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## **BEAIRD HARRIS & CO., P.C. YEAREND PLANNING**

Once December 31st has come and gone, your tax liability for the 2009 tax year will be set in stone. Until then, and especially now that your final tax picture for 2009 is becoming more clear, year-end tax planning presents a unique last chance to lower your tax bill. It is an investment in time well worth considering.

**Tax law changes.** Year-end tax planning is made more urgent in 2009 because of some significant tax law changes. In February, Congress passed the American Reinvestment and Recovery Act of 2009 (2009 Recovery Act), providing for a first-time homebuyer credit of 10 percent of the purchase price (up to \$8,000) and enhanced net operating loss (NOL) carryback rules for certain small businesses. Both these benefits were extended and enhanced when, this November, Congress passed the Worker, Homeownership and Business Assistance Act of 2009.

With the Worker, Homeownership and Business Assistance Act now in place, the homebuyer credit is available to qualified taxpayers purchasing principal residences on or before 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 new law treats the credit as not expiring until July 1, 2010.

The Worker, Homeownership and Business Assistance Act also provides a reduced credit for "long-time homeowners." Individuals who have owned and used the same residence as their principal residence for any five consecutive year period during the eight year period ending on the date of the purchase of a subsequent principal residence may be eligible for a reduced credit of \$6,500 (\$3,250 for married couples filing separately). Both credit opportunities carry an adjusted gross income ceiling, which itself can be subject to a "prior year" election. Year-end tax planning can help those close to this income line qualify in certain instances.

For businesses, the Worker, Homeownership and Business Assistance Act enhances the ability to carry back NOLs. All businesses, and not just qualified small businesses, may be eligible to elect to carry back applicable NOLs and obtain immediate cash refunds. An applicable NOL is the taxpayer's NOL for a tax year ending after December 31, 2007 and beginning before January 1, 2010. There are special rules for small businesses and for carryback offsets in the "fifth year." Many variables factor into taking this benefit, with some of them able to be changed by year-end tax planning before 2009 NOLs are set in stone.

Besides these incentives, a large number of other tax breaks are temporary and, therefore, enhance the urgency of year-end tax planning. For individuals, the expiring provisions include the itemized state and local sales tax deduction, the higher education tuition deduction; the additional standard deduction for real property taxes; and the above-the-line teachers' classroom expense deduction. For businesses, bonus depreciation and enhanced "section 179 expensing," both designed to temporarily encourage business to make capital investments, will expire after December 31, 2009 unless Congress extends them.

**Looking ahead.** What is on the horizon, for 2010 and beyond, is also crucial to effective year-end tax planning this year. In 2010, the opportunity to convert any IRA into a Roth IRA without the long-time \$100,000 income restriction has many individuals already setting aside funds. Some individuals, however, may do better to convert to a Roth IRA before the end of 2009, when the value of their accounts, and the consequential income that must be recognized on conversion, are at historic lows.

Effective for 2011, the Obama administration has proposed to increase the income and capital gains tax rates on single individuals with incomes of more than \$200,000 and married couples with incomes exceeding \$250,000. For taxpayers in those groups, including unincorporated small businesses from which their owners recognize income on their individual returns, following the traditional year-end planning maxim of deferring income into next year may not work well this year. Deferring too much income into 2010 could result in overloading income next year, when you may be looking to accelerate income into 2010 to escape the expected higher rates in 2011.

**Life changes.** Year-end tax planning is not only about what is happening in Congress and at the IRS. Addressing the changed circumstances in your life has always been a large part of year-end tax planning. What you planned for at the beginning of 2009 may not be what you are faced with now. Changes in your employment status, family, investments, or retirement plans raise new tax issues:

- Self-employment, severance pay, sign-on bonuses, stock options, moving expenses, and COBRA health benefits, to name a few employment-related events, all present unique challenges.
- In your personal life, marriage, divorce, a larger family, and child care or eldercare expenses arising in 2009 can impact your tax situation.
- Investments, too, generally benefit from year-end tax strategies. You can take steps to balance out gains and losses.

You also should take a year-end tally of dividends and interest to make certain that are paying the correct estimated tax. Working to rebuild a retirement nest egg through maximizing deductible 2009 contributions, and making certain that rollovers from former employers are done correctly, should also be a top priority at year end 2009.

**Losses.** A special word about losses, especially as this difficult year draws to a close. Matching losses with gains is not necessarily a simple task in the tax law. Different rules apply to different losses. Losses can be ordinary losses, passive losses, at-risk losses, capital losses, hobby losses, casualty losses, gambling losses, or Code Sec. 1231 losses. Knowing the differences and acting before year-end to match them correctly can mean significant tax savings.

**Timing.** Planning for deductions and credits at year-end can also get complex but can be equally as rewarding. Timing and qualification rules create traps and opportunities:

- Pre-paying certain expenses, such as real estate taxes or mortgage interest, does not necessarily translate into a larger deduction this year.
- Paying a spring college tuition bill in late December instead of early January, however, can impact whether you maximize the benefit of the new American Opportunity Tax Credit for both 2009 and 2010.

- Year-end charitable giving generally has been a smart way to reduce current year taxes but strict timing rules and revised substantiation requirements for property donations cannot be overlooked.
- Homeowners should also not ignore taking advantage of the new residential energy property credit, which has a unique set of rules on qualifying expenses and deadlines for installations.

Especially during 2009 -- a year of tumultuous change for our economy and our tax laws -- this office considers a year-end tax checkup an essential service for our clients. If you would like more information on any of the planning strategies described in this letter, or if you would like to explore how year-end tax planning can be customized to your individual circumstances, please contact our office today at 972-503-1040.

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