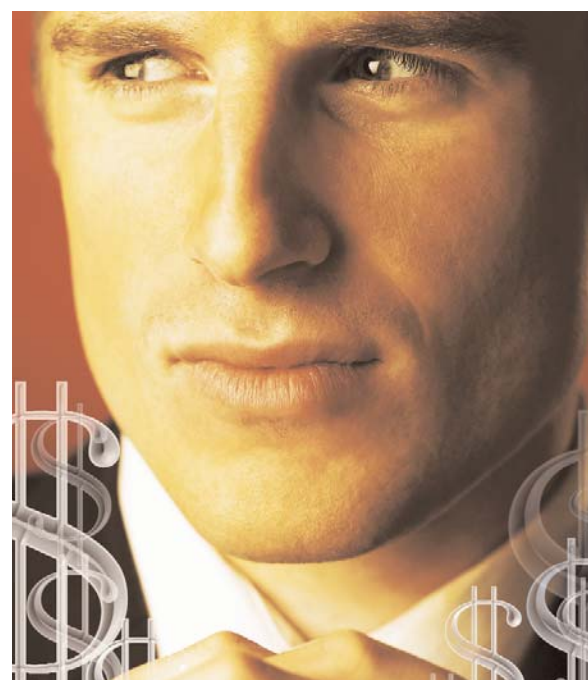


the Competitive Edge

Fall 2009

Pending Legislation Complicates Year-End Tax Planning

As 2009 comes to a close, it's a good time to review your year-end tax planning strategies. Many traditional strategies are still effective for this year but you need to keep in mind the impact of pending federal legislation. Congress is debating health care reform, a possible second stimulus bill, extending many temporary tax breaks, and more.



Inside This Issue

- 1 Pending Legislation Complicates Tax Planning
- 3 Tax Rules Affecting Telecommuting
- 4 Consider Asset Purchases Before Tax Incentives End
- 5 FIN 48 Disclosure Exemptions
- 6 DM Employee Receives Philanthropy Award

Health Care Reform

Lawmakers are searching for ways to fund health care reform. The House Ways and Means Committee proposed a surtax on higher-income taxpayers. The Senate Finance Committee would impose a tax on high-dollar health insurance plans. Both proposals are controversial and it is unclear at this time if either or none will be part of a final bill. We will keep you posted on developments.

More definite are new restrictions on health flexible spending arrangements (FSAs) and health savings accounts (HSAs). Lawmakers are expected to cap annual maximum contributions to health FSAs at \$2,500 (there is no limit under current law, although an employer is free to impose a limit). Moreover, you would no longer be able to purchase over-the-counter medications with health FSA dollars; only medicines with prescriptions would qualify. Congress

may also double the additional tax for HSA withdrawals before age 65 that are not used for qualified medical expenses.

Second Stimulus

Congress is expected to approve an extension of federal unemployment benefits before year end and may also extend the \$2,400 exclusion of those benefits from tax. The bill would have an even broader impact if lawmakers use it as a vehicle for a "second stimulus."

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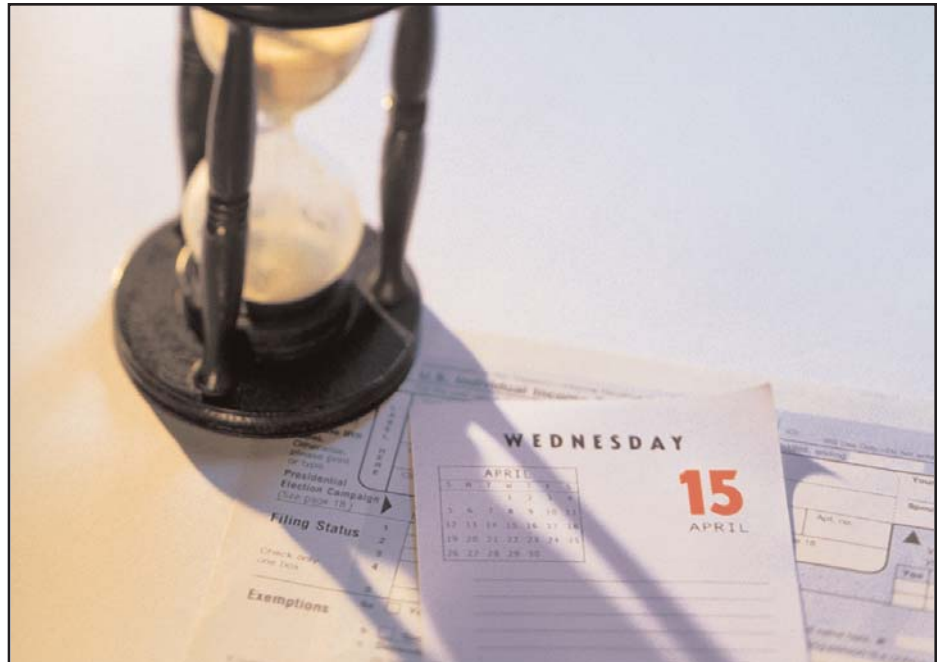
One of the most likely incentives to be attached to an unemployment benefits bill is the first-time homebuyer credit, which expires after November 30, 2009. For many individuals, the window of opportunity for taking advantage of the credit has already passed because you must close on a new home before December 1, 2009, to qualify for the credit rather than just sign the contract of sale before that date.

Several bills are pending in Congress to extend the first-time homebuyer credit. One proposal would extend the credit through December 1, 2010, and raise it to \$15,000 (the current cap is \$8,000). Another bill would eliminate the rules that generally limit the credit to lower- and moderate-income individuals.

Other provisions that could be attached to an unemployment benefits bill include extending COBRA premium assistance, the American Opportunity Tax Credit for college tuition, and the state and local sales tax deduction for motor vehicle purchases. Congress is also considering a new tax credit to reward employers that create jobs. Several ideas have been floated. One proposal would provide a \$3,000 tax credit for each qualified new job created in 2010. Even though there is support for extending these provisions, Congress will want to keep the cost of any bill as low as possible.

Extenders

Taxpayers are often surprised to learn that many popular tax breaks, such as the state and local sales tax deduction, are only temporary. Congress made them temporary so they would not permanently add to the federal budget deficit. Because they are so popular, however, Congress usually has extended them in the past. Some of the incentives, like the research tax credit, have been extended so many times that some taxpayers incorrectly believe they are permanent.



For year-end tax planning purposes, it's important to remember when these tax breaks will expire. Many of them are scheduled to sunset after December 31, 2009, unless Congress extends them.

Below are some of the tax breaks for individuals that are scheduled to expire after December 31, 2009:

- Temporary tax relief to victims of all federally declared disasters
- State and local sales tax deduction
- Teachers' classroom expense deduction
- Higher education tuition deduction
- Non-itemizers state and local real property tax deduction
- Tax-free distributions from IRAs for charitable contributions
- Bonus depreciation
- Expanded net operating loss carrybacks for small businesses
- Enhanced recovery periods for qualified leasehold improvements and restaurant property
- 15-year recovery period for qualified retail improvement property
- Brownfields remediation expensing
- Subpart F active financing and look-through exceptions
- Deduction for corporate donations of computer equipment for educational purposes
- Special expensing rules for film and production costs

Some of the incentives for businesses that are scheduled to expire after December 31, 2009, include:

- Code Sec. 179 small business expensing

Because these incentives are popular, there's a high likelihood that Congress will extend many, if not all, of them. Congress could extend these provisions before year end or wait until next year and make them retroactive to January 1, 2010.

Tax Rules Affecting Telecommuting

Increasingly, businesses across the country are finding that allowing employees to telecommute can be a win-win situation. Employees can gain more flexibility in their work life. Employers can reduce overhead expenses, secure talent beyond the business' immediate geographic vicinity, and even accomplish contingency planning objectives.

The value of these cost-saving measures and business enhancements are amplified during trying economic times. An overview of the federal tax rules applicable to telecommuters and those who employ them can help identify possible opportunities available when certain employees work off site.

Deducting Home Office Expenses

Types of Expenses. Federal income-tax rules generally categorize telecommuting expenses as either direct or indirect in nature.

Direct expenses are those that relate only to the portion of the telecommuter's home that is actually used as a home office. Such expenses may include improving or repairing the actual work space.

Indirect expenses may relate to both the personal portion of the home as well as the home office. Common examples of indirect expenses include real estate taxes, homeowner insurance premiums, and repairs benefiting the entire home.

Regular and Exclusive Use.

Various tests must be satisfied in order for an employee to be able to deduct the direct expenses and the business portion of indirect expenses relating to a home office. The tax law requires that the home office be used regularly and exclusively as a principal place of business or as a place to meet or deal with customers or clients in the ordinary course of business.

As a practical matter, employees don't commonly use a home office to

meet with clients. Accordingly, deductions may be limited to situations where the home office is used regularly and exclusively as the employee's principal place of business.

In situations where an employee works from home full-time, the principal-place-of-business test is usually easily met. However, if one's time is split between the home and an outside office, federal tax rules generally state that the test is also satisfied if administrative or management activities are performed at the home office to the exclusion of other fixed locations.

For the Convenience of the Employer. An employee must also be able to show that the use of a home office is for the convenience of the employer. This test is generally considered to have been met if the employer requests that the employee work from home. Alternatively, this test is also considered satisfied if the employee is not in the office on a regular basis due to the nature of his or her work.

Ultimately, the "convenience" test is determined by the facts and circumstances of the employment arrangement. In general, if the employee requests to telecommute, it commonly results in not having satisfied the test. However, the particular circumstances may show that the arrangement was established for the benefit of the employer, despite the fact that the employee chose to telecommute. For example, if the employer looks for volunteers to telecommute for legitimate business purposes and the employee volunteers, that arrangement could qualify as being for the employer's convenience.

How Tax Benefits Are Claimed

If an employee qualifies to claim various deductions relating to the business use of a home office, he or she would do so on Schedule A, Form

1040, as a miscellaneous itemized deduction subject to a 2%-of-adjusted-gross-income (AGI) floor. Tax rules limit the ability of a taxpayer-employee to claim telecommuting expenses to the extent the business deductions exceed his or her gross income for the tax year.

An employer may choose to reimburse an employee for expenses incurred relating to office supplies and equipment, as well as for utilities and maintenance expenses allocable to the home office (with the employer potentially claiming a deduction for the reimbursements). Or the employer may provide the telecommuting employee with necessary supplies and equipment and, accordingly, claim an ordinary business expense deduction.

As a general rule, it is advantageous for an expense or reimbursement arrangement to qualify as an "accountable plan." Otherwise, adverse income-tax consequences may flow to both your business and the employee.

Computers and Other Equipment

If a telecommuting employee purchases a computer or other equipment and uses it exclusively for business-related purposes, he or she may depreciate or expense the item, subject to a 2%-of-AGI limitation. If, on the other hand, the employer provides such equipment, the employer may claim appropriate deductions as if the item were located in the employer's regular offices.

Wholly unrelated expenditures, such as those relating to general landscaping or improving a room that is not used exclusively for home office purposes, are not deductible under the federal tax rules.

Businesses Should Consider Asset Purchases Before 2009 Tax Incentives End

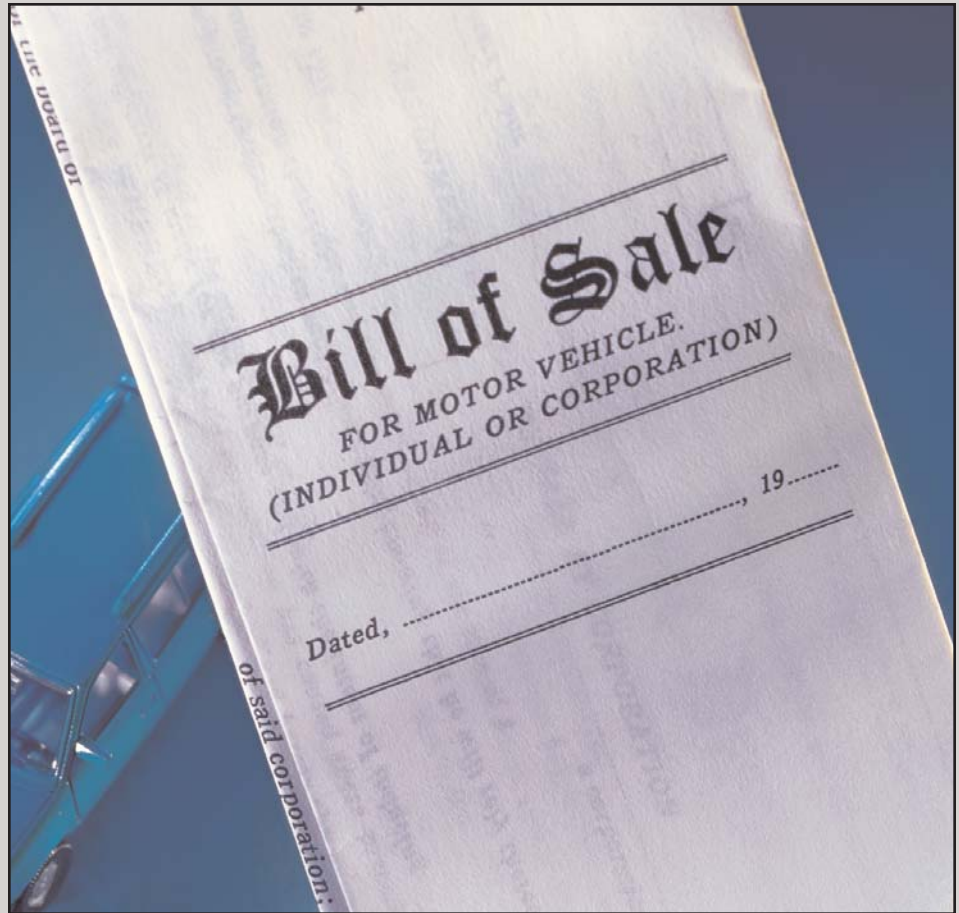
As the economic downturn took a toll on businesses, small and large, Congress reacted with legislation aimed at stimulating business investment. The Economic Stimulus Act of 2008, Emergency Economic Stabilization Act of 2008, and American Recovery and Reinvestment Act of 2009 all provide tax incentives for businesses, including additional 50 percent bonus depreciation, higher limits for first-year expensing, and shorter recovery periods for asset depreciation.

With many of these tax provisions set to expire at the end of 2009, business taxpayers with the cash and the credit score considering purchases of business equipment may want to maximize their potential tax savings before the end of the year. Taking advantage of these tax benefits can reduce current taxable income and increase cash flow.

Bonus Depreciation

Bonus depreciation and Code Sec. 179 expensing are the primary business incentives set to expire at the end of 2009. Congress extended 50 percent additional first-year bonus depreciation through December 31, 2009, in the 2009 Recovery Act. You deduct 50 percent of the property's cost basis in the first year, before reducing the basis for normal depreciation computed over the property's recovery period (formerly called its useful life), including the first year. However, you can irrevocably "elect out" of bonus depreciation.

Bonus depreciation is available for property with a depreciation (recovery) period of 20 years or less, water utility property, off-the-shelf computer software, and qualified leasehold property (farming equipment also qualifies for bonus depreciation, as well as first-year



expensing). The property must be new, and therefore begin with the taxpayer. It must be purchased and "placed in service" before December 31, 2009.

Vehicle Depreciation

Through 2009, Congress raised the limits on depreciation of "luxury" automobiles for 2009. The first-year depreciation limit, which is ordinarily \$3,060 for vehicles purchased in 2009, has been raised to \$11,060 (an \$8,000 increase) through the end of the year for property that would otherwise qualify for bonus depreciation. Both limits are higher for vans and trucks. To qualify, the vehicle must be used more than 50 percent for business. For the additional \$8,000 deduction, the vehicle must be new. Used vehicles first used in a taxpayer's

business still qualify for a deduction, but only up to the \$3,060 limit.

First-Year Expensing

In lieu of bonus depreciation, you can elect to write off part, or all, of the cost of one or more assets, up to the limit on "Code Section 179 expensing." The limit is \$250,000 through 2009. Unlike bonus depreciation, first-year expensing applies to tax years beginning in 2009. Therefore, a fiscal-year taxpayer is not faced with a December 31, 2009, deadline for acquiring property and placing it into service. Additionally, expensing can be claimed on used as well as new property, unlike bonus depreciation.

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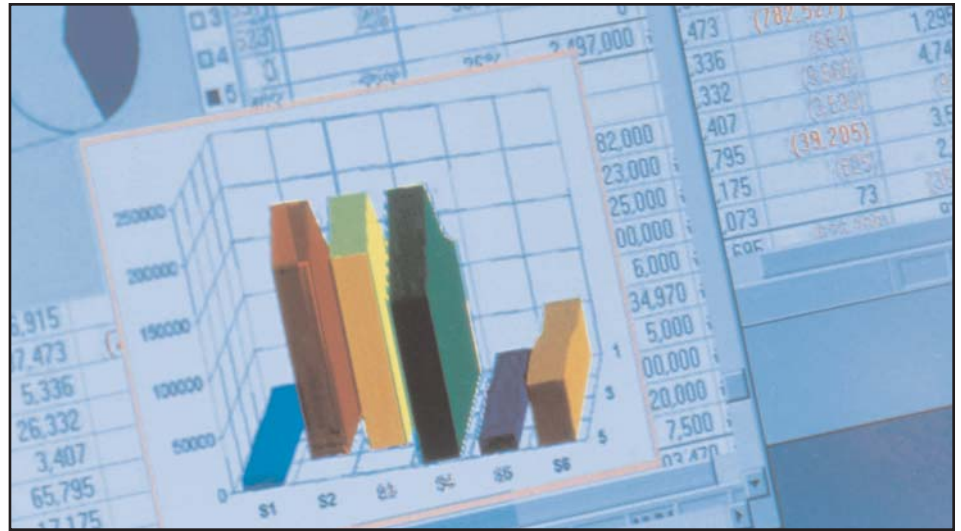
Private Companies Exempt From Some FIN 48 Disclosures

The Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standards (SFAS) No. 109 sets forth the financial accounting and reporting standards for the effects of income taxes resulting from an entity's activities during the current and previous tax years. FASB Interpretation (FIN) 48 ("Accounting for Uncertainty in Income Taxes") directs how SFAS No. 109 applies by setting a threshold condition that a tax position taken by an entity must satisfy before any part of the benefit of that position may be recognized in the entity's financial statement.

Under FIN 48, tax benefits resulting from uncertain tax positions that reduce an entity's current or future income-tax liability may be reported in financial statements only to the extent each such benefit (such as a deduction or credit) is recognized, measured, and disclosed according to a process outlined in FIN 48. FIN 48 generally applies to all entities, public and private.

Exemptions for Non-Public Entities

The provisions of a new Accounting Standards Update (ASU 2009-06) exempt private companies from certain aspects of a previously released FASB requirement, which



mandates the provision of a tabular reconciliation of the total amounts of unrecognized tax benefits at the beginning and end of a period. Additionally, private entities are also exempt from a requirement that mandates the disclosure of the total amount of unrecognized tax benefits that, if recognized, would affect the effective tax rates.

Private companies should be mindful, however, that they are still subject to certain other required disclosures, such as the provision of the total amount of tax-related interest and penalties recognized on their balance sheets.

FIN 48 Implementation Finalized

FIN 48 generally applies to all entities and was effective for fiscal years beginning after December 15, 2006. In February 2008, however, the FASB deferred the effective date for most non-public enterprises to annual financial statements for fiscal years beginning after December 15, 2007. Then, in December 2008, the FASB granted another one-year deferral for all non-public entities until fiscal years beginning after December 15, 2008 (calendar years ending December 31, 2009, or later). Public entities are still subject to the earlier implementation date.

(Businesses Should Consider Asset Purchases – Continued from page 4)

If you expense property that is also eligible for bonus depreciation, you should deduct the expensed amount from the property's basis before claiming depreciation. First-year expensing is limited to your taxable income for the year, and cannot be used to generate or increase a net operating loss for the current year. Thus, if you are operating at a loss you should not claim expensing.

The amount that you can expense must be reduced dollar-for-dollar by the amount of the Code Section 179 property placed in service during the year exceeds a specified threshold. The threshold for 2009 is \$800,000. The benefit does not fully phase out until investment reaches \$1.05 million.

Shortened Recovery Period

Congress reduced the recovery period from 39 years to 15 years for leasehold improvements, restaurant property, and retail improvement

property placed in service by December 31, 2009. Leasehold improvements also qualify for bonus depreciation as well.

Investing in assets for your business is not just about taxes. You need to consider whether buying business assets makes financial sense this year. If you are contemplating investing in your business this year, act before the end of 2009 to take advantage of these incentives.

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Doeren Mayhew Employee Receives Philanthropy Award

Dawn Jasinski, Doeren Mayhew Audit Manager, was awarded the Barbara Ann Karmanos Cancer Institute Philanthropy Award at the 15th Annual Karmanos Cancer Institute Heroes of Breast Cancer Awards. This award honors organizations and individuals who have distinguished themselves and inspired others in the fight against breast cancer. It is given in recognition of Dawn's philanthropic leadership and strong support of the Susan G. Komen Detroit Race for the Cure.

"Over the past five years, I have been involved with breast cancer fundraising (mainly Komen Detroit Race for the Cure® and the Breast Cancer 3-Day). I really got involved when my mother was diagnosed with

breast cancer in 2005. Prior to that, my aunt, grandmother, and my fundraising partner Sharon had also been diagnosed. It seemed I knew more and more people each year who were affected by this disease. It was then that I knew I had to help raise money to find a cure for breast cancer. In these economic times, I find it so hard to continue fundraising year after year. And then I see all the benefits and progress that is made through Karmanos and local fundraising groups. That is what



Dawn Jasinski, Doeren Mayhew Audit Manager (left), and Sharon Hemmen, former Doeren Mayhew employee and breast cancer survivor (right).

keeps me going. The support and encouragement I get each year goes a long way – hopefully long enough to one day find a cure."

— Dawn Jasinski