

RECENT TAX DEVELOPMENTS

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The following is a summary of the most important tax developments that have occurred in the past three months that may affect you, your family, your investments, and your livelihood. Please call us for more information about any of these developments and what steps you should implement to take advantage of favorable developments and to minimize the impact of those that are unfavorable.

New Opportunity to Convert to Roth IRA. This year is a pivotal one for retirement planning, as it is the first year in which taxpayers may convert funds in regular IRAs (as well as qualified plan funds) to Roth IRAs regardless of their income level. Such a conversion may be desirable because distributions from Roth IRAs may be tax-free if several conditions are met, and a Roth IRA owner does not have to commence lifetime required minimum distributions (RMDs) from Roth IRAs after he or she reaches age 70 1/2. However, even if Roth distributions are tax-free, a 10% penalty may apply. Plus, the conversion itself will be fully taxed, assuming the rollover is being made with pre-tax dollars (money that was deductible when contributed to an IRA, or money that was not taxed to an employee when contributed to the qualified employer sponsored retirement plan) and the earnings on those pre-tax dollars. For example, an individual in the 28% federal tax bracket who rolls over \$100,000.00 from a regular IRA funded entirely with deductible dollars to a Roth IRA will owe \$28,000.00 of tax. So the individual would be paying tax now for the future privilege of tax-free withdrawals and freedom from the RMD rules.

New Option to Choose Longer Carryback Period for Net Operating Loss (NOL). A new law enacted last November makes it easier for most businesses to get immediate tax savings from NOLs. It does so by allowing certain NOLs to be carried back to earlier, more profitable years. In these tough economic times, that is good news for businesses who have suffered losses recently after better years when high taxes were paid. Specifically, the new law generally permits any business to increase the carryback period for an applicable NOL to 3, 4, or 5 years from 2 years (however, businesses getting certain federal bailout funds are not eligible). An applicable NOL is a business's NOL for any tax year ending after December 31, 2007, and beginning before January 1, 2010. Generally, an election may be made for only one tax year. The amount of the NOL that can be carried back to the fifth tax year before the loss year cannot be more than 50% of a business's taxable income for that fifth preceding tax year determined without taking into account any NOL for the loss year or for any tax year after the loss year.

Homebuyer Credit Extended and Liberalized. A new law enacted last November extended and generally liberalized the tax credit for first-time homebuyers, making it a much more flexible tax-saving tool. Before the new law, the credit was to have expired for homes purchased after November 30, 2009. The new law extended the credit to apply to a principal residence bought before May 1, 2010; it also applies to a principal residence bought before July 1, 2010 by a person who enters into a written binding contract before May 1, 2010, to close on the purchase of the principal residence before July 1, 2010. Also, effective for purchases after November 6, 2009, the new law allows existing homeowners who meet certain conditions to qualify for a reduced credit of up to \$6,500.00. For purchases after November 6, 2009, the phaseout rules have been eased. These are the rules that cause the credit to be reduced or eliminated as modified adjusted gross income exceeds certain levels. Much higher income levels are now allowed before there is any reduction of the credit. On the negative side, a credit cannot be claimed for a home whose purchase price exceeds \$800,000.00. In addition, the new law includes some crackdowns designed to prevent abuse of the credit.

New Lease On Life for COBRA Subsidy. In December of last year, the 65% COBRA premium subsidy that was enacted in February of 2009 got a new lease on life. Under the original provision, employees who were involuntarily terminated after August 31, 2008 and before January 1, 2010, and who elected COBRA health continuation coverage, became entitled to receive a 65% subsidy on their COBRA premiums. For periods of COBRA coverage beginning after February 16, 2009, the involuntarily terminated employee was treated as having paid the required COBRA premium if the individual paid 35% of the premium amount. The employer (or, in some cases, multiemployer health plan or insurer) could recover the other 65% by taking the subsidy amount as a credit on its quarterly employment tax return. The December 2009 legislation added another six months to the maximum period that the COBRA subsidy can run (i.e., to a total of 15 months). In addition, it extended the up-to-15 month COBRA premium subsidy to workers (and their eligible family members) who lose their jobs during the first two months of 2010.

Standard Mileage Rates Down for 2010. The optional mileage allowance for owned or leased automobiles (including vans, pickups or panel trucks) is 50 cents per mile for business travel after 2009. That is 5 cents less than the 55 cent allowance for business mileage during 2009. Further, the rate for using a car to get medical care or in connection with a move that qualifies for the moving expense deduction is 16.5 cents per mile, down 7.5 cents from the 24 cents per mile allowance for 2009.

ARC Loan Program Has No Tax Consequences for Small Business Borrowers. The IRS has concluded that qualifying small business borrowers who receive an interest-free loan under the America's Recovery Capital Loan Program (ARC Loan Program) do not have income on account of the loan and cannot claim interest deductions for the loan. The ARC Loan Program helps small businesses that are experiencing financial hardship. Under it, viable small businesses experiencing immediate financial hardship can receive an interest-free loan of up to \$35,000.00 from a lender approved by the Small Business Administration (SBA) for the purpose of making payments on qualifying small business loans. The loan proceeds are used to make up to six months of principal and interest payments on qualifying small business loans (e.g., credit card obligations for the borrower's business, capital leases for major equipment and vehicles, and notes payable to suppliers or vendors) and repayment of the loan principal is deferred for at least 12 months after the last disbursement of the proceeds. Repayment of an ARC loan may extend up to five years, but the borrower must pay the principal over the repayment period. The SBA pays monthly interest to the lender, and provides a 100% guaranty of payment to the lender. The borrower has no obligation to pay any interest on the loan. The ARC Loan Program runs through September 30, 2010, or until appropriate funds run out, whichever comes first.

Indirect Investors Can Benefit from Ponzi Scheme Safe Harbor. A letter sent by the Internal Revenue Service to some members of the House of Representatives explains how indirect investors can benefit from a previously issued optional safe harbor which direct investors who suffered losses in Ponzi schemes can use to determine the proper time and amount of the loss. The letter indicates that the primary reason for the safe harbor's restriction to direct investors is because they are the party from which the perpetrator of the fraudulent arrangement stole money or property, and thus the proper party to compute and claim a theft-loss deduction. The letter stresses, however, that this restriction does not prevent indirect investors from benefitting from the safe harbor treatment or from deducting their share of a theft loss sustained by a passthrough entity. It notes that partnerships and LLCs taxed as partnerships that qualify as direct investors may use the safe harbor treatment and pass the loss through to the indirect investor (partner).

Proposed Regulations On Forthcoming Stock Reporting Rules. The Internal Revenue Service has issued proposed regulations explaining the complex basis and character reporting requirements that will apply for most stock acquired after 2010, for share in a regulated investment company (RIC, i.e., a mutual fund) or stock acquired in connection with a dividend reinvestment plan (DRP) after 2011, and other specified securities acquired after 2012. When these rules are implemented, the Internal Revenue Service will be in a much better position to monitor whether taxpayers are properly reporting investment gains and losses.

How Small Employers Opt In or Out of Filing Form 944 for 2010. The Internal Revenue Service has explained how small employers eligible to file Form 944 (Employer's Annual Federal Tax Return), should request to file that form instead of Forms 941 (Employer's Quarterly Federal Tax Return), for tax years beginning on or after January 1, 2010. In addition, the Internal Revenue Service explained how employers who previously were notified to file Form 944, may request to file Form 941 instead for tax years beginning on or after January 1, 2010. Employers whose estimated annual employment tax liability is \$1,000.00 or less are eligible to file Form 944 rather than Form 941 (but not if they must file Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, or Schedule H (Household Employment Taxes, Form 1040)). Beginning in tax year 2010, employers will be able to opt out of filing Form 944 for any reason if they follow certain procedures.