

Winter 2010

A Doeren Mayhew Quarterly Construction Newsletter

## Looking Back at 2009 and Getting Ready for Tax Time in 2010

*Before 2010 begins in earnest, you may find it helpful to take one last look at important tax developments that occurred during 2009 to see what impact they may have on next year's tax strategies. To help, we have prepared a list of 2009 tax developments, selected from the perspective of their importance to you in 2010. Some of the developments on the list are ongoing, with endings yet to be written. With other developments, the law is firmly established, although application of some of them to New Year transactions may remain somewhat uncertain. In all cases, they are notable for their potential to play an important role in 2010 and beyond.*

### Offshore Compliance

In 2010, the government will continue its follow-up work in pursuing disclosures made by UBS AG, as well as by individuals who, in 2009, disclosed names of advisors and other facilitators in record numbers. According to IRS Commissioner Doug Shulman, an "unprecedented" number of offshore account disclosures have been made. In addition, the IRS will make inroads in its multi-plank offshore tax reform plan, publishing (and enforcing) loophole-closing guidance such as recent temporary regulations that tightened restrictions on corporate inversion transactions.

### Net Operating Losses

Net operating losses took center stage in 2009 as the economic downturn continued to generate NOLs that were useless to many businesses as immediate cash generators under the regular two year carryback provisions. The five-year 2008 NOL carryback for small businesses of the American Recovery and Reinvestment Act of 2009 and the modified five-year 2008 or 2009 NOL carryback option under the Worker, Homeownership, and Business Assistance Act of 2009 created much IRS guidance on elections and refund claims.

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**Win a Shopping Trip!**

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Since the modified five-year election between 2008 and 2009 need not be made until the extended due dates for 2009 tax returns (although the business pressure to claim cash refunds immediately remains intense), NOLs – how to compute them, how to generate them, and how to claim them – are guaranteed to continue to be a hot focal point in 2010, as will the intense business pressure to claim cash refunds on the election as soon as possible.

### **Tax Gap**

As part of its effort to close the “tax gap” – the difference between what taxpayers owe and what is collected – the IRS (with encouragement from Capitol Hill) set into motion in 2009 an array of programs and initiatives that will expand in 2010. In addition to the offshore compliance initiative, IRS efforts will include a new employment tax audit program, plans to more tightly regulate tax return preparers, development of rules for credit card reporting on merchants, and laying the groundwork for implementing basis reporting by stockbrokers, as well as continuing the use of penalty provisions to create a virtual second tier of tax liability for missteps in determining when a tax strategy “crosses the line.”

### **Cancellation of Indebtedness Income**

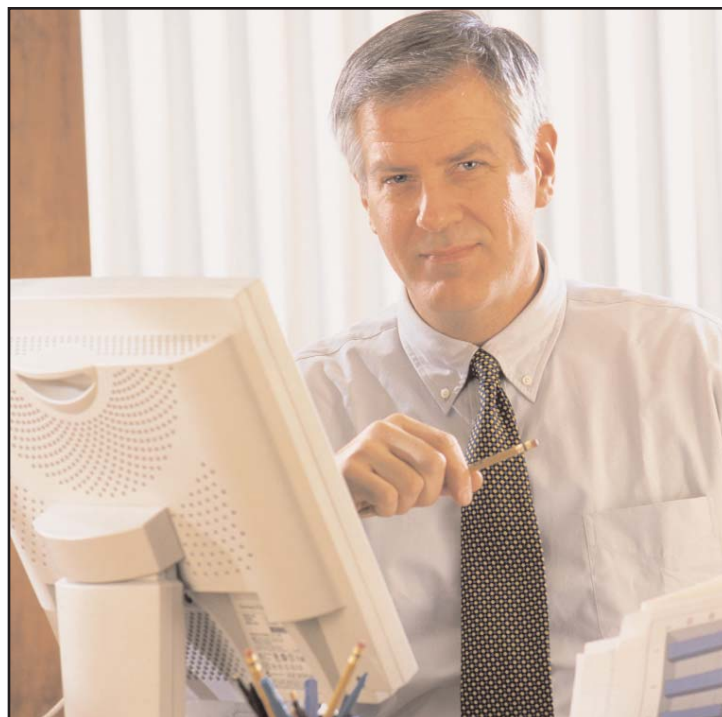
Although the recession has put a damper on acquiring real income, there continues to be no lack of cancellation of indebtedness (COD) income – nor issues over how exceptions to COD income should operate. Guidance regarding certain COD income continues to be a work in progress and the Treasury Department has promised rules on certain COD income in early 2010.

### **Homebuyer Tax Credit**

The first-time homebuyer tax credit’s latest iteration extends through April 30, 2010 (or closings before July 1 on contracts executed before May 1). The credit has certainly been one of the most publicized tax breaks in recent years. As a result, many homeowners and real estate agents have acted first and then called on their tax professional to “confirm and collect” on the credit. Nevertheless, after-the-fact strategies are available for both 2009 and 2010 purchases. This is especially true in connection with the long-time homebuyer portion of the credit under which income, residency, and the election to claim on the prior year’s return offer some flexibility.

### **Change of Accounting**

In 2009, the IRS made significant revisions to its required procedures for taxpayers to obtain automatic IRS consent to a change in accounting method. A new revenue procedure added a number of methods for which taxpayers may obtain



automatic consent and modified the rules that must be followed for obtaining automatic consent to an accounting method change. More companies are looking at accounting methods as part of their tax planning to enhance cash flow. Based on that evidence, filings of accounting method changes should continue into 2010 at a record pace.

### **AFRs and Asset Values at Historical Lows**

These days, it is difficult to have a below-market loan on which interest must be imputed considering that the rate charged would need to be below the current applicable federal rate (AFR). Low asset valuation also creates a particularly advantageous environment in which to convert from a corporation to a partnership, with taxable gain fixed in many cases at its lowest point in years. In addition to these factors, add the deadline created by the probability of higher taxes starting in 2011. 2010 strategies to take advantage of low interest rates and low values cannot be overemphasized.

### **Legislation**

The tax implications of health care reform, corporate tax reform, international tax reform, and a rise in the higher individual income tax rates (from the current 33 and 35 percent brackets to 36 and 39.6 percent, respectively, as well as higher capital gains rates) will all impact on long-term tax strategies undertaken in 2010 – so will those issues continuing to arise from the bumper crop of 2008 and 2009 tax legislation we have just gone through. Without any new case law, Treasury regulations, or IRS initiatives in 2010 (of which there are sure to be plenty of surprises), tax legislation will keep individuals and businesses busy.

## IRS Clarifies COBRA Premium Subsidy Credit

The IRS has provided further guidance to one of its questions and answers (Q&As) relating to the COBRA premium subsidy credit available to employers. The latest guidance pertains to situations in which a credit is claimed for 2009 COBRA premium payments received in 2010.

A subsidy of 65% of the COBRA continuation health insurance premiums paid is available to individuals who have been involuntarily terminated. The American Recovery and Reinvestment Act of 2009 extended the premium subsidy provision from nine to 15 months. The employer providing the subsidy generally receives a credit for the subsidy amount on Form 941, Employer's Federal Tax Return.

The IRS previously provided guidance on commonly asked COBRA-subsidy-related issues in Q&A format on its Website. One such question (FP-15) was: "Is the employer required to claim the credit on Form 941 for the quarter during which the COBRA subsidy is provided to an assistance-eligible individual?" The IRS answer is: "No. Instead of claiming the credit on Form 941 for the quarter during which the COBRA subsidy is provided, the employer may generally choose to claim the credit on Form 941 for a later quarter in the same calendar year."

The following inquiry was recently made to the IRS: If, in 2010, an employer receives payment of an assistance-eligible individual's 35% share of the COBRA premium for 2009 coverage, may the credit for the related employer-paid 65% premium subsidy be claimed for a quarter in 2009?

The IRS's response was "No." If an employer receives an assistance-eligible individual's 35% share of the COBRA premium in 2010, the employer may claim the credit for the related premium subsidy on Form 941 for either the quarter in 2010 in which it receives the individual's 35% premium payment, or a later quarter in 2010, but not for a quarter in 2009, regardless of the fact that the premium is for coverage during 2009.

In all cases, however, if an employer chooses to reduce its payroll tax deposits during the quarter based on the employer's receipt of the individual's 35% premium payment during that quarter, the employer must claim the credit for the related subsidy amount on Form 941 for the quarter during which its payroll tax deposits were reduced. Of course, an employer may only claim credit for the subsidy amount once.

The IRS's response should allay any concerns that existed among employers regarding the necessity to amend a 2009 employment tax return for affected COBRA premiums received after January 31, 2010, the deadline for filing 2009's Q4 Form 941.

## Win a Shopping Trip!

You could win a \$100 gift certificate to the Troy Somerset Collection! Just complete the form below and fax it to 248.273.6837 by February 25, 2010.

First Name

Last Name

Title

Company Name

Phone Number

Address

City

A random drawing will be held on February 26, 2010, to determine the winner. Entries must be received by February 25, to be eligible. One entry per company please. The winner will be notified by phone on February 26, and his/her name will appear in next quarter's newsletter.

The winner of last quarter's Detroit Pistons tickets drawing was Donald Munro of Munro Electric Company.

Congratulations, Donald!

## The Lighter Side

### Kids Will Be Kids

When one of her students asked for help putting his boots on, the kindergarten teacher could easily see why. With her pulling and him pushing, the boots still didn't want to go on. When the second boot was on, she had worked up a sweat.

She almost whimpered when the little boy said, "Teacher, they're on the wrong feet." She looked, and sure enough, they were. It wasn't any easier pulling the boots off than it was putting them on. She managed to keep her cool as together they worked to get the boots back on – this time on the right feet.

He then announced, "These aren't my boots." She bit her tongue rather than get right in his face and scream, "Why didn't you say so?" like she wanted to do. Once again she struggled to help him pull the ill-fitting boots off.

He then said, "They're my brother's boots. My Mom made me wear them." She didn't know if she should laugh or cry. She then mustered up the grace to wrestle the boots onto his feet again.

She said, "Now, where are your mittens?" He said, "I stuffed them in the toes of my boots . . ."

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**QUICK TAX FACTS  
2009-2010**



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