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2 tax bills in Congress treat dealers differently on floor plan interest

As the legislative sausage-making continues in the nation's capital, attempts to enact the first comprehensive reform of the tax code since 1986 are taking different paths in the Senate and the House of Representatives.

Full deductibility of business interest, which includes floor plan interest, is preserved under the tax plan passed by the House on Nov. 16, a reversal from when the bill was introduced. But in the Senate Finance Committee, the deductibility would be limited to 30 percent of adjustable taxable income.

Some tax analysts said that imposing a rigid formula in the tax code is risky, especially when market rates are increasing from historic lows. They also said that reducing the floor plan deductibility would unfairly put at serious risk dealerships with high-cost inventories.

Advocates for dealerships contend that floor plan interest should remain fully deductible for the following reasons:

• Automobile dealers contribute 18 percent of total retail sales nationally, so limiting the deductibility of floor plan interest could reduce growth and threaten jobs on Main Street. Also, interest rates are increasing, and floor plan loan rates are not fixed. Reducing interest deductibility of interest would exacerbate the negative economic consequences of any future downturn in the auto industry.

• Almost 90 percent of the nation's franchised dealerships are closely held companies. For these businesses, floor plan financing is a necessity, not a choice. Without affordable floor plan loans, dealerships would not be able to finance sufficient inventory, because the average sales price of a new vehicle is more than $34,000.

• The limitation on interest deductibility is apparently designed for companies that choose debt over equity for tax purposes, which is not the case for franchised au-

See **Floor plan**, Page 4

Take steps to keep harassment from taking hold at the dealership

It's a tough time to take in the news with the kiddies, what with harassment claims filling newspaper pages and television news programs. But dealerships should recognize that the issue does not end with the political and entertainment industries.

Neither does sexual harassment have a place at a dealership.

Sexual harassment can take many forms and includes unwelcome advances, request for sexual favors, and other related conduct. It also is deemed to be harassment if submission to such conduct is made a term of employment, behavior known as "quid pro quo" harassment.

Hostile environments can be created by managers and supervisors, co-workers, and even non-employees. Consider an outside trainer who regularly visits a dealership to instruct employees, including women, on the use of an F&I menu system. In the course of the training, the male trainer fills his lecture with sexually degrading comments directed towards women.

A situation like that should be brought to the immediate attention of dealership management or the human resources department, to avoid potential liability.

"Intolerable working conditions" that would compel a reasonable person to quit can also be a form of harassment. Examples of such behavior include having sexually suggestive calendars or viewing porn on company computers. It's not a defense that the calendar or pictures are kept at an employee's desk or that the computer porn can only be accessed with an employee's password.

Even playing sexually-charged music could be deemed intolerable by some,

See **Harassment**, Page 4

2017 year-end

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As another tax year comes to a close, it is time to consider your tax planning opportunities. With the new GOP tax plan recently revealed indicating potential big changes to be in effect for 2018, tax planning for this year has never been so relevant. As the year begins, it is prudent to consider opportunities that could help lower your tax bill for this year and possibly the next. Though this GOP tax plan is far from being passed, there are a few items to keep in mind as you move through your year-end planning.

House GOP tax plan proposal highlights

1. Business income from Pass-Through entities such as Partnerships, LLCs, and S Corporations, would be taxed at the maximum 25 percent rate.

a. 100 percent of passive activity income would be subject to the maximum 25 percent rate. For nonpassive activity income (including wages), 30 percent of the income would be subject to the 25 percent rate, and the remaining 70 percent would be taxed at the ordinary income rate and considered labor income. The bill also keeps the current rules for treatment of self-employment earnings in place.

b. For certain service professionals (doctor, lawyer, accountant, consultant, financial advisor, and engineer) all income would be taxed at the ordinary income rate.

2. A flat 20 percent rate would replace the current four tier schedule of corporate rates for C Corporations.

3. Alternative Minimum Tax (AMT) would be repealed for both individuals and businesses.

4. State and local income tax deductions would be eliminated and property tax deductions would be limited to $10,000.

Year-end planning

1. In light of the potential change in tax brackets with the new GOP tax plan, it could be beneficial to defer income until 2018 if moving into a higher bracket this year can be prevented. However, it is important to note many other items deductible under current law could also be reduced or eliminated under the new tax plan.

2. The Section 179 expensing limit for 2017 is $500,000 with a $2 million overall investment limit (before phaseout). This allows businesses to expense the cost of fixed assets such as equipment and furniture and fixtures. Consider placing eligible assets into service before the end of 2017 to take advantage of this expensing limit.

3. If you plan to make any charitable contributions, consider making them in 2017 to receive a tax deduction. Payments by credit card are deductible on the day they are made even if the payment to the credit card company occurs on a later date. The IRS requires written acknowledgment for each contribution of $250 or more. Don't forget to document your out-of-pocket expenses included when volunteering for a charity.

4. Confirm you have made all required personal and corporate income tax deposits for 2017, and see that your personal income tax withholding is adequate. You should consider paying all of your personal state income tax by the end of the year in order to take a federal income tax deduction for the state tax. The new GOP tax plan has proposed eliminating the Federal deduction for state taxes for years 2018 and beyond, so this could be the last year for this deduction.

However, you should consult with your tax advisor if you think you may be affected by the Alternative Minimum Tax as that would reduce or eliminate this deduction.

5. Consider maximizing your retirement contributions, $54,000 for defined contribution plans. This $54,000 limit includes your employee elected deferrals ($18,000 for 2017). An additional $6,000 catch up deferral is allowed for age 50 or over.

6. If you or the dealership owns stock that has unrealized losses, consider discussing with your tax or investment professional the benefit of selling them by year-end to offset realized gains recognized earlier in the year.

7. Confirm you have substantiation for your 2017 meal and entertainment expenses. Travel expenses and the cost of a holiday party for employees or food ordered into the dealership for staff should not be included in this amount. This could potentially be the last year for entertainment expense as the GOP tax plan proposes eliminating the deduction for entertainment, but the 50 percent meals deduction will stay intact.

8. Accrued interest on loans from shareholders and other related parties, as well as rents, must be paid in order for the dealership to deduct these amounts in the current year.

Keep accounting records open at end of December

1. Record December finance chargebacks in December.

2. Maximize LIFO deductions. Record all new vehicles that were built and invoiced in 2017 as vehicle purchases in 2017 by keeping the new vehicle purchase journal open the first few days of 2018.

See Page 3

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checklist for dealers

Continued from Page 2

3. Keep your accounts payable journal open to record all 2017 expenses in 2017, including advertising, interest, utilities, telephone, gasoline, data processing, insurance, etc.

4. Adjust your property tax payable account to equal at least the total you actually paid in 2017.

5. If any vehicle deal is not a 100 percent completed deal in 2017 (all paperwork and funding in 2017), then treat it as a 2018 vehicle sale.

6. Make sure all miscellaneous inventories are adjusted to actual, including labor inventory, sublet, gas-oil-grease, body shop materials, etc.

7. Distributions paid to S corporation shareholders should be equalized in accordance to their ownership percentage before year-end.

8. You must include a reasonable estimate of your LIFO adjustment for the year on all versions of your December financial statements. **There are no exceptions.** If there is not a separate LIFO cost of sales account, charge the LIFO estimate to cost of sales in a cost account that has no other activity.

9. Compare your actual parts inventory to the accounting parts inventory and make adjustments where appropriate. Have your parts manager determine which parts should be considered worthless. Subject to your review, dispose of these parts by year-end.

10. All wages and commissions paid in 2018 for 2017 services should be accrued in 2017. Make sure the first payroll in 2018 (even though some portion of the payroll was for 2017 services) is **not** included on your W-2s for 2017, but will instead be on the W-2s for 2018.

a. All accrued payroll for non-shareholders must be paid no later than March 15, 2018, for it to be deductible in 2017.

b. If you are a C corporation, make sure you pay any salaries, commissions, or bonuses to stockholders and related parties in December (if their ownership exceeds 50 percent including related party interests) in order to take a 2017 tax deduction.

c. If you are an S corporation, wages to a shareholder cannot be accrued and deducted for tax purposes. You must pay them in 2017 and include the wages on the 2017 W-2.

11. Reconcile, where possible, all balance sheet accounts before closing the year.

Additional year-end TO DOs

1. If you are not on LIFO for used vehicles, adjust all of your used vehicles to current wholesale market value at year-end. On an annual basis, used vehicle LIFO should be discussed with your tax advisor.

2. Businesses should consider the "de minimis safe harbor election" to expense the costs of lower value capital assets, materials, and supplies. Regulations allow businesses to write-off small asset purchases. The safe harbor amount that can be written off is up to $5,000 per item or invoice if you have an audited financial statement and $2,500 if you do not. However, you can set a write-off policy at any level that is material to you. The policy must be in writing.

3. Review all past due accounts receivables, including employee receivables. Write-off those receivables that are not collectible.

4. Review prepaid assets and expense all items in this account that are not valid as prepaid at year-end.

5. All payroll tax and sales tax payable accounts must equal the actual amount of the applicable taxes paid in 2018 for the 2017 fourth quarter and year-end filings. Investigate variances. The year-end payroll tax accrual can only include taxes owed on wages actually paid in 2017.

6. Compute the Dec. 31, 2017, accrued vacation wages payable and adjust the books accordingly. Accrued Vacation wages paid Jan. 1-March 15, 2018, are deductible in 2017 for tax purposes. No vacation accrual is allowed for any shareholders.

7. Review bank reconciliations for checks (including payroll checks over 60 days old) not expected to clear. These checks should be voided and reissued. Funds owed to payees who cannot be located may be considered unclaimed property, which would require you to remit the funds to the appropriate state agency. Before reissuing a check to a vendor, be sure that it has not been paid with a subsequent billing.

Year-end tax reporting

1. IRS Form 1099-MISC must be issued to all businesses that are not incorporated (including LLCs) and received $600 or more during 2017 for payment of services, awards, commissions, or fees for services. A Form 1099-MISC must be issued for payments to an attorney even if they are incorporated. When preparing the 1099, for those vendors from whom you purchased parts in conjunction with a service, you must report the total payment made to them on the 1099.
Also, Form 1099-MISC must be issued for all rents paid to non-corporate taxpayers, including shareholders, and Form 1099-INT must be issued for interest paid to shareholders and any other individuals. The deadline for filing 1099s is Jan. 31, 2018, for both paper and electronically filed Box 7 nonemployee compensation. All other 1099s are due Feb. 28, 2018, if paper filed and April 2, 2018, if electronically filed.

2. W-2s for S corporation shareholders must include in wages health insurance premiums paid by the corporation. This amount is not subject to social security or Medicare tax. If the dealership pays the insurance premiums on behalf of the shareholders' children who are employees of the dealership, the children's W-2 must include the insurance premi-

See **Year-end**, Page 4

Floor plan

Continued from Page 1

tomobile dealerships. Most franchised automobile dealerships are family-owned small businesses and do not have access to public equity markets.

The House tax reform bill (House Resolution 1) includes a provision to preserve full floor plan deductibility for businesses — including car and truck dealers, RV dealers, motorcycle dealers, boat dealers and retailers or farm and manufacturing vehicles and equipment — that rely on floor plan financing to purchase expensive inventory for their showrooms.

Senators are being urged to include such a provision in its tax legislation, which could be voted on soon.

Harassment

Continued from Page 1

and should be avoided. Such charges cannot be defended by claiming the conduct occurred in the privacy of an alleged offender's own office or workplace at the dealership.

Dealership personnel should be trained to treat every co-worker, subordinate, vendor, and customer with respect and dignity. That will avoid even the appearance of sexual harassment and enhance the dealership's reputation for professionalism and excellence.

Training should stress that if any employee becomes aware of, or even suspects, any form of sexual harassment at the dealership, that behavior should be reported immediately to management.

Year-end

Continued from Page 3

ums.

3. Under the Affordable Care Act, if you have 50 or more full-time or full-time equivalent employees, you are considered an Applicable Large Employer ("ALE"). ALEs are required to complete Form 1095-C, Employer-Provided Health Insurance Offer and Coverage for all full-time employees. This form details by month the employer health insurance offered to individual employees. The deadline for providing the forms to employees is Jan. 31, 2018. Paper filed forms are due Feb. 28, 2018, and electronic forms on April 2, 2018. There are extensions available if requested.

4. Determine if you are receiving services from individuals who should be considered employees. The IRS provides a voluntary program that will allow you to convert these individuals prospectively from independent contractors to employees with partial relief from penalties and interest including protection from prior year audits of the converted class of workers. Consult your tax advisor for details.

Review procedures for the use of demonstrators to ensure compliance with current IRS regulations

1. All individuals who are provided a demo to drive should sign a written demonstrator agreement.

2. There are two IRS-approved methods that can be used for full-time salespersons. The first method provides them with tax-free use of the demo. This method is fairly complicated and restrictive. The second method, used by most dealers, is the partial exclusion method. Under this method, an amount is added to wages on a monthly basis. The IRS has provided daily income amounts based on the value of the vehicle. For example, for a vehicle valued at $25,000, the daily inclusion is $6. Under this method, employees are not required to maintain logs.

3. For employees who are not full-time salespersons and for any other individuals who drive demos, the annual lease value method is used. The amount included in income is based on personal-use mileage and the IRS annual lease table. The IRS requires that logs be maintained in order to verify business versus personal use of the vehicle.

4. The amount included in income is to be added to each employee's W-2. Non-employee family member income amounts must also be included in the employee's W-2. This income is subject to social security and Medicare tax. Shareholders not on the payroll and any other non-employees must be issued a Form 1099-MISC for the income.

5. You can obtain more information about the personal use of autos including sample demonstrator agreements by requesting our Dealer Demonstrator Guidelines.

Other

1. Form 8300 must be filed if you receive cash in excess of $10,000 from a customer. This includes cashier checks, money orders, and traveler's checks except those issued by financial institutions requiring a lien on the vehicle.

2. If the dealership has a Section 125 plan (cafeteria plan), make sure eligible employees complete the 2018 election forms before the first 2018 payroll. Remember that stockholders owning more than 2 percent in S corporations (LLCs, etc.) are not eligible to participate.

3. If you offer a health care Flexible Spending Arrangement (FSA) as part of your cafeteria plan, in order for it to be a qualified benefit under a cafeteria plan, the maximum salary reduction contribution to the health care FSA for 2018 is limited to $2,650. Stockholders owning more than 2 percent in an S corporation or an LLC are not eligible to participate. If your company offers a qualified high deductible health insurance plan, you and employees might be able to contribute to individual Health Savings Accounts (HSAs). Contribution limits for 2018 are $3,450 for an individual and $6,900 for a family with a $1,000 additional contribution for those who are age 55 and over.

4. If you make gifts to individuals each year for estate tax purposes, the payments must be made by year-end. You may also be required to file a gift tax return depending on the size of the gift. Please consult your tax advisors on further guidance on this.