

THE Wisconsin - Accountant

2009 Seminars

May 8
Bob Jennings
Technology Seminar
Green Bay
Radisson Hotel
(800) 333-3333

June 16-17
Prof. John Connors
**Partnerships &
Depreciation**
Madison
Sheraton Hotel
(608) 251-2300

September 21-22
WAA Annual Convention
La Crosse
Radisson Hotel
(608) 784-6680

October 19-20
Federal Tax Update
Wausau
Stoney Creek Inn
(715) 355-6858

November 2-3
Gear Up 1040
Waukesha
Country Springs Hotel
(800) 247-6640

November 16
Gear Up Business Entities
Madison
Sheraton Hotel
(608) 251-2300

November 30 - December 1
Gear Up 1040
Hudson House Inn
(715) 386-2394

December 8-9
Bob Jennings Tax Update
Kalahari Resort
(877) 254-5466

Wisconsin Association of Accountants ■ 1-800-237-4080 - 715-425-0482 - www.wiassociationofaccountants.com

American Recovery & Reinvestment Act Current Tax Issues



Submitted by The IRS

First Time Homebuyer

If a taxpayer purchased a home in 2009 prior to the change in the First Time Homebuyer legislation (\$8000 and doesn't need to be repaid) and filed Form 5405 claiming only the \$7500, it is necessary to file an amended return to claim the additional \$500 credit. Attach the revised (February 09) Form 5405 to the 1040X. I have attached a copy for your reference. The IRS will not automatically make this adjustment; a 1040X is necessary.

On Wednesday, March 11 a Quick Alerts was issued advising that Form 5405 will not be accepted until March 30 for electronic filing. See below:

ATTN: Software Developers, Return Transmitters and Authorized IRS e-file Providers/EROs Please be advised, returns with Form 5405 claiming the First-Time Homebuyer Credit of \$8,000 for homes bought in 2009, will be accepted electronically starting with the 6 PM drain March 30, 2009.

Form 5405 can also be transmitted for PATS testing on March 30, 2009, for the 4 PM drain. The revised file specification for Form 5405 will be available on irs.gov March 20, 2009. Processing will begin March 16 for paper returns with a 2009 purchase on the Form 5405. These returns have been held up. It will be 6 to 8 weeks before refunds are issued.

Making Work Pay Credit

As you know, many taxpayers will begin to see an increase in their paychecks from a decrease in withholding due to the new Making Work Pay Credit. No action is necessary on the part of taxpayers for this adjustment to occur.

However, there are some taxpayers who will want to revise their W-4s so that they are not underwithheld when they file their 2009 returns next year. Taxpayers, who have two jobs, will have the \$400 adjustment made to both paychecks. Therefore they should consider revising their W-4s so they are not actually having an \$800 withholding reduction. Married couples whose combined income places them in an income bracket where the credit is phased out should also consider submitting a revised W-4.

If you do payroll work, be sure you have the new Publication 15-T. It is available at IRS.gov. The IRS asks that employers begin using these tables in lieu of the applicable previously published tables as soon as possible but no later than April 1, 2009.

New Form 8332 – Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent

New rules apply to allow the custodial parent to revoke a previous release of claim to exemption. It is important to be aware of this form now because it needs to be provided to the noncustodial parent in 2009 to be effective in 2010. The revocation will be effective no earlier than the tax year following the year it was provided to the noncustodial parent. Please refer to the form instructions for more specific information and the special rule for children of divorced or separated parents.



WAA Officers

President:

James H Molenda, EA
9401 W Beloit Rd Ste 201
Milwaukee, WI 53227
(414)545-2800
molendatax@aol.com

Vice Presidents:

William E Suttner, CPA
PO Box 187
Chilton, WI 53014
(920)849-9346
wes@suttnercpa.com

Thomas M Adler, CPA
1110 Fourier Dr Ste 110
Madison, WI 53717
(608)664-1944
tadler@adlercpa.com

Secretary:

Daniel T Mayer, EA, ABA, ATA, ECS
PO Box 307
Medford, WI 54451
(715)748-4110
dan-mayeracctg@charter.net

Treasurer:

James Badertscher, EA, ABA
112 West 5th St
Marshfield, WI 54449
(715)387-1782
dataflow-jlb@tznnet.com

NSA State Director:

Samuel J Micale, EA, ABA
12201 W Burleigh St Ste 6
Milwaukee, WI 53222
(414)431-1570
sjmicale@yahoo.com

Past President:

Tom Jankowski, EA, ATP, ATA
6200 Gisholt Dr Ste 100
Madison, WI 53713
(608)221-1685
tahoetom@tds.net

Directors:

Kimberley Hart, EA, ATP, ATA
5930 Seminole Centre Ct, Suite H
Madison, WI 53711
(608)288-8484
khart@hartassoc.net

Nick Krause, EA
PO Box 8033
Stevens Point, WI 54481-8033
(715)341-7100
nickk@retailfinancialservices.biz

Paul F. Kersten, CPA
112 W Division St
Shawano, WI 54166
(715)524-2302
paul_kersten_cpa@yahoo.com

Mary Jo Boldt, EA
820 Philip Dr, Ste A
Waukesha, WI 53186
(262)549-1700
maryjo@tomhoye.com

WAA OFFICE

Byron Dopkins, WAA Executive Director
PO Box 356, River Falls, WI, 54022
715-425-0482 1-800-237-4080

Executive Corner . . .

The end of tax season is near. I trust yours is going well and you will finish on time!

The seminar registration brochures have been redesigned this year. The design is more marketable and easier to follow. Please take a moment to review our two seminar offerings to be held in May and June. Look for your Spring/Summer registration brochure in the mail at the end of March.

The seminar information is also on our website. Please check it out - www.wiassociationofaccountants.com

Byron L Dopkins, EA ABA ECS
WAA Executive Director



**Byron Dopkins,
Executive Director**

From the President . . .

Byron gave me the option of writing something for our March newsletter.....OR NOT.

I hope our "quote of the month" is true.

Jim Molenda, EA
WAA President



**Jim Molenda,
President**

From the District V Governor . . .

Not a lot of "action needed activity" going on at Capital Hill. Congress has too many of their own problems but John Ams continues to make weekly communications and attend events for NSA.

Just received word the 64th Annual Meeting & Expo at San Diego has registration information completed and uploaded to the NSA website. Early bird fees cutoff is July 1st at \$ 549. If you get some time take a peek.

The 2009 Affiliated State Organization Survey is out and posted to the NSA website under ASO Resources. The Leadership Development Committee set a deadline for ASO's to complete the survey by May 1 to compile by June 1, 2009.

ACAT continues reformatting and editing the ABA Preparatory Course for consistency and ease to read.

"That's all for now!" Just around the corner we can all take a moment to reflect and do our networking with fellow WAA and NSA members.

Harlan Rose, EA, ABA
District V Governor



**Harlan Rose
NSA District V Governor**

QUOTE OF THE MONTH

"One can go a long way after one is tired."

Midwestern Disaster Legislation

1) Education Credits and On-line Courses – We have been advised that on-line courses can be used when computing the education credits. Of course, students do need to meet all the other requirements to claim the credit.

2) On-line Courses and the Expanded Definition Which Includes Room and Board - Because the on-line courses qualify for the credit, under the expanded definition room and board can also be used in the computation. I sent an e-mail on February 26 explaining the limitations for room and board.

3) Not Too Good to Be True - We continue to get questions about the education credits; some people still think they are too good to be true. As long as the student attends an eligible educational institution in a designated Midwestern disaster county and meets the other qualifications for an education credit, he/she will qualify for the credit. It does not matter that they were not physically on campus when the floods hit nor does it matter that they graduated in May.

4) Submission Issues – Earlier in the filing season there were some processing problems with Midwestern disaster returns involving the education credits, the earned income credit, and the additional child tax credit. (Remember that there is a provision in the disaster legislation that allows taxpayers to use their 2007 earned income to compute their 2008 EIC and Additional Child Tax Credit if it is more advantageous.) Apparently the IRS improperly processed some returns with these credits and the education credits and taxpayers received smaller refunds than anticipated. If the returns were filed electronically, the IRS will identify the returns and correct the accounts and issue any additional refunds by the week ending March 21, 2009. If the return was filed on paper, then the taxpayer must call the toll-free number at 1-800-829-1040 to self-identify or if as a preparer you have POA you can call the Practitioner Priority Service (PPS) at 866-860-4259.

5) Publication 4492B, Information for Affected Taxpayers in the Midwestern Disaster Areas - This is your best source of information for disaster provisions. I e-mailed it to you on January 23. It is also available at IRS.gov. Table 1 is important to use in determining if an educational institution qualifies for the expanded education credit.

IRS Releases Information to Help Employers Claim COBRA Medical Coverage Credit on Payroll Tax Form

IR-2009-15, Feb. 26, 2009

WASHINGTON— The Internal Revenue Service today released new detailed information that will help employers claim credit for the COBRA medical premiums they pay for their former employees.

The IRS unveiled new information on this Web site, IRS.gov, that includes an extensive set of questions and answers for employers. In addition, the Web site contains a revised version of the quarterly payroll tax return that employers will use to claim credit for the COBRA medical premiums they pay for their former employees.

Form 941, Employer's Quarterly Federal Tax Return, will also be sent to about 2 million employers in mid-March. The form is used to claim the new COBRA premium assistance payments credit, beginning with the first quarter of 2009.

"This is the first step in our effort to provide employers with information on this important health benefit for people who have lost their jobs," said IRS Commissioner Doug Shulman. "We will continue our work in the weeks ahead to help employers implement this crucial change for the nation's unemployed."

The American Recovery and Reinvestment Act of 2009, which became law last week, includes changes to the health benefit provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, commonly referred to as COBRA. The new law will affect former employees and their families, employers and others involved in providing COBRA coverage.

Under the new law, eligible former employees, enrolled in their employer's health plan at the time they lost their jobs, are required to pay only 35 percent of the cost of COBRA coverage. Employers must treat the 35 percent payment by eligible former employees as full payment, but the employers are entitled to a credit for the other 65 percent of the COBRA cost on their payroll tax return.

Employers must maintain supporting documentation for the credit claimed. This includes:

- Documentation of receipt of the employee's 35 percent share of the premium.
- In the case of insured plans: A copy of invoice or other supporting statement from the insurance carrier and proof of timely payment of the full premium to the insurance carrier.
- Declaration of the former employee's involuntary termination.

COBRA provides certain former employees, retirees, spouses, former spouses and dependent children the right to temporary continuation of health coverage at group rates. COBRA generally covers health plans maintained by private-sector employers with 20 or more full and part-time employees. It also covers employee organizations or federal, state or local governments. It does not apply to churches and certain religious organizations. The new COBRA subsidy provisions also apply to insurers required to offer continuation coverage under state law similar to the federal COBRA.

WAA Benefits

- Seminars and Educational Forums
- Accreditation
- Local Chapter Involvement
- Government Agency Liaison
- Monitor Legislation
- Insurance Programs
- Accountants Protection Plan

WAA Objectives

- To raise professional standards and improve the practice of accountancy.
- To strive for excellence in the profession.
- To encourage accountants in a continuing program of professional development.
- To foster increased recognition for the professional in the public, private and educational sectors of our state.
- To initiate legislative action and provide government liaison between the accounting profession and government leaders.
- To provide meetings and fellowship for accountants.
- To promote the highest standard of ethical conduct among its member.

New Motor Vehicle Sales Tax Deduction May Require Detailed Planning While Leaving Certain Issues Unanswered

Submitted by © Monthly Tax Update

As discussed above, the **American Recovery and Reinvestment Act of 2009** includes a tax provision designed to generate more automobile purchases. It is a new "for AGI" income tax deduction for sales and excises taxes paid on qualifying 2009 motor vehicle purchases. As a result, taxpayers considering a purchase of a new (vs. used) car or other qualifying motor vehicle this year should review the details behind this new temporary deduction.

Comment: This summary covers the details as well as highlighting the various tax planning considerations behind the deduction. However, there are still a number of questions which are discussed below that are left unanswered by the Code provisions and legislative history concerning this new provision.

New Temporary Deduction: For purchases on or after Feb. 17, 2009 and before Jan. 1, 2010, the Recovery Act provides a deduction for qualified motor vehicle taxes. Furthermore, it expands the definition of taxes allowed as a deduction to include "qualified motor vehicle taxes" paid or accrued within the tax year. (Code §164(b)(6)) Most importantly, the deduction is allowed for AGI, so it is not necessary for the taxpayer to itemize their deductions to take advantage of this break (i.e., non-itemizers will treat this as an addition to the standard deduction). (Code §63(c)(1)(E)) However, if the taxpayer does itemize, they may not also be claiming a sales tax (i.e., vs. state or local income taxes) deduction on Schedule A.

Covered Taxes and Vehicles: "Qualified motor vehicle taxes" are state or local sales or excise taxes imposed on the purchase of a qualified motor vehicle. (Code §164(b)(6)(A)) A "qualified motor vehicle" is a (1) passenger automobile, light truck or motorcycle the gross vehicle rating of which is not more than 8,500 pounds and (2) a motor home. And, as with the bonus depreciation rules, the original use of the motor vehicle must commence with the taxpayer. (Code §164(b)(6)(D))

Comment: Apparently, Congress did not see fit to extend this special deduction to "heavier" vehicles or trucks (i.e., those whose weight, plus the capacity to carry a load, when added together exceeded 8,500 pounds).

Limitation Based on Vehicle Price: Only taxes on that part of the qualified motor vehicle's purchase price not exceeding \$49,500 may be deducted. (Code §164(b)(6)(B))

Deduction Allowed for Multiple Vehicle Purchases? One of the questions being asked is whether the deduction can be taken for more than one otherwise qualifying vehicles, and if so, in what amount. In this regard, the Code and legislative history are not clear on this. However, the law does state that the deduction is allowed for "qualified motor vehicle taxes." And, this term includes "any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle." So, it would initially appear that absent any limiting language in this provision, a taxpayer could argue a deduction could be take for more than one vehicle. Nevertheless, the use of "a" as opposed to "any" or "one or more" suggests that the deduction is allowed only with respect to one vehicle. And, the dollar limitation seems to confirm this in that it too uses "a" in its language. Specifically, it states that "[t]he amount of any State or local sales or excise tax imposed on the purchase of a qualified motor vehicle...shall not exceed the portion of such tax attributable to so much of the purchase price as does not exceed \$49,500." Conversely one could argue that "a" being an indefinite article should not be interpreted as "one." But, if the deduction were available for two (or more vehicles), the \$49,500 limitation would produce an anomalous result. Namely, an individual

buying two cars each costing \$49,500 would be allowed to deduct the taxes on both vehicles, whereas another individual buying just one car costing \$99,000 could only deduct the tax on the first \$49,500. Consequently, the better view seems to be that the deduction is limited to the tax on just one qualified motor vehicle subject to the applicable limitations. In any event, the Service will have to clarify this issue.

Deduction Allowed for Multiple Vehicle Purchases Not Exceeding \$49,500? How should a taxpayer be treated who purchases two cars but they do not cost more than \$49,500 in the aggregate? From a policy standpoint, there would be no reason to deny the deduction to such an individual given that he could deduct the taxes on a single vehicle costing not more than \$49,500 (or, on the first \$49,500 of the purchase price of a higher costing vehicle). However, again it boils down to whether the Code permits a deduction for more than one vehicle. If so, then the limitation would be \$49,500 and there would be no issue of splitting the limitation among two or more vehicles.

Would Each Spouse Be Allowed the Deduction? In the case of married taxpayers, would each spouse on a joint return be permitted to deduct the tax on up to \$49,500 of the purchase price of his or her own vehicle, whether they file jointly or separately? Once again, we need some additional clarification from the IRS.

Income Limitation: The amount of sales or excise taxes that may be treated as "qualified motor vehicle taxes" is phased out ratably for a taxpayer with modified AGI (MAGI) between \$125,000 and \$135,000 (\$250,000 and \$260,000 on a joint return). MAGI is adjusted gross income for the tax year increased by any amount excluded from gross income under Code §911 (i.e., foreign earned income and foreign housing exclusions), Code §931 (i.e., exclusion of income derived from American Samoa) or Code §933 (i.e., exclusion of income from Puerto Rico). (Code §164(b)(6)(C))

Example 1: Lisa purchases a car for \$25,000 in a locality that imposes a 6% sales tax. Lisa's modified AGI is \$130,000. The qualified motor vehicle tax is \$1,500. The \$49,500 purchase price limitation does not apply. However, since Lisa's modified AGI exceeds \$125,000 by \$5,000, the taxpayer's qualified motor vehicle tax deduction is reduced by \$750 ($\$1,500 \times \$5,000 / \$10,000$). As a result, Lisa may only claim a \$750 qualified motor vehicle tax deduction.

Example 2: Mary purchases a car for \$25,000 in a locality that imposes a 6% sales tax. Mary's modified AGI is \$135,000. The qualified motor vehicle tax is \$1,500. The purchase price limitation does not apply. However, since Mary's modified AGI exceeds \$125,000 by \$10,000 the taxpayer's qualified motor vehicle tax deduction is reduced by \$1,500 ($\$1,500 \times \$10,000 / \$10,000$). As a result, no deduction is permitted in this instance.

Coordination With Pre-2010 Optional Sales Tax Deduction for Itemizers: The deduction for qualified motor vehicle taxes is not available to a taxpayer who elects to deduct state and local sales and use taxes under Code §164(b)(5) (i.e., instead of state and local income taxes as an itemized deduction). (Code §164(b)(6)(F))

Comment: For those taxpayers who itemize their sales tax deductions, this new for AGI deduction is not allowed in order to prevent a "double deduction" on the same sales tax dollars. However, for those taxpayers residing in a state with no income taxes (e.g., WA, TX, NV, etc.), there is no other choice except to take all sales taxes on Schedule A (i.e., if they otherwise choose to itemize vs. taking the standard deduction).

continued on next page

New Motor Vehicle Sales Tax Deduction May Require Detailed Planning While Leaving Certain Issues Unanswered *continued from previous page*

Comment: Taxpayers should be careful when comparing the optional sales tax under Code §164(b)(5) and the new deduction. For instance, when calculating the optional sales tax deduction under Code §164(b)(5)(F), if the rate of tax on motor vehicles exceeds the general sales tax rate, the deduction is limited to the general rate. Also, there is no dollar limitation under Code §164(b)(5) (i.e., with regard to itemizing the actual sales taxes associated with major purchases such as a motor vehicle). As a result, the Code §164(b)(5)(F) rule could limit the deduction under Code §164(b)(5) where the sales tax rate on an auto purchase is higher than the general sales tax rate, especially where the car is modestly priced. But, if the car's cost is well in excess of \$49,500, that difference would probably become immaterial and it would therefore be better to take the unlimited general sales tax deduction than the Recovery Act's new deduction for those who have a choice.

Comment: In states where there is an income tax, the Code §164(b)(5) election (i.e., to itemize sales taxes on Schedule A vs. this new for AGI deduction) will normally only be made if the taxpayer has made major purchases such as a new vehicle. As a result, in those states that do have an income tax, the election will probably not be made now since the deduction for "qualified motor vehicle taxes" can be made even if income taxes are deductible (and, it's a "for AGI" deduction). For example, if state and local sales taxes are equal to \$5,000 including \$2,500 on the purchase of a qualified motor vehicle, and state income taxes are \$4,000, under pre-Recovery Act law, a taxpayer would elect to deduct sales taxes instead of income taxes so as to get a \$1,000 additional deduction (i.e., \$5,000 instead of \$4,000 on Schedule A). However, under the Recovery Act, a taxpayer would now get a total deduction of \$6,500 if he chooses not make the election (i.e., \$4,000 of income taxes and \$2,500 for taxes on the qualified motor vehicle). This assumes there's no MAGI-based phaseout of the deduction.

Impact of AMT: The deduction for qualified motor vehicle taxes is also allowed in computing the AMT. (Code §56(b)(1)(E))

Comment: If a taxpayer would be subject to the AMT before itemizing any deduction for state or local income or sales taxes on Schedule A, the taxpayer would never benefit by electing to deduct state or local sales or use taxes instead of income taxes since such a deduction would not be allowed in computing the AMT. In addition, the taxpayer would lose the deduction for sales or excise taxes paid on a qualified motor vehicle. In other words, the election would reduce his regular tax, but the AMT would be increased by the same amount that the regular tax was reduced.

Comment: In the following examples an assumption is made, solely for purposes of simplification, that allowing the deduction for sales or use taxes on a qualified motor vehicle in computing AMT will not affect the amount of the exemption allowed in determining the taxable excess (i.e., alternative minimum taxable income (AMTI) less any exemption amount otherwise allowed) on which the tentative minimum tax is computed.

Example 3: A married couple filing a joint return live in a state that has no state or local income tax. They itemize their deductions and are in a 28% tax bracket for regular income tax purposes and a 26% tax bracket for AMT purposes. In 2009, they pay state sales taxes of \$5,000 including taxes of \$2,500 on the purchase of a qualified motor vehicle. Before taking into account any deduction for the payment of those taxes, their tentative minimum tax is \$26,000 (26% of taxable excess of \$100,000) and their regular income tax is \$25,500. Accordingly they owe an AMT of \$500 (\$26,000 less \$25,500). The total tax payable will be \$26,000 (i.e., regular income tax of \$25,500 plus AMT of \$500). In effect the total tax is the tentative minimum tax.

Option #1: If they elect to instead deduct their sales taxes as an itemized deduction, their taxable income will be reduced by \$5,000 and their regular income tax will be reduced by \$1,400 (28% of \$5,000) to \$24,100. However, their taxable excess will remain at \$100,000 since sales taxes are not deductible in computing alternative minimum taxable income. As a result, the tentative minimum tax will remain at \$26,000, and the AMT will increase to \$1,900 (\$26,000 less \$24,100). The total taxes payable will remain at \$26,000 (i.e., regular income tax of \$24,100 plus AMT of \$1,900).

Option #2: On the other hand, if the taxpayers choose not make the election to deduct sales taxes on Schedule A, they will be able to deduct the \$2,500 they paid for a qualified motor vehicle against both regular income tax and the tentative minimum tax. As a result, their regular income tax will be reduced by \$700 (28% of \$2,500) to \$24,800, and their tentative minimum tax will be reduced by \$650 (26% of \$2,500) to \$25,350. While their AMT will increase by \$50 to \$550, the total taxes payable will be reduced by \$650 from \$26,000 to \$25,350 (i.e., regular income tax of \$24,800 plus AMT of \$550).

Comment: If a taxpayer would not be subject to the AMT before taking any deduction for state or local income taxes or state or local sales and use taxes into account, then whether the taxpayer would be better off electing to itemize sales and use taxes instead of taking the "for AGI" deduction for sales or excise taxes paid on a qualified motor vehicle would depend mainly on by how much the regular income tax exceeds the tentative minimum tax. The larger the excess, the more likely it is that the taxpayer will benefit by making the election to take an itemized deduction for any sales and use taxes on Schedule A.

Example 4: Same facts as in Example 3 (i.e., the couple lives in a state with no income taxes) except that the taxpayers' regular income tax is \$27,000 (i.e., \$1,000 more than their tentative minimum tax of \$26,000). If they choose not to make the election to itemize their sales and use taxes, their regular income tax will be reduced by \$700 (28% of \$2,500 sales tax paid on purchase of qualified motor vehicle) to \$26,300. But, this would still be \$950 more than the tentative minimum tax of \$25,350 (\$26,000 reduced by \$650). Therefore, no AMT will be owed.

Alternative Option: On the other hand, if they do take an itemized deduction for their sales and use taxes, their regular income tax will be reduced by \$1,400 (28% of \$5,000) to \$25,600. Their tentative minimum tax will remain at \$26,000 and they will owe an AMT of \$400. Their total tax including the AMT will be \$26,000, but this still will be \$300 less than the \$26,300 of regular income tax they will owe if they do not make the election to itemize their sales and use taxes.

Example 5: Same facts as Example 4 except that the taxpayers' regular income tax is \$26,300 (i.e., \$300 more than their tentative minimum tax of \$26,000). If they do not itemize their sales and use taxes, their regular income tax will be reduced by \$700 (28% of \$2,500 sales tax paid on purchase of qualified motor vehicle) to \$25,600. Their tentative minimum tax will be reduced by \$650 (26% of \$2,500) to \$25,350 so no AMT will be owed. And, their total tax will be the regular income tax of \$25,600.

Alternative Option: On the other hand, if they do itemize their sales and use taxes, their regular income tax will be reduced by \$1,400 (28% of \$5,000) to \$24,900. Their tentative minimum tax will remain at \$26,000 and they will owe an AMT of \$1,100. Their total tax including the AMT will be \$26,000, or \$400 more than they would owe if they do not itemize their sales and use taxes. (Code §164; Sales Tax)

New Law Extends Net Operating Loss Carryback for Small Businesses

Submitted by The IRS

IR-2009-26, March 16, 2009

WASHINGTON — The Internal Revenue Service announced today that small businesses with deductions exceeding their income in 2008 can use a new net operating loss tax provision to get a refund of taxes paid in prior years.

To accommodate the change in tax law, the IRS today updated the instructions for two key forms — Forms 1045 and 1139 — that small businesses can use to make use of the special carryback provision for tax year 2008. These forms are used to accelerate the payment of refunds.

The new provision, enacted as part of the American Recovery and Reinvestment Act of 2009, enables small businesses with a net operating loss (NOL) in 2008 to elect to offset this loss against income earned in up to five prior years. Typically, an NOL can be carried back for only two years. The IRS released legal guidance today in Revenue Procedure 2009-19 outlining specific details. Some taxpayers must make the election to use this special carryback by April 17, 2009.

“The new net operating loss provisions could throw a lifeline to struggling businesses, providing them with a quick infusion of cash,” said IRS Commissioner Doug Shulman. “We want to make it as easy as possible for small businesses to take advantage of these key tax benefits.”

With the economic downturn and the new law, the IRS expects record numbers of small businesses to be eligible for the refunds. The IRS is putting in special steps to ensure timely processing of these refunds to help small businesses during this difficult period.

Small businesses with large losses in 2008 may be able to benefit fully from those losses now, rather than waiting until claiming them on future tax returns.

The normal two-year carryback remains available if the small business does not elect the special carryback provision. If the loss exceeds the income for the carryback period, the taxpayer can continue to carry forward the remaining balance of the NOL for up to 20 years.

For small businesses that use a fiscal year, this special carryback may be used for an NOL in either a tax year that ends in 2008 or a tax year that begins in 2008. Once a taxpayer makes this election, it may not be changed.

To qualify for the new five-year carryback provision, a small business must have no greater than an average of \$15 million in gross receipts over a three-year period ending with the tax year of the NOL. Businesses with more than \$15 million in gross receipts still qualify to carry back their 2008 NOL for two years.

There are several methods that a small business uses to elect the new provision as detailed in the Revenue Procedure.

If a small business previously elected to waive the carryback of 2008 NOL but now wants to elect this special carryback, the small business may revoke its previous election to waive the carryback. The election revocation must be made on or before April 17, 2009.

Generally small businesses that are not corporations (including sole proprietorships filing schedule C with their Form 1040) may accelerate a refund by using Form 1045, Application for Tentative Refund.

Corporations with NOLs may also accelerate a refund by using Form 1139, Corporation Application for Tentative Refund.

The IRS will be closely monitoring these filings and will provide additional staff as needed to process these forms. The IRS will work to issue refunds within 45 days or even earlier to the degree possible.

In addition, Questions and Answers have been posted on this Web site. Small businesses that file Form 1040 can also call 1-800-829-1040 with NOL questions. Corporations can contact 1-800-829-4933 with NOL questions.

Form 1045 or Form 1139, whichever the taxpayer uses, generally must be filed within one year after the end of the tax year of the NOL. In addition, the current year's tax return must be filed by the date the Form 1045 or Form 1139 is filed. Form 1045 and Form 1139 are filed at the same place the taxpayer's return is filed, as listed on the return instructions.

Accelerated refunds paid via Form 1045 or Form 1139 is described as “tentative” because the applications for refunds are potentially subject to review at a later date. Form 1045 Instructions and Form 1139 Instructions provide more information on the accelerated refund option.



Section 1211 5-year Net Operating Loss Carryback Election for Small Businesses

Submitted by The IRS

Q1: Do I have to carry back my net operating loss (NOL) for the full five year period?

A: No. You can elect to carryback the loss for any number of years from three to five, but remember that this is an irrevocable election.

Q2: Can I waive the carryback period and instead carry the full loss forward for the next 20 years?

A: Yes. You can waive the carryback period and instead carry the full loss forward for the next 20 years, but remember that this is an irrevocable election.

Q3: If my business operates on a fiscal year that ended in the middle of 2008, which year do I use?

A: You may elect for either 2008 or 2009, but not both. Whichever you choose, remember that this is an irrevocable election, and can be made for only one tax year.

Q4: Can you explain what an irrevocable election is?

A: Basically, it means that once you select how you are going to handle your NOL, whether to carry back a certain number of years or to only carry forward the losses, then you may not change this selection.

continued on next page

New Law Affects Required Minimum Distributions for 2009

Submitted by The IRS

On December 23, 2008, the President signed the Worker, Retiree, and Employer Recovery Act of 2008 (the Act) into law. Section 201 of the Act waives any required minimum distribution (RMD) for 2009 from retirement plans that hold each participant's benefit in an individual account, such as 401(k) plans and 403(b) plans, and certain 457(b) plans. The Act also waives any RMDs for 2009 from an Individual Retirement Arrangement (IRA). This means that most participants and beneficiaries otherwise required to take minimum distributions from these types of accounts are not required to withdraw any amount in 2009. If they do make a withdrawal in 2009 (that is not a RMD for 2008), they might be able to roll over the withdrawn amount into other eligible retirement plans. Of course, they must still include any previously untaxed portion of the withdrawal that they do not roll over in their gross income. See Individual Retirement Arrangements (IRAs), Publication 590, and Pension and Annuity Income, Publication 575, for additional information on rollovers and on calculating the taxable portion of a withdrawal or distribution.

The Act does not waive any 2008 RMDs, even for individuals who were eligible and chose to delay taking their 2008 RMD until April 1, 2009 (e.g., retired employees and IRA owners who turned 70½ in 2008). These individuals must still take their full 2008 RMD by April 1, 2009, or they might face a 50% excise tax on the amount not withdrawn. The 2009 RMD waiver under the Act does apply to individuals who may be eligible to postpone taking their 2009 RMD until April 1, 2010 (generally, retired employees and IRA owners who attain age 70½ in 2009). However, the Act does not waive any RMDs for 2010.

If a beneficiary is receiving distributions over a 5-year period, he or she can now waive the distribution for 2009, effectively taking distributions over a 6-year rather than a 5-year period.

IRA Reporting

The IRS issued Notice 2009-9 on January 9, 2009, which states that issuers of the 2008, IRA Contribution Information, Form 5498 should not put a check in Box 11. However, in recognition of the short amount of time to make programming changes, if a financial institution issues a 2008 Form 5498 with a check in Box 11, the IRS will not consider such form issued incorrectly solely because of the check in Box 11, as long as the financial institution notifies the recipient by March 31, 2009 that no RMD is required for 2009.

In addition, the RMD information required under Notice 2002-27, 2002-18 I.R.B. 814 does not need to be sent to IRA owners for 2009. If a financial institution sends a separate RMD statement to an IRA owner, either initially or in response to the owner's request for the financial institution to calculate the RMD for 2009, the financial institution may show the RMD for 2009 as zero (0). Alternatively, the financial institution may send the IRA owner a statement showing the RMD that would have been required but for the waiver of RMDs for 2009, along with an explanation of the waiver for 2009 RMDs.

The IRS encourages all financial institutions to inform IRA owners who delayed taking their 2008 RMD until April 1, 2009, that they are still required to take that distribution. •



Q5: I had slightly more than \$15 million in gross receipts last year, am I eligible for the five-year carryback?

A: It depends. To qualify for this particular 5-year carryback election the law says that the business must have an AVERAGE of less than \$15 million in gross receipts over a three-year period ending with the year giving rise to the loss. If your business gross receipts average more than \$15 million over the three-year period, the normal two-year carryback applies.

Q6: I filed my 2008 return already, but now, in light of the new law, I want to amend it, can I do this?

A: If the 2008 return has already been filed, you may still make the election by the later of – (A) six months after the due date of the return (determined without extensions), or (B) April 17, 2009. If you previously elected on that return to waive the normal 2-year NOL carryback, you may revoke that election in order to elect the 3 to 5-year carryback, provided you make your revocation and new election on or before April 17, 2009.

Q7: Can I use this for a 2009 return?

A: The law specifically states that the election is available for the tax year ending in 2008, unless the taxpayer elects this carryback for the tax year beginning in 2008. A calendar year taxpayer can elect only for 2008. A fiscal-year taxpayer whose year ends in 2008 can elect either for its fiscal year ending in 2008 or its fiscal year beginning in 2008 and ending in 2009, but not both.

Q8: When is the deadline for taking advantage of this NOL provision?

A: For a taxpayer who already has filed a return for the year of the loss for which the taxpayer wants to elect the special 2008 NOL carryback, see Q&A #6. If a taxpayer has not filed a return for the year of the loss, the taxpayer has until the later of – (A) the due date (with extensions) of the return for the year of the loss, or (B) April 17, 2009. The law will not allow for any extension of this deadline. After the later of these dates, you will have to use the current law provision of a two-year carryback.

Q9: How long will this law be in effect?

A: The law is in effect for a taxpayer's NOL for any taxable year ending in 2008, or if elected by the taxpayer, the NOL for any taxable year beginning in 2008. However, any election under this provision may be made only with respect to one taxable year.

Q10: Are there any exceptions for which the IRS will accept an election after the due dates described in Q&A #8?

A: Generally no. However, if the taxpayer has timely filed its return without making the election, an automatic six month extension from the return due date (excluding extensions) is available.

Q11: Assuming the taxpayer makes an election for the tax period ending January 2008, may the taxpayer make the election for the tax period ending January 2009?

A: No, a taxpayer may make the election for only one tax year, either beginning or ending in 2008.

Q12: If the taxpayer makes an unallowable second election on a tentative carryback what will happen?

A: If the taxpayer makes an unallowable second election on a tentative carryback claim (Form 1139), a letter with specific language will be used to reject the claim.

Q13: What else should the taxpayer do when it makes the election?

A: The taxpayer should attach a statement to the return saying that the taxpayer is electing to apply section 172(b)(1) (H), the length of the carryback period elected (3, 4, or 5 years), and, if applicable, that the election is for the taxpayer's tax year that begins in 2008.

questions & answers

Wisconsin Association of Accountants
P.O. Box 356
River Falls, WI 54022

Return Service Requested

U.S. Postage
PAID
Permit #70
River Falls, WI
54022

Chapter News Contacts

NW: Dan Mayer
P.O. Box 307
Medford, WI 54451
715-748-4110

SW: Arland Stone
431 Park Avenue
Beloit, WI 53511
608-365-1558

NE: Roberta Jezeski
P.O. Box 176
Black Creek, WI 54106
920-984-3555

SE: James H Molenda
9401 W. Beloit Road #201
Milwaukee, WI 53227
414-545-2800

This newsletter was designed and printed for the WAA by


HUB 70
Design & Print

From design to print...
turning your creative vision into reality

**Design,
Print &
Copy Services**

214 N. Main St.
River Falls, WI 54022
Tel 715.426.1750

nancy@hub70.com
www.hub70.com

Brochures
Newsletters
Direct mail
Business cards
Postcards
Letterhead
& MORE