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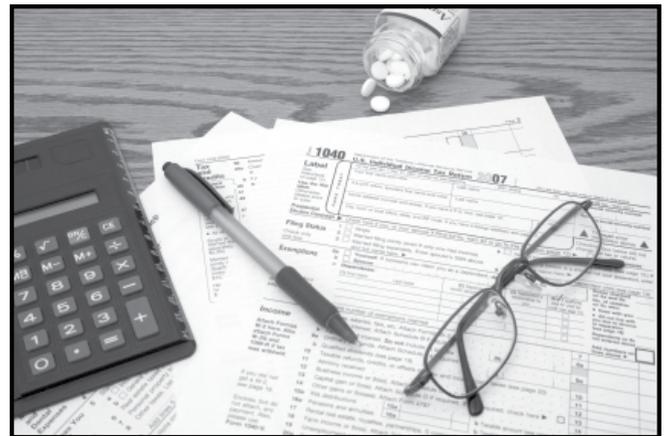
A NEWSLETTER FOR THE MANUFACTURING & DISTRIBUTION INDUSTRIES

FALL 2010

RECOVERY

Maximize the Tax Benefits of NOLs

It's been a difficult year for manufacturers and distributors, with many companies experiencing net operating losses (NOLs). While losing money is certainly not an ideal outcome after a year of hard work, an NOL can provide an opportunity to ease cash flow problems with a refund of prior years' taxes.



An NOL occurs when a company's tax deductions are higher than its taxable income for the year. Until tax years beginning in 2008, an NOL could be carried back up to two years or carried forward for up to 20 years to offset taxable income in those years.

However, the American Recovery and Reinvestment Act of 2009 (ARRA), signed in February 2009, temporarily increased the carryback period for NOLs from two years to up to five years. The Worker, Homeownership and Business Assistance Act of 2009 (WHBAA) signed in November 2009, supersedes the ARRA to include NOLs arising in 2009 as well as 2008.

Under this new legislation, the extended carryback period is not limited to an "eligible small business" — defined as a company with average annual gross receipts under \$15 million for the previous three years — as was the case with the ARRA. Now most businesses can choose to carry back an NOL for two, three, four or five years,

depending on which year will result in the biggest refund.

Other major WHBAA provisions relating to NOLs include a limitation on the amount of an NOL that can be carried back to the fifth preceding year, and the suspension of the 90 percent limitation on the use of any alternative minimum tax NOL deduction for which the extended carryback period is elected.

CARRY BACK OR CARRY FORWARD?

Generally, C corporations carry back their NOLs to the oldest year, with any excess loss applied to the next oldest year and so forth. Naturally, if the past five years didn't yield taxable income, the loss simply carries forward. If the loss is in excess of the prior five years' taxable income, this excess will carry forward as well. The best election can be determined by a marginal rate calculation.

How to Protect Your Intellectual Property

Many manufacturers and distributors are not aware that they have intellectual property to protect.

After years of working at your company, managers can become so familiar with specific innovations, processes and trade secrets that they forget these assets are worthy of special protection. Or executives assume that the company's important intangibles are protected under blanket copyrights or nondisclosure agreements.

But this is not always the case. Intellectual property is extremely valuable and can create an enormous competitive advantage. Here are some steps to help protect intellectual property from theft or exploitation:

Monitor exposure. What information are you sharing that should be protected? For example, in bid documents, does your company reveal proprietary information about how it integrates components? Does a bid describe a new product or innovation that's in development?

Does it share technical specifications that should not be disclosed to others?

Gather the executive team to discuss the circumstances under which your company shares its trade secrets. Once these potential "leaks" are identified, they can be plugged.

Use nondisclosure agreements. Unfortunately, bids often get shared with competitors and are used by potential clients to leverage price breaks or schedule accelerations. In the process, your company's proprietary information can circulate unfettered.

To solve this problem, require bid recipients to sign nondisclosure agreements (NDAs) that prevent



them from discussing your confidential bid information with others. Work with your corporate attorney to include language describing exactly how the information can be used.

For example, an NDA may dictate that bid information can be shared with the customer's employees on a "need-to-know" basis, or only for the purposes of responding to one specific bid.

For employees, too. The people working at your company must understand that their livelihoods depend on the business maintaining its competitive edge.

Employees have an ethical responsibility to not divulge trade secrets. You can make it a legal responsibility as well by requiring them to sign nondisclosure agreements.

Nondisclosure agreements also help protect trade secrets and customer lists from ex-employees who try to set up a competing shop. Note, however, that the enforceability of these agreements varies from state to state.

Protect designs and processes. Patents provide protection for up to 20 years, so use them! Often, company executives make the assumption that someone has taken the lead on the patent process when the paperwork hasn't actually been filed.

Or, there may be so much happening around the shop that no one is really paying attention to protecting the important innovations being implemented.

Assign a team to assess intellectual property at the company and create a process by which these assets get the protection they deserve.

Don't underestimate the value of the intellectual property in your company. Protecting it must be a priority. ■

We have close relationships with attorneys who can help you protect your intellectual property. Ask us how.

What Is IP?

Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images and designs used in commerce.

Intellectual property is typically guarded by patents, trademarks and copyrights, and by maintaining trade secrets.

EXPANSION TACTICS

Be Aware of Multistate Sales and Use Taxes

An enlarged sales footprint may be a good way to increase revenues. But before shipping across state lines, hiring an out-of-state employee or opening a new facility or office elsewhere, investigate the impact of each state's sales and use taxes.

GOT NEXUS?

A state cannot impose tax laws on an out-of-state company unless that company has "nexus" — a significant connection with the tax-imposing jurisdiction in the state. This connection may include soliciting sales in the state via an employee or independent agent, a physical presence or delivery of goods into the state by means other than mail or common carrier. Once nexus is established, the company must collect sales tax, which may include both state and local taxes, depending on jurisdiction.

GOT EXEMPTIONS?

Some manufacturers and distributors may qualify for a sales and use tax exemption or credit. Two of the most common exemptions are for sales to resellers and sales to tax-exempt

organizations. However, to qualify for these exemptions, it is necessary to file sales and use tax returns and obtain resale certificates from purchasers.

Some states offer exemptions or credits for materials and equipment used in the manufacturing process. Since these differ from state to state, check details by location.

GOT E-COMMERCE?

Many states are anxious to collect tax on e-commerce in their jurisdictions. Some are so eager for the potential revenue that they are going out of their way to try to prove nexus. At this point, however, e-commerce almost always follows the same rules as other sales in the state. A physical presence via an office, employee or agent is typically necessary.

GET SERIOUS

Potential sales and use tax revenue is so high that 47 states got together to form a special organization to pursue it. The Multistate Tax Commission (MTC), an intergovernmental state tax agency, works on behalf of states

to enforce multistate tax laws. The MTC helps states conduct audits to assess and encourage compliance.

If a company fails to file a sales tax return, collect the sales taxes it should or significantly under reports its sales, there is no statute of limitations — and the consequences can be severe. Companies that shirk their state tax responsibilities must not only cover the back taxes they should have collected, they must also pay significant penalties and interest.

With more than 7,500 separate state and local jurisdictions levying some form of sales and use tax, staying abreast of multistate tax liabilities can be a challenge. CPAs are familiar with interstate tax rules and regulations, so they can help companies analyze specific state and local tax liabilities. Many CPAs recommend a yearly review for this purpose. ■

For more information call Joe Bigane, Tax Partner, at 630-545-4540.

Maximize the Tax Benefits of NOLs *Continued from page 1*

The same rules apply to S corporations or LLCs, but because losses flow through to the shareholder's personal tax return, the tax refund would be claimed against personal income taxes paid. Note that for a flow-through entity, it is important for owners to know their tax basis. Is it sufficient to take a loss? If not, year-end tax planning may be used to establish basis.

Owners should also be aware of tax strategies that allow them to generate the largest refund. For example, buying equipment before

year-end and evaluating bad debt and inventory losses can maximize an NOL.

Because of the tax consequences and complexity of these rules, it is crucial to discuss NOLs with your tax advisor. Falling profits are not often a good thing, but they may prove beneficial if handled appropriately. ■

If you would like to learn more about NOLs and carryback rules or other strategies, please call Phil Czajkowski, Partner-in-Charge, Tax Services at 630-545-4580.

Don't Forget: Passive Loss Rules

Passive investors cannot use passive losses to offset their earned or ordinary income.

For example, say an owner has transferred S corporation stock to passive shareholders, such as his or her children, who are not working in the company. If the company experiences an NOL, passive loss rules prohibit the children from claiming the loss.

Essentially, passive losses can only be used to offset passive income.

Wolf & Company LLP

Certified Public Accountants

Manufacturing & Distribution Group

2100 Clearwater Drive, Oak Brook, IL 60523

www.wolfcpa.com



Wolf Financial Group

IFRS in the U.S.

Though more than 100 countries have adopted International Financial Reporting Standards (IFRS), the United States is not among them. Why?

To do so would require substantial investment in education, training and technology. Additionally, some investors are not confident in the international accounting standards. And a few simply prefer the generally accepted accounting principles (GAAP) used in the U.S.

However, with continued globalization of the U.S. economy, investors and capital markets are eager for uniform global accounting standards. Plus, if the U.S. doesn't commit to IFRS adoption, there

is a risk that global investors and businesses will shift to financial centers and exchanges where IFRS is accepted.

Progress to "converge" US-GAAP and IFRS has been slow. Still, U.S. adoption seems inevitable.

The U.S. Financial Accounting Standards Board (FASB) and the Securities and Exchange Commission (SEC) support IFRS adoption in the U.S. According to the Center for Audit Quality, U.S. adoption of IFRS would:

- Facilitate efficient capital allocations.
- Align the U.S. with other countries.

- Protect the long-term competitiveness of U.S. capital markets.
- Promote increased transparency.
- Reduce complexity in financial reporting.
- Increase efficiency for companies.

Currently, 42 percent of global Fortune 500 companies use US-GAAP, 32 percent use IFRS and 26 percent use other accounting standards. ■

For more information about IFRS call Keith Friedlein, Partner-in-Charge, Wolf & Company's Manufacturing & Distribution Group at 630-545-4505 or visit <http://www.ifrs.com>.