RECENT UTAH LAW CHANGES

By Christopher N. Nelson

With the recent conclusion of its 2009 legislative session, the Utah Legislative has enacted numerous new laws. Some law changes of particular interest include the following:

Medical Malpractice – SB 79

The Legislature increased the standard of proof required to prove medical malpractice in emergency rooms from "preponderance of evidence" to "clear and convincing evidence." This change, which requires a heavier burden of proof for malpractice claims, covers hospitals, staff and physicians from the time a patient enters the emergency department of a hospital until his or her condition has been stabilized and is either discharged from the emergency department or transferred to another department of the hospital. This change is effective beginning June 1, 2009, through July 1, 2013 (at which time the prior standard of care will again become effective).

Tax Changes – SB 23

For tax years beginning on or after January 1, 2009, entities treated as partnerships for Federal income tax purposes (including limited liability companies, limited partnerships and general partnerships) are required to withhold and pay tax on income derived from or connected to Utah sources on behalf of "pass-through entity taxpayers." For purposes of this new law, a "pass-through entity taxpayer" means a resident or nonresident individual, business entity, estate, or trust receiving income, gain, loss, deductions, or credits from a pass-through entity. This withholding amount must be remitted by the due date of the pass-through entity's return, not including extensions. Each pass-through entity taxpayer can then claim a refundable tax credit in the amount of the withholding paid on its behalf against Utah state income taxes due. Certain pass-through entities are exempt from these withholding requirements. Significantly, however, withholding is not required when the pass-through entity taxpayer is a Utah resident individual.

Effective for tax years beginning on or after January 1, 2013, S corporations will not be taxed for Utah purposes as they are for Federal tax purposes. Stay tuned for further developments on this issue.❖

2009 HOME-BUYING INCENTIVES

By Samuel A. Lambert

Federal "First-time" Buyer's Credit

With the 2009 Recovery Act, Congress revised the "First-time" Buyer's Credit it created last year. You may want to be aware of the following:

Pursuant to the original rule, Buyers who bought a home between April 9, 2008 and December 31, 2008 may qualify to take a tax credit of $7,500, if the home is their principal residence, they have not owned another principal residence for the three-year period before the purchase, the seller is not a related person, and the Buyers have a modified adjusted gross income of less than $170,000 ($95,000 for single filers). The credit is reduced for Buyers with income above $150,000 ($75,000 for single filers).

A qualified Buyer receives a refundable credit of up to $7,500 for tax year 2008. Buyers must pay the credit back over 15 years, as if the credit were an interest-free loan. If the home ceases to be the Buyer's principal residence before complete repayment of the credit, any remaining credit is due on that year's tax return. If the home was sold at a loss to an unrelated person, repayment of the remaining credit is forgiven to the extent of the loss.

With the new rule, qualifying Buyers who purchase a home between January 1, 2009, and November 30, 2009, can receive a credit of up to $8,000. This credit need not be repaid, unless the home is sold or ceases to be their principal residence within 3 years.

Utah Housing Grant for Newly Constructed Homes

The Utah Legislature passed, and the Governor signed, a bill that provides for a $6,000 grant to the buyers of a new home that has never been occupied. To qualify, the buyers must have an income under $150,000 for a couple or $75,000 for an individual. The state is using federal stimulus funds to pay for these grants.

By combining these two credits, a qualifying person can receive up to $14,000 of taxpayer money just for buying a new home in Utah. ❖

Tax & Business Newsletter

Christopher N. Nelson – Editor

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The Tax & Business Newsletter features selected developments in Federal and Utah law. It should not be relied upon for substantive tax or business advice. Contact your attorney to resolve tax or legal questions.

Tax & Business Newsletter

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ALSO INSIDE THIS ISSUE

2	Required Minimum Distribution Relief for 2009
2	President Obama's Pay Raise May Cause Pain Come Tax Time
3	Cars & Trucks & Things That Go
3	Utah Becomes 4th State To Enact L3C Legislation
3	Corporation & Business Entity Amendments
4	Recent Utah Law Changes
4	2009 Home Buying Incentives

ESTATE TAXES: WHEN WILL CONGRESS FINALLY ACT?

By Gregg D. Stephenson

After years of debate and uncertainly, estate planning practitioners hope that 2009 is the year that Congress finally acts and gives us conclusive and permanent estate tax rules. The estate tax exclusion amount (the amount that an individual can transfer to his or her heirs upon death without incurring estate taxes) increased to $3.5 million on January 1, 2009 from $2.0 million in 2008, and the estate tax rate is currently 45%. However, under the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), the estate tax disappears in 2010 only to return in 2011 with an exclusion amount of $1.0 million and a tax rate of 55%. While no one believes that Congress will allow the estate tax to disappear in 2010 and return in 2011 with a lower exemption amount, the uncertainly has made it difficult for individuals to pursue effective estate planning.

President Obama has proposed freezing the estate tax exemption and the estate tax rate at their current levels, or $3.5 million and 45%. Senator Max Baucus (D-MT), Chairman of the Senate Finance Committee, recently introduced legislation that follows the President's proposal. The legislation, referred to as "Permanent Estate Tax Relief" in the bill (the bill is referred to as the "Taxpayer Certainty and Relief Act of 2009"), includes the following provisions:

- Makes permanent the current $3.5 million estate tax applicable exclusion amount and 45% rate;
- Unifies the federal gift tax with the estate tax by providing a single exclusion amount of $3.5 million (the federal gift tax exclusion amount is current $1.0 million); and
- Makes the estate tax exclusion "portable" by allowing the estate tax unified credit of a deceased spouse to pass to a surviving spouse and the surviving spouse's estate.

This legislation will not be passed because tax legislation must originate in the House of Representatives. However, the legislation gives us an idea of what is likely to come, and similar legislation could be proposed in the House later this year.

While it appears likely that some type of legislation will be passed this year, hopefully fixing the estate tax exclusion amount at $3.5 million, the debate is certainly not over. On April 12, Senators Blanche Lincoln (D-AK) and Jon Kyl (R-AZ) introduced legislation that would increase the exemption to $5.0 million and decrease the rate to 35%. It is unlikely that such a proposal will gain any traction, especially considering the ballooning federal deficit, but individuals would be wise to keep their eye on what Congress does with the estate tax so they know how to plan.

For more details on the estate tax and to discuss how the estate tax may apply to you and your particular situation, please contact a member of Ray Quinney & Nebeker's Tax, Trusts and Estate Planning Section.❖

REQUIRED MINIMUM DISTRIBUTION RELIEF FOR 2009

By John R. Madsen

The Worker, Retiree and Employer Recovery Act of 2008 provides that required minimum distributions from certain defined contribution retirement plans and individual retirement arrangements (IRAs) do not need to be taken for calendar year 2009. Required minimum distributions typically are required annually after the plan participant attains age 70½ or dies. The 2009 relief applies to defined contribution retirement plans (such as profit sharing plans, money purchase pension plans and 401(k) plans), Section 403(a) and (b) defined contribution plans, governmental Section 457 defined contribution plans and IRAs. The relief does not extend to defined benefit pension plans. The Act also provides that the five (5) year distribution period required for certain taxpayers will be calculated without regard to 2009. In analyzing the required minimum distributions that can be skipped for calendar year 2009, it is important to understand that the new law does not waive a 2008 required minimum distribution that was deferred to April 1 of 2009. For example, suppose an IRA owner attained age 70½ during 2008 but decided not to take his first required minimum distribution (*i.e.*, the distribution which is in reality attributable to calendar year 2008) during that year. The taxpayer must take his first required minimum distribution (which in this case was really attributable to 2008) by April 1, 2009. However, as a result of the passage of the new law, the taxpayer does not have to take during 2009 the second required minimum distribution, which would otherwise be required to be taken by December 31, 2009. It is important for persons required to take required minimum distributions to review with their tax advisors how the new law applies in their particular situation.❖

2009 Tax Reference Guide

Gift and Estate Tax	
Gift Tax Annual Exclusion	$13,000
Estate Tax Applicable Credit Amount	$3,500,000
IRA Limits	
IRA Annual Contribution (under age 50)	$5,000
IRA Annual Contribution (age 50 or over)	$6,000
Social Security Taxable Wage Base	$106,800
Qualified Plan Limits	
401(k) Annual Contribution (under age 50)	$16,500
401(k) Annual Contribution (age 50 or over)	$22,000
SEP Contribution (up to 25% of compensation)	$49,000
SIMPLE Elective Deferral (under age 50)	$11,500
SIMPLE Elective Deferral (age 50 or over)	$14,000

PRESIDENT OBAMA'S PAY RAISE MAY CAUSE PAIN COME TAX TIME

By Charles H. Livsey

The United States Tax Code occupies five inches of a tax attorney's bookshelf. Thirteen inches of Regulations explaining the Code sit next to it. Congress enacted approximately 1,000 pages of new laws with the passing of various Acts including the 2008 Economic Stimulus Act and the 2009 American Recovery and Reinvestment Act Congress. Needless to say, it will take some time to integrate all of these changes into the Tax Code and Regulations.

One change which you may personally notice is the Making Work Pay Credit. You may find a little extra take-home pay in your paycheck. During 2009 and 2010, an average single filer with a modified adjusted gross income of less than $75,000 should see a $10 to $35 per month increase with a maximum credit of $400 per year. The average married joint filers with a modified adjusted gross income less than $150,000 should see a $20 to $70 per month increase with a maximum credit of $800 per year. The credit is calculated at a rate of 6.2% of earned income. Single and married workers over the above-stated limits are totally phased out if their modified adjusted gross income is greater that $95,000 and $190,000, respectively.

Starting on April 1, 2009, if you are an employee, your employer should adjust the withholding schedule which may result in an increase of take-home pay. Self-employed taxpayers can claim the credit when they file their tax returns.

Please use caution to make sure you don't receive tax credits in excess of your entitlement. For example, if you have multiple jobs and both of your employers adjust your withholding schedules, then you may receive twice the allowable amount. Alternatively, if you and your spouse are employees of companies that adjust their withholding schedules, then you may receive twice the allowable amount. The painful reality of this oversight will require that you pay back the excess amount. To avoid this problem, you may want to lower your allowances by changing your W-4 to ensure your employer withholds enough. For more information on this subject, please see IRS Publication 919 which contains worksheets and guidance.

One more word of caution: your employer only knows about the income you earn from the employer. If you receive income from investments or rental property, this income may increase your modified adjusted gross income over the applicable limits. If this happens, then you may not be able to take the credit and will be required to pay the money back. Again, consider adjusting your W-4. ❖

CARS AND TRUCKS AND THINGS THAT GO

By Tatyana S. Feilbach

1. *New Vehicle Tax Deduction*

The recently enacted American Recovery and Reinvestment Act of 2009 (the "2009 Recovery Act") includes a new tax break for purchases of new passenger cars, minivans, light-duty trucks, motorcycles and motor homes purchased between February 17, 2009 and December 31, 2009. This tax break is in the form of a deduction for state and local sales and excise taxes paid on new vehicle purchases and attributable to the first $49,500 of the vehicle's purchase price.

Generally, sales tax is not a deductible item for individuals. A limited exception allows taxpayers who itemize their deductions to claim either (1) state and local income taxes or (2) state and local general sales taxes. The 2009 Recovery Act allows buyers to claim an income tax deduction for the sales or excise tax they paid on a vehicle purchase without having to otherwise itemize their deductions. However, the new vehicle deduction cannot be taken by a taxpayer who elects to deduct state and local sales taxes in lieu of state and local income taxes. The deduction may be claimed by taxpayers who deduct state and local income taxes.

The amount of taxes that can be taken as a deduction is phased out ratably for a taxpayer with modified adjusted gross income ("AGI") between $125,000 and $135,000 ($250,000 and $260,000 on a joint return). Specifically, the amount of the full deduction is reduced by the amount that bears the same ratio to motor vehicle taxes as the excess of the taxpayer's modified AGI for the tax year over $125,000 ($250,000 in case of a joint return) bears to $10,000.

2. *Plug-in Electric Vehicle Tax Credit*

Under the plug-in electric vehicle credit program, which was established in 2008, the base amount of this credit is $2,500, plus another $417 for each kilowatt hour of battery capacity in excess of four (4) kilowatt hours (the current Toyota Prius battery stores 1.3 kilowatt hours). Until the 2009 changes become effective, the amount of the available credit depends on the weight of the vehicle.

For vehicles purchased after December 31, 2009, the maximum credit for qualified vehicles will be limited to $7,500 regardless of vehicle weight. Furthermore, the credit will be eliminated for plug-in vehicles weighing 14,000 pounds or more. Finally, the credit will be phased out once each manufacturer has sold 200,000 credit-eligible vehicles for use in the United States (the 2008 version phased out the credit after a total of 250,000 eligible vehicles were sold, regardless of the manufacturer).❖

UTAH BECOMES 4TH STATE TO ENACT L3C LEGISLATION

By Bruce L. Olson

On March 23, 2009, Utah became the 4th state to enact legislation for a "low-profit limited liability company," generally known as an "L3C." An L3C is a variant of an LLC that links business methods with charitable purposes in a for-profit entity organized to engage in socially beneficial activities. An L3C makes it easier for private foundations and public charities to invest in socially desirable ventures that otherwise may not be available because of federal tax law restrictions. The principal purpose of an L3C is to achieve socially beneficial purposes, not to make a profit, although profits are not prohibited. The L3C thus occupies a unique niche between the for-profit and charitable sectors.

An L3C might be created to undertake a low return, high risk business activity with a view to combating economic deterioration, destruction of historic property or job loss. For example, a hotel plan for a deteriorating central business district would have some ability to generate revenue but not enough to attract sufficient capital to begin operations and thus might be a candidate for an L3C. Our firm had the opportunity of being principal drafter for language in this legislation, so if you have any further questions concerning L3C's, please contact us.❖

CORPORATION AND BUSINESS ENTITY AMENDMENTS

By Bruce L. Olson

The Utah legislature enacted SB192, which made several changes to Utah's corporation and nonprofit corporation acts. Our firm also had the opportunity of being principal drafter for this bill. The following changes are made in the State's nonprofit corporation law. First, a quorum of directors now must always be at least two directors. Second, the law was clarified to provide that a governmental entity that is a member of a nonprofit corporation can receive distributions of profits and income from the nonprofit corporation just the same as nonprofit corporations that are members of nonprofit corporations may receive distributions. Also, the legal consequences of a nonprofit corporation converting to a for-profit corporation or vice versa are now set forth in the law. For example, the debts and liabilities of a converting entity do not disappear but remain following the conversion. In a change that affects both corporations and nonprofit corporations, as a result of a newly enacted Utah law regulating registered agents, language requiring the Division of Corporations to be the agent of a dissolved corporation is no longer needed and was removed from the law.❖