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NewsBriefs

Volume XIV, Issue I November 2008

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Highlights of 2008 Tax Changes — Rita J. French, Tax Manager

This year included several new tax laws passed in an attempt to help the economy. The three major tax acts of 2008 are: the Economic Stimulus Act passed in February which included the recovery rebates; the Housing and Economic Recovery Act in July that was targeted at home ownership and affordable housing; and the Emergency Economic Stabilization Act (EESA), a rescue plan with bailout measures for the financial market, which passed in October.

A brief description of selected provisions is given below. If you would like to discuss how these changes could affect you, please contact our office for more information.

Changes Affecting Individuals

AMT. The alternative minimum tax (AMT) was created nearly 40 years ago as an alternative tax to the regular income tax to ensure that very wealthy individuals pay their fair share of taxes. However, the AMT was not indexed for inflation and it is ensnaring middle-income taxpayers. To prevent this, Congress created an AMT "patch." The 2008 patch is similar to past patches but with some important differences.

The 2008 patch raises the AMT exemption amounts to $69,950 for married couples filing jointly and surviving spouses, $46,200 for single taxpayers and heads of household, and $34,975 for married couples filing separately. The new change to AMT also allows taxpayers to use nonrefundable personal credits to reduce their AMT liability. A new feature to this patch abates AMT liability stemming from the exercise of incentive stock options prior to 2008 along with interest and penalties on the unpaid amounts. The new law also allows individuals, including those who paid their ISO AMT liabilities, to accelerate the refund of the minimum tax credit that has not been used.

Property tax standard deduction. The Housing Act gives non-itemizers a limited deduction for state and local real property taxes for 2008, to a maximum $1,000 ($500 for single individuals). The EESA extends the same relief to 2009.

Tax-free IRAs charitable contributions. The EESA extends through December 31, 2009, the opportunity for certain taxpayers age 70 1/2 or older to make tax-free distributions from IRAs for charitable purposes. This contribution can include any required minimum distribution that the taxpayer would be otherwise required to take.

Tuition and fees deduction. New law allows taxpayers to continue to deduct qualifying tuition and fees paid in 2008 and 2009 that are required for the student's enrollment or attendance at a post-secondary school. The tuition and fees deduction is an above-the-line write-off that, depending on adjusted gross income, can reduce taxable income by as much as $4,000.

State and local sales tax deduction. This deduction that was set to expire at the end of 2007 was extended through December 31, 2009. It provides the option for itemizers to deduct sales tax rather than state and local income taxes.

Teachers. A special deduction that allowed teachers to deduct up to $250 of qualified classroom expenses above-the-line expired at the end of 2007, but the EESA makes it retroactive to January 1, 2008, and extends it through 2009.

Residential energy property. The energy incentive impacting most individuals is the credit for the purchase of residential energy property. A credit of up to $500 is available in 2009 for non-business energy property that meets the requirements for qualified energy efficiency improvements or qualified residential energy property expenditures. Eligible improvements include insulation materials, exterior windows, including skylights and exterior doors.

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Highlights of 2008 Tax Changes—continued from page 1

Are you a first-time homebuyer or looking to sell your second home ?

First-time homebuyer tax credit. This credit, while generous, is essentially an interest-free loan from the government. Taxpayers who take the credit, which equals 10 percent of the purchase price (up to $7,500 for single individuals and married couples filing jointly; $3,750 for married individuals filing separate returns) must repay the credit. They will have 15 years to repay the credit in equal amounts. The credit is temporary and applies to homes purchased on or after April 9, 2008 and before July 1, 2009. There are complex rules about who can take it that include income limitations.

Two revenue raiser provisions that were included to offset the above are:

Home sale exclusion. The home sale exclusion is one of the most popular tax breaks in the Tax Code. A married couple filing jointly can generally exclude up to $500,000 in gain (single individuals up to $250,000). The Housing Act changed some rules to close what some call a "loophole". Before the new law, if a second home becomes a principal residence, after two years the owner could sell it and exclude up to $250,000 in gain from their income or up to $500,000 for couples filing jointly. The new law prorates the exclusion between the time that a home is used as a principal residence and the total length of ownership, which includes any "non-qualifying" use as a rental or vacation property. Non-qualifying use before January 1, 2009, the effective date of the provision, is not used in the calculation; neither are periods after a qualified use of the property or temporary absences of less than two years.

Broker basis reporting. Starting in 2011, brokers will be required to report to the IRS not only their customers' gross proceeds from the sale of most corporate stocks, but also the investor's cost basis in those shares. This will encourage the more accurate computation of capital gains each year. Broker basis reporting is expected to raise $6 billion over 10 years. The reporting requirement takes effect for stocks acquired in 2011, mutual funds acquired in 2012, and other securities acquired in 2013.

Incentives Targeted at Businesses

Small business expensing. Under new law, a business can expense up to $250,000 of the cost of qualifying property with limitations based on the total cost of property placed in service in excess of $800,000. The new law makes no changes to the general rules for the types of property that are eligible for expensing. Generally, the property must be tangible personal property, which is actively used in the taxpayer's business and for which a depreciation deduction would be allowed. The property must be used more than 50 percent for business and must be newly purchased property. The existing exception for computer software applies to the enhanced expensing amounts under the new law.

Bonus depreciation. New law provides qualifying taxpayers 50 percent first-year bonus depreciation of the adjusted basis of qualifying property. This provision is substantial, providing businesses with an estimated $44 billion in additional deductions in 2008.

AMT and R&D credit. The Housing Act allows corporations otherwise eligible for additional first year depreciation to elect to claim additional research or minimum tax credits in lieu of claiming bonus depreciation for "eligible qualified property" placed in service after March 31, 2008. This election may benefit those with unused credits. Generally, taxpayers are permitted an additional first-year depreciation deduction equal to 50 percent of the adjusted basis of qualified property generally placed in service in 2008. A corporation making the election allowed by the Housing Act forgoes the depreciation deductions and instead increases the limitation on the use of research credits or on the use of minimum tax credits. The increases in the allowable credits are treated as refundable. The depreciation for qualified property is calculated for both regular tax and AMT purposes using the straight-line method in place of the method that would otherwise be used without the election.

Are you a small business owner who owns or leases the building where you are located?

Research tax credit. The EESA extends the research tax credit to amounts paid or incurred in 2008 and 2009. It also increases the alternative simplified research credit to 14 percent starting next year, a tremendous incentive now for smaller firms to finally use the research credit to grow their businesses.

Leasehold improvements. Many businesses remodel or otherwise make improvements to their facilities on a regular schedule. Under the new law, qualifying restaurant improvements and leasehold improvements will be eligible for 15-year cost recovery rather than a 39-year period for two more years, through December 31, 2009. Similarly, Congress authorized a 15-year recovery period for depreciation of certain improvements to retail space. This treatment is extended through December 31, 2009. It applies to both owner-occupied businesses and restaurants, as well as leased establishments.

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Highlights of 2008 Tax Changes—continued from page 2

Other Legislation

FDIC Deposit Insurance Coverage. Although not a tax law change, another provision of EESA is of particular interest to individuals and businesses. It temporarily increases the basic limit on FDIC insurance coverage from $100,000 to $250,000 per depositor. The increase is effective October 2, 2008 through December 31, 2009 after which the coverage limit returns to $100,000. Coverage for retirement accounts has not increased and will remain at $250,000.

What's ahead? Tax planning strategies are affected by current law and the anticipation of law changes to come. It is likely we will have major tax legislation in 2009. It's also possible there could be changes before the end of 2008. There has been discussion about Congress temporarily suspending the required minimum distribution (RMD) rules for IRAs and qualified plans for 2008 and 2009. This would prevent retirees from being forced to withdraw assets that are currently undervalued. The deadline for 2008 RMDs is December 31, 2008 so this leaves little time for a change to these rules.

Please contact our office for more information.

Changes to NYS LLC/LLP Fees and Corporate Fixed Dollar Minimum tax—Roberta M. Norman, CPA

New York tax law has been amended to change both the LLC/LLP fees and corporate fixed dollar minimum tax for tax year 2008.

The LLC/LLP fees are no longer based on the number of members. The fees will be based on New York gross receipts. The due date for LLC fees has not changed and they are due by Jan 30th for calendar year LLCs and LLPs. Also, disregarded (single member) LLCs will have to file again, however the fee is only $25.

"The LLC/LLP fees are no longer based on the number of members. The fees will be based on New York gross receipts."

The fixed dollar minimum (FDM) tax for corporations will also be based on New York receipts instead of gross payroll.

New York receipts for the purpose of these changes are the portion of the entity's total receipts attributable to New York.

On a positive note, the minimum fee for inactive corporations has been reduced from $800 to only $25.

The new fees and FDM tax are outlined in the table below:

NY Source Receipts	LLC Fee	S Corp FDM	C Corp FDM
Not more than $100,000	$25	$25	$25
$100,001 - $250,000	$50	$50	$75
$250,001 - $500,000	$175	$175	$175
$500,001 - $1,000,000	$500	$300	$500
$1,000,001 - $5,000,000	$1,500	$1,000	$1,500
$5,000,001 - $25,000,000	$3,000	$3,000	$3,500
$25,000,001 and over	$4,500	$4,500	$5,000

Accounting Pronouncement Updates—Chirag R. Desai

SFAS No. 162, The Hierarchy of Generally Accepted Accounting Principles improve financial reporting by identifying a consistent framework, or hierarchy, for selecting accounting principles to be used in preparing financial statements that are presented in conformity with U.S. generally accepted accounting principles for nongovernmental entities. This Statement is effective 60 days following the SEC's approval of the Public Company Accounting Oversight Board amendments to AU Section 411, *The Meaning of* Present Fairly in Conformity With Generally Accepted Accounting Principles.

SFAS No. 161, Disclosures about Derivative Instruments and Hedging Activities enhances required disclosures regarding derivatives and hedging activities, including enhanced disclosures regarding how: (*a*) an entity uses derivative instruments; (*b*) derivative instruments and related hedged items are accounted for under FASB Statement No. 133, *Accounting for Derivative Instruments and Hedging*

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Activities; and (*c*) derivative instruments and related hedged items affect an entity's financial position, financial performance, and cash flows. Statement 161 is effective for fiscal years and interim periods beginning after November 15, 2008. Early application is encouraged.

SFAS No. 160, Noncontrolling Interests in Consolidated Financial Statements establishes new accounting and reporting standards for the noncontrolling interest in a subsidiary and for the deconsolidation of a subsidiary. Specifically, this statement requires the recognition of a noncontrolling interest (minority interest) as equity in the consolidated financial statements and separate from the parent's equity. The amount of net income attributable to the noncontrolling interest will be included in consolidated net income on the face of the income statement. This Statement is effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2008 (that is, January 1, 2009, for entities with calendar year-ends). Earlier adoption is prohibited.

SFAS No. 141 (Revised 2007), Business Combinations will significantly change the accounting for business combinations. Under Statement 141R, an acquiring entity will be required to recognize all the assets acquired and liabilities assumed in a transaction at the acquisition-date fair value with limited exceptions. This Statement applies prospectively to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2008. An entity may not apply SFAS No. 141R before that date. The effective date of this Statement is the same as that of the related FASB Statement No. 160, *Noncontrolling Interests in Consolidated Financial Statements.*

FSP FAS 157-3, amends Statement of Financial Accounting Standards No. 157, "Fair Value Measurements" by incorporating "an example to illustrate key considerations in determining the fair value of a financial asset" in an inactive market. The FSP became effective on October 10, 2008, and applies to prior periods for which financial statements have not yet been issued.

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