

THE BERNSTEIN REPORT

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Dear Reader,

As part of the Emergency Economic Stabilization Act of 2008, Congress included the Tax Extenders and AMT Relief Act of 2008. The Act's Tax provisions have been circulating for months, and include the amended version of H.R. 6049 in the final bill. The Emergency Economic Stabilization Act contains over \$150 billion in tax breaks and was signed into law on October 3. The alternative minimum tax (AMT) changes and some of the extenders are discussed in the inside report.

The IRS has released the inflation-adjusted figures for 2009 (Rev. Proc. 2008-66). The inflation-adjusted figures affecting estate and gift taxes are: (1) the amount of gifts that can be made to each recipient under the federal gift tax annual exclusion is increased to \$13,000, (2) the amount of excluded gifts that can be made to a spouse who is not a US citizen is increased to \$133,000, (3) the amount of value reduction that is available for certain real property used in a farm or closely held business is increased to \$1 million for estate tax purposes, and (4) the amount used to determine the special 2 percent interest rate for deferred estate taxes for a closely held business is increased to \$1,330,000.

The inflation indexed numbers increase the opportunities for retirement savings and qualified pension plans. For Sec. 401(k) and Sec. 403(b) retirement savings plans, the participant can elect to contribute up to \$16,500 in before-tax dollars in 2009. Participants in such plans born before 1960 can contribute up to \$22,000 as a result of catch-up provisions. Contribution limits for qualified defined contribution plans will increase to \$49,000, while benefit funding limits for defined benefit pension plans increases to \$195,000. Unfortunately, contribution limits for both regular and Roth IRAs remain at \$5,000 for 2009.

The election will probably be over by the time this letter is printed. Regardless of the results, there are many tax issues that will have to be addressed rather quickly due to the sunset provisions placed in the tax changes that were enacted during the Bush Administration. We'll keep you up-to-date with any proposals as they are presented.

Cordially,

Richard S. Bernstein

**A Second Opinion Costs You NOTHING,
But Could Save You MILLIONS!**

**WHEN IT COMES TO YOUR HEALTH, YOU GET A SECOND OPINION,
SHOULD YOUR FINANCIAL WEALTH BE ANY DIFFERENT?**

YEAR-END TAX PLANNING TIPS FOR 2008

There is always a plethora of ideas to make some last-month adjustments to reduce taxes at the end of a calendar year. This year proves to be no exception. The discussion below provides some food for thought for this year and some new changes impacting all taxpayers for next year.

Uncertainty Still Surrounds AMT's Future

The AMT Exemption (i.e., the AMT Patch) increased again with the passage of the Tax Extenders and AMT Relief Act. Prior to passing the new law, the AMT Exemption amounts were scheduled to revert to year 2000 levels (e.g., \$45,000 for married couples filing jointly and \$33,750 for single taxpayers). The exemption amounts for 2008 are \$46,200 for single and head of households, \$69,950 for married couples filing jointly, and \$34,975 for married couples filing separately. The extension will leave about four million taxpayers subject to the AMT. However, absent any further AMT change, the Treasury estimates that at least 25 million taxpayers would be subject to the AMT in 2009. Of course, the patch could be renewed next year or a new Congress could pass reform legislation to have a more permanent reform of the AMT.

As indicated in prior newsletters, planners and their clients need to keep in mind that many common deductions are added back in calculating the AMT. Some of the itemized deductions that are added back include: state and local income taxes (including sales taxes), real estate taxes, and miscellaneous itemized deductions in excess of 2 percent of adjusted gross income. In addition, for those taxpayers claiming the standard deduction in lieu of itemizing their deductions, the standard deduction is added back to taxable income in calculating the AMT. Furthermore, both personal and dependency exemptions are not allowable in computing the AMT! In planning the timing of year-end deductions (i.e., taxes), what may seem tax deductible may prove to be an illusion due to an AMT issue!

Some Individual and Business "Extenders" Affecting 2008 and 2009 Taxes

The new law extends the following individual and business tax provisions through 2009: Since we were unsure about the passage of some of these extenders, it is important to make decisions concerning some of these items before the close of 2008.

- the itemized deduction for state and local sales taxes;
- the above-the-line \$4,000 qualified tuition and expenses deduction for joint filers with AGI below \$130,000 and unmarried filers below \$65,000 (\$2,000 for AGI below \$160,000 for married couples filing jointly and \$80,000 for others);
- the limited addition to the standard deduction for real property taxes paid by non-itemizers (\$1,000 for joint filers and \$500 for others);
- the provision that allows taxpayers to roll over (trustee to trustee) distributions of up to \$100,000 per year to qualified charities from their traditional and Roth IRAs. This is limited to donors above age 70 1/2 but presents a useful planning opportunity before the end of 2008 for an IRA owner who doesn't need the minimum distribution for 2008 and wants to avoid income taxes on the required distribution;
- the above-the-line \$250 deduction for teachers' classroom expenses;
- 15-year cost recovery for leasehold and restaurant improvement;

- Enhanced charitable deduction for contributions of food and contributions of books and computer hardware to schools is extended, and S corporation shareholders can receive pass-through charitable deductions of appreciated property equal to fair market value rather than the S corporation basis in the property.

Changes to Consider Regarding Your Principal Residence

This past July, The Housing and Economic Recovery Act of 2008 became law and included some key provisions impacting the acquisition, maintenance, and sale of your principal residence.

- A new first-time homebuyer credit for individuals acquiring a principal residence in the United States. This first-time homebuyer credit is equal to the lesser of \$7,500 (\$3,750 for married couples filing separately) or 10 percent of the purchase price of the home. For example, if a home costs \$75,000, the allowable credit would be \$7,500. A home costing \$150,000 would generate an allowable credit of \$7,500. The credit phases out at AGI levels over \$150,000 for married couples filing jointly and \$75,000 for others. If the home is purchased by July 1, 2009, it can be deemed purchased on December 31, 2008 for purposes of the credit. The first-time homebuyer credit must be recaptured over fifteen years with no interest. The recapture begins in the second taxable year after the taxable year in which the home is purchased. If the homeowner sells the home at any time during the 15-year payback period, the remaining amount is recaptured, unless the home is sold at a loss, at which point the balance is forgiven;
- An additional standard deduction for real property taxes for non-itemizers (lesser of real estate taxes paid or \$1,000 (married filing jointly) and \$500 (single filer);
- For those selling or exchanging their principal residence after December 31, 2008, Section 121 has been amended to limit exclusion of gain to 1 sale or exchange every 2 years and provides a special rule for certain sales by surviving spouses. Under new Section 121(b)(5)(A), Section 121(a) shall not apply to the gain from the sale or exchange of property as is allocated to periods of nonqualified use. The gain shall be allocated to periods of nonqualified use based on the ratio which property owned by the taxpayer is placed in a nonqualified use to the total amount of time the property was owned by the taxpayer. Nonqualified use is any use not as a principal residence. (e.g., Property used for rental or vacation home purposes.)

Business Opportunities

In addition to this year's rebate payments, legislation (i.e., Economic Stimulus Act of 2008) earlier this year provides the following time sensitive business tax incentives:

- The Act increased the expensing limit under Section 179 to \$250,000 and the phase-out to \$800,000 for 2008. (This is an increase from the scheduled expensing limit of \$128,000 and the phase-out threshold of \$510,000). These adjustments only apply to taxable years beginning in 2008. For fiscal year taxpayers, you will not be able to make use of this provision until the first year beginning in 2008, but qualifying purchases would continue until the end of that fiscal year. For example, a November fiscal year taxpayer would only be permitted to make purchases on or after December 1, 2008, but the taxpayer could continue to purchase qualifying assets through November 30, 2009. This provision provides a great opportunity to make capital expenditures up to \$250,000 with immediate tax benefits.

- The Act also allows a trade or business to depreciate an additional 50 percent of the cost of a new asset acquired and placed into service in 2008. The types of property eligible for "bonus" depreciation will be the same as included under previous "bonus" depreciation legislation (i.e., tangible property that has a recovery period not exceeding 20 years, purchased computer software, water utility property, and qualified leasehold improvement property). Similar to prior "bonus" legislation, the original use of the property must commence with the taxpayer. Qualifying property must be placed in service after December 31, 2007, and before January 1, 2009. The additional bonus depreciation deduction will be allowed under the AMT.

Lower Tax Rates on Long-Term Capital Gains

The long-term capital gains rate of 15 percent may have a limited time horizon. The November election had not yet occurred at the time this was written. If Senator McCain wins the election, it is much more likely that the lower rate will continue than if Senator Obama wins the election. Tax-planning may dictate incurring some gains earlier in anticipation of an increase of the capital gains rate in 2009 tax changes.

Brokerage Statements to Receive New Filing Season Deadline

Effective for statements to be issued in 2009, the Emergency Economic Stabilization Act extended the date by which brokers must furnish information forms (i.e., Form 1099-B) to customers from January 31 to February 15.

Social Security Wage Base

The wage base for 2008 is \$102,000. The amount for 2009 is projected to be \$106,500. Taxpayers who have some control over how much money they make may wish to receive additional earned income in excess of \$102,000 this year rather than next, especially if the taxpayer expects that income will drop below the wage base next year. Earned income in excess of \$102,000 is not subject to the OASDI tax. However, the 2.9 percent Medicare tax (1.45 percent for employees) applies regardless of income level.

This Tax Letter is intended to assist you to conserve your estate and to protect the interests of your family and business associates. Estate planning involves the joint services of a competent Trust Officer, Attorney, Accountant, and Life Underwriter. The experience and advice of each is generally essential.

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