

January 19, 2009

Dear Clients,

While the new law tax changes in the Emergency Economic Stabilization Act of 2008 were the most significant developments in the final quarter of 2008, many other tax developments may affect you, your family, and your livelihood. These other key developments in the final quarter of 2008 are summarized below. Please call us for more information about any of these developments and what steps you should implement to take advantage of favorable developments and to minimize the impact of those that are unfavorable.

**New law waives required minimum distribution (RMDs) for calendar year 2009.** A new law enacted in late 2008 provides that retirement plan account participants, IRA owners, and their beneficiaries do not have to take RMDs for 2009. Thus, taxpayers who can take advantage of this change won't be forced to sell stock or mutual fund shares held in retirement accounts when their value is exceptionally depressed. This change helps retired taxpayers who do not need to rely on their RMDs for living expenses. By not making the RMD for 2009 (or withdrawing less than the RMD) from their qualified plan accounts and/or IRAs, they will wind up with less taxable income for 2009, and, possibly, avoid (or mitigate the effect of) AGI-based phase outs of tax breaks. They will also have more tax-sheltered amounts to leave to their beneficiaries. There's no need to show that a retirement plan account or IRA is "in distress" because of stock market conditions in order to qualify for the 2009 RMD suspension. Thus, for example, the RMD suspension applies equally to IRAs invested entirely in FDIC-insured bank-CDs as well as to IRAs invested in depressed-in-value stocks or mutual funds. The suspension of RMDs for 2009 doesn't help those older taxpayers who must make regular withdrawals (sometimes in excess of the RMD) from their retirement plan accounts and IRAs in order to get by each month.

**New law requires qualified plans to offer post-2009 rollover option for nonspouse beneficiaries.** A provision in late 2008 legislation requires employer sponsored qualified retirement plans to offer nonspouse beneficiaries the opportunity to roll over an inherited plan account balance to an IRA set up to receive the rollover on the nonspouse beneficiary's behalf. This rule will become effective for plan years beginning after 2009. Until then, under current rules, qualified plans may, but are not required to, offer nonspouse beneficiaries this rollover option. The rollover option will give much-needed flexibility to those who inherit retirement plan accounts from someone other than their spouse, such as a parent, an uncle, or a same-sex partner. For a long time, nonspouse beneficiaries of IRAs have had access to a roll-over type option that IRS has sanctioned. While nonspouse beneficiaries can't treat an inherited IRA as their own, they can make trustee-to-trustee transfers to another IRA if the ownership of the new IRA is set up in the same way as the ownership of the old IRA, that is, in the name of the decedent for the benefit of the IRA beneficiary.

**Standard mileage rates down for 2009.** The optional mileage allowance for owned or leased autos (including vans, pickups or panel trucks) is 55 cents per mile for business travel after 2008. That's 3.5 cents less than the 58.5 cents allowance for business mileage that applied in the last six months of 2008. Further, the rate for using a car to get medical care or in connection with a move that qualifies for the moving expense deduction is 24 cents per mile, down 3 cents from the 27 cents per mile allowance for the last half of 2008.

**Manipulation of charitable remainder trust identified as "transaction of interest".** Effective October 31, 2008, the IRS identified a new transaction and substantially similar ones as "transactions of interest" (i.e., subject to special scrutiny by the IRS for possibly inappropriate tax avoidance). They involve a sale of all interests in a charitable remainder trust (after the contribution of appreciated assets to and their reinvestment by the trust), that results in the grantor (the person who set up the trust) or other recipient

receiving the value of their trust interest while claiming to recognize little or no taxable gain. Persons entering into these transactions on or after November 2, 2006, must disclose the transaction, and material advisors who make a tax statement on or after November 2, 2006, with respect to transactions entered into on or after that date, have disclosure and list maintenance obligations. Failure to follow the disclosure rules can result in steep penalties.

**IRS scrutinizing use of rollovers to fund new business start-ups.** The IRS issued guidelines to address potentially abusive retirement plan arrangements called Rollovers as Business Start-ups (ROBS). These are designed to allow individuals to convert their existing retirement accounts into seed money for funding new businesses without first paying taxes on the distributions. Having been made aware that ROBS plans are being actively marketed, the IRS has issued guidelines for its employee plans specialists to follow in examining these plans. Though not stating that ROBS plans do not meet IRS requirements for qualified plans in and of themselves, the guidelines signal that IRS is carefully scrutinizing these transactions, particularly with regard to the following key issues: discrimination in benefits, rights and features; improper stock valuation; and prohibited transaction payments of promoter fees.

**IRS expedites lien process for homeowners trying to sell or refinance.** The IRS has announced an expedited process to make it easier for financially distressed homeowners to avoid having a federal tax lien block refinancing of mortgages or the sale of a home. Filing a Notice of Federal Tax Lien is a formal process by which the IRS makes a legal claim to property as security or payment for a tax debt. Taxpayers looking to refinance or sell a home where a federal tax lien has been filed, have two options. They or their representatives, such as their lenders, may (1) request that the IRS make a tax lien secondary to the lien by the lending institution that is refinancing or restructuring a loan (subordination), and (2) also request that the IRS discharge its claim if the home is being sold for less than the amount of the mortgage lien under certain circumstances. The process to request a discharge or a subordination of a tax lien takes approximately 30 days after the submission of the completed application, but in late 2008 the IRS said it will work to speed those requests in wake of the economic downturn. The IRS urges people to contact the IRS Collection Advisory Group early in the home sale or refinancing process so that it can begin to work on their requests.

This information is provided as a means of keeping you up-to-date on fourth quarter 2008 developments. Please feel free to call us if you have any questions regarding this, or any other tax matter.

Sincerely,

Holloway & Smith, CPA, P.C.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS and other taxing authorities, we inform you that any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed on any taxpayer or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.