MAXWELL & LOCKE & RITTER

Report

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Spring 2010

New tax laws that may impact your return

Individuals

Tax season is upon us, and some major changes enacted this past year could affect your 2009 return.

Economic stimulus/Making Work Pay credit

For 2009 and 2010, the Making Work Pay tax credit will provide most workers with a credit of up to $400, or $800 on a joint return. For individuals with earned income below $6,452 ($12,904 for married couples), the maximum credit is 6.2 percent of earned income.

No credit is available for married couples with modified adjusted gross income over $190,000 or $95,000 for single filers.

New vehicle sales tax

If you bought a new vehicle after Feb. 16, 2009, you can deduct the state and local sales or excise taxes, even if you do not itemize your deductions. This deduction is not available for purchases in 2010.

The deduction is limited to the portion of the tax attributable to the first $49,500 of the purchase price. No deduction is available if your modified adjusted gross income is greater than $135,000 for individuals or $260,000 on a joint return.

Home buyer credits

The first-time home buyer credit was increased to $8,000 for home purchases during 2009. The credit does not have to be repaid if you keep the home for at least three years. You are considered a first-time home buyer if you have not owned a home during the prior three years.

A $6,500 credit is available if you have owned your existing home for at least five years and purchased a new home after Nov. 6, 2009.

The income limits for both credits were increased for homes purchased after Nov. 6, 2009. To qualify for the full credit, your modified adjusted gross income must be under $125,000 for individuals and $225,000 for married couples. For homes purchased before Nov. 7, 2009, the comparable income limits were $75,000 and $150,000, respectively. Both credits are available for homes with a written contract in place before May 1, 2010, as long as closing takes place by Jun. 30, 2010.

*See **Individuals** inside*

Businesses

Several tax changes will affect the 2009 tax filings of most businesses. Many apply whether the business operates as a corporation, an LLC or an unincorporated entity.

Some of these tax-saving opportunities will remain available for 2010, while others expired at the end of 2009. A number of significant tax changes that could affect many businesses remain on the Congressional agenda. As 2010 evolves, remain alert for more tax changes to come.

Listed below are several important tax items that may affect your business taxes for 2009 and 2010.

Five-year loss carryback

The five-year loss carryback election, which was available in 2008 only to eligible small businesses (ESBs), is now available to all businesses. The election is available not only to corporations but also to individual taxpayers who experience a net operating loss as a result of losses they report from proprietorships, partnerships, LLCs and S corporations.

If you experience a net operating loss (NOL) in 2009, the election allows you to carry the loss back to 2004 through 2008 and obtain a refund of income taxes you paid in those years.

Moreover, if you experienced a NOL in 2008 but did not qualify as an ESB, you may now elect the five-year carryback for your 2008 NOL. The only proviso is that you can elect the extended carryback for only one year, not both.

ESBs that made the extended carryback election for 2008 can make a second election for 2009. Businesses that file using a fiscal year, rather than a calendar year, can make the election for any fiscal year ending after Dec. 31, 2007, and beginning before Jan. 1, 2010.

Expensing election

For qualifying property purchased and placed in service during a tax year beginning in 2009, the expense election amount is $250,000. This amount is reduced if the total amount of qualifying property is more than $800,000.

*See **Businesses** inside*

Individuals *continued from front*

After Nov. 6, 2009, the credits are not available for homes priced above $800,000. Both credits are also limited to 10 percent of the cost of the new home.

Alternative minimum tax (AMT)

The exemption for AMT purposes has increased for 2009. The amounts are $46,700 for unmarried, $70,950 for joint returns, and $35,475 for married persons filing separate returns. Unless Congress acts to raise the exemption, which it has always done in the past, the amounts will decrease significantly in 2010.

Standard deduction

If you claim the standard deduction, you may be entitled to an increased amount if you, or your spouse if you file jointly:

➨ Are age 65 or older on Dec. 31, 2009

➨ Are legally blind

➨ Paid state or local real estate taxes

➨ Paid state or local sales or excise tax on the purchase of a new vehicle and/or

➨ Incurred a disaster loss attributable to a federally declared disaster.

Neither the increase for real estate taxes nor the increase for sales/excise taxes is scheduled to be available for 2010.

Standard mileage rates

The 2009 rate for business use of your vehicle is 55 cents per mile. The rate for use of your vehicle to get medical care is 24 cents per mile. Beginning Jan. 1, 2010, the amounts are 50 cents per business mile and 16.5 cents per mile for medical care.

Personal exemption and itemized deduction phaseouts

If your adjusted gross income (AGI) for 2009 exceeds $166,800, or $83,400 for married persons filing separately, your itemized deductions may be limited.

Similarly, your deduction for exemptions may be limited if your AGI exceeds the following amounts: $166,800 if you are unmarried, $250,200 for joint returns, $125,100 for married persons filing separately, and $208,500 for heads of household.

For 2010, the phaseout of itemized deductions and personal exemptions is set to expire.

Unemployment income

If you received unemployment benefits in 2009, you can exclude up to $2,400 from your taxable income. This benefit is not currently available for 2010.

Tax changes taking effect in 2010

Beginning in 2010, there are no income limits on individuals who want to convert a traditional IRA to a Roth IRA. For any conversion in 2010, you can elect to pay the tax in 2011 and 2012.

Unless Congress acts to extend the following provisions, they all expired at the end of 2009:

➧ *Sales tax itemized deduction* – Primarily affecting residents of states without an income tax, the alternative of a state and local sales tax deduction instead of a comparable income tax deduction will no longer be available to those who itemize.

➧ *Educator expenses* – Teachers will no longer be able to deduct up to $250 of out-of-pocket expenses incurred for school supplies.

➧ *IRA distributions to charity* – Charitable distributions made directly from an IRA to a qualified charity will no longer be excluded from your income.

➧ *Tuition and fees deduction* – The deduction of up to $4,000 for college tuition and fees expires after 2009. ■

Businesses *continued from front*

For businesses that use a fiscal year as their tax accounting year, the deduction limit applies to property purchased and placed in service in their tax year beginning after Dec. 31, 2008.

For tax years beginning in 2010, the maximum deduction will be $134,000, provided the amount of qualifying property does not exceed $530,000. In later years, the maximum deduction is scheduled to drop to $25,000, as long as the amount of qualifying property does not exceed $200,000.

Bonus depreciation

Property that does not qualify for an immediate tax write-off under the expensing election may qualify for an increased first-year depreciation deduction under the bonus depreciation rules. This deduction is equal to 50 percent of the cost of qualifying property purchased and placed in service by Dec. 31, 2009.

To qualify for bonus depreciation, the property must be new. Used property does not qualify. In addition, the property must either:

➨ Have an applicable MACRS recovery period of 20 years or less

➨ Be water utility property or computer software not covered by the Section 197 amortization rules; or

➨ Be qualified leasehold improvement property.

Bonus depreciation is not available for property placed in service after Dec. 31, 2009.

Domestic production activities deduction

For 2009, the domestic production activities deduction is set at 6 percent of qualifying business net income, and the rate increases to 9 percent in 2010. The deduction is available to businesses engaged in construction, engineering or architectural services, film production, or the lease, rental or sale of tangible personal property manufactured, produced, grown or extracted by the business. The rate will remain at 6 percent in 2010 for oil and gas companies.

Work opportunity credit

Businesses that hired workers who are members of certain target groups, such as disabled veterans, food stamp recipients or ex-felons, can claim a credit equal to 40 percent of the first $6,000 of wages paid to each such employee. For 2009 and 2010, the eligible target group is expanded to include unemployed veterans and disconnected youth.

Energy tax incentives

The tax credit for facilities producing electricity from wind, closed-loop biomass, open-loop biomass, geothermal energy, municipal solid waste, qualified hydropower and marine and hydrokinetic renewable energy is available during 2009 and 2010.

In addition, businesses that place in service facilities that produce electricity from wind and other renewable resources can choose either the energy investment tax credit – which generally provides a 30 percent tax credit for investments in energy projects – or the production tax credit, which can provide a credit of up to 2.1 cents per kilowatt-hour for electricity produced from renewable sources. A business may not claim both credits for the same facility.

Businesses also can apply for a grant instead of claiming either the energy investment tax credit or the renewable energy production tax credit for property placed in service in 2009 or 2010. ■

IRS to study employment tax compliance of 2,000 businesses

The Internal Revenue Service plans to conduct a three-year study of employment tax compliance, starting in February 2010.

In each of the next three years, 2,000 taxpayers will be randomly selected for comprehensive examinations to collect data on employment tax filers.

This study will be the IRS's first employment tax study in a quarter century. Data collected from the examinations will be used by the IRS to better understand the compliance characteristics of employment tax filers.

If your business receives a notice describing the process for the research project, you should expect to be required to produce all of your records relating to filing employment tax returns and deposits of employment taxes.

There are two main goals for the research project:

1. To secure statistically valid information for computing the employment tax gap
2. To determine compliance characteristics so the IRS can focus its efforts on the most noncompliant employment tax areas

The IRS says the results will allow it to gauge more accurately the extent to which businesses properly comply with employment tax law and related reporting requirements. It will also help the IRS select and audit future employment tax returns with the greatest compliance risk.

Tax Court rules on tax implications of life insurance policy

A recent Tax Court case underscores the importance of learning the tax implications before cashing in a life insurance policy.

In the case of *Barr v. Commissioner*, TC Memo 2009/250, Nov. 3, 2009, taxpayer Harvey Barr discovered that surrender of a life insurance policy is taxed at the higher ordinary income rate, rather than at the long-term capital gain rate.

In 1980, Barr purchased a life insurance policy on his mother in the face amount of $200,000. After paying the premiums for eight or nine years, the policy had built up sufficient cash value that Barr stopped writing checks to pay the premiums. Instead, the premiums were automatically paid with dividend accumulations and loans against the cash value of the policy.

In 2005, Barr decided to surrender the policy. He received checks from the insurance company totaling about $12,000. The $12,000 represented the difference between the policy's cash value of just over $361,000 and policy loans that had been used to pay the premiums since 1988 or 1989.

The difference between the cash value and Barr's total investment in the contract amounted to almost $136,000, which Barr was required to include as taxable income in 2005. Moreover, the income was taxed as ordinary income, not as long-term capital gain, since a surrender of a life insurance policy is not a "sale or exchange," a requisite for capital gain treatment.

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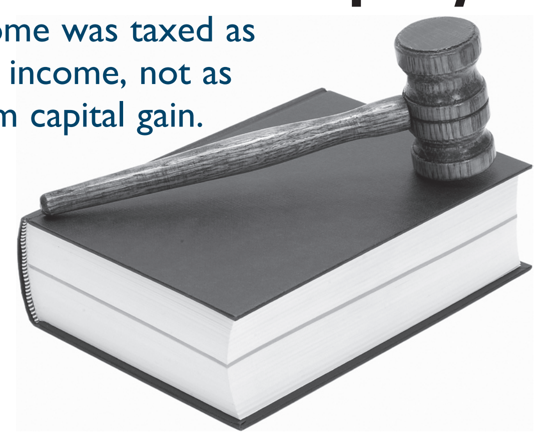

Bartering in these tough economic times? Don't forget your taxes

Bartering is the most ancient form of commerce. While our ancestors may have exchanged eggs for corn, today you can barter computer services for auto repair.

But one thing they didn't have to deal with so much in ancient times was taxes.

Today, the tax law requires that the fair market value of the goods and services exchanged be reported as income by both parties.

Here are a few things you should know about bartering:

➤ **Barter Exchange** – A barter exchange functions primarily as the organizer of a marketplace where members buy and sell products and services among themselves. Whether this activity operates out of a physical office or is Internet based, a barter exchange is generally required to issue Form 1099-B, *Proceeds from Broker and Barter Exchange Transactions*, annually to its clients or members and to the IRS.

➤ **Barter Income** – Barter dollars or trade dollars are identical to real dollars for tax reporting. If you conduct any direct barter, you should report the fair market value of the products or services you receive on your tax return.

➤ **Taxes** – Income from bartering is taxable in the year it is performed. You may be subject to liabilities for income tax, self-employment tax, employment tax or excise tax. Your barter activities may result in ordinary business income, capital gains or capital losses, or you may have a nondeductible personal loss.

Women hit more often by identity theft

Women are more likely than men to be victims of identity theft, a lot more likely, according to a study of more than 800 households by Affinion Security Center, an identity theft security company.

Nearly twice as many women as men reported unreimbursed losses of $1,000 or more, and, overall, 28 percent of the women interviewed said they had been the victim of some level of identity theft fraud, compared to 21 percent of the men.

The good news is that more than 60 percent of the cases were solved within a month, with 42 percent resolved within a week. Only 13 percent of cases were never resolved.

After becoming victims of identity theft, more women than men – 19 percent compared to 13 percent – changed their behavior and began shopping online less often. A full 7 percent of women stopped shopping online altogether.

Four times as many women as men also reported that, after becoming victims of identity theft, they now keep all of their information locked in a safe.

The study also found that women were less likely to report the loss, and it took them longer to restore their identities.

The good news is that more than 60 percent of the cases were solved within a month, with 42 percent resolved within a week. Only 13 percent of cases were never resolved.

According to a separate study by the Identity Theft Assistance Center, about one fourth of cases are committed by a friend, family member or in-house employee followed closely by computer-related fraud. Lost or stolen wallets, checkbooks or credit cards accounted for about 15 percent of the fraud, and mail fraud about 11 percent.

‘Red Flag Rules’ Update

Enforcement of the “Red Flag Rules,” which require financial institutions and creditors to have identity theft prevention programs, has been delayed until June 1, 2010, at the request of Congress, according to The Federal Trade Commission.

The deadline has been extended several times already, and it remains unclear what the ultimate resolution of this issue will be. The most recent deadline was Nov. 1, 2009.

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