

Taxing Times

Tax information for clients and friends of Stambaugh Ness



November 18, 2009

By Tax Advisor Colette Brownson
Tax Specialist Melissa J-L Myers

INDIVIDUAL TAX NEWS

TAX PLANNING SERIES

In the May through October issues of the Taxing Times, we provided you with various tips for tax planning in 2009. We have now concluded our Tax Planning Series. If you would like to review these previous suggestions, please refer to [our website](#). The past monthly editions are located there for your convenience.



*Tax Specialist
Melissa J-L Myers*

WORKER, HOMEOWNERSHIP, AND BUSINESS ASSISTANCE ACT OF 2009

On November 6, 2009, President Obama signed the Worker, Homeownership, and Business Assistance Act of 2009. This Act made some additional changes to the first-time homebuyers' credit and the NOL carryback provision for corporations. We have highlighted these changes below.

First-Time Homebuyer Credit

As we have discussed in previous editions, the first-time homebuyer credit is available to individuals purchasing a new home in 2009. This credit is comprised of 10% of the purchase price of the qualified residence, with a maximum credit of \$8,000. However, the original cut-off date for this credit was November 30, 2009. This meant you need to have settlement on your qualified residence by that time. The new law not only extends the timeframe for the credit, but it also extends the credit to higher income taxpayers and allows a reduced credit to some non-first-time homebuyers. The new law also expressly excludes high-end homes from the credit.

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PLUS -
What's on Your Mind ... "Taxing" Questions - Section 179 Depreciation

The new law provides a new expiration of April 30, 2010. If a taxpayer enters into a binding contract before May 1, 2010, to close on the purchase of a principal residence before July 1, 2010, the credit will be treated as not expiring until July 1, 2010. If you purchase your qualified principal residence before April 30, 2010, you may claim the credit on your 2009 income tax return.

Effective for purchases after November 6, 2009, the credit is available to non-first-time homebuyers. Individuals who have occupied their current residence at least 5 consecutive years may be eligible for a modified credit even though they are not technically first-time homebuyers. The credit for the long-term residents of the same principal residence is a reduced amount, with the maximum credit being \$6,500.

MELISSA'S COMMENTS: *"The new law has increased the phase-out limitations to \$125,000 for single taxpayers and \$225,000 for married couples filing a joint return. Also, the first-time homebuyer credit may be allocated between two or more un-married taxpayers using any reasonable method."*

NOL Carryback

The expanded net operating loss (NOL) carryback period for small businesses as provided by the American Recovery and Reinvestment Act of 2009 has been modified by the Worker, Homeownership, and Business Assistance Act of 2009. The 2009 Worker Act now allows businesses of all sizes to carryback NOLs to more than two and less than six years. In addition, the provision has been extended to NOLs for 2008 or 2009. In general, NOLs can be carried back two years and forward 20 years. The carryback and carryover periods are determined by the law applicable to the year in which the NOL arises, rather than any of the years to which it is carried back or forward. An NOL that is not utilized within its statutory timeframe expires without providing any tax benefit.

Under the 2009 Worker Act, the election to carryback an NOL for three, four, or five years is expanded for businesses of all sizes with an NOL for a tax year ending after December 31, 2007 and beginning before January 1, 2010. However, the amount of the NOL which may be carried back to the fifth year preceding the tax year of the loss cannot exceed 50 percent of the taxpayer's taxable income for the carryback year.

MELISSA'S COMMENTS: *"Although the provision extends to 2008 and 2009, the election for the expanded NOL carryback period can only be made with respect to one loss year, unless the election is made for an eligible small business. Eligible small business may make an election for two loss years. Fortunately, taxpayers who have filed their tax returns and have made an election before the enactment of the 2009 Worker Act are allowed time to revoke prior election and timely file a new election."*

YORK ADAMS TAX BUREAU CHANGES TAX FORM

In past years, taxpayers filing a local earned income tax return were permitted to deduct a loss from an unincorporated business against earned income. In addition, a taxpayer could not offset losses from one business against profits from another. However, pursuant to the Pennsylvania Act 32 and effective for tax year 2009, taxpayers are no longer able to deduct their business loss against their earned income and can now offset the net loss of one business against the net profit of another business. The local tax return has been altered to reflect this change.

MELISSA'S COMMENTS: *"The new form indicates lines to offset net losses from one business against net profits from another business. However, if your overall total for all of your business activity is a net loss, you may not use that amount to offset your earned income."*

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***What's on Your
Mind ...
"TAXING"
QUESTIONS***

Dear Colette and
Melissa,

My corporation purchased \$200,000 worth of new assets in 2009. Will we be able to take Section 179 depreciation on the full amount for both federal and state purposes? We file in Pennsylvania only.

*Thanks,
Jeremy
Hanover, PA*

Dear Jeremy,

The availability of the Section 179 depreciation deduction will depend on whether you are an S-corporation or a C-corporation. If your corporation files as an S-corporation, you may be able to take the \$250,000 deduction for Federal purposes, but you are limited to a deduction of \$25,000 for Pennsylvania purposes. However, C-corporations are eligible a Section 179 deduction of up to \$250,000 on both the Federal and Pennsylvania tax returns.

*Until next month,
Colette and Melissa*

If you have a general tax question you would like to have answered in a future edition, please email mmyers@stambaughness.com.

WHY NOT DONATE THE CAR???

Not happy with the trade-in amount being offered for your vehicle by a car dealer? Not able to sell your car on EBay, Craig's List or other newspaper advertisement? Why not consider donating your car to a qualified charitable organization. It's a great way to help someone and can be used as a deduction on your tax return.



**Tax Advisor
Colette Brownson**

If you donate a qualified vehicle to a qualified organization and you claim a deduction of more than \$500, you can deduct the smaller of:

- The gross proceeds from the sale of the vehicle by the organization, or
- The vehicle's fair market value on the date of the contribution. If the vehicle's fair market value was more than your cost or other basis, you may have to reduce the fair market value to figure the deductible amount.

You must attach to your return a copy of Form 1098-C, Contributions of Motor Vehicles, Boats, and Airplanes, (or other statement containing the same information as Form 1098-C) you received from the organization. The Form 1098-C (or other statement) will show the gross proceeds from the sale of the vehicle. If you do not attach Form 1098-C (or other statement), you cannot deduct your contribution. You must get Form 1098-C (or other statement) within 30 days of the sale of the vehicle. But if exception 1 or 2 (described next) applies, you must get Form 1098-C (or other statement) within 30 days of your donation.

- **Exception 1 – vehicle used or improved by organization.** If the qualified organization makes a significant intervening use of or material improvement to the vehicle before transferring it, and you claim a deduction of more than \$500, you generally can deduct the vehicle's fair market value at the time of the contribution. But if the vehicle's fair market value was more than your cost or other basis, you may have to reduce the fair market value to get the deductible amount. The Form 1098-C (or other statement) will show whether this exception applies.

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• **Exception 2 – vehicle given or sold to a needy individual.** If the qualified organization will give the vehicle, or sell it for a price well below fair market value, to a needy individual to further the organization's charitable purpose, and you claim a deduction of more than \$500, you generally can deduct the vehicle's fair market value at the time of the contribution. But if the vehicle's fair market value was more than your cost or other basis, you may have to reduce the fair market value to get the deductible amount. This exception does not apply if the organization sells the vehicle at auction. In that case, you cannot deduct the vehicle's fair market value.

You must also fill out **Form 8283**, Section A, if your total deduction for all noncash contributions is more than \$500. An appraisal generally must be obtained if you claim a deduction for a contribution of non-cash property worth more than \$5,000. In that case, you must also fill out Form 8283 Section B. Attach Form 8283 to your return.

COLETTE'S COMMENTS: *"One big thing to keep in mind is that if you donate a car to a charitable organization and the FMV is \$5,000 and the organization turns around and sells the car for \$2,500 you are limited to the \$2,500 for your deduction, unless you fall under one of the exceptions listed above.*

"Also, if the donation will be more than \$5,000 you need to get an independent appraisal for the vehicle. For a list of qualified charitable organizations that will accept your donated vehicle you can go to www.cars4charities.org or www.800charitycars.org."

CORPORATE TAX NEWS

PENNSYLVANIA: RECENTLY ENACTED TAX LAW CHANGES

On October 9, 2009, Governor Ed Rendell signed the tax reform bill, House Bill 1531, into law. The bill contains an estimated \$1.5 billion of revenue raisers and tax increases. The following provisions impact all entities filing Pennsylvania corporate returns. Below is a brief summary of the highlights of House Bill 1531.

Back in 2006, Pennsylvania passed legislation that accelerated the phase-out of the Capital Stock Franchise Tax (CSFT), decreasing the rate by 1.0 mill each year until the tax was phased-out entirely for tax years beginning after December 31, 2010. House Bill 1531 freezes the CSFT rate

at the 2008 rate of 2.89 mills and makes this provision retroactive to January 1, 2009. For tax years beginning on or after January 1, 2012, the rate is scheduled to drop to 1.89 mills and for tax years beginning on or after January 1, 2013, the rate will be further reduced to 0.89 mills. Additionally, the bill increases the fixed formula capital stock value deduction from \$150,000 to \$160,000.

Fortunately, the bill provides relief from the underpayment of estimated taxes resulting from this retroactive change. This means corporations who are following the current CSFT safe harbor provisions do not need to adjust their estimated payments prior to January 1, 2010.

The recently passed bill also made changes to the corporate net income (CNI) apportionment formula. Note: this provision only impacts C corporations filing in multiple states. Prior to the passage of House Bill 1531, the apportionment formula weighted the property and payroll factors at 15 percent each and the sales factor at 70 percent. Now, the property and payroll factors have been reduced to 8.5 percent each and the sales factor increased to 83 percent. The sales factor is set to increase to 90 percent in 2010 and property and payroll will be reduced to 5 percent.

However, unlike the change in CSFT, corporate taxpayers currently using the safe harbor for quarterly CNI payments will be required to include any "catch-up" amount in their December estimated tax payment. With the passage of House Bill 1531, the corporate net income tax net operating loss cap was increased to \$3 million or 15 percent of Pennsylvania taxable income for taxable years beginning after December 31, 2008, and to the higher of \$3 million or 20 percent of Pennsylvania taxable income for taxable years beginning after December 31, 2009. The cap previously was \$3 million or 12.5 percent of taxable income.

There was no increase to the personal income tax rate, nor the sales and use tax rate. Effective immediately, the sale and use of helicopter and similar rotorcraft are exempted from Pennsylvania sales and use tax. Repair parts and components, as well as installation in such craft, also are exempted. Sales tax licensees whose reportable taxes exceed \$25,000 in the 3rd quarter of 2010 will be required to begin remitting sales tax on a semi-monthly basis, beginning in June 2011. Tax for the first 15 days of the month will be due on the 25th and tax for the 16th day

through the end of the month will be due on or before the 10th of the following month.

The amounts available under the Educational Improvement Tax Credit program have been reduced from \$75 million to \$60 million in fiscal 2009-2010, and to \$50 million in 2010-2011. The statute has been amended to clarify that where a pass-through entity transfers a credit to its shareholders, members or partners, an election may be made to use the credit in the year of contribution or the following year. The definition of pass-through entity now includes single member limited liability companies treated as disregarded entities for federal tax purposes. Credits continue to be granted on a first-come, first-served basis, except that if applications received prior to October 1, 2009 exceeded the allocation, such applications will be granted on a pro-rata basis.

PENNSYLVANIA AMNESTY PROGRAM

Under Act 48, which was signed into law on October 9, 2009, Pennsylvania will be issuing a tax amnesty period from April 26 to June 18, 2010. During this limited period, the Pennsylvania Department of Revenue will waive 100 percent of the penalties and one-half of the interest for anyone who pays their delinquent state taxes.

MELISSA'S COMMENTS: *"If you have delinquent taxes due to the Pennsylvania Department of Revenue, it would be a good idea to pay the taxes during the Amnesty Period. While you are able to pay the taxes now through a Voluntary Disclosure Agreement (VDA) with the State, the company must pay the full interest amount under a VDA, but the Amnesty Program cuts the interest in half.*

"Also, please beware that it is not uncommon for states to alter the regulations of their voluntary disclosure programs after offering an amnesty program. The changes to the voluntary disclosure program could be less favorable to companies who owe taxes to the state. Now is a good time to re-evaluate your business transactions to determine your company's need to file under the Pennsylvania Amnesty Program when it is offered."