PUBLICATION

The American Jobs Act of 2011

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Earlier this week President Obama sent the much anticipated American Jobs Act of 2011 (the Bill) to Congress for consideration. The Bill contains numerous and far reaching incentives to create jobs. In order to pay for the Bill's more than $400 billion (over ten years) jobs stimulus package, the Obama Administration has proposed several changes to the Internal Revenue Code (the Code) that would begin as early as 2013.

Revenue Raising Provisions

The proposed change to the Code that would likely have the biggest impact on individual taxpayers is a limitation on the tax value of all itemized deductions, and some other tax expenditure items, to 28 percent for taxpayers in the top two tax brackets. This limitation would only apply to married taxpayers with an adjusted gross income in excess of $250,000, or single taxpayers above $200,000. Under this proposal, the value of many deductible items would be reduced from 39.6 cents on the dollar (for a top bracket taxpayer in 2013) to 28 cents on the dollar. This proposed change would also apply to the alternative minimum tax.

The Bill also contains a provision that would significantly modify the manner for taxing carried interests in partnerships under the Code. As proposed, the change would cause income from partnership interests attributable to providing services to the partnership to be taxed as ordinary income, whereas such income is presently generally taxed as capital gains.

Another provision of the Bill would close what many in Congress refer to as the "corporate jet loophole" by increasing the recovery period for corporate aircraft, which is currently five years, to seven years. This proposed change to the Code would effectively treat all depreciable aircrafts in the same manner.

The Bill also contains numerous changes to the Code's tax provisions affecting the oil and gas industry, as well as individual interest holders. The biggest of these proposed changes for individuals and small producers would likely be the repeal of percentage depletion for oil and gas properties, as well as a provision that would subject working interest holders to passive activity rules. In addition to these changes, nearly every other oil and gas income tax incentive provision is either repealed or significantly modified under the Bill.
Although several of these provisions may not have a direct impact on many taxpayers, such changes could greatly affect the tax benefits to be received from any oil and gas investments.

The Next Step

Although many members of Congress have repeatedly voiced their opposition to any tax increases. Nevertheless, there remains a strong chance of passage for at least some of the Bill's job stimulus provisions, which in turn would require some form of a revenue offset. Additionally, statements from members of both parties, as well as from the Obama administration, have suggested the possibility of piecemeal passage of various portions of the Bill.

While the proposed changes to the Code outlined above as well as other proposals in the Bill may or may not be enacted, it is nevertheless important to be proactive in planning for such possibility. To discuss any of these proposals and the impact that possible changes may have on your unique tax situation, please contact any of the following attorneys in the Firm's Tax Department.