tax credit. Small employers with 10 or fewer full-time equivalent employees (FTEs) paying average annual wages of not more than $25,000 may be eligible for a maximum credit of 35 percent in 2010 through 2013. The credit rises to 50 percent for 2014 through 2015. The maximum credit for small tax-exempt employers is 25 percent for 2010 through 2013 and 35 percent for 2014 through 2015. The credit is subject to phaseout (but not below zero). The credit is reduced by 6.667 percent for each FTE in excess of 10 employees and by four percent for each $1,000 that average annual compensation paid to an employee exceeds $25,000.

> ***Comment.*** An administration proposal would enhance the credit and reduce the impact of the phaseout.

> Example. A small manufacturer employs nine individuals with average annual wages of $23,000 for each employee in 2013. The manufacturer pays $72,000 in health care premiums for its employees. Assuming that the manufacturer meets all the other requirements, its credit for 2013 is $25,200 (35 percent x $72,000).

There are several steps small employers must take to determine eligibility for the credit:

- Determine the employees who are taken into account for purposes of the credit.
- Determine the number of hours of service performed by those employees.
- Calculate the number of FTEs.
- Determine the average annual wages paid per FTE.
- Determine the premiums paid by the employer that are taken into account for purposes of the credit.

Exchanges. The PPACA requires states to create health insurance exchanges by 2014. Qualified small employers will be able to obtain health insurance for their employees through these exchanges.

PENSION PLAN FUNDING

In the Pension Protection Act of 2006 (PPA), Congress tightened the funding requirements for defined benefit pension plans maintained by private companies. The PPA was designed to strengthen troubled plans before employers slipped into bankruptcy. The law increased the limit for deductible

contributions while generally requiring higher funding levels. Most pension plans have to become fully funded over a seven-year period.

The new funding rules initially were intended to apply beginning in 2008. However, Congress has postponed some of the rules. The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 provides single-employer plans with an extended period to amortize certain funding shortfalls and other temporary funding relief. If a plan's funded percentage falls below 60 percent, benefit accruals generally must cease and certain payments cannot be made. The health care legislation provides targeted relief. The IRS provided additional administrative relief in 2011 guidance.

An employer's annual required contribution is based on a comparison of the plan's assets with the plan's funding target. The Moving Ahead for Progress in the 21st Century Act (MAP-21), enacted in 2012, provides additional pension relief, by moderating the interest rate used to determine the present value of a plan's benefit obligations and funding target. The provision is expected to reduce the amount of employer contributions.

ESTIMATED TAX PAYMENTS

Although an annual review of your estimated tax payments is always important, it may be particularly imperative to do so during a downturn. Economic downturns and other changes to your business's financial matters – such as if business is slower than usual – may have impacted your income. A change in your business's income, deductions, credits, and exemptions may make it necessary to refigure your estimated tax payments for the remainder of the year. To avoid either a penalty from the IRS or overpaying the government interest-free, consider increasing or decreasing the amount of your remaining estimated tax payments.

For calendar-year corporations, estimated tax installments are due on April 15, June 15, September 15, and December 15. If any due date falls on a Saturday, Sunday or legal holiday, the payment is due on the first following business day. To avoid a penalty, each installment must equal at least 25 percent of the lesser of:

- 100 percent of the tax shown on the current year's tax return (or of the actual tax, if no return is filed); or
- 100 percent of the tax shown on the corporation's return for the preceding tax year, provided a positive tax liability was shown and the preceding tax year consisted of 12 months.

A lower installment amount may be paid if it is shown that use of an annualized income method, or for corporations with seasonal income, an adjusted

seasonal method, would result in a lower required installment.

If you expect your business to experience an uneven income stream for the remainder of the year, or changes in the amount of deductions, credits, exemptions, and other adjustments, your required estimated tax may not necessarily be the same for each remaining period, requiring adjustment to your estimated tax payments. The need for, and the extent of, adjustments to your estimated tax payments should be assessed at the end of each installment payment period.

If you discover within a payment period that a change in your business's anticipated income, deductions, credits, exemptions, or other taxes will either increase or decrease your business's tax liability (and therefore the required annual payment expected for the balance of the year), you should adjust your remaining quarterly payments accordingly. To change your estimated tax payments, refigure your total estimated tax payments due. Then, figure the payment due for each remaining payment period. Be careful, however: if an estimated tax payment for a previous period is less than one-fourth of your amended estimated tax, you may be subject to a penalty when you file your return.

CONCLUSION

There are many tax provisions of particular significance for businesses during periods of economic distress. With cash management at a premium, you want to conduct your business to minimize your tax liability and maximize your cash flow.

Many of the recent tax incentives have been quickly enacted. Consequently, some provisions are not as carefully constructed as others and require a business to think through each opportunity – its pros and cons – before jumping into any particular tax strategy. Moreover, many of these provisions contain a short window of time within which they are available. Professional tax advice in these situations is needed to meet these deadlines to maximize tax savings.