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The 2003 Tax Act: How It Affects Contractors

President Bush's eagerly anticipated – and hotly debated – 2003 tax relief bill is now the law of the land. But, while a few provisions targeting businesses were included, much of the Act focuses on individual, rather than corporate, issues. For contractors, then, the question of tax relief is one of degree . . .

BY RICHARD R. SHAVELL

In May 2003, President Bush signed the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA), his third tax bill since taking office.[1] Here are the most important tax-relief provisions contractors should know:

- Foremost is the continued liberalization of the expensing election available under IRC §179.
- First-year bonus depreciation has been expanded and extended.
- The income tax rate reduction has been accelerated.

JGTRRA also includes new and/or amplified rate changes and deductions (such as the temporary lowering of the capital gains rate and the tax rate for dividend income) that could significantly impact the construction industry.

This article presents an overview of these and other issues and discusses tax planning opportunities for contractors.

Liberalized Expensing Election

Businesses are entitled to allocate the cost of asset acquisitions over various periods of time, based on the estimated class life of the assets. Obviously, the more quickly assets can be deducted via depreciation, the more quickly current taxes will be lowered – hence the desire to accelerate depreciation deductions.

Under §179, a business can elect to immediately deduct the cost of new asset purchases up to a certain threshold. Prior to the 2003 tax act, up to $25,000 of qualified property placed in service for the year could be expensed. JGTRRA increases this threshold to $100,000.[2]

The phase-out threshold limits the availability of this expensing provision; under the 2003 tax act, the threshold has been increased from $200,000 to $400,000.[3] Therefore, if the total assets qualifying for §179 expensing do not exceed $400,000, a deduction of up to $100,000 may be taken.

Above the Threshold

Contractors with asset purchases over $400,000 will see the availability of the expensing deduction phased-out on a dollar-for-dollar basis above that threshold. A taxpayer can go up to $500,000 in total purchases before the entire §179 expensing provision is reduced to zero.

For the majority of contractors, managing this threshold should not be a concern. However, for larger entities, such as heavy/highway contractors, the threshold limit may be an issue.

Qualifying Property

Qualifying property is defined in §179 as depreciable tangible property purchased for use in the active conduct of a trade or business. For 2003 through 2005, taxpayers are permitted to make or revoke the §179 election on amended returns without IRS consent.[4]

The new provisions are indexed for inflation, but generally expire after 2005. Effective for the tax years beginning after December 31, 2002, the thresholds will go back to their pre-2003 JGTRRA levels after 2005.

This provision enables most contractors to expense virtually all of the equipment they purchase in a given year. In addition, their record-keeping burden will likely be diminished because most contractors will be able to expense (rather than depreciate) a significant portion of assets.

Note, too, that for tax years beginning after 2002 and before 2006, property eligible to be expensed now includes off-the-shelf software.[5]

What Did Not Change

JGTRRA did not change one of the rules which otherwise limits the expensing deduction – that the taxpayer must have taxable income.[6] If there is no taxable income, the elected expensing amount under §179 is deferred and carried over to the following year.

This has always been a concern for contractors faced with lower taxable income levels. The issue is whether or not to elect §179, even though the increased deduction cannot add to a current-year loss for the respective taxpayer or entity.

Most practitioners take the position that electing the expensing is more advantageous because the value will be received in the very next year in which there is taxable income.

With a significantly higher §179 threshold, this perspective may change. A taxpayer may want to simply take the regular depreciation deduction, which can increase the loss. Due to the availability of bonus depreciation, the delayed deduction may now be less significant than it would have been before the new provisions took effect.

Bonus Depreciation

Bonus depreciation enables taxpayers to accelerate their deduction for depreciation; it was added by the 2002 tax act, with an original effective date of September 11, 2001. Under JGTRRA, bonus depreciation is increased from 30% to 50% for new property placed in service after May 5, 2003 and before January 1, 2005.[7]

Property is eligible for bonus depreciation only if:

1) It is of a specified type, including:
   - MACRS property with a 20-year or less recovery period,
   - Certain computer software which cannot be amortized as a §197 intangible,
   - Certain water utility property, or
   - Qualified leasehold improvement property;
2) Its original use commences with the taxpayer after September 10, 2001 (30% bonus) or after May 5, 2003 (50% bonus);
3) It is acquired within the statutory time periods; and
4) It is placed in service by a statutory date.[8]

Consider the purchase of a qualifying asset (such as a truck) for $20,000. Under the bonus depreciation rules, 50% of the truck's cost would automatically be depreciated;

the balance of $10,000 would then be subject to the regular depreciation rules.

Important Dates

The effective rate for bonus depreciation applies to new property placed in service after May 5, 2003 and through December 31, 2004. Property with longer production periods can be completed in 2005 (with certain limitations), as long as a binding contract was entered into on or before December 31, 2004. This will have a significant impact on new acquisitions. Note that the 2002 rate of 30% bonus depreciation continues to apply for property acquired between September 11, 2001 and May 5, 2003.[9]

Treatment

Bonus depreciation is treated as a normal depreciation deduction. For example, if §1245 assets (generally, tangible personal property) are disposed of prior to the end of their normal recovery period, the depreciation deductions (including bonus depreciation) would be subject to ordinary income recapture when the property is sold at a gain.

Thus, if a taxpayer takes bonus depreciation on a truck, and the truck is later sold at a gain, a portion (or all) of the depreciation would be treated as ordinary income recapture in the year of sale, rather than as potential capital gains income.[10]

AMT Considerations

Bonus first-year depreciation is permitted for AMT, as well as for regular tax purposes. Therefore, no AMT adjustment for the entire recovery period applies for that portion of the qualified property claimed under bonus depreciation,[11] or for the remaining portion depreciated under regular methods.[12]

Taxpayers may elect out of bonus first-year depreciation for any class of property for any tax year. Also, taxpayers may elect to claim the 30% bonus first-year depreciation instead of the 50% bonus.[13]

Bonus Depreciation & Luxury Cars

The dollar limits for luxury auto depreciation have been changed to take into account the enhanced bonus depreciation. The new law raises the bonus depreciation with respect to luxury cars by $7,650 for the initial year.[14]

Example

Let's consider the bonus depreciation on a passenger luxury car purchased for $30,000 in June, 2003. Assuming the auto is used 100% for business, the 2003 dollar cap for passenger luxury autos has remained at $3,060.[15]

However, the business may claim a first-year depreciation of $10,710 (the $3,060 regular depreciation cap plus the $7,650 revised bonus depreciation on qualified cars). This represents the maximum deduction for expensing the first-year bonus depreciation allowance and the regular first-year depreciation allowance.

Combined §179 & Bonus Depreciation

Consider this: A contractor purchases a $250,000 property that is placed in service June 1, 2003. This date is after the effective date of the new provisions enacted by JGTRRA. (Should this be the contractor's only asset purchased during the year, the contractor does not exceed the threshold of $400,000 of qualified purchases and the phase-out rules will not apply.)

Here is how the taxpayer would figure the bonus first-year depreciation in conjunction with the AMT:

1) **Elect §179.** The taxpayer claims $100,000 as an expensing deduction under §179.

2) **Calculate the bonus depreciation.** The balance of qualified property is now $150,000, of which the taxpayer can take a bonus depreciation of $75,000 at the 50% level.

3) **Calculate the regular depreciation.** The remaining adjusted basis of $75,000 ($250,000 minus the $100,000 §179 deduction minus the $75,000 bonus depreciation) is depreciated over the next five years.

   In the first year, another 20% would be available for regular depreciation based on the tables for five-year class property under MACRS. Therefore, the taxpayer would have $15,000 of regular depreciation.

4) **Add the results of steps 1-3.** The $15,000 regular depreciation is added to the $100,000 §179 expensing and the $75,000 bonus depreciation. Thus, in the first year, the taxpayer deducts $190,000 of depreciation.

   This represents 76% of the $250,000 cost of the acquired asset. At a 35% tax rate, the tax benefit would be $66,500 (or a 26.6% return on the acquisition in the first year).

Why This Is Important

As shown by this example, JGTRRA has a significant impact on the cost of capital investment. This, of course, is one of the underpinnings of the 2003 tax act and its provisions.

The hope is that, given adequate incentives or subsidies, businesses will invest in equipment and other assets – which, in turn, will affect the investment behavior of taxpayers in the aggregate. The result is intended to stimulate the economy.[16]

IRR Analysis

Some studies indicate that the availability of bonus depreciation and expensing can lower the carrying cost of asset acquisitions by as much 4%.[17] To confirm that, my firm recently prepared an analysis to determine the increment in the after-tax internal rate of return (IRR) as it applies to investors and property that take advantage of bonus depreciation.

Our analysis was based on varying assumptions and timing of property sales. It concluded that a cost segregation study that included bonus depreciation during the next year or two could increase the after-tax IRR by 1.5% to 3%.

Accelerating tax deductions on such a property increases the after-tax IRR from approximately 10% to 12% and results in a 20% increment in IRR. (See my article, "Cost Segregation Studies: Accelerating Tax Depreciation," in the November/December 2002 issue of this magazine for more information on accelerating tax depreciation for property acquisitions.)

Accelerating Tax Rate Reductions

JGTRRA accelerates many of the changes that were included in the 2002 tax act. For calendar year 2003 and thereafter, and except where noted for sunset provisions, individual tax rates include the following changes:

- The maximum individual marginal income tax rate is 35% (sunsets after 2010).[18]
- The maximum rate for capital gains property taken into account after May 5, 2003 is 15% (sunsets after 2008).[19]
- The maximum rate on most dividends received is 15% (sunsets after 2008).[20]

A complete listing of individual tax rates can be found in the chart below. Corporate rates are shown on the next page.

INDIVIDUAL TAX RATES FOR THE NEXT 10 YEARS (%)

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
INCOME TAX RATE REDUCTION										
Top bracket	38.6	35	35	35	35	35	35	35	35	39.6
Fifth bracket	35	33	33	33	33	33	33	33	33	36
Fourth bracket	30	28	28	28	28	28	28	28	28	31
Third bracket	27	25	25	25	25	25	25	25	25	28
Second bracket	15	15	15	15	15	15	15	15	15	15
Initial bracket	10	10	10	10	10	10	10	10	10	No 10% bracket
CAPITAL GAINS										
Capital gains rate	20	15	15	15	15	15	15	20	20	20
Capital gains rate for taxpayers 10% or 15% bracket	10	5	5	5	5	5	0	10	10	10
DIVIDENDS										
Dividends rate *(taxed as capital gains)*	Did not apply	15	15	15	15	15	15	Will not apply	Will not apply	Will not apply
Dividends rate for taxpayers in 10% or 15% bracket *(taxed as capital gains)*	Did not apply	5	5	5	5	5	0	Will not apply	Will not apply	Will not apply

S vs. C Issues

CORPORATE TAX RATE SCHEDULE (%) – QUICK TAX METHOD *For tax years beginning after 12/31/02*						
TAXABLE INCOME	**Times**	**%**	**Minus**	**Dollars**	**Equals**	**TAX**
$0 to $50,000	x	15	minus	$0	=	Tax
$50,001 to $75,000	x	25	minus	$5,000	=	Tax
$75,001 to $100,000	x	34	minus	$11,750	=	Tax
$100,001 to $335,000	x	39	minus	$16,750	=	Tax
$335,001 to $10,000,000	x	34	minus	$0	=	Tax
$10,000,001 to $15,000,000	x	35	minus	$100,000	=	Tax
$15,000,001 to $18,333,333	x	38	minus	$550,000	=	Tax
$18,333,334 and over	x	35	minus	$0	=	Tax

The changes in tax rates will likely have an impact on business structuring decisions (C corporations vs. pass-through entities such as S corporations or LLCs). In making such decisions, it is important to recognize the following relationships between individual, corporate, and investment tax rates that will exist for the near future:

- The individual dividend rate (15%) vs. the rate for C corporations with taxable income over $10 million (35%).
- The individual dividend rate (15%) vs. the maximum rate for C corporations with taxable income of $10 million or less (34%).
- The C corporation taxable income rate and the individual ordinary income rate are now roughly equalized at 34/35% vs. 35%.
- The individual net capital gains rate and ordinary income rate are 15% (vs. 35% for corporations).
- The individual dividend tax rate and ordinary income tax rate are 15% (vs. 35% for corporations).

The Administration's Take

The Bush administration has an interest in seeing that taxes on investment income continue to decrease.[21] The lower rate on income and capital gains is intended to increase savings and investments, thereby increasing expensing by businesses. This coincides with the provisions previously discussed regarding bonus depreciation and §179 expensing.

If one considers the possibility of additional changes, dividend income would be one area where there may be even further decreases in rates. Remember that prior to JGTRRA, the administration was looking to eradicate all taxation on dividend income.[22]

The objective? To eliminate double taxation of C corporation income (which occurs when after-tax income is distributed via dividends to C corporation shareholders, who must then pay tax on the dividend income). Shareholders will now enjoy the lower 15% rate on their dividends.

Other Observations

Individual marginal rates have continued to slide and, from a historical perspective, are now at a fairly low maximum taxable income rate. Because these rates are now equalized with C corporation rates, we expect to see a continuing decline in the C corporation tax base. If this trend continues, a higher percentage of businesses will be operating as pass-through entities to avoid taxation at the corporate level.[23]

In addition to tax rate equalization, there are other reasons for an increase in the number of pass-through entities, including:

- The potential elimination of double taxation,
- The potential ability to take advantage of pass-through losses, and
- The ability to deduct interest expense on capital that is secured via debt.

However, should future deficit levels require a tax rate increase, the decline in the C corporation tax base will most likely be offset by increases in individual income tax rates.

Preferred Stock Issues May Rise

In addition to the rate changes, another issue affecting the C vs. S corporation debate centers on the capitalization of closely held C corporations.

Then & Now

In the past, capitalization through debt was preferred because the individual creditor or shareholder receiving the interest or dividend income assumed that both types of income would be taxed at an equal rate.

With the ordinary **INCOME TAX** rate **2 1/3 times higher** than the **CAPITAL GAINS** rate, we should see a continuing preference for **CAPITAL GAINS INCOME.**

This has changed so that, although corporations can still benefit from an interest deduction, the use of stock for raising capital may provide a lower cost of capital in the near future.

Under JGTRRA, the investor/creditor receiving stock will now receive dividends that are taxed at the new special 15% rate (rather than interest payments, which could be taxed at the highest individual marginal tax rate of 35%).

This is a trend my firm has already witnessed; one of our clients issued preferred stock via a private placement, inducing investors to take advantage of the potentially lower taxes on the qualifying dividends.

(*Note:* C corporations considering this way to raise capital must be certain that all of the requirements are met to ensure that any dividends paid on common or preferred stock qualify for the new lower 15% rate.)

A Positive Impact

Freeing a C corporation of interest payments will have a collateral positive impact on its financial statements; in essence, they could look much like the financial statements of its counterpart, the S corporation.

With an S corporation, paid dividends (or distributions) reduce equity, but have no immediate impact on the company's income statement. C corporations that now raise capital with stock issues (rather than debt) will find themselves in a similar situation. Corporate net income could increase because interest deductions could be decreased in favor of non-deductible dividend payments.

This could have a positive impact on the availability of other types of credit in situations where the users of financial statements are sensitive to balance sheet analysis. In particular, surety capacity could be increased in the near future (under certain circumstances) should capital be raised by equity rather than debt issues.

Individual Rate vs. Capital Gains Rate

With the ordinary income tax rate 2 1/3 times higher than the capital gains rate, we should see a continuing preference for capital gains income. The 25% reduction (from 20% to 15%) is available through 2008.[24]

Real estate "developers" will strive to avoid "inventory" treatment of their real estate sales to ensure the availability of capital gains rates. Also, long-held properties with significant built-in gains because of their depreciated (reduced) basis may now become available for sale as owners begin to recognize that a 15% capital gains rate may not be "all that bad."

Other Capital Gains Issues

The capital gains rate cut does not necessarily apply to all capital gains items. For instance, collectibles and certain other assets remain subject to the 28% maximum rate.[25] Additionally, unrecaptured §1250 (land and building) depreciation gains will still be taxed at a 25% maximum capital gains rate.[26]

And, capital losses against ordinary income are still limited to $3,000 per year for individual taxpayers.[27]

The Date Dilemma

The May 6, 2003 effective date for capital gains transactions will add further complexity for tax preparers and taxpayers. It is expected that a significant number of errors will occur on 2003 tax returns because there will be differing rates for gains that are transacted before and after the effective date. Practitioners and individuals should, therefore, be careful when preparing what is expected to be an even further expanded Schedule D tax worksheet to report capital gains.

The Kiddie Tax

Taxpayers may also consider transferring securities and assets to children over the age of 13 who are otherwise exempt from the "kiddie tax."

Assuming the child is in the 10% (or lowest) income tax bracket, a sale of a low-basis asset will either not be taxed at all or be taxed (in part) at a lower 5% rate, rather than at the adult 15% capital gains rate. This could assist in the maneuvering of assets for children as they approach college age.

Other Dividend Issues

Determining whether a dividend qualifies for these new rates will be a concern over the next few years. Certain types of dividends are specifically excluded.[28] These include:

- Dividends paid from an exempt entity,
- Amounts that would be deductible dividends paid by mutual savings banks,
- Dividends paid to ESOPs that the employer deducts,
- Dividends from certain foreign corporations that are "not qualified,"
- Dividends on stocks held for less than 60 days, and
- Dividends that are otherwise treated as investment income under §163(d)(4)(B).

Of these, the two that would concern most individuals are the holding period exclusion and the investment interest election.

Holding Requirements

As with capital gains, the 60-day holding requirement is going to add practical complexity for brokers and other interested parties trying to determine the following:

1) The holding period to which dividends may apply on specific shares, and

2) Whether the minimum 60-day holding period is achieved to ensure that the dividends qualify for the lower tax rate.

Investment Income

According to §163, shareholders can take the dividend amount into account as investment income for a specific computation in the code. This is actually a benefit to taxpayers because JGTRRA enables the individual to make an election that previously only existed as a capital gain.[29]

The issue concerns individual taxpayers with limitations on the amount of investment interest expense they can deduct. To maximize this deduction, a special election can be made to treat the dividends received as "investment income." This will forego the lower tax rate on dividends and enable the dividend income to be included in the computation of investment income.

If the computation of investment income is increased by the taxpayer by this election, more investment interest expense will likely be permitted to be deducted, thereby offsetting more income at a higher marginal rate.

Other Rate Change Issues

As indicated in the previous individual tax rate chart below, the highest marginal rate for 2002 was 38.6%, whereas the 2003 highest marginal rate is now 35%. Because the tax rates changes are retroactive to the beginning of 2003, taxpayers will be able to reduce the amount withheld from their paychecks to reflect the natures of both the retroactive and prospective tax cuts.

New withholding tables have been distributed, but generally taxpayers can look forward to a refund or larger refund than they would have received without the reduction in rates. Shareholders and partners of pass-through entities can see the impact by revising their estimated tax payments.

A Few Final Words about Rates

Employees may have an opportunity to double-up their savings by leaving their net check substantially the same and contributing the excess funds to such pension plans as a 401(k), SEP, or IRA.

Note that all of the tax brackets will be adjusted annually for inflation. However, the 10% threshold will be indexed for inflation starting in 2004 (rather than 2007, as previously mandated by prior tax relief).[30]

Corporate Estimated Tax Payments

Corporate estimated tax payments due on September 15, 2003 can be diminished by 25%, with that 25% portion of the payment due on October 1, 2003.[31]

There is no basis for this in sound tax policy; the provision simply shifts revenue between fiscal years 2003 and 2004 for federal budget balancing purposes. However, this change does add some complexity for C corporations in terms of estimated taxes.

Two Other Provisions Affecting Any/Everyone

In addition to the accelerated rate cuts and investment tax reductions, there are several other high-profile changes in the new tax law.

Child Credit

The child tax credit has been increased from $600 to $1,000.[32] However the increase is temporary – the change is only effective for 2003 and 2004. The credit is scheduled to fall to $700 in 2005, but will then increase back to $1,000 by the year 2010 under a prior tax act schedule.[33]

The child tax credit continues to be phased-out in certain modified levels of adjusted gross income. For joint filers, it is $110,000; for married filing separately, $55,000; and for single filers, $75,000.[34]

Marriage Penalty Relief

JGTRRA increases the standard deduction for married couples to twice the amount of the standard deduction for single taxpayers.[35] However, relief is temporary and only for two years, 2003 and 2004.

In 2005, the standard deduction for married taxpayers will fall to 174% of the standard deduction for single taxpayers and gradually rise to double the amount by 2009.[36]

Because of the increase, some married couples who would otherwise itemize deductions on Schedule A may now use the more simplified standard deduction. On the other hand, the higher deduction may cause more couples to slide into an AMT position.

Provisions Not Included in JGTRRA

Several issues were not addressed in the 2003 tax act. First (and foremost) is an overhaul of the AMT, which has been a continuing source of concern to the construction industry, as well as others.

The AMT

The AMT continues to be an issue for small contractors (those with revenues averaging under $10 million and who elect more advantageous methods for reporting long-term contracts, such as the completed contract method).[37] Projections still show that millions of taxpayers will be caught in the complexities of AMT – in many cases, simply accelerating taxes that otherwise would not be due until a later date. The construction industry, as well as other interested parties, continues to lobby for changes to these very complex and outdated provisions.

There is one positive note: Many of the more beneficial provisions in the 2003 tax act have been insulated from and do not affect AMT. This includes bonus depreciation and the increase in §179 expensing. Also, the individual AMT exemption has been modestly increased (as shown in the chart next page).[38]

Estate Taxes

The 2001 tax act contained significant changes to the estate, gift, and generation-skipping transfer taxes. These taxes were scheduled to be lowered between 2002 and 2009, and repealed for 2010.[39] (However, the scheduled repeal sunsets the very next year!) To date, nothing has been done to rectify this sunset provision, perpetuating uncertainty in this very complex area.

Phase-Outs

Prior to JGTRRA, exemptions and deductions were phased-out as income increased. Currently, the phase-out is gradually reduced and repealed after 2009.[40]

JGTRRA did not address the repeal schedule for the phase-out of personal exemptions or for the limitation of itemized deductions; likewise, the 2003 tax act did not accelerate these changes.

NOL

Surprisingly, the five-year net operating loss (NOL) carry-back period contained in Bush's other tax acts was not extended. (The two-year carry-back was extended to five years by the 2002 tax act for net operating losses arising in taxable years ending in 2001 and 2002.)[41]

There was much discussion that this would be extended in 2003; it was not and taxpayers should note this fact.

Other Issues

The research tax credit generally applies to amounts incurred before July 1, 2004.[42] This particular tax credit has been extended many times in the past, but is currently set to expire on that date. It, too, was not extended by the 2003 tax act.

PROVISIONS IN JGTRRA AND THEIR EFFECTIVE DATES

From JCX-55-03, issued by the Joint Committee on Taxation on May 22, 2003

PROVISION	EFFECTIVE
Acceleration of Certain Previously Enacted Tax Reductions	
1. Expand the child credit to $1,000 for 2003 through 2004; revert to present-law phase-in for 2005	Taxable years beginning after 12/31/02
2. Accelerate the expansion of the 15% individual income tax bracket and the increase in the standard deduction for married taxpayers filing joint returns; revert to present-law phase-in for 2005	Taxable years beginning after 12/31/02
3. Accelerate the expansion of the 10% bracket; revert to present-law phase-in for 2005	Taxable years beginning after 12/31/02
4. Accelerate the 2006 rate schedule	Taxable years beginning after 12/31/02
5. Increase the individual AMT exemption amount by $4,500 single and $9,000 joint for 2003 and 2004	Taxable years beginning after 12/31/02
Growth Incentives for Business	
1. Increase bonus depreciation to 50% and extend through 12/31/04	Property placed in service after 5/5/03
2. Increase §179 expensing: Increase the amount that can be expensed from $25,000 to $100,000 and increase the phase-out threshold amount from $200,000 to $400,000; include software in §179 property; and index both the deduction limit and the phase-out threshold after 2003 (sunsets after 2005)	Taxable years beginning after 12/31/02
Reduction in Taxes on Dividends and Capital Gains	
1. Tax capital gains with a 15/5% rate structure for 2003 through 2007, and 15/0% in 2008 (sunsets 12/31/08)	Sales on or after 5/6/03
2. Tax dividends with a 15/5% rate structure for 2003 through 2007, and 15/0% in 2008 (sunsets 12/31/08)	Dividends received in taxable years beginning after 12/31/02

These issues, along with eliminating taxation on dividends, may be incorporated into future tax bills. Discussions of further tax reductions must also address the multiple and ongoing budget concerns that underlie much of the national debate.

Tax Planning Opportunities

Contractors and taxpayers must consider how the new tax law will affect them. Tax planning projections should be done and a recalculation of 2003 quarterly estimated tax payments should be considered. Contractors should also review the following planning issues:

- Where appropriate, consider accelerating ordinary income to take advantage of the accelerated rate reductions.
- If there are investment interest expenses that are otherwise not deductible, consider treating dividends as investment income, thus enabling an increased deduction.
- Where feasible or practical, consider purchasing new business equipment in 2003, 2004, and 2005 to take advantage of bonus depreciation and/or §179 expensing at the elevated thresholds.

- If a new building is purchased, consider engaging a qualified professional to perform a cost segregation study to take advantage of bonus depreciation.

- For leasehold improvements that qualify for bonus depreciation, complete the improvements in 2003 and 2004.[43]

- Assess investment strategies to take advantage of lower taxes on long-term capital gains, as well as lower taxation on dividend income (as opposed to interest income).

Conclusion

While JGTRRA does provide some tax relief for contractors, it also leaves many issues unaddressed. As always, you are advised to consult with your company's tax accountants and advisors before embarking on a specific strategy. BP

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He has also testified before the House Committee on Small Business, the House Committee on Ways and Means, and the Senate Finance Committee on the business impact of proposed legislation.

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Endnotes

1. Jobs and Growth Tax Relief Reconciliation Act of 2003 (P.L. 108-27), signed 5/28/03
2. Code §179(b)(2)
3. Code §179(b)(5)
4. Code §179(c)(2)
5. Code §179(d)(1)
6. Code §179(b)(3)
7. Code §168(k)
8. Code §168(k)(2)
9. Code §168(k)
10. Regulation §1.168(k)-1T(f)(3)
11. Regulation §1.168(k)-1T(d)(1)(iii)
12. Regulation §1.168(k)-1T(d)(2)(ii)
13. Regulation §1.168(k)-1T(e)
14. Code §168(k)(4)(D)
15. Regulation §1.168(k)-1T(d)(3), Example 2
16. Dept. of the Treasury, Office of Public Affairs press release, dated 5/22/03
17. "The Effects of Temporary Partial Expensing on Investment Incentives in the United States," *National Tax Journal*, September 2002, reported by The Heritage Foundation
18. Code §1(i)(2). Also see Joint Committee on Taxation Summary of Conference Agreement, JCX-0-03, dated 5/22/03 regarding sunset provisions
19. Code §1(h)(1)(c)
20. Code §1(h)(11); Act Section 302(a)
21. See Pres. Bush's "Jobs & Economic Growth" press release, dated 1/7/03
22. Ibid.
23. See Joint Committee on Taxation Report, "Background and Proposal Relating to S Corporations," dated 6/18/03
24. Code §1(h)
25. Ibid.
26. Ibid.
27. Code §1211
28. Code §1(h)(11)
29. Code §1(h)(11)(D)(i)
30. Act §104(b)
31. Act §501
32. Code §24(a)
33. Ibid.
34. Code §24(b)(2)
35. Code §63(c)(7)
36. Ibid.
37. Code §460(e)
38. Code §55
39. Code §2210(a)
40. Code §151(d)(3)(E) and §68(g)
41. Code §172(b)(1)
42. Code §41(h)
43. Code §108(k)(3)