TAX ACCOUNTING REVIEW
SUMMER 2009

TAX ACCOUNTING GROUP
of Duane Morris LLP

Mid-Year Tax Planning: Taking Advantage of the Recovery Act and Making the Most of a Weak Economy

Summer is here and tax planning may be the last thing on your mind. Most taxpayers wait until year-end to consider tactics to save on their tax bill; however, as taxes become increasingly complicated, year-end may be too late. The American Recovery and Reinvestment Act of 2009 (the Recovery Act) created many beneficial tax advantages, some of which are temporary and only apply in 2009, barring any further legislation. Both individuals and small businesses may now want to take advantage of both tried-and-true tax planning techniques along with new tax breaks before they disappear. Many of the following suggestions can be implemented now to ease the burden of both year-end tax planning and your 2009 and beyond income tax bills.

Tax Planning Strategies for Individuals

TAX CREDITS AND DEDUCTIONS

Credits for Energy-Efficient Home Improvements

Energy credits which previously expired for 2008 are back in 2009 with even higher limits under the Recovery Act. The Recovery Act provides a credit of 30 percent of the cost, up to $1,500, for qualified improvements placed in service during 2009 and 2010. Improvements include adding insulation, energy-efficient windows and doors, and energy-efficient heating and air conditioning systems to a principal residence. Other improvements such as geothermal heat pumps, solar water heaters, solar panels and small wind energy systems can be made to any home, including vacation and rental homes, and are not subject to the $1,500 limit. To qualify for a credit you must receive and retain a Manufacturer Certification Statement. More information regarding what products qualify as energy efficient is available at www.energystar.gov.

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Tax Planning Strategies for Small Businesses

Bonus Depreciation

The Recovery Act has extended the 50 percent bonus depreciation rules for qualified property placed in service in 2009, thereby allowing for a higher than normal tax deduction in the year of purchase. To qualify for bonus depreciation, the property must be new and have a depreciation period of less than 20 years, or be water-utility property or computer software not covered by Section 197, or be qualified leasehold improvement property.

The 50 percent bonus depreciation can also result in greater write-offs for taxpayers who buy heavy SUVs in 2009 for business purposes. SUVs with a gross vehicle weight (GVW) rating of more than 6,000 pounds are exempt from the Section 280F depreciation limits. Between the Section 179 expensing allowance for heavy SUVs, 50 percent bonus depreciation and regular first-year depreciation, taxpayers who buy new heavy SUVs in 2009 and place them in service this year may be able to depreciate most of the cost of the vehicle.

Enhanced Section 179 Expensing

The Recovery Act has extended the increased Section 179 expense limit of $250,000 for property placed in service in 2009. As a result, many businesses can receive an immediate tax write-off for the cost of most new and used personal property. If you do not act this year, the Section

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Sales Tax Deduction on New Vehicle Purchases

Sales and excise taxes paid on the purchase of new cars, light trucks, motor homes and motorcycles purchased between February 16, 2009, and December 31, 2009, may be deducted on your 2009 income tax return. The deduction is available to both taxpayers who itemize deductions and who claim the standard deduction and is available with respect to multiple vehicles. The deduction is limited to sales tax paid on the first $49,500 of the purchase price and is phased out for individual and joint filers with modified adjusted gross incomes between $125,000 and $135,000, and $250,000 and $260,000, respectively.

Hybrid Vehicle Credit

A credit is allowed for the purchase (not lease) of a qualifying new hybrid vehicle. The allowable credit ranges from $1,500 to $3,000 and is not phased out for high-income taxpayers or affected by alternative minimum tax. However, the credits are phased out once a manufacturer has sold over 60,000 hybrids in the U.S. The credits have vanished for Toyota, Lexus and Honda hybrids but are still available for Ford, Mercury, Chrysler, GM, Mazda and Nissan vehicles.

Lean-Burn Diesel Vehicle Credit

A credit is also available for the purchase of a new qualifying lean-burn diesel vehicle. The allowable credit ranges from $900 to $1,800 and is not phased out for high-income taxpayers or affected by AMT. The credits are subject to the same phase-out rule as hybrid credits; however, it is not an issue so far, and Audi, BMW, Mercedes and Volkswagen all offer vehicles that qualify for the credit.

First-Time Home Buyer Credit

The Recovery Act expanded 2008's Housing Act credit for first-time homebuyers. A first-time homebuyer is anyone who has not had an ownership interest in a principal residence within the three years prior to the purchase. The credit is equal to 10 percent of the purchase price and is limited to $8,000 on homes purchased between January 1, 2009 and November 30, 2009. It is phased out for individual and joint filers with modified adjusted gross incomes between $75,000 and $95,000, and $150,000 and $170,000, respectively. The credit can be claimed on your 2009 income tax return, or may be claimed now by filing an amended 2008 income tax return. Remember that unless this benefit is extended by congress, it is only available for home purchases completed by November 30, 2009.

The current economic and tax environments make this an ideal time for parents and grandparents who have the desire and the means to assist their children in making first time home purchases, since interest rates and home prices are at their lowest levels in years. Since, for 2009, taxpayers in the 10 percent and 15 percent tax brackets enjoy a zero percent tax rate on long term capital gains, children who receive stock from parents, sell the shares, and use the proceeds to fund the home purchase will not

TAX ACCOUNTING GROUP NEWS

The Tax Accounting Group welcomes **Richard Petillo** as a tax accountant. Rich practices in the areas of federal, state and local tax compliance and planning, including financial statement preparation and analysis for individuals and businesses. Mr. Petillo graduated from Drexel University with a bachelor of science degree in business and engineering with a concentration in accounting.

Michael Gillen was invited to partcipate in an IRS focus group to provide input to and assist the IRS in determining what methods, systems, processes and procedures might be effective in increasing small business compliance with existing and future tax laws. The focus group developed recommendations for the IRS to consider for improved tax education and guidance for taxpayers.

John Friskey authored an article "IRS Offshore VDP - Last Opportunity for Taxpayers to Avoid Criminal Prosecution and Penalties?", which was published in *The Legal Intelligencer* on June 2, 2009.

Barbara Ruth authored an article "Tax Benefits Associated With Pro Bono and Other Volunteer Activities", which was published in *The Legal Intelligencer* on March 3, 2009.

Michael Gillen and **Steven Packer** authored an article "While Markets Continue to Fall, Fraud Activity Continues to Rise", which was published in *The Legal Intelligencer* on January 6, 2009.

incur federal income tax liabilities on any gains realized to the extent the child's taxable income does not exceed $67,900 if married and filing jointly, $45,500 if head of household or $33,950 if single. Therefore, if the child's taxable income falls within this range in 2009, you could give them some of your appreciated stock or mutual fund shares held in taxable brokerage accounts which they could sell and apply the proceeds to their home purchase. Any gains will be long-term and free of federal income tax if your ownership period plus the child's is greater than one year. As a result of the annual gift tax exclusion privileges, as long as the gifted stock is worth less than $13,000 ($26,000 if gifted by married taxpayers) the taxable estate of the parents or grandparents making the gift is reduced without any adverse federal gift or estate tax implications. If your child is married, you and your spouse could give the couple $52,000 ($26,000 each) under the gift tax exclusion.

If adult children are in need of additional funds to purchase their first home, you may wish to also consider making a loan to them. If you loan funds to your children, and use the Applicable Federal Rate (AFR) (presently 4.36 percent which is very low based on historical standards), there will be no unintended negative tax consequences, as loans carrying the AFR interest rate will avoid the lender having to consider the complex below market loan rules.

Increased Transit and Vanpool Transportation Fringe Benefits

The Recovery Act increased the monthly exclusion for employer-provided transit and vanpool benefits from $120 to $230 for March 1, 2009 through December 31, 2010. After 2010, the amounts will be adjusted for inflation. If you currently pay more than $120 per month in qualified transportation costs, you may now increase your contribution to a pretax transportation spending account up to $230 per month. If you are not currently taking advantage of this benefit, now is a great time to start.

Cash for Clunkers

President Obama signed into law a program called the Car Allowance Rebate System (CARS), which provides a credit for fuel-inefficient vehicles that are traded in for new fuel-efficient vehicles between July 1, 2009 and November 1, 2009. The trade-in vehicle must have been owned and insured for a full year before the trade and have a combined miles per gallon (mpg) rating of 18 or less. The credit, received at the time of the purchase or lease of a new car, is $3,500 for a car getting at least 22 mpg and $4,500 for a car getting at least 26 mpg. At time of print, the future of this program is in question as Congressional sources say funding requisitions are on pace to exceed budget. Watch for further developments.

STRATEGIES FOR YOUR INVESTMENTS

Consider Disposition of a Losing Pass-Through Investment

The economic downturn has caused even historically profitable companies to generate losses. Losses generated from pass-through entities for which a taxpayer does not materially participate, such as partnerships, LLCs and S corporations, are subject to the passive activity rules and are often not deductible. However, unallowed losses can be carried forward to offset future passive income or can be deducted against ordinary income when the investment is disposed. If you are currently invested in a pass-through entity that generates significant nondeductible losses, you may wish to consider disposing of the interest to accelerate the deduction of your accumulated losses. If you wish to preserve an investment position and realize a tax loss without running afoul of the "wash sale" rule, please contact us for options.

Carefully Time Investment Gains and Losses

As you evaluate your investments, consider the impact of selling appreciated securities. The current maximum federal income tax rate on long-term capital gains is 15 percent. It is widely expected that the federal long-term capital gain rate will be increased to 20 percent for 2010 and beyond, so now may be a good time to cash in some long-term winners to benefit from historically low tax rates.

Biting the bullet and selling some loser securities before year-end may also be a good idea. The resulting capital losses will offset gains from other sales this year, including short-term gains from securities owned for one year or less.

PLANNING AND CREDITS FOR HIGHER EDUCATION (COLLEGE OR BEYOND) COSTS

Expanded Qualifying Educational Expenses for Section 529 Plans

For 2009 and 2010, withdrawals from 529 plans can now be used tax-free for computers and computer technology, including Internet access and related software. Therefore, instead of the equipment purchase being required for attendance (the old burden of proof), the new standard enacted by the Recovery Act simply requires that the equipment be used by the student or their family while enrolled at a qualifying school. The types of purchases that qualify are broad and include computers and most equipment attached to or run by the computer. For instance, a PDA (personal digital assistant) would likely qualify if used for educational purposes, such as a podcast. However, it does not include video games, unless educational in nature.

Options for Section 529 Plan Losses

If your child's 529 plan balance has significantly decreased, you may want to consider postponing withdrawals until later in your child's college career or transferring the 529 plan assets to a younger sibling so that the account has time to recover. This strategy assumes that other funds are available to pay current college tuition and related costs. Section 529 plan withdrawals may be rolled over tax-free within 60 days to another 529 plan for the benefit of a new designated beneficiary who is a member of the family of the old beneficiary. The rollover may result in gift-tax consequences; therefore, contact us before executing such a rollover.

Additionally, if you are the owner of a 529 plan that is worth less than the combined contributions to the account, you now have the opportunity to remove funds from the account without paying a penalty. The transaction results in a loss deductible by the parent or owner of the plan on Schedule A as a miscellaneous itemized deduction subject to the 2 percent floor.

Utilize a Coverdell Education Savings Account to Fund Private School Tuition

Coverdell Education Savings Accounts (ESA) are tax-favored accounts designated for K–12 and higher education expenses. While plan contributions are not tax-deductible, subsequent distributions of contributions and earnings on contributions for qualified education expenses are exempt from federal income tax. The total allowable annual contribution for each child or beneficiary is limited to $2,000. The contribution limit is phased out for single and joint filers with modified adjusted gross income between $95,000 and $110,000, and $190,000 and $220,000, respectively. If distributions are not for qualified education expenses, the earnings are subject to regular income tax plus a 10 percent penalty.

Parents who are restricted from contributing to an ESA for a child can circumvent the income limitations by making a cash gift to their child who then contributes to the ESA. The contribution is considered a gift to the child. However, due to the low contribution limit for ESA's, the gift should be well under the allowed annual gift-tax exclusion amount ($13,000 for 2009 per donee), which should help avoid gift-tax concerns. Contributions are allowed to both a 529 plan and an ESA for the same child or beneficiary during the same year.

Temporary Expansion of the Hope Scholarship Credit

The Recovery Act modified and renamed the Hope Credit to the American Opportunity Tax Credit for 2009 and 2010. The maximum credit allowed for the first two years of postsecondary education was increased from $1,800 to $2,500, equal to 100 percent of the first $2,000 of qualifying expenses plus 25 percent of the next $2,000. This credit begins to phase out for single and joint filers with modified adjusted gross income between $80,000 and $90,000, and $160,000 and $180,000, respectively. Additionally, course materials were added to the list of qualified expenses, which previously only included tuition and fees. Course materials include books, supplies and equipment needed for a course of study, whether or not the materials are purchased from the educational institution as a condition of enrollment or attendance.

Coordination With College Savings Plans

A taxpayer may claim both an income exclusion for 529 plans and Education Savings Accounting (ESA) distributions for the same student in the same year. However, the qualifying expenses cannot be used for both. When determining the excludable amount for 529 plans and ESA distributions, qualifying expenses must be reduced by tax-free education benefits (i.e., scholarships and employer-provided education assistance) plus the amount of the qualifying expenses taken into the account in computing the education credit.

Coordination With Deduction for Qualified Tuition and Expenses

An above-the-line deduction of up to $4,000 for qualified tuition and expenses and education credits cannot be claimed in the same tax year for the same student. Choosing whether to claim a deduction or credit depends on various factors, including the amount of the eligible expenses, the taxpayer's level of AGI and marginal tax bracket, and the type of credit claimed.

Consider Utilizing IRA Funds

A taxpayer may distribute funds from a Roth IRA to pay for qualified higher-education expenses for various family members without incurring a 10 percent early-withdrawal penalty. Qualified higher education expenses are defined in the same manner as under Section 529 plans (see page 4). Also, the earnings from a Roth IRA may also be taken as a tax-free distribution if the account has been open at least five years and the taxpayer is age 59½ or older.

Similar to the Roth IRA, a taxpayer may distribute funds from a traditional IRA to pay for qualified higher-education expenses for various family members without incurring the 10 percent early-withdrawal penalty. Unlike a Roth IRA, the portion of distributions from a traditional IRA allocable to contributions originally deducted are taxable.

PLANNING FOR RETIREMENT

Roth IRA Conversions in 2009 With Increasing Benefits in 2010

Taxpayers with traditional IRAs that have taken a major beating during the stock market downturn may want to consider converting from a traditional to a Roth IRA. Since a Roth conversion is treated as a taxable liquidation of the traditional IRA followed by a nondeductible contribution to the Roth IRA, the tax hit from converting would be much less than it was prior to the downturn. Post-conversion, all income and gains accumulate tax-free. Therefore, it may be advantageous to incur the tax liability now rather than later.

To be eligible for a Roth conversion in 2009, your adjusted gross income cannot exceed $100,000. However, for one year only in 2010, this income limitation is eliminated and the tax due will be spread over a two-year period, leaving you with a tax-free nest. Taxpayers who have made annual contributions to nondeductible traditional IRAs consisting of various equities may find that the conversion is very enticing since it may be nearly tax-free. This is a result of the recent lack of equity appreciation in many retirement accounts due to a depressed stock market and because the principal or original nondeductible contributions are distributed tax-free.

Taking Distributions Before Required Minimum Distributions

In recent times, many taxpayers were committed to contributing as much money into retirement accounts as possible to save on current years' taxes and receive a deferral of income on earnings. However, with an aging population, tax planning has changed gears and is now primarily focused on the best ways to withdraw money from retirement accounts. Taxpayers between the ages of 59½ and 70½, the age when tax-free retirement withdrawals are permitted and the age when minimum retirement plan distributions are not mandatory, should consider making distributions from their retirement accounts earlier than 70½ if their tax bracket is relatively low. With individuals losing jobs, investment portfolios at ten-year lows, and higher tax rates expected, this strategy may be prudent. Additionally, taxpayers who have reached the required minimum distribution (RMD) age may also want to consider this option for tax year 2009, even though the RMD rule has been waived for the same year.

MISCELLANEOUS PLANNING OPPORTUNITIES

Charitable Gifts of Securities

Taxpayers who wish to make gifts to charities may consider selling loser stocks, giving away the resulting cash and then claiming the capital loss and the charitable deduction on their returns. Alternatively, taxpayers may consider giving away appreciated stock, avoiding the tax on capital gains while deducting the fair market value of the stock contributed.

Alternative Minimum Tax (AMT)

The AMT, initially enacted to ensure that high-income taxpayers pay their fair share, continues to ensnare more middle-income taxpayers each year. The AMT is complex and can wipe out a number of tax-planning steps intended to reduce regular income tax. Taxpayers subject to the AMT should consult with us in an effort to develop strategies to minimize the impact of the AMT. ■

179 limit is cut almost in half for 2010. The amount must be reduced dollar-for-dollar by the amount that the property cost exceeds $800,000. That is, the Section 179 limit on property of $850,000 is $200,000 [$250,000 – ($850,000 – $800,000)].

Longer Carryback Period for Net Operating Losses

The Recovery Act allows qualifying small- and medium-sized businesses to carry back net operating losses (NOLs) generated in tax years beginning or ending in 2008 for up to five years (versus the two-year carryback rule that usually applies). Therefore, if a qualifying business uses a fiscal tax year (e.g., one ending in October), it may still have time to take actions that will create or increase an NOL for the current tax year. That NOL can then be carried back for up to five years to recover taxes paid in those years.

Built-In Gain Tax Period Shortened

When a C corporation converts to S corporation status, appreciated assets held by the corporation at the time of the conversion that are disposed within the 10-year recognition period are subject to a built-in gains tax at the highest corporate rate (presently 35 percent). For tax years 2009 and 2010, the Recovery Act has shortened from 10 years to seven years the period during which the built-in gain tax is applicable. Accordingly, the recognition period ends at the beginning of the 2009 tax year if the S corporation election was made for the 2002 tax year and the recognition period ends at the beginning of the 2010 tax year, if the S corporation election was made for the 2003 tax year. Calendar-year taxpayers who made the S election prior to 2003 can make dispositions during 2009 and 2010 without being concerned with the built-in gains tax.

Consider Selling Qualified Small Business Stock

Prior to the Recovery Act, individuals could exclude 50 percent of the gain on the sale of qualified small business stock (QSBS) held for at least five years (60 percent for certain empowerment zone businesses). To qualify for the exclusion, QSBS must meet a number of conditions (e.g., it must be stock of a corporation that has gross assets that do not exceed $50 million and that meets active business requirements). Under the Recovery Act, the percentage exclusion for gain on QSBS sold by an individual increases to 75 percent for stock acquired after February 17, 2009, and before January 1, 2011.

Lower Estimated Tax Payments for 2009

Certain businesses that operate as sole proprietors, LLCs, partnerships and S corporations can reduce their 2009 estimated tax payments to 90 percent of 2008 tax under the Recovery Act. A small business owner will qualify for the reduced payments if: (1) 2008 adjusted gross income (AGI) was less than $500,000, and (2) more than 50 percent of 2009 AGI is generated from a small business. A small business is defined as a business that, on average, had fewer than 500 employees during 2008. Prior to the act, estimated tax payments were based on 100 percent of 2008 tax, or 110 percent of 2008 tax for AGIs over $150,000. Although this new rule will not reduce a small business owner's 2009 tax liability, it can significantly help manage cash flows for 2009.

Work Opportunity Tax Credit

Employers can qualify for a tax credit known as the work opportunity tax credit that is worth as much as $2,400 for each eligible employee ($4,800 for certain veterans and $9,000 for employees who are "long-term family assistance recipients"). The credit is generally limited to eligible employees who begin work for the employer before September 1, 2011. The credit is available on an elective basis for employers hiring individuals from one or more of ten targeted groups. The amount of the credit available to an employer is determined by the amount of qualified wages paid by the employer. Generally, qualified wages consist of wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer (two years in the case of an individual in the long-term family assistance recipient category).

Generally, an employer is eligible for the credit only for qualified wages paid to members of a targeted group including: (1) qualified members of families receiving assistance under the Temporary Assistance for Needy Families (TANF) program, (2) qualified veterans, (3) qualified ex-felons, (4) designated community residents, (5) vocational rehabilitation referrals, (6) qualified summer youth employees, (7) qualified members of families receiving Food Stamp assistance, (8) qualified Supplemental Security Income recipients, (9) long-term family assistance recipients, (10) certain unemployed veterans or disconnected youth who begin work for the employer during 2009 or 2010 and (11) certain individuals hired before August 28, 2009 to work in the Hurricane Katrina disaster area. Also, the credit is not available for certain employees who are related to the employer or work more than 50% of the time outside of a trade or business of the employer (e.g., working as a maid in the employer's home). ■

Estate and Gift Tax Planning Opportunities

The federal estate tax exemption increased from $2 million to $3.5 million for 2009 but is scheduled to disappear in 2010 and reappear in 2011 with an exemption of only $1 million. Although Congress has not yet addressed this sunset provision, it likely will not materialize. The generation skipping tax (GST) exemption also increased from $2 million to $3.5 million for this year and with careful planning up to $7 million may be transferred by a married couple, free from GST tax, to (or in trust for the benefit of) grandchildren and great-grandchildren upon the surviving spouse's death. Therefore, your estate plans should remain flexible and planning to avoid or minimize federal estate tax should be part of your overall financial game plan. The increased exemption amounts provide many planning opportunities including the use of credit-shelter trusts.

Annual Exclusion Gifts

Gifting is a useful and common tool used to reduce a taxable estate. The annual gift tax exclusion increased from $12,000 to $13,000 per recipient for 2009 although the lifetime gift tax exemption amount remains at $1 million. Therefore, a married couple can gift up to $26,000 per donee free from gift tax consequences. In 2009, the combination of the annual gift tax exclusion and first-time home buyer credit could help your children or grandchildren buy their first home. If your child is married, you and your spouse could give the couple $52,000 ($26,000 each) under the gift tax exclusion. Assuming the couple could qualify for the $8,000 first-time home buyer credit, they would effectively have a $60,000 down payment for their home.

Planning Opportunities Involving Low Interest Rates

Interest rates are at an all-time low and many estate planning strategies utilize interest rates set by the federal government including intra-family loans and installment sales of assets,

such as interests in a family business. Intra-family loans are beneficial when interest rates are low because the lent funds can be used to invest in assets with an expected yield higher than the loan rate or to pay down existing debt incurred at a higher rate. Consequently, consider gifts to grantor retained annuity trusts and charitable lead annuity trusts as they provide additional methods for taking advantage of the low interest rates to pass asset appreciation on to family members with little or no gift tax consequences.

Planning Opportunities Reflecting Lower Asset Values

The current economic climate provides a favorable opportunity to gift assets to family members. Giving an asset away now, when its value is likely lower than it was last year, may make sense. If the asset recovers its value, it will do so in the hands of the recipient and avoid higher gift or estate tax. Therefore, the asset appreciation belongs to the recipient, along with any associated capital gains tax. ■

For More Information

In closing, a little time invested in mid-year tax planning can result in significant tax savings later. While we have covered a short list of topics, many other tax planning strategies exist and could apply to your specific situation.

We hope you find this newsletter guide valuable, and invite you to consult with us regarding any of the topics covered or your own unique situation.

About Duane Morris

Duane Morris LLP, a full-service law firm with more than 700 attorneys in 24 offices in the United States and internationally, offers innovative solutions to the legal and business challenges presented by today's evolving global markets. In addition to legal services, Duane Morris has independent affiliates employing approximately 100 professionals engaged in other disciplines, such as the tax, accounting and litigation consulting practice of the Tax Accounting Group.

About the Tax Accounting Group

The Tax Accounting Group, one of the largest groups of its kind affiliated with a law firm, has an active and diverse practice with more than 60 service lines in more than 45 industries, serving clients in 43 states and eight foreign countries. The Group's certified public accountants, certified fraud examiners, financial consultants and advisors provide a broad range of cost-effective tax preparation, planning and consulting services as well as accounting, financial and management advisory services to individuals, corporations, partnerships, estates and trusts, and nonprofit organizations.

The Group also provides an array of litigation consulting services to numerous lawyers and law firms representing clients in regulatory and transactional matters and throughout various stages of litigation. Consulting services include, but are not limited to, case assessment and strategy development; asset recovery investigation and locator services; damage assessment and measurement; marital disputes; forensic and investigative accounting; fraud and embezzlement detection; and civil and criminal tax controversies.

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