

J W ENTERPRISES LLC:

2008 Year-End Tax Planning

Dear Client:

Although the majority of taxpayers think of April 15th as their deadline for federal tax purposes over the course of any single year, looking at December 31st as a more important date makes much more sense for many taxpayers. You always can file an extension to avoid the April 15th deadline; but you can't move the end of your tax year.

Once December 31 passes, your taxable income, deductions, credits and tax liability for the year are all "set in concrete" with little if any opportunity to change the outcome. As a result, year-end tax planning should form an essential part of your financial strategy. Changes brought about during this year, and forecasts for 2009, make that advice even more compelling for year-end 2008.

Effective year-end tax planning for 2008 combines use of traditional techniques of acceleration and deferral of income/deductions with appropriate responses to a constantly changing tax landscape. Change in 2008 in particular has come in four unique ways over the past several months:

- The impact that the current financial crisis has had on the value of our homes, debt management, investment portfolios and retirement savings is obvious; some tax-wise ways to manage this crisis on a personal level are available.
- Several tax breaks will end on December 31, 2008. Still others have been extended or enhanced by the recently-passed Emergency Economic Stabilization Act of 2008. Both situations require proactive responses to maximize tax benefits.
- New energy tax incentives are now available, thanks again to the Emergency Economic Stabilization Act of 2008. When combined with rising fuel prices, these incentives for "going green" are now worth serious investigation, by individuals and businesses alike.
- The prospect of major upheavals in our tax laws in 2009 makes the need to maximize tax savings in 2008 more urgent. The possibility of retroactive tax law changes by the next Administration to the start of 2009, as well as alternative minimum tax (AMT) reform and sun-setting of favorable tax rates under the "Bush tax cuts," are real.

Traditional Planning

Traditional year-end tax planning incorporates a standard set of considerations but is far from a one-size-fits-all process. Every plan must account for the particular needs and circumstances of each individual or business.

Income shifting. Individuals and businesses alike can benefit from the classic strategy of shifting taxable income and accelerating or deferring deductions between 2008 and 2009 by controlling the receipt of income and payment of expenses. Taxpayers expecting to be in the same or lower tax bracket in 2009 should consider deferring income until next year and accelerating deductible expenses in 2008. Alternatively, if a substantial increase in income is anticipated in 2009 (propelling the taxpayer into a higher tax bracket), income should be accelerated in 2008 and deductions deferred until next year.

Capital losses. Long-term capital losses can be used to fully offset long-term capital gains. Losses taken in excess of gains can also be used to offset up to \$3,000 in ordinary income (or \$1,500 for a married couple filing separately). Short-term losses can be used to offset short-term gains that are

otherwise taxable at your ordinary income tax rate (which can reach as high as 35 percent). Unlike carrybacks for businesses, excess capital losses incurred by individuals may only be carried forward.

Casualty losses. Both individuals and businesses are also allowed deductions for casualty and theft losses; and capital losses. Deductions by individual taxpayers for those losses, however, are limited. Casualty losses generally are deductible only if deductions are itemized and then subject to both a \$100 deductible per occurrence and a 10 percent adjusted gross income limitation. The Emergency Economic Stabilization Act of 2008, however, provides some further relief to victims of certain natural disasters during 2008.

Life events. A birth of a child, a marriage, divorce, death, new job, loss of a job, new home, foreclosed home, and other "major life changes" also typically have significant tax implications. Many of the applicable tax rules are tied to the calendar year in which they occur.

Business losses. Business loss deductions can be taken for bad debts, losses on the sale of business assets and net operating losses. If a business had a bad year in 2008 but had profitable years in 2006 or 2007, a carryback of net operating losses when the 2008 tax return is filed will allow the business to apply for an immediate refund based on use of those losses. A carryforward of up to 20 years is also permitted.

Temporary Tax Breaks

Many tax breaks are "temporary." They are enacted for a one or two year period, with the next Congress left with the decision over whether to continue them longer. Congress in 2008 made a decision to let several provisions expire; but it also extended (and in some cases enhanced) many others. In any case, action in 2008 is necessary. For those tax breaks that end in 2008, action before year-end 2008 is essential; for those that apply to both 2008 and 2009, remember that you don't get double the amount in 2009 if you don't take the necessary action to qualify you in 2008.

Here is a partial list of those tax breaks especially relevant to 2008 year-end planning:

AMT patch. The Emergency Economic Stabilization Act of 2008 (EESA) included among its many provisions an alternative minimum tax (AMT) patch. For the 2008 tax year, the AMT exemption amounts are raised to once again insulate most middle-income taxpayers from the reach of the AMT. The patch is only for 2008. Hopes are high that in 2009 Congress finally will face up to the need to find a permanent solution to the AMT and pass AMT reform rather than yet another patch.

Property tax standard deduction. The Housing Assistance Tax Act of 2008 gives non-itemizers a limited deduction for state and local real property taxes for 2008, to a maximum \$1,000 (\$500 for single individuals). The EESA extends the same relief to 2009.

State and local sales tax deduction. The American Jobs Creation Act of 2004 and subsequent legislation allowed individuals to deduct state and local general sales taxes in lieu of state and local income taxes. This deduction expired at the end of 2007. The EESA makes the deduction retroactive for 2008 and extends it for two years through December 31, 2009.

Higher education tuition deduction. The EESA extends through December 31, 2009, the above-the-line higher education tuition deduction. The deduction allows eligible taxpayers to deduct the costs of qualified higher education expenses paid during the year for themselves, a spouse, or a dependent.

Tax-free IRAs charitable contributions. The EESA extends through December 31, 2009, the opportunity for certain taxpayers age 70 1/2 or over to make tax-free distributions from IRAs for

charitable purposes. This contribution can include any required minimum distribution that the taxpayer would be otherwise required to take.

Bonus depreciation. For businesses, the Economic Stimulus Act of 2008 provides 50 percent bonus depreciation of the adjusted basis of qualifying property. The property generally must be purchased and placed in service during 2008.

Enhanced expensing. Also specifically for businesses, the Economic Stimulus Act of 2008 increases the amount of deductible Code Sec. 179 expensing for 2008 and increases the threshold for reducing the deduction. The enhanced expensing provision applies to business property purchased and placed in service in tax years beginning in 2008.

Research tax credit. For businesses, the EESA extends the research tax credit to amounts paid or incurred in 2008 and 2009. It also modifies the credit, increasing the alternative simplified credit, which promises to transform the research credit into a greater benefit for smaller businesses.

Energy Incentives

The Emergency Economic Stabilization Act extends a host of energy tax incentives, some targeted to consumers and others to producers and manufacturers. The new law also introduces many favorable changes in qualifying for these tax breaks. Many of the extensions go beyond the one or two year periods that Congress authorized for non-energy extenders. New solar and wind power industries will arise due to these powerful tax breaks.

Residential energy property. The energy incentive impacting most individuals is the credit for the purchase of residential energy property. A credit of up to \$500 is available in 2009 for nonbusiness energy property that meets the requirements for qualified energy efficiency improvements or qualified residential energy property expenditures. Eligible improvements include insulation materials, exterior windows, including skylights and exterior doors. If you are planning any of these improvements soon, waiting to complete them until early 2009 makes sense because of this credit's new effective date.

Commercial buildings. A deduction for energy efficient commercial buildings is extended through December 31, 2013. Congress also modified the energy efficient appliance credit for manufacturers of qualifying dishwashers, clothes washers, and refrigerators.

Biking to work. The EESA introduces a new employer-provided transportation fringe benefit. In addition to transit passes and van pooling, employers starting in 2009 can offer their employees up to \$20/month as a tax-free benefit if they commute to work by bicycle.

Give our office a call

Because of the complexity of the tax law, understanding what planning provisions to incorporate into your year-end tax planning strategy can be a daunting task. While this letter hopefully gives you a heads-up on at least several tax opportunities on which you might follow through before year end, there are many more techniques that can be used depending upon your individual circumstances. For a more detailed plan that can be customized to your particular circumstances, please don't hesitate to give our office a call.

Sincerely yours,

JAKE WORLINE