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The commercial classroom: Examining the new tax laws for 2011

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This column is offered to help educate agents new to commercial and investment brokerage and serve as a review of basics for existing practitioners.

In December of 2010 the "Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010" was passed into law. In this article we will examine the key elements pertaining to commercial real estate and business

Tax Brackets

The 25%, 28%, 33%, and 35% individual income tax brackets were due to expire at the end of 2010; they have been extended for an additional two years, through 2012. If this occurred the rates would have reverted to 28%, 31%, 36%, and 39.6% respectively.

Capital Gains and Dividends

The capital gains and dividend rates for taxpayers below the 25% bracket is now 0%. For those in the 25% bracket and above, the capital gains and dividend rates are currently 15%. These rates were scheduled to expire at the end of 2010, and would have reverted to 10% and 20%, respectively, and dividends would be subject to the ordinary income rates. The bill extended the current capital gains and dividends rates for all taxpayers for an additional two years, through 2012.

Cost Recovery

The bill extends for two years the special 15-year cost recovery period for certain leasehold improvements, restaurant buildings and improvements, and retail improvements. Note, the 15-year accelerated depreciation schedule expired on December 31, 2009. This bill made the effective date of this retroactive to January 1, 2010 and is therefore now scheduled to expire on December 31. Prior to establishing this special 15-year cost recovery for these categories of properties the cost recovery for these items was 39 years.

Bonus Depreciation

Under current law, businesses are allowed to recover the cost of capital expenditures over time according to a depreciation schedule. Congress allowed businesses, beginning January 1, 2008 through December 31, 2009, to take an additional depreciation deduction allowance equal to 50% of the cost of the depreciable property placed in service in those years. Under the Small Business Jobs Act of 2010, this temporary increase in the depreciation deduction allowance was extended through December 31, 2010. The bill extends and temporarily increases this bonus depreciation provision for investments in new business equipment. For investments placed in service after September 8, 2010 and through December 31, the bill provides for 100% bonus depreciation. For investments placed in service after December 31 and through December 31, 2012, the bill provides for 50% bonus depreciation.

Section 179

Deductions Reduced in 2012

Under current law a taxpayer may elect to deduct the cost of certain property placed in service for the year rather than depreciate those costs over time. Over the years the thresholds and phase-outs amounts for this have been increased and extended several times, including most recently as part of the Small Business Jobs Act which increased the thresholds to $500,000 and $2 million for the taxable years beginning in 2010 and 2011. This bill reduces these amounts; it reverts to the 2007 maximum amount and phase-out thresholds for taxable years beginning in 2012, of $125,000 and $500,000 respectively. This is effective for taxable years beginning after December 31.

For specific application of these statutes be sure to consult your accountant or tax advisor.

Issues Ahead

Most of the provisions discussed here expire at the end of 2011 or 2012. We must be very aware of the changes that could occur at that time.

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