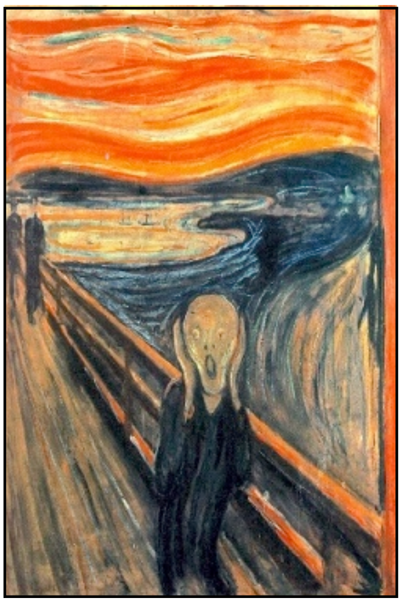
NEWSLETTER

Special Edition

GET READY --PRESIDENT OBAMA WILL BE MAKING IT MUCH MORE EXPENSIVE TO BE A HIGH INCOME TAXPAYER, STARTING THIS YEAR!



As promised (and as predicted in our first newsletter), President Obama has served notice that he intends to allow the Bush tax cuts for high earning taxpayers to expire at the end of 2010. As a result, the top tax brackets will go from 33 and 35% to 36 and 39.6%. But he also proposes, in his new Budget, to limit the tax benefit of deductions for those in the highest two brackets (the 33% and 35% referred to above), permitting no more than a 28% benefit. Opposition is forming against these limitations.

He has also proposed to change the way hedge fund managers pay tax on their income, assessing tax at ordinary income tax rates.

Capital gains rates will also increase, from 15% to 20% (for those lucky few with any capital gains).

Lastly, President Obama also proposes to freeze the current level of estate tax exemption at $3.5 million and the current rate at 45%. There are a lot of details to be added and we'll keep you informed in future editions.

Special Newsletter!

We ordinarily publish our tax newsletter once each quarter, but there is so much important news that we need to get our newsletter out a month early.

The big news, of course, is what is going on in Washington, starting with the new Stimulus and the Obama Budget proposals. We've given you a description of the new NOL rules on page 3. On page 1 we talk about proposed income tax changes for high net worth clients.

We want you to know about an important deadline of April 1st. Nate Wolf describes it all on page 2.

On page 4, two of our partners, Lisa Taylor and Andy Bosin, explain the new Paid Leave Act for NJ employers.

As always, please let me know of your comments and ideas to make our newsletter better.

Kevin Kilcullen
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Nathan P. Wolf, our new partner, possesses over 29 years of extensive experience in property tax assessment, condemnation, and valuation matters involving apartment, commercial, office, warehouse, hotel and retail properties, in addition to unique properties such as casinos/hotels, super regional malls, and special purpose properties. He primarily practices in New Jersey and Pennsylvania although he has assisted in appeals filed in New York and other states. Among his most recent successes, Nate was able to provide his client with a $24 million tax reduction. Nate is available for consultation and assistance in the review process and to represent your interests in the appeal process. He can be contacted at (973) 422-4166 or nwolf@sgklaw.com

REAL ESTATE RECESSION--CUSHIONING THE BLOW

Real estate values were not immune to the economic crisis of 2008. The rising trend of business failures and contractions, financial market instability, tightening credit and continued layoffs, does not instill a spirit of optimism for real estate values in 2009. Vacancy rates are increasing. Finding new tenants and maintaining rent levels has become difficult and costly. As property values deteriorate, operating expenses continue to escalate and erode profits. Property taxes typically rank among the highest of operating expenses.

Unfortunately, expectations are that the situation will only worsen. Governments, at local levels, have worsening financial pressures and unavoidably, increased taxation is often the fiscal response and the perceived remedy.

In a recent editorial, Governor Jon Corzine stated that:

"Eight in ten New Jersey towns are planning property tax increases of more than four per cent and nearly a third are planning increases of ten per cent or more."

Excessive property tax bills are the product of erroneous assessments and overvaluation. This burden can only be addressed and remedied by filing a tax appeal before April 1, 2009. All property assessments, including those recently appealed, should be thoroughly analyzed to determine whether relief is warranted.

Net lease landlords, although currently not paying the tax, should strongly consider filing appeals for two reasons. First, in the event of a tenant default, you will be paying the unchallenged tax. Second, in the lease-up process, reduced taxes will lessen a tenant's cost of occupancy, allowing for greater rent maximization and providing a competitive advantage over others. Net lease tenants also have a right to appeal in many instances.

Valuation in property tax matters can vary greatly from that applicable in other contexts. The advice of a tax appeal attorney, well versed in the law and valuation theory, will provide significant insight and assistance. Nate has the adroitness to help you reduce your tax bill, increase operating profits, and create added-value to your real estate holdings.

PRESIDENT OBAMA'S NEW STIMULUS PACKAGE PERMITS MORE CARRYBACKS FOR SMALL BUSINESS

In late February, Congress passed and the President signed a $787 billion economic stimulus package. The bill, known as the American Recovery and Reinvestment Act of 2009 ("ARRA"), offers a combination of fast-acting tax cuts and increased government spending on public works projects, healthcare, energy and technology.

Of the $787 billion, an estimated $29 billion is slated for tax cuts directed at businesses. This amount is largely targeted at increasing incentives for energy investment, loosening rules on depreciation, and expanding the net operating loss ("NOL) carry-back provision for small businesses. This final item, which has an estimated value of $947 million for small businesses across the country, is our focus here.

Background

The tax code recognizes that many businesses, especially during early or lean years, will fluctuate between operating at a profit and operating at a loss. To account for this reality, the tax code permits businesses that have NOLs to use them to offset income from other years.

The use of losses to offset income in future years is known as a carryover. Under current law, NOLs may be carried over for up to twenty years. If any losses remain unused following Year 20, they will vanish.

In addition to the carryover, businesses are also permitted to carry-back losses for two years. Indeed, businesses with NOLs arising in years other than its first year, the loss must carry those losses back as far as possible (absent a special election) before carrying them forward. Accordingly, a loss in Year 3 must first be used to offset income in Year 1, and if there is any excess loss, it must then be used to offset income in Year 2.

New Law

Under the ARRA, entities that have a 2008 NOL may make an election to carry-back such loss for three, four, or five years, instead of only two years. This means that previously taxed gains occurring 3-5 years ago may be offset by current losses. Absent the new law, these gains and the taxes paid on them, would have been frozen. Now these taxes can be recovered. For purposes of this special provision, the 2008 NOL includes an entity's loss for the fiscal year ending in 2008, but an entity may elect to have such provision apply to losses for the fiscal year beginning in 2008. Thus, the special five year period can be used for NOLs from a fiscal tax year beginning in 2008 or ending in 2008, but not for both.

Once made, an election to apply the extended carryback to NOLs is irrevocable, so it is important for businesses to carefully ascertain whether it is more effectively used for losses. Important considerations are the size of the 2008 NOL and the available income and effective tax rates from the preceding five years against which such loss could be offset. We suggest that each business seeking relief under this new section prepare a careful analysis.

Note this applies only to "small" businesses whose average gross receipts for the three year period ending in 2008 do not exceed $15 million per year. (Earlier version of the bill had allowed it for all corporations.) For purposes of making this determination, certain employer aggregation rules apply. Special provisions also apply for businesses that had made a previous election with respect to their NOLs.

We recommend that anyone who has an entity that has suffered losses in 2008 or is expected to suffer losses in 2009 contact us to discuss the particulars of your situation, so that we may adequately plan to take maximum advantage of these important tax changes.

Brian DeBoer is an Associate in the Tax Department of Stern & Kilcullen, LLC. He may be reached at bdeboer@sgklaw.com.

NEW JERSEY ENACTS PAID FAMILY LEAVE LAW

New Jersey has passed a law which provides employees with paid leave when they take time off from work to care for a new baby or a sick relative. Although the new legislation does not itself provide the right to leave, it allows qualified workers to receive certain disability benefits when on leave to care for a newborn (within 12 months of birth), to care for a newly adopted child (within 12 months of placement), or to care for a family member suffering from a serious health or medical condition, which includes psychological comfort and arranging for third party care.

It is important to note that the law DOES NOT cover employees who are on leave because of their own disability. However, such employees are covered under other provisions of New Jersey's Temporary Disability Benefits Law.

Paid leave may be taken for a continuous period or on an intermittent basis when medically necessary.

The new law provides two-thirds wage replacement, up to a maximum of $524, for up to six weeks. The benefit costs will be completely funded through employee payroll deductions based on salary, with a maximum annual contribution of $33 per employee each year.

Employees' contributions began on January 1, 2009 and benefits will be available beginning July 1, 2009. In order to qualify for the benefit, employees must have worked at least 20 weeks for a covered New Jersey employer or earned at least 1,000 times the applicable minimum wage in such employment – currently $7,150 per year.

Employers must provide employees with notice of the program's benefits. Moreover, an employer must comply with certain reporting requirements to the Division of Temporary Disability Insurance (the "Division") by no later than the ninth day of an employee's family leave.

As noted above, an employee who must care for a sick family member may take his or her family leave intermittently, rather than consecutively, subject to certain conditions which includes fifteen days' notice, medical certification and a regular schedule for the intermittent leave.

However, employees taking family leave to spend time with a newborn or newly adopted child cannot take leave intermittently unless the employer agrees and the Division is properly notified of the agreement.

An employer may require the employee to use up to two weeks of paid sick leave or vacation time prior to taking paid leave.

Finally, a New Jersey employer can elect not to adopt provisions of the New Jersey State plan and instead set up a similar private plan subject to certain conditions and limitations.

Actions To Be Taken

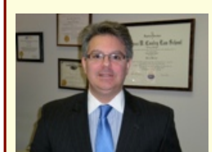
Employers should examine their payroll policies to make certain that the correct deductions from wages were made beginning on January 1, 2009. Because these benefits are paid by the State, employers need only pay employee contributions.

Additionally, employers should anticipate requests for leave early this Summer. Employees who may have been reluctant to take unpaid leave for financial reasons may no longer have such concerns.

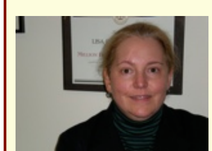
Contributors

ANDY BOSIN

Andy is a Partner in our



Employment Law Group. He has experience in large employment law litigation, as well as in negotiating severance packages and settlement agreements. He can be reached at abosin@sgklaw.com.



LISA TAYLOR

Lisa is a Partner in our Health Care Group. She is a noted authority on health law and a regular speaker and prolific author on health care topics. She can be reached at ltaylor@sgklaw.com