

**Income Tax Update  
Presented to Estate Planning Council**

November 12, 2009 by Diane McDonough, CPA

**FOR INDIVIDUALS**

Social Security taxable wage base stays at \$106,800.

**Retirement Accounts**

*Roth IRA Conversion Rule:* Funds in a traditional IRA (including SEPs and SIMPLE IRAs), § 401(a) qualified retirement plan, § 403(b) tax-sheltered annuity or § 457 government plan may be rolled over into a Roth IRA. The rollover is a taxable event on the amount converted. No penalties will apply if all the requirements for such a transfer are satisfied.

A taxpayer's AGI (whether married filing jointly or single) is limited to \$100,000 to make such a conversion and the taxpayer must not be a married individual filing a separate return. The AGI limitation does not apply to conversions from a Roth designated account in a § 401 or § 403(b) plan. Beginning in 2010, the \$100,000 income limit on Roth IRA conversions is repealed, and taxpayers will be able to make Roth IRA conversions without regard to their AGI.

If you are eligible to convert to a Roth IRA in 2010, you will have the option of spreading the income ratably over two taxable years (2011 and 2012).

*Required Minimum Distributions:* For 2009 only, taxpayers may waive taking their required minimum distribution. Thus, for 2009, no minimum distribution is required from IRAs or defined contribution plans (§ 401(k) plans, § 403(a) and (b) annuity plans, and § 457(b) plans that are maintained by a governmental employer). As a result, a person who attains age 70½ in 2009 is not required to take a distribution by April 1, 2010.

*Contribution limits for 2010 (same as 2009):*

Plan	Regular	Catch-up *
401k, 403b, 457	\$ 16,500	\$ 5,500
IRA's	5,000	1,000
SEP	49,000	0
SIMPLE	11,500	2,500

\* Additional allowed for individuals age 50 and over

Wage limit \$245,000

AGI limits for traditional deductible IRA's didn't change, phase out starts at \$55,000 (\$89,000 MFJ)

### **Making Work Pay Credit**

For 2009 and 2010, individuals other than nonresident aliens and dependents can claim a refundable tax credit equal to the lesser of 6.2% of the individual's earned income, or \$400 (\$800 on a joint return) - phases out starting at AGI of \$75,000 (\$150,000 MFJ). Withholding tables were adjusted in April of 2009.

### **Kiddie Tax - nothing new, just a reminder**

For 2009, the kiddie tax applies to:

- children under 18;
- 18-year old children who have unearned income in excess of the threshold amount, do not file a joint return and who have earned income, if any, that does not exceed one-half of the amount of the child's support; and
- Children between the ages of 19 and 23 if, in addition to the above rules, they are full-time students. For 2009, the kiddie tax threshold amount is \$1,900.

### **Child Tax Credit**

*Child Tax Credit:* A tax credit of \$1,000 per qualifying child under the age of 17 is available on this year's return. In order to qualify for 2009, the taxpayer must be allowed a dependency deduction for the qualifying child. **One new qualifying determination is that the qualifying child must be younger than you.** The credit is phased out at a rate of \$50 for each \$1,000 (or fraction of \$1,000) of modified AGI exceeding the following amounts: \$110,000 for married filing jointly; \$55,000 for married filing separately; and \$75,000 for all other taxpayers. A portion of the credit may be refundable. For 2009, the threshold earned income level to determine refund ability is \$3,000.

### **Education**

*The HOPE Credit* has a new name for 2009 and 2010, the American Opportunity Tax Credit. The maximum credit is \$2,500 (100% on the first \$2,000, plus 25% of the next \$2,000) for qualified tuition and fees paid on behalf of a student (i.e., the taxpayer, the taxpayer's spouse, or a dependent) who is enrolled on at least a half-time basis. The credit is available for the first four years (rather than two as in past years) of the student's post-secondary education. The credit is phased out at modified AGI levels between \$160,000 and \$180,000 for joint filers, and between \$80,000 and \$90,000 for other taxpayers. Forty percent of the credit is refundable, which means that you can receive up to \$1,000 even if you owe no taxes. The term "qualified tuition and related expenses" has been expanded to include expenditures for "course materials" (books, supplies, and equipment needed for a course of study whether or not the materials are purchased from the educational institution as a condition of enrollment or attendance).

*The Lifetime Learning Credit* maximum for 2009 is \$2,000 (20% of qualified tuition and fees up to \$10,000). A student need not be enrolled on at least a half-time basis so long as he or she is taking post-secondary classes to acquire or improve job skills. Eligible students include the taxpayer, the taxpayer's spouse, or a dependent. For 2009, the Lifetime Learning credit is phased out at modified AGI levels between \$100,000 and \$120,000 for joint filers, and between \$50,000 and \$60,000 for single taxpayers.

*529 Plans:* the definition of qualified higher education expenses is expanded to include the purchase of any computer technology or equipment and internet access and related services for use by the beneficiary and the beneficiary's family. (NOTE: cannot include software for games, hobbies, sports, etc). The ability to set up new plans was to sunset in 2010, but has been made permanent. Reminder: federal financial aid guidelines consider the funds to be assets of the parents.

*Coverdell Education Savings Account:* For 2009, the aggregate annual contribution limit to a Coverdell education savings account is \$2,000 per designated beneficiary of the account. This limit is phased out for individual contributors with modified AGI between \$95,000 and \$110,000 and joint filers with modified AGI between \$190,000 and \$220,000. The contributions to the account are nondeductible but the earnings grow tax-free.

**REMINDER** - 529 plan distributions and Coverdell Education Savings Account distributions cannot be used to claim the American Opportunity Tax Credit or the Lifetime Learning Credit.

Student Loan Interest: You may be eligible for an above-the-line deduction for student loan interest paid on any "qualified education loan." The maximum deduction is \$2,500. The deduction for 2009 is phased out at a modified AGI level between \$120,000 and \$150,000 for joint filers, and between \$60,000 and \$75,000 for individual taxpayers.

## **Energy Incentives**

*Alternative Motor Vehicle Credit:* For 2009, a credit is available for purchases of motor vehicles powered by certain alternative fuels. The dollar amount of the credit depends on fuel savings and weight of the vehicle. The most popular vehicles subject to the credit are hybrids. However, when a particular manufacturer sells in the United States its 60,000th of the particular hybrid, a phase-out period kicks in. The phase-out will reduce the credit from fully available to nothing being available. Due to this limitation, many popular hybrids have been phased out from the credit. Credits are also available for lean-burn technology vehicles (subject to the same phase-out), qualified fuel cell motor vehicles, qualified alternative fuel motor vehicles, and qualified plug-in electric-drive motor vehicles. The amount of the credit could affect your decision on which vehicle to purchase.

*Residential Energy Efficient Property Credit:* Tax incentives are available to taxpayers who install certain energy efficient property, such as photovoltaic, solar water heating, fuel cell property, small wind energy property and geothermal heat pumps. In 2009, a credit is available for the expenditures incurred for such property up to a specific dollar limitation, except that the cap is removed for all property except fuel cell property, so 2009 may be a better time to purchase and install such equipment. The property purchased cannot be used to heat swimming pools or hot tubs.

*Nonbusiness Energy Property Credit:* After expiring in 2007, the nonbusiness energy property credit was re-enacted for 2009 and 2010 only. Property qualifying for the credit includes windows (including skylights), exterior doors, insulation, metal roof, advanced main air circulating fans, natural gas, propane, or oil furnace or hot water boilers, and other energy efficient building property that meets certain energy standards. The credit is 30% of the cost of the improvement(s) to principal residence up to a maximum credit per year of \$1,500.

## **First Time Homebuyer Credit**

- *Stage one - purchased 4/09/08 to 06/30/09* - 10% up to \$7,500, but has to be paid back over next 15 years, accelerated if home sold or ceased to be principal residence within 15 years - modified AGI must be less than \$95,000(\$170,000 if married filing jointly) - can elect to report credit on 2008 return
- *Stage two - purchased 1/1/09 to 11/30/09* - 10% up to \$8,000, with no payback, but recapture if home sold or ceased to be principal residence within 36 months of purchase - same AGI limits - can elect to claim credit on 2009 return
- *Stage three - purchased 12/01/09 to 4/30/10* - must be at least 18 years old - 10% up to \$8,000, modified AGI must be less than \$125,000(\$225,000 if married filing jointly) - new 10% credit up to \$6,500 for certain taxpayers who currently own a home that are buying up or down with same payback provisions - can elect to claim credit on 2009 return

## **Changes to Sale of Principal Residence Rules**

For sales after 12/31/08, homeowners must start tracking periods of non-qualified use, defined as any period the property is not used by the taxpayer, his or her spouse, or his or her former spouse as a principal residence. Non-qualified use does not include 1) period after last day of use as a principal residence before sale, or 2) any period (up to 2 years) of temporary absence due to a change in place of employment, health, or unforeseen circumstances. Numerator is periods of non-qualified use, denominator is periods of ownership. Ownership prior to 12/31/08 does count in the denominator.

### **Alternative Minimum Tax**

- The exemption amounts are: (1) \$70,950 for married individuals filing jointly and for surviving spouses; (2) \$46,700 for unmarried individuals other than surviving spouses; and (3) \$35,475 for married individuals filing a separate return - one year fix only, 2010 reverts back to low exemptions unless extended again or permanently modified
- For 2009, a list of nonrefundable personal credits that can offset an individual's regular and alternative minimum tax expanded from three to twelve, but the list is shortened for 2010 and after
- For 2008 through 2012 some long-term Minimum Tax Credit carryovers may be refundable based on a formula
- The interest income from private activity bonds issued in 2009 and 2010 will not be added for AMT taxable income. (another box on the 1099?) Refunding bonds will get this new treatment unless they are refunding bonds issued during 2004-2008.

### **Temporary Extensions**

- Additional standard deduction for property taxes (up to \$500 single, \$1,000 MFJ) through 2009
- Cancellation of Debt (COD) Income - exclusion for certain home mortgages extended for 2010 through 2012
- Tuition and fees deduction through 2009
- Educator's expenses through 2009
- IRA distributions made directly to charity are tax-free through 2009

### **COBRA Premium Assistance**

A person eligible for COBRA coverage between 9/1/08 and 12/31/09 whose employment was involuntarily terminated during that period, can elect this coverage, which allows the person to pay 35% of the plan premium for up to 9 months and the employer pays the remaining 65%. The employer claims a credit equal to the 65% paid on Form 941 quarterly. Other than the administrative headache, the employer is not out any funds for this program. The person who elects this coverage cannot take the Health Coverage Tax Credit on the same premiums. If the person's AGI for the year exceeds \$125,000 (\$250,000 MFJ), the 65% paid by the employer is taxable income to the person.

### **Sales Tax on New Vehicles**

Whether using the standard deduction or itemized deductions, taxpayers can deduct the sales tax paid on NEW passenger automobiles, light trucks, motorcycles, or motor homes in addition to other tax deductions with some restrictions. Of course, it does phase out starting at AGI of \$125,000 (\$250,000 MFJ).

### **Unemployment Compensation**

For 2009 only, up to the first \$2,400 of unemployment compensation received by each individual can be excluded from income.

## **A Few Business Incentives**

*Bonus depreciation:* Extended for 2009, including election to forego bonus depreciation to receive refunds of a portion of R&D or Minimum Tax carryforward credits.

*Section 179:* larger deduction limit allowed for tax years beginning in 2009 of \$250,000 with maximum qualifying property limit of \$800,000.

*Net Operating Loss Carryback:* Up to 5 year carryback period now available to all businesses for 2008 or 2009 losses (must pick one). Eligible small businesses ( gross receipts <\$15 million) that elected a longer carryback period for 2008 can also elect the longer carryback period for 2009. Any taxpayer that had elected to carryforward the net operating loss for a tax year ending before November 6, 2009, can revoke that election by the filing deadline for their 2009 return.

## New York State

### HIGH INCOME INDIVIDUAL TAXPAYERS:

- Already aware of higher NYS tax rate for individuals - results in flat rate for NYAGI  $\geq$  550K.
- NYAGI > 1M - only get 50% of charitable contributions, nothing else

Change to RESIDENCY definition for NY domicile - considered non-resident for tax if:

- temp in foreign country 450 out of 548 days and spouse and or children in state  $\leq$  90 days in calendar year, whether or NOT at principal place of abode
- TP did not maintain place of abode in NY but had one elsewhere, and TP spent 30 days (including partial days) or less in NY for any purposes

New definition of "permanent place of abode" - The amendment to the regulations repealed the language and related example that provided that an abode would not be considered permanent if it was maintained only during a temporary stay for the accomplishment of a particular purpose. As a result of the amendments, for tax years ending on or after December 31, 2008, New York State will no longer recognize a temporary stay exception in determining whether or not a taxpayer maintains a permanent place of abode inside or outside New York State.

Accordingly, a taxpayer is maintaining a permanent place of abode in New York State if the abode meets the physical characteristics described in the regulation (for example, it is not a mere camp or cottage) and the taxpayer maintains the abode for substantially all of the tax year (disregarding small portions of the year). Generally, a taxpayer maintains a permanent place of abode for substantially all of the tax year if the taxpayer maintains the abode for more than eleven months.

If 50% or more of the assets of an entity is real estate located in New York State, then the sale of an interest in the LLC is NY source income, to extent of NY real estate - not just pass-through's such as LLC's and S Corporations, this includes C corps with < 100 shareholders

Newly created New York Higher Education Loan Program (NYHELP) - interest paid ON THESE LOANS are deductible for NYS purposes - as written, this program must not be considered education loans for the federal deduction because there is no mention of adjustment to federal deduction, just that this is a modification adjustment.

Middle Class Star Rebate repealed - no funds out in 2009 - still have Basic or Enhanced for low income individuals only.

"Ponzi-type" fraudulent investment arrangements - if you have this situation, see TSB-M-09(7) I issued 5/29/09.

New POA-1-IND - for INDIVIDUALS only, both taxpayers and representatives signatures are required to be notarized!

Fuel Cell Electric Generating Equipment Credit and Transportation Improvement Contribution Credit - no new claims after 1/1/09, but can carryforward credits up to 5 years.

New Metropolitan Commuter Transportation Mobility Tax - 0.34% on wages subject to federal social security - also on self-employed's (including partners in partnerships) - first payments due 11/2/09 - group returns available to partnerships - non-resident partners are subject to the tax also

Partnerships are subject to annual filing fee starting for 2009 if gross income  $\geq$  \$1M. The fee starts at \$1,500 and goes up to \$4,500. Draft form not available, so we're unsure yet if it will be reported on 2009 Form IT-204-LL, or a new form.

Sales tax audit issues-

- Any electronic records must be submitted instead of paper printouts
- Plus a new penalty for vendors who fail to maintain adequate records of \$1,000 for 1st quarter and \$5,000 for additional quarters
- \$1,000 per quarter for records not in "auditable form"

New York now conforms to federal extension period of 5 months for partnerships and fiduciaries (9/15 for calendar year) for tax years ending on or after 12/31/09.

New shorter website address: (no www) [nystax.gov](http://nystax.gov)