

“THE NEWSLEDGER”

TAX PRIZES AND SURPRISES!

- Bad news for taxpayers with casualty losses on non-business assets. For 2008 the \$100 per-casualty loss floor still exists, however for 2009 any casualty loss over the new \$500 floor is only deductible to the extent that it exceeds 10% of adjust gross income. The \$100 floor is scheduled to return in 2010.
- The standard mileage rate will drop to 55 cents per mile for 2009. That’s a decrease of 3 ½ cents per mile from the rate that took effect in July 2008. The medical travel and employment moving standard rate falls to 24 cents for 2009; a reduction of 3 cents from 2008.
- The Social Security wage base for 2009 will be \$106,800, a \$4,800 increase over 2008. The tax rate remains unchanged. The threshold for the Nanny tax increases to \$1,700 for 2009.
- The Government Accounting Office has recommended that the IRS follow the state of Oregon in policing income tax return preparers. Oregon requires preparers who aren’t CPA’s, attorneys or enrolled agents to take classes, pass a test and pay a registration fee. Almost half of those who take the exam fail and are barred from return preparation. The state also imposes continuing education requirements and annual fees. The IRS anticipates the passage of similar legislation next year!
- The annual gift tax exemption will rise to \$13,000 in 2009. The personal exemption will increase to \$3,650 for 2009. The standard deduction will increase by \$500 to \$11,400 for married taxpayers, by \$250 to \$5,700 for singles, and by \$350 to \$8,350 for household heads for 2009. Marrieds 65 and up will get an extra \$1,100 each while singles and household heads receive \$1,400.
- Effective October 1, 2008, the IRS increased their interest rates. On overdue 2009 taxes the rate is now 6%, except for corporations that owe IRS more than \$100,000 in back taxes. They will be charged 8%. On refunds the IRS will pay 6% to individuals; and 5% to corporations; unless the corporate refund exceeds \$10,000, then the rate will be 3.5%.
- For the year 2008 only – Non-itemizers can deduct property taxes in addition to their standard deduction up to \$1,000 for marrieds and \$500 for singles.

- In the future a successful innocent-spouse claim will not shield community property from the IRS – says the court of appeals!.
- The IRS is increasing its audit examinations of tool reimbursements plans. Firms involved in the aviation, agriculture and construction businesses will be targeted. The IRS position is that, unless employees are required to substantiate tool expenses and return any excess to their employers, payments under the company plan will be taxed and hit with appropriate payroll taxes.
- Businesses no longer have to file an election to amortize start-up organizational costs. Now up to \$5,000 of start-up costs can be deducted, subject to a dollar for dollar phase-out once the total expenditures exceed \$50,000.

THE EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

The Emergency Economic Stabilization Act of 2008 was enacted on October 3, 2008, to jump start the economy, calm fears in the financial markets and ease the credit crunch. The Act includes \$150 billion in individual and business tax incentives. The rescue package includes the following provision:

- The Act created the Troubled Assets Relief Program which allows the Treasury department to acquire potentially bad mortgage debts and other troubled assets from banks and other institutions by direct purchase or through auction. Once the Treasury acquires assets it can implement executive compensation and/or limit the deductibility of such compensation.
- The Act patches the current AMT rules by raising the exemption amounts and allowing taxpayers to take nonrefundable personal credits against their AMT liability. The AMT exempt amounts are \$69,950 for married couples filing jointly and surviving spouses, \$46,200 for single individuals and heads of households and \$34,975 for married couples filing separately.
- The Act extended the exclusion for indebtedness in the Mortgage Forgiveness Relief Act of 2007. The \$2 million mortgage indebtedness exclusion is now available through 2012.

- The Act extended the state and local sales tax deduction, teachers classroom expense deduction, higher education tuition deduction, additional standard for real property taxes, and tax-free distributions from IRAs for charitable purposes.
- The Act extends the research credit to amounts paid in 2008 and 2009.
- The Act allows taxpayers engaged in environmental cleanup to be eligible for enhanced expensing of remediation costs.
- The Act allows employers to pay \$20 per month in fringe benefit payments to employees who commute to work on a bicycle.
- The Act establishes business incentives including allowing for a 15-year recovery period for qualifying leasehold improvements; Indian employment credits; charitable deductions for food inventories, books and computer equipment; and a New Markets Tax Credit.
- Under the rescue plan community banks and other qualifying financial institutions that hold preferred stock in Fannie Mae and Freddie Mac may treat their losses as ordinary losses.
- The new law provides relief to those high-tech workers and others who were left holding worthless stock options but a large AMT tax bill when the tech industry collapsed. Also abated are AMT tax liabilities stemming from the exercise of incentive stock options before 2008.
- The Act enhances the child tax credit. This credit was refundable to the extent of 15 percent of the taxpayers earned income in excess of \$12,050; now the earned income floor falls to \$8,500.
- Included in the new law are several extended incentives to encourage the production of renewable energy. The Act extended the credit for producing electricity from qualified wind facilities; the credits for producing electricity through biomass and other qualifying renewable sources; and the credits for solar energy, fuel cell, and micro turbine property are extended.

The Act also includes \$43 billion in revenue raisers:

- Reporting by brokers has been expanded to include the reporting of the adjusted basis of publicly traded securities – and the determination of long-term vs. short-term status. This reporting is to begin for stocks acquired during 2011, mutual funds acquired in 2012, and other securities acquired in 2013.
- Now nonqualified deferred compensation plans maintained by foreign corporations are taxable, unless the compensation is deferred for 12 months or less and at the end of the year that compensation vests. This change applies to deferred compensation for services performed after 2008.
- The domestic oil and gas production activities deduction is now capped at six percent.
- The Act tightens the rules for oil and gas companies to pay taxes on overseas income. It eliminates the distinction between foreign oil and gas extraction

income and foreign oil-related income from transportation and refining and applies the foreign tax credit limitations to income from oil and gas sales.

- The Act extends the spill liability trust fund tax through 2017, and increases the tax to eight cents per barrel through 2016; nine cents in 2017.
- Finally the law extends the 0.2 percent surtax on FUTA taxes through 2009.

FUEL USE TAX – A ROAD TO THE FUTURE

Many states are looking at road user pricing as a future tool in reducing traffic gridlock and increasing tax revenues. A 2007 study established statistics indicating that traffic congestion in the United States caused 4.2 billion hours of travel delays and 2.9 billion gallons of wasted fuel. At the same time it was determined that approximately 18% of the nations more than 912,000 miles of roads and highways are in poor condition, and approximately 27% of our nearly 594,000 bridges are structurally deficient. Various states (including Maryland) feel the answer to this problem could be road user pricing, which links travelers driving choices to the actual costs imposed on the traffic system. Road pricing can be implemented in several ways; including pricing on a single corridor; pricing areas within dense urban environments during peak travel; and developing variable pricing for parking.

COMPLETED CONTRACT METHOD EXPANDED FOR HOME CONSTRUCTION CONTRACTS

The IRS has issued regs that will expand the types of contracts that will be eligible for the home construction contract exemption; which will allow more taxpayers to use the completed contract method of accounting. Generally the IRS requires income from long-term contracts to be determined using the percentage-of-completion method, based on cost-to-cost comparisons. However, income from exempt construction contracts still may be determined using the completed contract method. By definition an exempt home construction contract is any contract in which 80% or more of the total estimated contract costs are reasonably expected to be attributable to the construction of either dwelling units of buildings containing four or fewer dwelling units or improvements to real property directly related to and located on the sight of the dwelling units. The IRS now agrees that contracts for the construction of common improvements are eligible for the home construction exemption, even if the contract is not for the construction of any dwelling unit. Also each unit in a condominium will now be treated as a separate building; as in the past townhouses have been treated.

THREE WAYS FOR “ROTH” TO RETIRE

The IRS has issued final regulations on the conversion of a non-Roth IRA annuity to a Roth IRA. The new regs allow for three different methods of determining the fair value of the annuities. First the regs use a conversion method similar

to those found in gift tax regs. This method is based on comparable contracts issued by the same company at or around the same time. The second method presented is an approximation method where there are no comparable contracts; while the third and final method would be an accumulation of premiums method similar to a valuation method used for qualified pension plans.

IRS ATTEMPTS TO CLOSE TAX GAP BY ATTACKING HOBBY BUSINESSES

The IRS is aggressively attacking small businesses that they consider not-for-profit entities. Generally, an activity is presumed to be carried on for-profit if it makes a profit in at least three out of five of the last five years, including the current year. If the activity is not-for-profit, a hobby, losses from the activity may not be used to offset other income!

The IRS looks at the following list of factors to determine if an activity is engaged in for-profit or is a hobby:

1. Does the time and effort put into the activity indicate an intention to make a profit?
2. Does the taxpayer depend on income from the activity?
3. Are any losses beyond the taxpayers control or did they occur in the start-up phase of the business?
4. Has the taxpayer changed operation methods to improve profits?
5. Does the taxpayer have professional advisors who understand the activity and understand how to make it profitable?
6. Has the taxpayer made a profit in the past in a similar activity?
7. Does the activity make a profit in some years?
8. Can the taxpayer expect to make a profit in the future using existing assets?

STOCK INVESTOR OR TRADER – THAT IS THE QUESTION!

Traders in stocks, bonds, etc. can make a market-to-market election and treat their gains and losses as ordinary. If you qualify as a trader there is no limit on the amount of business expenses that can be deducted. However, if you do not qualify as a trader all gains and losses are capital in nature, subject to capital loss limitations, and you can only deduct business expenses as miscellaneous itemized deductions, subject to the two percent limitation rules.

In a recent Tax Court case an elderly married couple were determined to be investors, not traders, because the court found that their trading was insubstantial and they failed to seek profits from short-term swings in the daily stock market. It didn't matter that the couple had incorporated as a trading company or that they had made a timely election to be treated as a trader.

EMPLOYEE TRAVEL PER DIEM RATES SIMPLIFIED

Effective October 1, 2008, the IRS issued new government-approved per diem rates for employee travel. The per diem rate for designated high-cost areas is now \$256 per day (\$198 for lodging and \$58 for meals and incidental expenses). The new approved per diem rate for low-cost areas is \$158 per day (\$113 for lodging and \$45 for meals and incidental expenses).

SINGLE-MEMBER LLC CAN CAUSE MAJOR EMPLOYMENT TAX PROBLEMS

In a recent Court case a taxpayer, who was the sole owner of a Limited Liability Company, incurred employment tax liabilities in excess of \$100,000. The IRS attempted to collect the unpaid taxes from the taxpayer personally. The taxpayer sought judicial review of the assessment claiming that the disregarded single-member LLC should be treated separately from the owner for employment tax purposes. The court rejected the taxpayer's argument stating that IRS's check-the-box regulations are a fair and reasonable attempt to identify entity type. Under the check-the-box regs an LLC entity that has only one owner can choose to be treated for federal tax purposes as an association or as a sole proprietorship. If, as in this case, no election is made, a single member LLC is disregarded as an entity separate from the individual and taxed as a sole proprietorship.

DO-GOODERS BEWARE – IRS DOESN'T APPRECIATE YOUR ATTITUDE

In a recent Tax Court case the IRS challenged a \$6,500 church deduction claimed by a taxpaying couple. The taxpayers had cancelled checks to prove the properness of their deduction. NOT GOOD ENOUGH! The IRS wasn't questioning that the contributions had been made or the tax exempt status of the church. They were disallowing the deduction on the grounds that the donations weren't properly substantiated with contemporaneous acknowledgements from the church. The Tax Court agreed. The court stuck to the strict letter of the law, which requires checks exceeding \$250 to be further substantiated with contemporaneous written acknowledgement from the charity.

WHAT A BA – HUMBUG RULING!

HOW LONG DOES MONEY LAST?

Not that many of us have paper money long enough to be concerned with its physical life; the government is now becoming coin conscious. It has been determined that the average life span of a one dollar bill is twenty-one months. This relatively short life span has caused the U.S. government/U.S. Mint to push the use of dollar coins as a "green" alternative to the greenback. The Mint says that dollar coins last decades and that their use could save the

government billions in replacement costs over those extended years. Since January 2007 the Mint has produced more than one billion of the new presidential dollar coins. Four designs are minted each year, honoring the presidents in the order in which they served.

FOOD FOR THOUGHT

WHEN I LOOK TO THE FUTURE I FIND MYSELF SURROUNDED BY THE PAST!

ZIMMERMAN & ASSOCIATES EVENTS

A new and exciting player has been drafted from the real world league to join our Z&A team of fun professionals. Assist us in giving a great big wonderful "HOWDY" to our new business manager, Amy Tucker. "MISS PERSONALITY" can analyze your financial position, prepare your tax return, and make you laugh, even in tough times. Better hurry though, the make me laugh line is already quite long for 2009!

Our Z&A family now have our own home grown protection squad. Jordan Huebschman recently achieved his karate black belt, while his mother Traci, received her brown belt.

Congratulations to Jamie Zimmerman for being chosen by her peers as captain of the University of Alabama soccer team. She led them to a great season that didn't end until the SCC tournament! What a great senior year for Jamie!

Z&A would like to take this opportunity to introduce our old friends to our list of new and exciting client friends:

S & S DRILLING, INC.
CONVERGENT TECHNOLOGIES DESIGN
GROUP, INC.
CONVERGENT TECHNOLOGIES DESIGN
GROUP OF ARIZONA, INC.
KMC DEVELOPMENT, LLC
VILLA PROPERTIES, LLC
LUMBERJACK PROPERTIES, LLC
KING TRANSPORTATION RESOURCES, INC.
GRACELAND PROPERTIES, LLC
ED PROPERTIES, LLC
FASTING ENTERPRISES, LLC
FASTING MANAGEMENT, INC.
CHAMPION MEATS, INC.

We here at Z&A can't effectively communicate the love and appreciation that we feel for our client-friends and business associate-friends. Your loyalty, understanding and faithfulness have brightened an otherwise difficult year.

As the holidays approach we pray that everyone will stop, look and listen; for surely a brighter and more prosperous 2009 is now in view. Together we will make our trip through 2009 a great and successful venture! We know this to be true because "Santa Bob" told us so!

Have the happiest of holiday seasons! Welcome in a great new year! Make 2009 a year of love, loyalty, happiness and friendship! Be assured Z&A will always be there to befriend you!