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Criser, Gough, & Parrish

Small Business Alert

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Business Continuity Planning

by **Greg Gough, ChFC**

Abstract: Planning can ensure that your family and business are protected.

The long term survival of your business—and the well-being of your family—are factors that you should consider if you haven’t already.

The main goals of creating an estate plan for your business are:

- to establish a business continuation plan that can help provide benefits for your business and your heirs.
- to meet your objectives for asset distribution.
- to potentially reduce taxes for your heirs.

To make sure that an estate plan is up-to-date and effective, these are some of the concerns that you should document on an annual basis:

- Is there a business continuation plan? Does the plan identify the owner’s successors? If so, are these successors trained and ready to take over when necessary?
- Is the insurance coverage adequate to keep the business going?
- Are financial arrangements up-to-date? For example, are new sources of capital to fund expansion, purchases, new product lines and buy-sell agreements identified?
- Is the business properly valued?
- Are employees informed about the future plans for the business? Knowing that the business has a continuity plan can help keep good employees on staff.

Make sure that you have issued detailed instructions to an executor. It is important to document everything relating to your corporate and personal assets (e.g., the locations of all safety deposit boxes and investment accounts), even if your heirs will not actively run the business. This document should discuss management plans, shareholder agreements, buy-sell agreements and other issues vital to the company’s future. By keeping this information up to date, you will make it much easier for someone to take over or liquidate.

Planning today could go a long way in helping alleviate asset distribution headaches for your heirs and partners. Creating a proper estate plan requires careful planning and input from trained legal, tax and financial professionals.

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Bonus Depreciation Makes a Comeback

Bonus first year depreciation was first allowed following the terrorist attacks of 2001 but generally isn't available for property acquired after 2004. (There are some exceptions, such as for qualified GO Zone property generally placed in service before 2008.)

The Economic Stimulus Act of 2008 provides for bonus (accelerated) depreciation by allowing a bonus first-year depreciation deduction of 50% of the adjusted basis of qualified property placed in service after Dec. 31, 2007, and, generally, before Jan. 1, 2009. The basis of the property and the depreciation allowances in the year the property is placed in service and later years are appropriately adjusted to reflect the additional first-year depreciation deduction. The amount of the additional first-year depreciation deduction is not affected by a short taxable year. The taxpayer may elect out of additional first-year depreciation for any class of property for any taxable year.

The interaction of the additional first-year depreciation allowance with the otherwise applicable depreciation allowance may be illustrated as follows. Assume that in 2008 a taxpayer purchases new depreciable property and places it in service. The property's cost is \$1,000 and it is 5-year property subject to the half-year convention. The amount of additional first-

year depreciation allowed under the provision is \$500. The remaining \$500 of the cost of the property is deductible under the rules applicable to 5-year property. Thus, 20 percent, or \$100, is also allowed as a depreciation deduction in 2008. Accordingly, the total depreciation deduction with respect to the property for 2008 is \$600. The remaining \$400 cost of the property is recovered under otherwise applicable rules for computing depreciation.

Bonus depreciation is allowed for AMT purposes as well as for regular tax purposes. Additionally, bonus depreciation is permitted only for: (1) property to which MACRS applies that has an applicable recovery period of 20 years or less, (2) water utility property, (3) non-custom-made computer software, and (4) qualified leasehold improvement property. Original use of the property must begin with the taxpayer after Dec. 31, 2007. Additionally, the placed-in-service cutoff date is extended for an additional year (i.e., before Jan. 1, 2010) for certain property with a recovery period of ten years or longer and certain transportation and aircraft property.

Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any tax advice contained herein is not intended or written to be used for the purpose of avoiding tax penalties that may be imposed by the IRS.

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