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TAX LETTER

2009 Tax Specials - Part 2

Previously in our August 2009 Tax Letter, we outlined eight (8) key changes for the 2009 taxable year. This October Tax Letter continue to outline a few more important development for our readers to consider.

9) **Vehicle Sales Tax** – In August, we informed our readers that there will be a special deduction for qualified sales tax paid on a purchase of a new vehicle. Recently, we learned from the IRS's literature that the new vehicle sales tax may be applied to more than one new cars. However, the IRS will apply the cost limitation ($49,500) to each individual car purchased. Further, buyers of new vehicles in States with no sales tax can claim a deduction for exercise tax and/or fees imposed by State or local authorities for the purchase of the vehicle. (IRS News Release IR-2009-60)

10) **Employer Provided Cell Phone** – Employer provided cell phone should be one of the so call "listed property". As such, employees are required to keep a detail records for their usages and made certain periodical reports to the employer. Otherwise, the employees will be required to report taxable income for the use of the employer provided cell phones. To avoid this tedious record keeping and reporting requirement, recently the IRS provided 3 alternative methods. One of them is the 75% - 25% safe harbor method. Employer could adopt this method and only deduct 75% of all the expenses associated with providing cell phones to employees. However, it is not clear whether or not that the employees will be allowed to claim the 25% as working condition fringe benefits. (IRS Notice 2009-46)

11) **HSA 2009** – HSA (Health Savings Account) has a new development to remember. If a levy is attached on a taxpayer's HSA and latter being withdrawn to satisfy the tax deficiency. Not only the HSA is not protected from IRS levy, the withdrawal to satisfy the levy will also be subject to the 10% penalty, unless the beneficiary of the HSA is deceased, or disabled or attained the age of 65. (IRS Chief Counsel Advice 2009-27019)

12) **Limited Partnership and LLC** – Recently in July 2009, both the Tax Court and the Court of Federal Claims came to a similar conclusion regarding the presumption of "Passive" participation. The Courts found that with respect to a Limited Partnership, there are two types of partners, the general partners having management power and personal responsibility, and the limited partners having no management power and no personal liabilities for the debts of the partnership. On the other hand, a LLC (Limited Liability Company), is a hybrid entity between a Corporation and a Partnership. Similar to a shareholder of a Corporation, a member of a LLC can directly participate in the

management of the LLC and at the same having limited liability for the debt and liability of the LLC. Therefore, whether a member of a LLC is a passive participant, an active participant or a material participant in the business of the LLC, the determination should be based, entirely, on the facts and circumstances of each case. (IRC Section 469(h)(2))

13) **COBRA for Layoff Employees** – ARRA '09 (American Recovery and Reinvestment Act of 2009), among other provisions, stipulated that if en employer paid for or subsidized up to 65% of the COBRA premium for layoff employees, such amount paid could be used by the employer to directly reduce the employer's employment taxes liabilities, such as liabilities under Form 941 (Federal Quarterly Payroll Tax Reports) and the annually reported Form 940 for annual payroll tax purposes.

14) **Acquisition of Qualified Business Properties** – The ARRA '09 also extended to business taxpayers, at least, two provisions to deduct their purchase and installment of qualified new business properties and/or equipment for the year 2009. First, the 50% "bonus" depreciation was extended to 2009 by ARRA. Second, the IRC Section 179 deduction had been increased from a maximum $133,000 to $250,000. Further, the beginning point for deduction phase-out was also increased to $800,000 of IRC Section 179 acquisition.

15**)** **If You Over Contribute to Your 401K** – If you contributed more than allowed in your 401K plan, you are required to withdrawn the amount over the limit ASAP. Many 401K participants who had excess contribution returned to them from 401K plans in 2008 experienced a loss. That is the amount actually returned was less than the amount should have been returned due to the loss of investment value and/or market shrinkages. If this happened to you and you received a Form 1099R showing the full amount of the "excess deferral" and the "actual amount distributed", you are allowed to deduct the loss as a "Loss on excess deferral distribution". It is an "above the line" deduction.

Should you have any comment or questions, please feel free to give us a call at 415-381-0681 or visit our web site – chochan.com.

Sincerely,

Cho F Chan CPA, Inc.