2024 YEAR-END INCOME TAX PLANNING FOR BUSINESSES

INTRODUCTION

It's hard to believe we are nearing the end of another year. Before we say goodbye to 2024, we believe it's important to take a moment and review year-end tax planning opportunities. Examining your 2024 tax situation before year-end could lead to tax savings when you file your tax return in 2025. As a result, we have included our 2024 year-end income tax planning letter to assist you with this process. We've included selected traditional as well as some new planning ideas for your consideration. If you have questions or want to discuss planning ideas not included in our letter, please call our firm.

Caution! The IRS continues releasing guidance on various important tax provisions. We closely monitor new tax legislation and IRS releases. Please call our firm if you would like an update on the latest tax legislation, IRS notifications, announcements, and guidance or **if you need additional information concerning any item discussed in this letter.**

Be careful! Although this letter contains planning ideas, you cannot properly evaluate a particular planning strategy without calculating the overall tax liability for the business and its owners (including the alternative minimum tax) with and without the strategy. In addition, this letter contains ideas for Federal income tax planning only. **State income tax issues are not addressed.** However, you should consider the state income tax impact of a particular planning strategy. We recommend that **you call our firm before implementing any tax planning technique** discussed in this letter.

TABLE OF CONTENTS

A Table of Contents begins on the next page to help you locate items of interest.

TABLE OF CONTENTS

POSSIBLE LEGISLATION BEFORE YEAR-END **1**

HIGHLIGHTS OF PROVISIONS INCLUDED IN SECURE 2.0 ACT FIRST EFFECTIVE IN 2024 ..... **1**

EMPLOYERS MAY AMEND A PLAN TO INCREASE BENEFITS ON OR BEFORE THE DUE DATE OF THEIR RETURN 1

TREATMENT OF STUDENT LOAN PAYMENTS AS ELECTIVE DEFERRALS FOR PURPOSES OF MATCHING CONTRIBUTIONS 1

STARTER 401(k) DEFERRAL ONLY PLANS FOR EMPLOYERS WITH NO RETIREMENT PLAN 1

SAFE HARBOR DEFERRAL ONLY 403(b) PLANS FOR EMPLOYERS WITH NO RETIREMENT PLAN 2

DISTRIBUTIONS FROM DESIGNATED ROTH ACCOUNTS IN EMPLOYER RETIREMENT PLANS NOT REQUIRED UNTIL ACCOUNT OWNERS DEATH 2

EMPLOYER ALLOWED TO REPLACE SIMPLE IRA WITH SAFE HARBOR 401(k) PLAN DURING A PLAN YEAR 2

EMPLOYERS MAY ESTABLISH EMERGENCY SAVINGS ACCOUNTS LINKED TO INDIVIDUAL RETIREMENT PLANS 2

HARDSHIP WITHDRAWAL PROVISIONS OF 403(b) PLANS BROADENED TO CONFORM WITH HARDSHIP WITHDRAWALS FROM 401(k) PLANS 3

OTHER SELECTED RECENT DEVELOPMENTS **3**

BENEFICIAL OWNERSHIP REPORTING WITH FINCEN DUE IN 2024 3

IRS MOVES FORWARD WITH EMPLOYEE RETENTION CREDIT CLAIMS 4

BUSINESSES LOCATED IN AND INDIVIDUALS LIVING IN A HURRICANE HELENE DISASTER ZONE HAVE UNTIL MAY 1, 2025, TO FILE RETURNS AND MAKE CERTAIN TAX PAYMENTS 4

QUALIFIED COMMERCIAL CLEAN VEHICLES CREDIT 5

TRADITIONAL YEAR-END TAX PLANNING TECHNIQUES **7**

PLANNING WITH TIMING OF INCOME AND EXPENSES 7

FIRST-YEAR 168(k) BONUS DEPRECIATION DEDUCTION 7

SECTION 179 DEDUCTION 8

SALARIES FOR S CORPORATION SHAREHOLDER/EMPLOYEES 9

S CORPORATION SHAREHOLDERS SHOULD CHECK STOCK AND DEBT BASIS BEFORE YEAR-END 10

MAXIMIZE YOUR 20% 199A DEDUCTION FOR QUALIFIED BUSINESS INCOME (QBI) **10**

HIGHLIGHTS OF THE 20% 199A DEDUCTION FOR "QUALIFIED BUSINESS INCOME" (QBI) 10

CAREFUL WITH EMPLOYEE BUSINESS EXPENSES **14**

UN-REIMBURSED EMPLOYEE BUSINESS EXPENSES ARE NOT DEDUCTIBLE 14

AN EMPLOYER'S QUALIFIED REIMBURSEMENT OF AN EMPLOYEE'S BUSINESS EXPENSES ARE DEDUCTIBLE BY THE EMPLOYER AND TAX-FREE TO THE EMPLOYEE 14

DEDUCTIONS FOR BUSINESS MEALS 14

OTHER SELECTED YEAR-END PLANNING CONSIDERATIONS FOR BUSINESSES **14**

IRS INCREASES STANDARD MILEAGE RATES EFFECTIVE JANUARY 1, 2024 14

PARTNERSHIPS AND S CORPORATIONS IN APPLICABLE STATES SHOULD CONSIDER ELECTION TO ALLOW BUSINESS TO PAY STATE AND LOCAL INCOME TAXES 15

CONSIDER SIMPLIFIED ACCOUNTING METHODS FOR CERTAIN SMALL BUSINESSES 15

NO DEDUCTION FOR EXPENSES OF A "HOBBY" 15

NEW FORM 15397 APPLICATION FOR EXTENSION OF TIME TO FURNISH RECIPIENT STATEMENTS 15

LOWER FORM 1099-K THRESHOLD 15

TIMING OF YEAR-END BONUSES CAN REDUCE TAXES 16

DON'T FORGET DE MINIMIS SAFE HARBOR ELECTION TO EXPENSE CERTAIN ASSETS 16

FINAL COMMENTS **16**

POSSIBLE LEGISLATION BEFORE YEAR-END

Each year we work to provide you with our year-end planning letter in time to implement possible tax saving strategies before December 31st. As a result, it's possible Congress could pass new legislation between your receipt of this letter and year-end. Congress has not acted concerning several expiring provisions and extenders, including those introduced by the Tax Cuts and Jobs Act. At this point, it is uncertain whether there will be new legislation after the election and before 2025. Therefore, please contact our firm if you would like an update on possible legislation and how it could affect you.

HIGHLIGHTS OF PROVISIONS INCLUDED IN SECURE 2.0 ACT FIRST EFFECTIVE IN 2024

On December 29, 2022, President Biden signed the "Consolidated Appropriations Act, 2023." The Act includes a segment called SECURE 2.0 dealing with retirement plans. The following is a brief summary of selected provisions of SECURE 2.0 first effective for 2024. **Caution!** A business wishing to implement any of these provisions should consult with the attorney handling the business's qualified plan since these provisions may require plan amendments.

Employers May Amend A Plan To Increase Benefits On Or Before The Due Date Of Their Return

- SECURE 2.0 provides that an employer may amend a profit-sharing, pension, stock bonus, or annuity plan to increase benefits accrued under the plan effective as of any date during the immediately preceding plan year (other than increasing the amount of matching contributions) if **1)** the amendment would not otherwise cause the plan to fail to meet any of the qualified plan requirements, and **2)** the amendment is adopted prior to the due date (including extensions) of the employer's return for the taxable year for which the amendment is effective.

Treatment Of Student Loan Payments As Elective Deferrals For Purposes of Matching Contributions

- This provision allows employers to make matching contributions under a 401(k) plan, 403(b) plan, 457(b) plan, or SIMPLE IRA with respect to "qualified student loan payments" (QSLPs) made by an employee participating in the plan. A **"Qualified Student Loan Payment"** is a payment made by an employee on a qualified education loan incurred by the employee for the payment of qualified higher education expenses. The amount of a qualified student loan payment that may be matched cannot exceed **1)** the maximum elective deferral allowed under the plan for the year minus **2)** the elective deferrals made by the employee for the year.

Starter 401(k) Deferral Only Plans For Employers With No Retirement Plan

- **SECURE 2.0 Allows Employers To Establish Starter 401(k) Deferral Only Plans.** The following requirements apply to a starter 401(k) deferral only plan:

  i) The employee is deemed to have elected to make elective contributions of a percentage of compensation as provided under the plan unless the employee elects to make a lesser contribution or no contribution.

  ii) The elective deferral percentage provided under the plan is not less than 3% or more than 15%.

  iii) The only contributions allowed to be made to the plan are these employee elective deferral contributions. Employers may not make matching or other contributions to the plan.

  iv) The maximum elective deferral contributions for any employee for a calendar year may not exceed $6,000 (as indexed for inflation after 2024).

  v) Additional Catch up contributions are permitted (for an employee who attains age 50 by the end of the tax year) up to $1,000, as indexed for inflation.

vi) An employee eligible to participate in the plan includes an employee at least age 21 who has completed a year of service.

vii) The employer may not maintain another qualified plan during the year except for a plan where the only participants are employees covered by a collective bargaining agreement.

viii) **Note!** A Starter 401(k) Deferral Only Plan is not treated as a top-heavy plan.

Safe Harbor Deferral Only 403(b) Plans For Employers With No Retirement Plan

- SECURE 2.0 also allows public schools and certain tax-exempt employers to establish a safe harbor deferral only 403(b) plan. A safe harbor deferral only 403(b) plan generally has the same characteristics as a starter deferral only 401(k) plan as outlined above.

Distributions From Designated Roth Accounts In Employer Retirement Plans Not Required Until Account Owners Death

- **Background.** Required minimum distributions (RMDs) are not required to begin prior to the death of the owner of a Roth IRA. However, prior to 2024 the RMD rules applicable to qualified retirement plans applied to the owner of a designated Roth account in an employer retirement plan (e.g., 401(k) plan). **After 2023,** the Act provides that no distributions are required from a designated Roth account in an employer retirement plan prior to the death of the account owner.

- **Increase In SIMPLE Elective Deferral Limit And Contribution Limit. For employers with 25 or fewer employees** who received at least $5,000 of compensation for the preceding calendar year, the Act increases the **1)** annual deferral limit **and 2)** the age 50 catch-up contribution limit to 110% of these limits that would otherwise apply in 2024. The regular and catch-up deferral limits for 2024 are $16,000 and $19,500, respectively. Therefore, 110% of these amounts would be $17,600 and $21,450, respectively. This provision applies automatically. **Employers with 26 to 100 employees, can elect** to utilize the increased annual deferral and age 50 catch-up limits if the employer either **1)** matches employees' elective deferrals up to 4% (rather than 3%) of compensation or **2)** provides an employer contribution of 3% (rather than 2%) of employees' compensation. An employer must elect to utilize this increased limitation where the employer has between 26 and 100 employees.

- **Increased Limitation For Transferring Former Employee's Account Balance To An IRA.** Previously, if a former plan participant did not elect for the amount due the participant from an employer's retirement plan to be paid or to be transferred via a trustee-to-trustee transfer to an IRA or another qualified plan and the former participant's account balance was between $1,000 and $5,000, the employer was required to transfer the amount to an IRA for the former participant in a trustee-to-trustee transfer if the plan requires plan accounts of $5,000 or less to be distributed to the former participant. **The Act increases the $5,000 amount to $7,000. The Act** also permits a retirement plan service provider to automatically transfer a former plan participant's account balance from an IRA established for the former participant, as described above, to an employer-sponsored plan in which the individual is an active plan participant.

Selected Other Changes Made To Retirement Plans By SECURE 2.0

Employer Allowed To Replace SIMPLE IRA With Safe Harbor 401(k) Plan During A Plan Year. The Act allows an employer to replace a SIMPLE IRA with a SIMPLE 401(k) plan or other 401(k) plan meeting certain requirements during a plan year.

Employers May Establish Emergency Savings Accounts Linked To Individual Retirement Plans. The Act provides employers the **option** to offer non-highly compensated employees emergency savings accounts linked to the employee's account in the employer's individual account plan (e.g., 401(k), profit-sharing). These accounts are called Pension-Linked Emergency Savings Accounts (PLESAs).

<u>Hardship Withdrawal Provisions Of 403(b) Plans Broadened To Conform With Hardship Withdrawals From 401(k) Plans.</u> Before 2024, hardship withdrawals were only allowed from 403(b) plans to the extent of employee salary reduction contributions. **Beginning in 2024,** hardship distributions to a participant in a 403(b) plan may be made from salary reduction contributions, nonelective contributions, matching contributions, and earnings on any contributions. This conforms the hardship provisions for 403(b) plans to those for 401(k) plans.

OTHER SELECTED RECENT DEVELOPMENTS

Beneficial Ownership Reporting With FINCEN Due In 2024. As a part of the Corporate Transparency Act (CTA), a new rule went into effect on January 1, 2024, requiring certain entities ("reporting companies") to report beneficial ownership information (BOI) to the US Department of the Treasury through its FinCEN website. The point of the new law is to provide transparency on the individuals who utilize certain entities to conduct criminal activities, including money laundering. The following is a brief discussion of key provisions of these BOI rules.

- **Penalties.** CTA provides that those willfully providing, or attempting to provide, false or fraudulent beneficial owner information or willfully failing to report complete or updated beneficial ownership information to FinCEN as required by CTA *"(i) shall be liable for a civil penalty of not more than $500 for each day that the violation continues or has not been remedied; and (ii) may be fined not more than $10,000, imprisoned for not more than 2 years, or both."* Therefore, those required to file these BOI reports should do so unless exempt from filing. **Note!** If you are not familiar with these BOI reporting rules, please call our office and we will gladly discuss them with you.

- **Businesses Required To File.** Domestic companies required to file generally include corporations, limited liability companies (LLCs), and other entities created by filing a document with the secretary of state or similar office under state law. In addition, foreign companies registered to do business in the U.S. are generally subject to BOI reporting. For a description of companies required to report and companies exempt from BOI reporting, please see FinCEN's Small Entity Compliance Guide**.**

- **Due Dates For BOI Reports. Reporting companies created or registered before 2024 must file a BOI report with FinCEN by January 1, 2025. Reporting companies created or registered on or after January 1, 2024, and during 2024 have 90 days to file an initial BOI report.**

- **Update!** On Tuesday, October 29, the Financial Crimes Enforcement Network (FinCEN) issued notices announcing that *certain* businesses affected by hurricanes **Beryl**, **Debby**, **Francine**, **Helene**, and **Milton** will have an additional six months to submit beneficial ownership information (BOI) reports. This additional time includes updates or corrections to previous reports.

- In the notices, FinCEN generally extended the filing deadlines for reporting companies that have an original reporting deadline beginning one day before the date the specified disaster began and ending 90 days after that date and are located in an area designated by the Federal Emergency Management Agency as qualifying for individual or public assistance and by the IRS as eligible for tax filing relief. Per FinCen, "*As further explained in the Notices, to qualify, a reporting company must have a BOI reporting deadline falling within the period beginning one day before the date the specified disaster began - as indicated by the Federal Emergency Management Agency (FEMA) – and ending 90 days after that date. (Where multiple disasters with different starting dates are related to the same storm, FinCEN used the earliest of these dates.) A reporting company also must be located in an area that is designated both by FEMA as qualifying for individual or public assistance and by the Internal Revenue Service as eligible for tax filing relief. Please refer to the applicable Notice for specific information."*

IRS Moves Forward With Employee Retention Credit Claims. During the moratorium on processing ERC claims, which began September 14, 2023, the IRS reviewed claims filed before September 14, 2023, and determined that approximately 50,000 were valid, low-risk claims which the IRS said will be processed and paid during 2024. The IRS began processing claims submitted between September 14, 2023, and January 1, 2024 in August. The IRS says it will focus on the highest and lowest risk claims first and that taxpayers may receive payments for some valid tax periods while others remain under review. In addition, the IRS sent out 28,000 letters disallowing as much as $5 billion in ERC claims. Letter 105-C, "Claim Disallowed," was sent to "businesses whose claims showed a high risk of being incorrect." The first batch of letters were sent in mid-July. The IRS said it believes "more than 90%" of the notices were valid. The IRS also said in limited cases where a claim can be proven to have been improperly denied, the IRS will work with taxpayers to correct it. Going forward, the IRS notes that it will "adjust its processes and filters for determining invalid claims" after each wave of disallowances, based on feedback from the tax community.

The IRS says taxpayers who do not agree with the Letter 105-C disallowance should provide additional documentation supporting the credit claimed. If the IRS continues to disallow the credit, those wishing to appeal the Letter 105-C disallowance have two years from the date of Letter 105-C to appeal the disallowance to the IRS Office of Appeals and/or to file suit, according to the IRS website. Normally, a taxpayer has only 30 days to appeal an IRS assessment with the IRS Office of Appeals.

The IRS has shared five characteristics it observed on incorrect claims: **1)** Essential businesses during the pandemic that could fully operate and didn't have a decline in gross receipts, **2)** Businesses unable to support how a government order fully or partially suspended business operations, **3)** Business reporting family members' wages as qualified wages, **4)** Businesses using wages already used for Paycheck Protection Program (PPP) loan forgiveness, and **5)** Large employers claiming wages for employees who provided services.

- **IRS Opens Second ERC Voluntary Disclosure Program Through November 22, 2024.** The second ERC Voluntary Disclosure Program is open 08/15/24 through 11/22/24 for 2021 tax periods only. Employers who received a credit or refund prior to 08/15/24 for 2021 tax periods are eligible for the second VDP and will be required to repay 85%. The program will operate similarly to the first Voluntary Disclosure Program.

- **Statute Of Limitations On IRS Assessment Denying Employee Retention Credits.** The general three-year statute of limitations on assessment of Employee Retention Credits expired on April 15, 2024, for 2020 employee retention credit claims (and will expire April 15, 2025, for 2021 claims). However, the IRS has two years from issuance of any refund to seek its repayment, even if the general three-year statute of limitations has expired. However, a special five-year statute of limitations applies to IRS assessments for credits taken for the third quarter of 2021. **Note!** The fact that the IRS pays an employer's claim for the employee retention credit does not mean the IRS agrees the employer is entitled to the credit. Only after the relevant statutes of limitations have expired can the employer be certain its refund claim will not be challenged by the IRS.

Businesses Located In And Individuals Living In A Hurricane Helene Disaster Zone Have Until May 1, 2025, To File Returns And Make Certain Tax Payments. The IRS has announced that individuals living in, and businesses located in **Alabama, Georgia, North Carolina, South Carolina and certain counties in Florida, Tennessee and Virginia** now have until May 1, 2025, to file various returns and make certain payments. The May 1, 2025, deadline applies to:

a. Individuals who had an extension to 10/15/24 to file their 2023 return. As tax payments for 2023 were due on 04/15/24, no relief is available for those payments.

b. Businesses (including tax-exempt organizations) with an original or extended due date on or after the disaster start date and before May 1, 2025, including calendar-year corporations with extensions to 10/15/24 to file, and tax-exempt organizations with extensions to 11/15/24.

c. Payments normally due after the disaster start date and before 05/01/25, including certain quarterly estimated payments. This generally does not apply to payroll or excise tax deposits. See state specific information below. Penalties for underpayment of estimated taxes due during this period will not apply.

d. Quarterly payroll and excise tax returns normally due 10/31/24, 01/31/25 and 04/30/25.

e. The performance of certain time-sensitive acts described in Reg. §01-7508A-1(c)(1) and Rev. Proc. 2018-58.

- **State Specific Information.** The extension of time for filing returns and making payments applies to returns and certain payments due during the deferral period beginning on the start date of the FEMA disaster declaration and ending on May 1, 2025. The start dates for the various states are listed below:
- **Alabama** start date of disaster declaration: **September 22, 2024 (See AL-2024-05).**
- **Florida** start date of disaster declaration: **September 23, 2024 (See FL-2024-08).**
- **Georgia** start date of disaster declaration: **September 24, 2024 (See GA-2024-08).**
- **North Carolina** start date of disaster declaration: **September 25, 2024 (See NC-2024-08).**
- **South Carolina** start date of disaster declaration: **September 25, 2024 (See SC-2024-08).**
- **Virginia** start date of disaster declaration: **September 25, 2024 (See VA-2024-01).**
- **Tennessee** start date of disaster declaration: **September 26, 2024 (See TN-2024-01).**

Note! Please see https://www.irs.gov/newsroom/tax-relief-in-disaster-situations concerning disaster filing and payment relief details concerning these and other areas provided disaster relief during 2024. Some recent disasters for which filing, and payment relief has been recently granted include:

- **Hurricane Debby – See the following for details: FL-2024-07, GA-2024-07, SC-2024-07, and NC-2024-07.**
- **Hurricane Milton – See the following for details: FL-2024-10.**
- **Severe Storms And Flooding in Connecticut and New York – See the following for details: CT-2024-11 and NY 2024-08.**

Qualified Commercial Clean Vehicles Credit. The **Inflation Reduction Act Of 2022** introduced a credit for depreciable commercial electric and fuel cell vehicles acquired and placed in service after 2022 and before 2033. **Planning Alert!** A Qualified Commercial Clean Vehicle means the electric or fuel cell vehicle is used in a trade or business or for the production of income. According to the IRS, *"business use means any use in a trade or business of the taxpayer*."

- **Credit Amount.** The credit is the **lesser of: 1)** 30% of the vehicle's basis or **2)** the incremental cost of the vehicle if the vehicle is 100% electric. The 30% credit amount is reduced to 15% if the vehicle has a gasoline or diesel component (i.e., if a hybrid). The IRS says the **incremental cost** of vehicles with a GVWR of less than 14,000 pounds is deemed to be $7,500 except for small hybrid vehicles where the incremental cost is deemed to be $7,000. The **maximum credit allowed** is **$7,500** where the

vehicle has a **GVWR of less than 14,000 pounds** and **$40,000** for a vehicle with a **GVWR of 14,000 pounds or more.**

- **Qualified Commercial Clean Vehicle.** A "Qualified Commercial Clean Vehicle" is a vehicle that: **1)** is depreciable property; **2)** is acquired for use or lease by the taxpayer, and not for resale; **3)** is manufactured for use on public streets, roads, and highways, or is "mobile machinery" (including vehicles that are not designed to perform a function of transporting a load over the public highways); **4)** has a battery capacity of not less than 15 kilowatt hours (7 kilowatt hours for vehicles weighing less than 14,000 pounds) and is charged by an external electricity source; and **5)** is made by a qualified manufacturer that has a written agreement with the Treasury Department and provides reports to the Treasury Department. Qualified commercial fuel cell vehicles are also eligible for the credit. A list of qualified manufacturers can be found here – see https://www.irs.gov/credits-deductions/manufacturers-for-qualified-commercial-clean-vehicle-credit.

- **Other Requirements.** The credit for a Qualified Commercial Clean Vehicle is not allowed if the taxpayer is allowed a Clean Vehicle Credit. **Note!** A **Clean Vehicle Credit** of up to **$7,500** is available for electric vehicles and fuel cell vehicles placed in service after 2022 and before 2033. This credit applies to vehicles used in a business (i.e., depreciable vehicles) and for vehicles acquired for personal use. However, more businesses should qualify for the Qualified Commercial Clean Vehicle credit. The basic requirements to qualify for the Clean Vehicle Credit also apply to the Qualified Commercial Clean Vehicle credit. However, to qualify for the Clean Vehicle Credit, **1)** the vehicle must have its final assembly in North America, **2)** a taxpayer's modified adjusted gross income must be $300,000 or less on a joint return ($150,000 or less for singles) for either the current or prior taxable year, **3)** the retail price of the vehicle cannot be more than $80,000 for SUVs, pickups, and vans or more than $55,000 for other vehicles, and **4)** the vehicle's batteries must meet certain stringent requirements. These 4 requirements do not apply to the Qualified Commercial Clean Vehicle credit. **Planning Alert!** A business that acquires a new vehicle qualifying for either the regular clean vehicle credit or this commercial clean vehicle credit may choose to take the larger of the two credits, but not both. As with other clean vehicle credits, a VIN is required on returns claiming the Qualified Commercial Clean Vehicle credit.

- **Lessors Of Commercial EVs Take The Credit If Treated As Owner Of The EV.** Recently released Q&As explain that the lessor of a qualified Commercial EV is eligible for the Clean Vehicle Credit if the lessor is treated as the owner under general tax principals.

  Q&A explains the rule as follows: *"Based on longstanding tax principles, the determination whether a transaction constitutes a sale or a lease of a vehicle for tax purposes is a question of fact. Features of a vehicle lease agreement that would make it more likely to be recharacterized as a sale of the vehicle for tax purposes include, but are not limited to:*
  - *A lease term that covers more than 80% to 90% of the economic useful life of the vehicle,*
  - *A bargain purchase option at the end of the lease term (that is, the ability to purchase the vehicle at less than its fair market value at the end of the term) or other terms/provisions in the lease that economically compel the lessee to acquire the vehicle at the end of the lease term,*
  - *Terms that result in the lessor transferring ownership risk to the lessee, for example, a terminal rental adjustment clause (TRAC) that requires the lessee to pay the difference between the actual and expected value of the vehicle at the end of the lease."*

- **Basis Of Vehicle Reduced By Credit.** The basis of the vehicle is reduced by any Commercial Clean Vehicle Credit or by any Non-Commercial Clean Vehicle Credit claimed.

- **It's Easier To Qualify For The Commercial Clean Vehicle Credit Than The Clean Vehicle Credit Discussed Previously.** The AGI limitations, the limitation on the cost of the vehicle, the requirement that final assembly of the vehicle must occur in North America, and the battery minerals and component requirements that apply to the Clean Vehicle Credit do not apply to the credit for Qualified Commercial Clean Vehicles. In addition, any unused Qualified Commercial Clean Vehicle Credit may be carried forward if the taxpayer does not have sufficient tax to use the credit. The Clean Vehicle Credit may not

be carried forward. However, beginning in 2024, a taxpayer may be able to obtain benefit of the Clean Vehicle Credit, even without sufficient tax to utilize the credit, by obtaining benefit of the credit from the auto dealer.

TRADITIONAL YEAR-END TAX PLANNING TECHNIQUES

Planning With Timing Of Income And Expenses. One traditional year-end tax planning strategy for business owners includes reducing current year taxable income by deferring income into later tax years and accelerating deductions into the current tax year. This strategy is beneficial where the income tax rate on the business's income in the following year is expected to be the same or lower than the current year. **Caution!** In the following discussions we include "timing" suggestions as they relate to traditional year-end tax planning strategies that would cause you to accelerate deductions into 2024, while deferring income into 2025. However, for businesses that expect their taxable income to be significantly lower in 2024 than in 2025, the opposite strategy might be more advisable. In other words, for struggling businesses, a better year-end planning strategy could include accelerating revenues into 2024 (to be taxed at lower rates), while deferring deductions to 2025 (to be taken against income that is expected to be taxed at higher rates).

Planning Alert! The 20% 199A deduction that was first available in 2018 adds another wrinkle to deciding whether to defer or accelerate revenues, and/or to defer or accelerate deductions. As we will discuss, your ability to take maximum advantage of the 20% 199A deduction for 2024 and/or 2025 may, in certain situations, be enhanced significantly if you are able to keep your taxable income below certain thresholds. Consequently, please keep that in mind as you read through the following timing strategies for income and deductions.

First-Year 168(k) Bonus Depreciation Deduction. Traditionally, a popular way for businesses to maximize current-year deductions has been to take advantage of the **First-Year 168(k) Bonus Depreciation deduction.** Before the *"Tax Cuts and Jobs Act"* (TCJA) which was enacted in late 2017, the 168(k) Bonus Depreciation deduction was equal to 50% of the cost of qualifying depreciable assets placed in service. The *"Tax Cuts and Jobs Act"* temporarily increased the 168(k) Bonus Depreciation deduction to 100% for qualifying property acquired and placed in service **after September 27, 2017,** and **before January 1, 2023.**

Planning Alert! Beginning **with 2024,** the 100% §168(k) deduction is reduced as follows for property placed in service: **1)** During **2024 - 60%, 2)** During **2025 - 40%, 3)** During **2026 - 20%,** and **4) After 2026 - 0%** (with an additional year for long-production-period property and noncommercial aircraft). **Note!** The U.S. House of Representatives passed a bill during 2024 that would restore the 168(k) deduction to 100%. However, the bill died in the Senate.

The 168(k) Bonus Depreciation was enhanced by the TCJA which made the following changes:

- **"Used" Property Temporarily Qualifies For 168(k) Bonus Depreciation.** For qualifying property acquired and placed in service **after September 27, 2017, and before 2027,** the 168(k) Bonus Depreciation may be taken on **"new" or "used"** property. Therefore, property that generally qualifies for the 168(k) Bonus Depreciation includes **"new"** or **"used"** business property that has a depreciable life for tax purposes of **20 years or less** (e.g., machinery and equipment, furniture and fixtures, sidewalks, roads, landscaping, computers, computer software, farm buildings, and qualified motor fuels facilities).

- **The 168(k) Bonus Depreciation Deduction For "Used" Property Generally Makes Cost Segregation Studies More Valuable.** Depreciable components of a building that are properly classified as depreciable personal property under a **cost segregation study** are generally depreciated over 5 to 7 years. Before TCJA, these depreciable building components for a purchaser of a "used" building generally qualified for the 179 Deduction (subject to the dollar caps) but did not qualify for a 168(k) Bonus Depreciation deduction because the 168(k)-depreciation deduction only applied to "new" property. However, the depreciable components of a building that are properly classified as "personal property" (as opposed to "real property") now qualify for the 168(k) Bonus Depreciation (new or used).

- **<u>Annual Depreciation Caps For Passenger Vehicles Increased.</u>** Vehicles used primarily in business generally qualify for the 168(k) Bonus Depreciation. However, there is a dollar cap imposed on business cars, and on trucks, vans, and SUVs that have a **loaded vehicle weight (GVWR) of 6,000 lbs. or less.** For qualifying vehicles placed in service **in 2024** and used 100% for business, the annual depreciation caps are as follows: **1st year - $12,400; 2nd year - $19,800; 3rd year - $11,900; 4th and subsequent years - $7,160.** Moreover, if the vehicle (new or used) otherwise qualifies for the 168(k) Bonus Depreciation, the first-year depreciation cap (assuming 100% business use) is **increased by $8,000 (i.e., from $12,400 to $20,400 for 2024).** **<u>Planning Alert!</u>** If a new or used truck, van, or SUV (which is used 100% for business) has a **GVWR over 6,000 lbs., 60% of its cost** (without a dollar cap) could be deducted **in 2024** as a **168(k) Bonus Depreciation deduction.**

- **<u>168(k) Bonus Depreciation Available In Tax Year Qualifying Property "Placed In Service."</u>** The 168(k) Bonus Depreciation deduction is taken in the tax year the qualifying property is "placed in service." Consequently, if your business anticipates acquiring qualifying 168(k) property between now and the end of the year, the 168(k) Bonus Depreciation deduction is taken in 2024 if the property is placed in service no later than December 31, 2024, if the business has a calendar tax year. Alternatively, the 168(k) Bonus Depreciation deduction can be deferred until 2025 if the qualifying property is placed in service in 2025. However, the 168(k)-depreciation deduction **is scheduled to drop to 40%** of the basis of the property if placed in service in 2025. Generally, if you are purchasing "personal property" (equipment, computer, vehicles, etc.), "placed in service" means the property is **ready and available** for use (this commonly means the date on which the property has been **set up and tested).** If you are dealing with building improvements (e.g., "Qualified Improvement Property"), the date on the **Certificate of Occupancy** is commonly considered the date the qualifying building improvements are placed in service. **<u>Planning Alert!</u>** Unlike the 179 Deduction (discussed next), the 168(k) Bonus Depreciation deduction is automatically allowed unless the business timely **elects out** of the deduction. However, the 179 deduction is not allowed unless the business makes an **affirmative election to take it.**

<u>Section 179 Deduction.</u> Another popular and frequently used way to accelerate deductions is by taking maximum advantage of the up-front Section 179 Deduction ("179 Deduction"). The Tax Cuts and Jobs Act (TCJA) also made several taxpayer-friendly enhancements to the 179 Deduction which include: **1)** Substantially increasing the 179 Deduction limitation (up to **$1,220,000 for 2024), 2)** Increasing the phase-out threshold for total purchases of 179 property **($3,050,000 for 2024),** and **3)** Expanding the types of business property qualifying for the 179 Deduction. **<u>Observation!</u>** To maximize your 179 Deductions for 2024, it is important for your business to determine which depreciable property acquired during the year qualifies as 179 Property. The following is a list of business property that qualifies for the 179 Deduction.

- **<u>General Definition Of 179 Property.</u>** Generally, "depreciable" property qualifies for the **179 Deduction** if: **1)** It is purchased **new or used, 2)** It is "tangible personal" property, **and 3)** It is used primarily for business purposes (e.g., machinery and equipment, furniture and fixtures, business computers, etc.). Off-the-shelf business software also qualifies. **<u>Planning Alert!</u>** The 179 Deduction **is now allowed** for otherwise qualifying property used in connection with lodging (e.g., 179 property in a home the owner is renting to others should qualify).

- **<u>Expanded Definition Of "Qualified Real Property."</u> For property placed in service in tax years beginning after 2017, "Qualified Real Property"** (which qualifies for the 179 Deduction) means any of the following **"improvements" to an existing commercial** (i.e., nonresidential) building that are **placed in service after the commercial building was first placed in service: 1) "Qualified Improvement Property", 2) Roofs, 3) Heating, Ventilation, and Air-Conditioning Property, 4) Fire Protection and Alarm Systems, and 5) Security Systems.** **<u>Tax Tip!</u>** Determining whether a major repair to a building's roof should be capitalized or deducted immediately as a repair under capitalization regulations, is not always an easy task. Since new roofs with respect to an existing commercial building may now qualify for the 179 Deduction, in many situations, the "capitalization vs. repair" issue relating to the replacement of roofs should largely be eliminated where the 179 limitation caps for the year are not exceeded. **<u>Planning Alert!</u>** "Qualified Improvement Property" (QIP) also qualifies for the 60% 168(k) first-year bonus depreciation deduction as well as for the 179 Deduction, subject to the dollar

limitation listed previously. "Qualified Improvement Property" generally means improvements to the interior portion of a commercial building which are placed in service after the building is placed in service and which do not expand the floor space of the building and do not involve the internal structural framework of the building.

- **Business Vehicles.** New or used business vehicles generally qualify for the 179 Deduction, provided the vehicle is **used more-than-50% in your business.** **Planning Alert!** As discussed previously in the 168(k) Bonus Depreciation segment, there is a dollar cap imposed on business cars and trucks that have a **vehicle weight of 6,000 lbs. or less.** If applicable, this dollar cap applies to both the 168(k) Bonus Depreciation and the 179 Deduction taken with respect to the vehicle.

  - **"Heavy Vehicles" Exempt From Dollar Caps.** Trucks, vans, and SUVs that have a loaded **weight (GVWR) of more than 6,000 lbs.** are exempt from these annual depreciation caps. In addition, these vehicles, if used more-than-50% in business, will also generally qualify for a **179 Deduction of up to $30,500** if placed in service in 2024 **($31,300** if placed in service in 2025). **Tax Tip!** Pickup trucks with loaded vehicle weights over 6,000 lbs. are exempt from the $30,500 limit to the 179 Deduction if the truck bed is at least six feet long. **Planning Alert!** The $30,500 cap applies only for purposes of the 179 Deduction. This $30,500 cap **does not apply** with respect to the 168(k) Bonus Depreciation deduction taken on vehicles weighing over 6,000 lbs. **Tax Tip!** Neither the **179 Deduction** nor the 168(k) Bonus Depreciation deduction requires any proration based on the length of time that an asset is in service during the tax year. Therefore, your calendar-year business would get the benefit of the **entire 179 or 168(k) Deduction** for 2024 purchases, even if the qualifying property **was placed in service as late as December 31, 2024!** However, you would claim the 168(k) and 179 deductions in 2025 if the qualifying property was placed in service on January 1, 2025, or after. Therefore, **if you want the deduction for 2024, make sure the vehicle or other qualifying property is placed in service in 2024.**

- **The 168(k) Depreciation Deduction Has Temporarily Made The Section 179 Taxable Income Limitation Less Important.** The 179 Deduction is limited to a taxpayer's "trade or business" taxable income (determined without the 179 Deduction) for the tax year. Any excess 179 Deduction over the "taxable income limitation" is carried forward to later years until the taxpayer generates enough business taxable income to fully deduct it. This generally means that this "taxable income limitation" will not limit the taxpayer's Section 179 Deduction for a specific tax year so long as the taxpayer has aggregate net income (before the section 179 Deduction) from all trades or businesses at least equal to the 179 Deduction for that tax year. For this purpose, an individual's trade or business income includes W-2 wages reported by the individual and/or the individual's spouse (if filing a joint return).

  Planning Alert! There is **no "taxable income limitation" or $30,500 cap** with respect to the 168(k) Bonus Depreciation deduction. Therefore, for example, a taxpayer could deduct **60% of the full cost** of an SUV weighing over 6,000 lbs. purchased in 2024 and used entirely for business as a **168(k) Bonus Depreciation deduction** without being limited by the $30,500 cap, and regardless of the amount of the taxpayer's taxable income. However, combining the $30,500 179 deduction, the 168(k) deduction, and regular MACRS depreciation on the remaining basis of an SUV weighing over 6,000 lbs. can produce advantageous results. For example, if in 2024, a taxpayer purchases for $100,000 an SUV weighing over 6000 lbs., places the SUV in service during the last quarter of 2024, uses the SUV 100% for business from the date of purchase until the end of 2024, the taxpayer should be able to deduct **$73,590** of the cost during 2024 by combining the 179 deduction, the 168(k) deduction and the regular MACRS depreciation deduction. **Planning Alert!** With the 168(k) deduction scheduled to drop to **40% in 2025**, it may be possible to create a larger deduction by pushing asset purchases into 2024 instead of waiting until 2025.

Salaries For S Corporation Shareholder/Employees. For 2024, an employer generally must pay FICA taxes of 7.65% on an employee's wages up to **$168,600 ($176,100 for 2025)** and FICA taxes of 1.45% on wages in excess of **$168,600 ($176,100 for 2025)**. In addition, an employer must withhold FICA taxes from an employee's wages of 7.65% on wages up to $168,600 ($176,100 for 2025) and 1.45% of wages in excess of $168,600 ($176,100 for 2025). Generally, the employer must also withhold an additional Medicare

tax of **0.9% for wages paid to an employee in excess of $200,000.** If you are a shareholder/employee of an S corporation, this FICA tax generally applies only to your W-2 income from your S corporation. Other income that passes through to you or is distributed with respect to your stock is generally not subject to FICA taxes or to self-employment taxes.

- **<u>Compensation Must Be "Reasonable."</u>** If the IRS determines that you have taken unreasonably "low" compensation from your S corporation, it will generally argue that other amounts you have received from your S corporation (e.g., distributions) are disguised "compensation" and should be subject to FICA taxes. Determining "reasonable compensation" for S corporation shareholder/employees continues to be a hot audit issue, and the IRS has a winning record in the Courts. Over the years, the IRS has been particularly successful in reclassifying distributions as wages where S corporation owners pay themselves **no wages** even though they provided significant services to the corporation. However, there have been several cases where the S corporation owners paid themselves **more than de minimis wages,** but the Court still held that an additional portion of their cash "distributions" should be reclassified as "wages" (subject to payroll taxes). **<u>Caution!</u>** Determining "reasonable" compensation for an S corporation shareholder is a case-by-case determination, and there are no rules of thumb for determining whether the compensation is "reasonable." However, Court decisions make it clear that the compensation of S corporation shareholders should be supported by independent data (e.g., comparable industry compensation studies), and should be properly documented and approved by the corporation. **<u>Planning Alert!</u>** Keeping wages low and minimizing your FICA tax could also reduce your Social Security benefits when you retire. Furthermore, if your S corporation has a qualified retirement plan, reducing your wages may reduce contributions that can be made to the plan on your behalf since contributions to the plan are based on your "wages."

<u>S Corporation Shareholders Should Check Stock And Debt Basis Before Year-End.</u> If you own S corporation stock and you think your S corporation will have a tax loss this year, you should **contact us as soon as possible.** These losses will not be deductible on your personal return unless and until you have adequate "basis" in your S corporation. Any pass-through loss that exceeds your "basis" in the S corporation will carry over to succeeding years. You have basis to the extent of the amounts paid for your stock (adjusted for net pass-through income, losses, and distributions); **plus,** any amounts you have personally loaned to your S corporation. **<u>Planning Alert!</u>** If an S corporation anticipates financing losses through borrowing from an outside lender, the best way to ensure the shareholder gets **debt basis** is to: **1)** Have the shareholder personally borrow the funds from the outside lender, and **2)** Then have the shareholder formally (with proper and timely documentation) loan the borrowed funds to the S corporation. It may also be possible to restructure (with timely and proper documentation) an existing outside loan directly to an S corporation in a way that will give the shareholder debt basis. However, the loan must be restructured before the S corporation's year ends. **<u>Caution!</u>** A shareholder cannot get debt basis by merely guaranteeing a third-party loan to the S corporation. **Please do not attempt to restructure your loans without contacting us first.**

<u>MAXIMIZE YOUR 20% 199A DEDUCTION FOR QUALIFIED BUSINESS INCOME (QBI)</u>

First effective in 2018, the 20% 199A Deduction has had a major impact on businesses. This provision allows qualified taxpayers to take a 20% Deduction with respect to **"Qualified Business Income," "Qualified REIT Dividends,"** and **"Publicly Traded Partnership Income."** Of these three types of qualifying income, **"Qualified Business Income" (QBI)** has had the biggest impact by far on the greatest number of taxpayers. Consequently, this discussion of the 20% 199A Deduction focuses **primarily on "Qualified Business Income" (QBI). <u>Planning Alert!</u>** The rules for determining the 20% 199A Deduction for Qualified REIT Dividends and Publicly Traded Partnership Income are relatively straight forward. **<u>Note!</u>** The 20% 199A Deduction is set to **expire after 2025!**

<u>Highlights Of The 20% 199A Deduction For "Qualified Business Income" (QBI).</u> In certain situations, the rules for determining whether a taxpayer qualifies for the 20% 199A Deduction with respect to **Qualified Business Income (QBI)** can be quite complicated. Consequently, the discussion below provides only an "overview" of the primary requirements for a taxpayer to be eligible for the 20% 199A Deduction as it applies to QBI.

- **<u>Who Qualifies For The 20% 199A Deduction With Respect To "Qualified Business Income" (QBI)?</u>** Taxpayers who may qualify for the 20% 199A Deduction are generally taxpayers that report **"Qualified Business Income" (QBI)** as: Individual owners of S corporations or partnerships; Sole Proprietors; Trusts and Estates; and Certain beneficiaries of trusts and estates. **<u>Planning Alert!</u>** The 20% 199A Deduction is available **for tax years beginning after 2017 through 2025 and** is generally taken on the owner's individual income tax return. The 20% 199A Deduction does not reduce the individual owner's "Adjusted Gross Income" (AGI) or impact the calculation of the owner's Self-Employment Tax. Instead, the deduction simply reduces the owner's Taxable Income (regardless of whether the owner itemizes deductions or claims the standard deduction). In other words, the 20%199A Deduction is allowed **in addition to** an individual's itemized deductions or standard deduction.

- **<u>Rules For 20% 199A Deduction For QBI Are Much Simpler For Taxpayers With 2024 "Taxable Income" Of $191,950 Or Below ($383,900 Or Below If Filing Joint Return).</u>** Computing the 20% 199A Deduction for QBI for some taxpayers can be extremely tricky. However, as you read the following discussion, you will discover that certain rules that could otherwise limit the amount of the 20% 199A QBI Deduction do not apply to taxpayers with Taxable Income (excluding the 20% 199A Deduction) of **$191,950 or below ($383,900** or below if married filing jointly).

- **<u>"Qualified Business Income."</u> "Qualified Business Income" (QBI)** generally eligible for the 20% 199A Deduction, is defined as the net amount of qualified items of income, gain, deduction, and loss with respect to **"any"** trade or business **<u>other than:</u> 1)** Certain **personal service** businesses known as **"Specified Service Trades Or Businesses"** (described in more detail below), and **2)** The **Trade or Business** of performing services **"as an employee"** (e.g. W-2 wages). **<u>Caution!</u>** QBI also generally **<u>does not include</u>** certain items of income, such as: **1)** Dividends, investment interest income, short-term capital gains, long-term capital gains, income from annuities, commodities gains, foreign currency gains, etc.; **2)** Any **"guaranteed payment"** paid to a partner by the partnership; **3)** Reasonable compensation paid by an S corporation to a shareholder; or **4)** Income you report as an independent contractor (e.g., sole proprietor) where it is ultimately determined that you should have been classified as a "common law" employee.

- **<u>"Depreciation Recapture Income" May Be Treated As QBI.</u>** As mentioned previously, a capital gain or loss (long-term or short-term) is excluded from the determination of QBI. However, on the sale of depreciable "personal" business property, the gain is generally treated as "ordinary" gain (not "capital" gain) to the extent the seller previously took either depreciation or the 179 Deduction with respect to that property. This is commonly referred to as "Depreciation Recapture Gain." Depreciation Recapture Gain (i.e., treated as "ordinary" gain) with respect to a qualifying business is included in the calculation of QBI. **<u>Planning Alert!</u>** Depreciation Recapture Gain most commonly occurs when a taxpayer sells depreciable **"personal"** property (e.g., business equipment, furniture and fixtures, certain business vehicles, etc.). However, the sale of depreciable **"real"** property (e.g., depreciable buildings used in a commercial business) in certain situations can also generate Depreciation Recapture Gain. For example, if a taxpayer takes the 179 Deduction with respect to qualifying improvements (e.g., new roof, Qualified Improvement Property) to a commercial building and later sells the building, the sale can trigger Depreciation Recapture Gain to the extent of the previous 179 Deduction. If, at the time of the sale, the building had been used in a business that was otherwise generating QBI, the Depreciation Recapture Gain on the sale of the building resulting from the 179 Deduction would be included in QBI.

- **<u>"Ordinary Gain" On The Sale Of A Partnership Interest Could Generate QBI.</u>** Generally, the gain on the sale of a partnership interest is classified as a "capital" gain which is excluded from the computation of QBI. However, code section 751 of the internal revenue code requires a partner to treat income from the sale of the partner's partnership interest as "ordinary" gain (not "capital" gain) to the extent of the partner's share of the partnership's "Unrealized Receivables" (e.g., zero-basis receivables held by a cash-basis partnership; Depreciation Recapture Gain reflected in the partnership's depreciable property) and "Substantially Appreciated Inventory." Gain on the sale of a partnership interest to the extent it is treated as "ordinary" gain under code section 751(a) is considered attributable to the trades or businesses conducted by the partnership. Therefore, if the partnership is generating QBI at the date of the sale of the partnership interest, the "ordinary" gain triggered to the selling partner

under code section 751 should also be included in the partner's QBI. **Note!** Unlike partnerships, no portion of the gain or loss on the sale of S corporation stock will be included in the determination of QBI.

- **W-2 Wage And Capital Limitation On The 20% QBI Deduction.** Generally, your 20% QBI Deduction with respect to each Qualified Trade or Business may not exceed **the greater of:** **1)** 50% of the allocable share of the business's W-2 wages allocated to the QBI of each "Qualified Trade or Business," or **2)** The sum of 25% of the business's allocable share of W-2 wages with respect to each "Qualified Trade or Business," plus 2.5% of the business's allocable share of unadjusted basis of tangible depreciable property held by the business at the close of the taxable year. **Note!** This limitation, to the extent it applies, is generally designed to ensure that the full 20% of QBI Deduction is available only to qualified businesses that have sufficient W-2 wages, sufficient tangible depreciable business property, or both.

- **Owners With Taxable Income Below Certain Thresholds Are Exempt From The W-2 Wage And Capital Limitation!** For 2024, an otherwise qualifying taxpayer is **entirely exempt** from the **W-2 Wage and Capital Limitation** if the Taxpayer's **"Taxable Income"** (computed without regard to the 20% 199A Deduction) is **$191,950 or below ($383,900** or below if married filing jointly). **Caution!** For 2024, the Wage and Capital Limitation phases in ratably as a taxpayer's Taxable Income **goes from more than $191,950 to $241,950, or from more than $383,900 to $483,900** (if filing jointly).

- **"Specified Service Trade Or Businesses" (SSTBs) Income Does Not Qualify For The 20% 199A Deduction For Owners Who Have "Taxable Income" Above Certain Thresholds.** Based on "Taxable Income" (before the 20% 199A Deduction), all or a portion of qualified business income from a so-called "Specified Service Trade or Business" **may not qualify** for the 20% 199A Deduction. More specifically, if **"Taxable Income"** for 2024 (before the 20% 199A Deduction) is **$191,950 or below ($383,900 or below** if married **filing jointly), all** the qualified business income from a "Specified Service Trade or Business" **(SSTB)** is eligible for the 20% 199A deduction. However, if for 2024 **"Taxable Income"** is **$241,950 or more ($483,900 or more** if married **filing jointly), none** of your SSTB income qualifies for the 20% 199A Deduction. **Caution!** If for 2024, your **"Taxable Income"** is **between $191,950 and $241,950** (between **$383,900 and $483,900** if married **filing jointly),** only **a portion** of your SSTB income will be eligible for the 20% 199A Deduction.

  Planning Alert! A taxpayer with Taxable Income for 2024 of **$191,950 or less ($383,900** or less if married filing jointly) qualifies for two major benefits: **1)** The taxpayer's SSTB income (if any) is fully eligible for the 20% 199A deduction, ***and*** **2)** The taxpayer is completely exempt from the W-2 Wage and Capital Limitation. Consequently, if you are in a situation where your 20% 199A Deduction would otherwise be significantly reduced (or even eliminated altogether) due to either or both limitations, it is even more important that you review year-end strategies that could help you reduce your 2024 taxable income (before the 20% 199A Deduction) to or below the $191,950/$383,900 thresholds.

- **What Is A "Specified Service Trade Or Business" (SSTB)?** A ***Specified Service Trade or Business*** **("SSTB")** is generally defined as: **1)** a trade or business activity involved in the performance of services in the field of: health; law; accounting; actuarial science; performing arts; consulting; athletics; financial services; or brokerage services; **2)** a trade or business involving the receipt of fees for celebrity-type endorsements, appearance fees, and fees for using a person's image, likeness, name, etc.; and **3)** any trade or business involving the services of investing and investment management, trading, or dealing in securities, partnership interests, or commodities. An "SSTB" **does not include** the performance of **architectural** or **engineering** services.

- **Evaluating Reasonable W-2 Compensation Paid To S Corp Owner/Employees Is Even More Important Now.** S corporation shareholder/employees have had an incentive to pay themselves W-2 wages as low as possible because only the shareholder's W-2 income from the S corporation is subject to FICA taxes. Other income of the shareholder from the S corporation is generally not subject to FICA or Self-Employment (S/E) taxes. Traditionally, where the IRS has determined that an S corporation shareholder/employee has taken unreasonably **"low"** compensation from the S corporation, the IRS

has argued that other amounts the shareholder has received from the S corporation (e.g., distributions) are disguised **"compensation"** and should be subject to FICA taxes. In light of the 20% 199A Deduction, reviewing the amount of W-2 wages for Shareholder/Employees of S Corporations becomes even more important as we illustrate below:

- **For example,** for S Corporation shareholder/employees who expect 2024 Taxable Income (before the 20% 199A Deduction) of **$191,950 or less ($383,900 or less** if married filing jointly), **there is a tax benefit** to keeping the shareholders' W-2 wages at a level that the shareholder/employee's taxable income does not exceed **$191,950 ($383,900 if married filing jointly),** because: **1)** The W-2 Wages paid to shareholders **do not qualify** for the 20% 199A Deduction, but the W-2 Wages **do reduce** a shareholder's pass-through Qualified Business Income, **2)** The shareholder will be exempt from the W-2 Wage and Capital Limitation, and **3)** The shareholder's pass-through SSTB income (if any) will be eligible for the 20% 199A Deduction. **<u>Caution!</u>** As mentioned previously, the IRS has a long history of attacking S Corporations it believes are paying shareholder/employees unreasonably low W-2 wages.

  By contrast, for S Corporation shareholder/employees who expect to have Taxable Income (before the 20% 199A Deduction) of **$241,950 or more ($483,900 or more** if married filing jointly), there **may be a tax benefit from "increasing"** the shareholder's W-2 wages if: **1)** The S corporation is generating pass-through Qualified Business Income (QBI), and **2)** The W-2 Wage and Capital Limitation will significantly limit the amount of the shareholder/employee's 20% 199A Deduction unless the S corporation increases the W-2 wages paid to the shareholder/employee. However, increasing the shareholder/employee's W-2 wages will increase the payroll tax liability of the S corporation and the shareholder. Therefore, careful calculations should be made before adopting this strategy.

<u>Planning Alert!</u> If you want our firm to review how the W-2 wages your S corporation is currently paying its shareholders affect the 20% 199A Deduction, please **contact us as soon as possible.** We will evaluate your specific situation and make recommendations. **<u>Caution!</u>** The quicker you contact us, the better chance you have to act before the end of 2024 to increase your 20% deduction.

- **<u>Payments By A Partnership To A Partner For Services.</u>** A partner's pass-through share of **QBI** generally **"is eligible"** for the 20% 199A Deduction. Moreover, payments by the partnership to the partner that are properly classified as **"distributions"** neither reduce nor increase the partnership's QBI that passes through to its partners. However, the following types of payments to a partner by a partnership **do reduce** the **amount of QBI** otherwise generated by a partnership, and are also **"not eligible"** for the 20% 199A Deduction: **1)** Any amount that is a **"guaranteed payment"** paid by the partnership to the partner, or **2)** Any amount allocated or distributed by a partnership **to a partner** for services provided to the partnership where it is ultimately determined that the partner was **acting other than in** his or her capacity as a partner. **<u>Caution!</u>** It is not always clear whether specific payments to a partner will be classified as "distributions" (that generally do not reduce the 20% 199A Deduction), or alternatively fall into one of the two above-listed categories that are not eligible for the 20% 199A Deduction. Often partnerships call distributions to partners "guaranteed payments" when they are not technically guaranteed payments. Generally, guaranteed payments are payments made to partners without regard to the partnership's income. If payments to partners are merely distributions of profits or advance distributions of profits, they are probably not guaranteed payments and should not be classified as such and should not reduce the QBI of the partnership.

- **<u>250-Hour Safe Harbor For Rental Real Estate.</u>** For any business activity to generate **"Qualified Business Income" (QBI),** the activity must constitute a **"trade or business".** For Federal income tax purposes, there has always been uncertainty whether and when a "real estate rental" activity is considered a "trade or business". In response to that uncertainty, the IRS released guidance that presumes a rental real estate activity is a "trade or business" **for purposes of the 20% 199A Deduction.** This presumption generally applies if the owner, employees, and independent contractors, in the aggregate, provide 250 or more hours of qualifying services with respect to the rental property during the tax year.

Planning Alert! Failing to satisfy this 250-hour safe harbor only means the rental real estate activity will not be "presumed" to be a "trade or business" for purposes of the 20% 199A Deduction. For those who fail to satisfy this safe harbor, depending on the facts, it may still be possible for the owner to successfully argue that the rental real estate activity constitutes a "trade or business" under general common law principles or when the property is rented to a business controlled by the owner and in which the owner materially participates. **Note!** This 250-hour safe harbor contains several rules and requirements that are too lengthy to address in this letter. If you own rental real estate that is generating net rental income, feel free to **call our firm** and we will gladly review your specific situation and determine if your rental real estate activity is a trade or business qualifying for the 20% 199A Deduction using the 250-hour safe harbor or one of the other trade or business tests.

CAREFUL WITH EMPLOYEE BUSINESS EXPENSES

Un-Reimbursed Employee Business Expenses Are Not Deductible. For 2018 through 2025, "un-reimbursed" employee business expenses are not deductible at all by an employee. For example, an employee **may not deduct** on the employee's income tax return any of the following business expenses **incurred as an "employee", even if the expenses are necessary for the employee's work - Automobile expenses** (including auto mileage, vehicle depreciation); **Costs of travel, transportation, lodging and meals; Union dues** and expenses; **Work clothes and uniforms;** Otherwise qualifying **home office expenses; Dues** to a chamber of commerce; **Professional dues; Work-Related education expenses; Job search expenses; Licenses and regulatory fees; Malpractice insurance premiums; Subscriptions** to professional journals and trade magazines; and **Tools and supplies** used in your work.

An Employer's Qualified Reimbursement Of An Employee's Business Expenses Are Deductible By The Employer And Tax-Free To The Employee. Generally, employee business expenses reimbursed under an employer's qualified **"Accountable Reimbursement Arrangement" are deductible by the employer** (subject to the 50% limit on business meals), and the reimbursements are **not taxable to the employee.** However, reimbursements under an arrangement that is not a qualified "Accountable Reimbursement Arrangement" generally must be treated as compensation and included in the employee's W-2, and the employee would get no offsetting deduction for the business expense. **Planning Alert!** Generally, for a reimbursement arrangement to qualify as an **"Accountable Reimbursement Arrangement": 1)** The employer must maintain a reimbursement arrangement that requires the employee to substantiate covered expenses; **2)** The reimbursement arrangement must require the return of amounts paid to the employee in excess of the amounts substantiated; and **3)** There must be a business connection between the reimbursement (or advance) and the business expenses.

Deductions For Business Meals. Generally, only 50% of the cost of business meals (i.e., food and beverages) is deductible. In addition, a business may deduct 50% of the cost of food and beverages provided during a nondeductible entertainment activity with a business associate provided the food and beverages are purchased separately from the entertainment, or the cost of the food and beverages is stated separately from the cost of the entertainment on one or more bills, invoices, or receipts. **Caution!** If an employer reimburses an employee's deductible business food and beverage expense under an Accountable Reimbursement Arrangement, the employer could deduct 50% of the reimbursement. However, as discussed previously, an employee who is not reimbursed by the employer for the business meal would get no deduction because un-reimbursed employee business expenses are not deductible by employees (from 2018 through 2025).

OTHER SELECTED YEAR-END PLANNING CONSIDERATIONS FOR BUSINESSES

IRS Increases Standard Mileage Rates Effective January 1, 2024. The standard mileage deduction rate for deductible **business miles** was increased from 65.5 cents per mile to **67.0 cents per mile** effective January 1, 2024. The **charitable mileage rate is still 14.0 cents per mile** and the rate for **medical and moving mileage dropped to 21.0** cents per mile for 2024. **Planning Alert!** Be sure to keep proper records for business, medical/moving, and charitable mileage for use as a possible deduction for 2024. **Note!** Moving expenses are not deductible for 2018 through 2025 except for certain military personnel.

<u>Partnerships And S Corporations In Applicable States Should Consider Election To Allow Business To Pay State And Local Income Taxes.</u> **From 2018 through 2025,** the aggregate itemized deduction for state and local real property taxes, state and local personal property taxes, and state and local income taxes (or sales taxes if elected) is **limited to $10,000** for individuals ($5,000 for married individuals filing separately). As a result, most states have enacted legislation allowing partnerships and S corporations to elect to pay state and local income taxes on the partnership's or S Corporation's income. If this election is made, the state and local taxes paid by the partnership or S Corporation are deductible by the entity and reduce the income flowing through to the partners or shareholders. This treatment may be beneficial to owners who have state and local taxes above the $10,000 cap discussed above. If the entity pays the state and local income taxes on its income, the owner does not pay tax on the same income. States either give the partners or S corporation shareholders a state credit or deduction on their personal returns for the state and local tax paid on income reported by the entity. Interestingly, the IRS has approved this avoidance of the $10,000 limitation for state and local taxes on partnership and S corporation income. **Please give us a call** if you would like to know more about your state's law allowing state and local taxes to be paid by the partnership or S corporation.

<u>Consider Simplified Accounting Methods For Certain Small Businesses.</u> The Tax Cuts And Jobs Act (enacted in late 2017) provides the following accounting method relief provisions for businesses with **Average Gross Receipts (AGRs)** for the **Preceding Three Tax Years of $30 Million or Less (for 2024): 1)** Generally allows businesses to use the cash method of accounting even if the business has inventories; **2)** Allows simplified methods for accounting for inventories; **3)** Exempts businesses from applying UNICAP, and; **4)** Liberalizes the availability of the completed-contract method. **<u>Planning Alert!</u>** The IRS has released detailed regulations and procedures to follow for taxpayers who qualify and wish to change their accounting methods in light of these relief provisions. **Please call our firm** if you want us to help determine whether any of these simplified accounting methods might be available to your business.

<u>No Deduction For Expenses Of A "Hobby".</u> Previously, otherwise deductible trade or business expenses attributable to an activity that was *"not engaged in for profit"* (i.e., a hobby loss activity) were deductible: **1)** only as *miscellaneous itemized deductions,* and **2)** only to the extent of the activity's gross income. Since these hobby loss expenses are classified as miscellaneous itemized deductions, no deduction is allowed for these expenses ***from 2018 through 2025.*** **<u>Planning Alert!</u>** This makes it even more important for owners engaged in activities commonly subject to IRS scrutiny, to take steps to demonstrate the business is operated with the intent to make a profit.

<u>New Form 15397 Application For Extension Of Time To Furnish Recipient Statements.</u> New for 2024, **Form 15397, Application for Extension of Time to Furnish Recipient Statements,** may be used to request a **30-day extension** to provide recipients with **Forms W-2, W-2G, 1042-S, 1094-C, 1095, 1097, 1098, 1099, 3921, 3922, 5498, and 8596.** Form 15397 should be used to **request a one-time extension** and is **due after January 1 and by the original due date of the recipients copy of the form(s).** The IRS says **Form 15397 cannot be mailed and should be faxed. <u>Caution!</u> Form 15397 does not extend the due date that the information returns are to be filed with the IRS and/or Social Security Administration. <u>Note!</u>** If you need additional time to file information returns with the IRS or Social Security Administration, see the requirements for filing **Form 8809 Application for Extension of Time To File Information Returns.**

<u>Lower Form 1099-K Threshold.</u> For each calendar year between 2010 and 2022, Payment Settlement Entities have been required to file Form 1099-K annually with the IRS with respect to payees and furnish information to the payees, reporting the gross amount of reportable payment transactions. **However, prior to 2023,** third-party settlement organizations were not required to file Form 1099-K where: **1)** the payee had **200 or fewer otherwise reportable transactions** during the calendar year and **2)** the **gross amount of such transactions during the calendar year was $20,000 or less.**

- **<u>American Rescue Plan Act Changed The 1099-K Reporting Threshold To $600.</u>** The American Rescue Plan Act lowered the exception from filing Form 1099-K by Payment Settlement Entities to gross payments of **$600 or less, with no minimum number of transactions. The new $600 reporting threshold was to apply beginning with 2023 transactions. <u>Note!</u>** In Information Release

2023-221, the IRS announced that 2023 would be treated as a transition period and penalties will not apply where a third-party settlement organization applies the prior law $20,000/200 transaction exemption for 2023 transactions.

- **Update! IRS Now Says 2024 Will Be A Phase-In Year With A Reporting Threshold of $5,000.** In Information Release 2023-221, the IRS announced *"Given the complexity of the new provision, the large number of individual taxpayers affected and the need for stakeholders to have certainty with enough lead time,* ***the IRS is planning for a threshold of $5,000 for tax year 2024 as part of a phase-in to implement the $600 reporting threshold enacted under the American Rescue Plan"***

Timing Of Year-End Bonuses Can Reduce Taxes. Employers may benefit from timing the payment of year-end bonuses. Employers using the cash method of accounting for income tax purposes can deduct bonuses when paid. This allows the employer to take the deduction in the year it produces the most tax benefit by paying the bonus in the current year or delaying payment until next year. Employers using the accrual method of accounting for income tax purposes may generally deduct bonuses in the year accrued assuming the bonuses can be determined by the end of the tax year and are paid within 2½ months after the end of the tax year. Accrual method employers can also push the deduction for bonuses into the following tax year by not paying the bonuses within the 2½ month time frame or by changing the bonus calculation so that the bonuses are unable to be determined by year-end. **Caution!** Accrual method C corporations may not deduct accruals to more than 50% shareholders until the day the amounts are includable in the shareholder's income. Accrual method S corporations and personal service corporations may not deduct amounts owed to any shareholder until the day includable in the shareholder's income. And accrual method partnerships, LLCs, and LLPs taxed as partnerships may not deduct amounts accrued to any owner until the day it is includable in the owner's income.

Don't Forget De Minimis Safe Harbor Election To Expense Certain Assets. Making the de minimis safe harbor election on your company's 2024 return will allow it to expense certain costs paid for assets, materials and supplies purchased through your company. The safe harbor **threshold is $5,000** if your company has a certified, audited financial statement and **$2,500 if it doesn't.** **Note!** The $5,000/$2,500 thresholds are applied to each invoice.

FINAL COMMENTS

Please contact us if you are interested in a tax topic that we did not discuss. Tax law is constantly changing due to new legislation, cases, regulations, and IRS rulings. Our Firm closely monitors these changes. In addition, **please call us before implementing any planning idea discussed in this letter, or if you need additional information concerning any item mentioned in this letter.** We will gladly assist you. **Note!** The information contained in this material should not be relied upon without an independent, professional analysis of how any of the items discussed may apply to a specific situation.

Disclaimer: Any tax advice contained in the body of this material was not intended or written to be used, and cannot be used, by the recipient for the purpose of promoting, marketing, or recommending to another party any transaction or matter addressed herein. The preceding information is intended as a general discussion of the subject addressed and is not intended as a formal tax opinion. The recipient should not rely on any information contained herein without performing his or her own research verifying the conclusions reached. The conclusions reached should not be relied upon without an independent, professional analysis of the facts and law applicable to the situation.