



Vistage Tips

Tax Law Changes for 2009

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The federal stimulus plan and other legislation has created significant tax law changes that offer tax-savings on both personal and business tax positions. Below are explanations of the changes and strategies you can employ to take advantage of the new laws and complement your overall financial plan.

Changes Affecting Businesses

The stimulus plan, also known as American Recovery and Reinvestment Act of 2009 (ARRA) includes incentives for businesses and will create tax savings and additional cash flow that can be used to spur economic growth.

Extended Bonus Depreciation and IRC Section 179 Expensing

ARRA extends the additional 50 percent first-year depreciation through 2009. The act also extends the temporary \$8,000 increase in the first-year depreciation limit that applies to passenger automobiles that qualify for 50 percent bonus depreciation. In addition, ARRA also extends the 2008 limits relating to Section 179 expensing. For 2009, the maximum that a taxpayer can expense using Section 179 is \$250,000 (this amount is reduced dollar for dollar for the cost of qualifying purchases in excess of \$800,000). If you are considering significant fixed asset purchases in the near future, it may make sense to accelerate these to the 2009 tax year to take advantage of these deductions.

Net Operating Loss (NOL) Carrybacks

The act allows small businesses (less than \$15 million in gross receipts) to elect to extend the general 2-year carryback rule for 2008 NOL's to 5 years. Tax rates are expected to increase after the tax cuts enacted during the Bush administration expire in 2010. For NOL's generated beginning in 2009, it may be more beneficial to elect to carry the losses forward to reduce taxable income that is likely to be taxed at higher rates.

Recently, Congress passed an amendment to the NOL provision and extended it to 2009 and to include all businesses, not just those with income under \$15 million as was the law for 2008. A taxpayer may make the election for only one taxable year, and the amount of any NOL carried back to the 5th taxable year is limited to 50% of the taxpayer's income from that year. Those that made the eligible small business election carryback for 5 years in 2008 are eligible to make the election again in 2009. Eligible small businesses are also not subject to the 5th year 50% income limitation mentioned above.

Consolidated Omnibus Budget Reconciliation Act Continuation Premium Subsidy (COBRA)

The law requires certain group health plans to allow terminated employees to continue to participate in the group plan for a specified period of time after separation from employment. ARRA provides that for a period up to nine months an assistance-eligible individual is treated as having paid any premium required for COBRA coverage if the individual has paid at least 35% of the premium. Thus, if the eligible person pays at least 35% of the premium, the group health plan must treat the individual as having paid the full required premium and

Changes Affecting Individuals

The stimulus plan offers a host of tax credits, deductions, and other provisions that offer targeted financial relief to individuals.

Higher Alternative Minimum Tax (AMT) Exemption

The IRS has raised the amount of income exempt from the AMT to \$70,950 for Married Filing Jointly (MFJ) and added a provision that excludes private activity bond interest on bonds issued in 2009 and 2010.

The Alternative Minimum Tax is a parallel tax calculation to the regular income tax calculation that generates an alternative tax liability by applying different rules for determining taxable income. This is accomplished by limiting or eliminating the benefits of certain tax deductions and credits. The end result is that a taxpayer pays the higher of the regular tax liability or the alternative minimum tax liability.

Taxpayers susceptible to AMT include those with a significant amount of:

- Long-term capital gain subject to low, preferential tax rates
- Dividend income that's subject to low, preferential tax rates
- Personal exemptions
- Deductible medical expenses
- State and local taxes deductions
- Miscellaneous itemized deductions

To avoid paying AMT, you need to plan for it by finding the "break-even" point where AMT is approximately equal to regular tax when considering certain deductions. For example, if you were subject to AMT in 2009 then you would not benefit from prepaying state and local taxes for 2010. Shifting income and deductions to the present or subsequent tax year is a way to plan for AMT and is discussed in the planning section below.

Lower Estimated Tax Payments

For tax year 2009 going forward, the new required estimated tax payment is the lesser of 90 percent of the tax shown on the current year return or 90 percent (down from 110 percent) of the tax shown on the return for the prior taxable year. This change allows for more flexibility in your tax payments which in turn increases your control over your personal cash flow.

This change is for taxpayers whose adjusted gross income (AGI) shown on the preceding year's tax return is less than \$500,000 (MFJ), and the individual certifies that at least 50 percent of the gross income show on the return for the preceding taxable year was income from a small trade or business.

the individual is entitled to a 65% subsidy on the premium. If, as an employer, you provide this subsidy, then you can claim a corresponding credit on your quarterly/annual employment tax return (Form 941).

Tax Planning Tips for Businesses

While 2009 tax returns are not due until April 15, 2010, the time to evaluate your 2009 tax situation is right now. Certain tax planning strategies can increase your cash flow, but you must take action prior to the end of the year.

Strategies for Businesses with Increased Profits in 2009

If you expect your 2009 tax bracket to be higher than last year, look for opportunities to accelerate deductions or defer income. Deferring income to a year with a lower tax rate will decrease the taxes on that income. Similarly, accelerating deductions into the year with a higher tax rate will increase the value of that deduction.

- Opportunities to Defer Income
 - Delay collection of business debts, rents, and payment for services (if operating on the cash method of accounting)
 - Defer year-end compensation/bonuses to right after year-end
 - Defer sale of capital gain property or take installment payments rather than lump-sum payments
 - Postpone retirement plan distributions that are not required
- Opportunities to Accelerate Deductions
 - Make next year's charitable contributions before year-end
 - Make deductible interest and property tax payments due in January prior to year-end
 - Make Q4 state estimated tax payments prior to year-end (make sure that you will not be subject to the Alternative Minimum Tax for 2009)
 - Accelerate alimony payments

You may not be able to control some of the items above, but it's prudent to identify where you have some flexibility in the timing of these items.

Strategies for Businesses with Decreased Profits in 2009

If you expect the financial struggles of the past 15 months to put you in a lower tax bracket than previous years, you should look for opportunities to accelerate income and defer deductions. Hopefully 2010 will be a more prosperous year for your business and recognizing income during 2009 with the lower tax rate could provide significant savings. This timing strategy may not have a significant impact for your 2009 tax planning, but could have a major impact on your 2010 tax planning.

Take Advantage of Tax Cuts Before They Expire

Many of the tax cuts that were enacted during the Bush administration are set to expire at the end of 2010. As mentioned above, the billions of dollars spent on economic recovery efforts during 2009 will likely be paid for, in part, by tax increases on high net-worth individuals.

While no one knows for sure how tax rates will change, these are some changes that might take place:

No Required Minimum Distributions on IRAs and Retirement Plans

At age 70 ½, taxpayers are generally required to start taking required minimum distributions (RMDs) from any traditional IRA or employer-sponsored retirement plans that they own. However, the RMD requirement is suspended for 2009. This is an advantage for high net worth taxpayers who would rather postpone the receipt of taxable income and allow their IRA to grow for future generations. If you have taken an RMD for 2009, then you are eligible to rollover the RMD to the same IRA or other eligible retirement plan.

No Income Limitations on Traditional IRA to Roth Conversion

Income limitations for Roth IRA conversions will repeal in 2010, and any taxpayer will be able to convert a traditional IRA to a Roth IRA. In addition, a taxpayer will be able to pay the income tax on the 2010 conversion over 2011 and 2012. If the law remains as presently enacted, even a nondeductible traditional IRA can be funded and then converted to a Roth IRA in 2010, allowing a high-income taxpayer to effectively contribute regardless of the modified AGI contribution limitations.

Because Roth IRAs don't have RMDs, higher income taxpayers can allow their assets to grow untouched in a Roth IRA and pass all the appreciation to future generations. Another relevant factor to consider is that gross income triggered by a Roth conversion is based on account balances at the time of conversion. Even though the market has rebounded since its low in March 2009, you may still be able to convert your traditional IRAs in January 2010 at a substantially reduced cost due to depressed market values. This limits the amount of taxes that would have been otherwise paid on future distributions from a traditional IRA.

Deductions for Losses Related to Ponzi Schemes

In March 2009, the IRS released two pronouncements intended to address the losses incurred by those who fell victim to fraudulent investment schemes, such as the Madoff case. Defrauded taxpayers are entitled to a theft loss, which offsets dividends, interest, salaries and other ordinary taxable income. These losses are not subject to limitations as are typical theft losses and they are deductible immediately in the year that fraud is detected. If the losses create an operating loss for the year, then it can be carried forward to reduce future tax liabilities or carried back to recover taxes previously paid. This is a huge benefit for many high income taxpayers who were involved in investment partnerships and hedge funds with indirect investments in these Ponzi schemes.

Other Credits, Deductions and Provisions for Individuals

- A tax credit up to \$8,000 is available for qualified first-time homebuyers, and a credit of up to \$6,500 is available for qualified repeat homebuyers who have owned and occupied a primary residence for a period of five consecutive years during the last eight years. These credits are available through June 30, 2010 for homes costing less than \$800,000. For single filers, the credits phase out between \$125,000 and \$145,000 of modified adjusted gross income; for married couples, the range is \$225,000 to \$245,000.
- While it remains uncertain, Congress has discussed extending the existing \$8,000 credit for first-time homebuyers and offering a new credit of up to \$6,500

- Top marginal tax rate may increase from 35 to 39.6 percent.
- 15 percent qualified dividend and long-term capital gain tax rates may increase to 20 percent.
- Healthcare bill may impose a surtax of 5.4 percent on singles with Adjusted Gross Income (AGI) over \$500,000 and joint filers with AGI over \$1 million.
- High-income taxpayers may lose up to 80 percent of their itemized deductions (charitable contributions, real estate taxes, state income taxes, and interest) if their income is high enough.

Given these possible scenarios, revenue or income may be more valuable to you in 2010 than 2011. As you plan for the 2010 tax year, it's important to keep these potential changes in mind.

With likely changes in law coming, proactive tax planning is more important than ever. We encourage you to be in touch with your tax adviser regarding your personal tax planning strategy to determine the tools and techniques that will place you in the best financial position.

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for some existing homebuyers. Congress has also discussed raising the income limits for the credit from \$150,000 (MFJ) to \$250,000 allowing higher-income taxpayers to take advantage.

- Taxpayers who do not itemize deductions are able to claim an additional standard deduction of up to \$1,000 (MFJ) for real estate property taxes paid for 2009, the last year this deduction will be available.
- Taxpayers can deduct the sales and excise tax on the purchase of a qualified new automobile, light truck, or motorcycle through December 31, 2009.
- 529 college tuition plans may now be used to purchase computer equipment and Internet access in 2009 and 2010.

Estate Tax Changes

Recently Congress discussed keeping the estate exemption level permanent at \$3.5 million. As the law currently stands, there will be no estate tax in 2010 with the estate tax law reverting back to 2001 levels (\$1 million exemption, 55% unified rate) in 2011. The Obama administration has indicated it would not like either of these scenarios to occur. Currently, there appears to be a consensus that the proper response is to simply extend 2009 law, with a \$3.5 million estate tax exemption and a top 45 percent rate. The exemption would then increase at some incremental rate for inflation.

Whatever changes occur with regard to estate tax law, if your total assets exceed the current \$3.5 million exemption for 2009, then you should consider talking to your tax adviser about proactive estate techniques and planning. Some examples of these types of planning would be the utilization of Grantor Retained Annuity Trusts (GRATs), Charitable Lead Annuity Trusts (CLATs) and Installment Sales to Grantor Trusts and Family Limited Partnerships (FLPs). In the tax profession, it has long been acknowledged that the estate tax is an "optional" tax that can be significantly minimized or possibly eliminated if you start your estate planning process early enough.