

PHILIP COWAN
JOHN M. CYTRON
FRANK T. DAVENPORT
LAWRENCE M. ELMAN
WILLIAM J. FRANKO
ALAN GARLAND
LYNN LUCCHESI-SOTO
HOWARD MARKS

JULIUS H. SHAPIRO
STEVEN C. WEISS
CHARLES JIONGCO
MICHAEL ZALAY
Of Counsel
AVRUM DANNEN

Winter 2008

**BN&F NEWS
UPDATE**

**2008 Year End Tax
Planning Tips**

The brief discussion below summarizes some of the key points for 2008 year end tax planning and 2009 tax planning. For a full discussion, please see our website www.bnf-law.com and in the right column titled "Latest BN&F News" click on the link "2008/2009 Tax Planning Letter", http://www.bnf-law.com/pdfs/2008_Year-end_Tax_Planning.pdf

Now is a good time to think of planning moves that will help lower your tax bill this year and possibly for next year even with the factors that compound the challenge — the stock market's decline, the current, difficult economic climate, and the strong possibility of tax changes next year.

Congress has "fixed" so to speak for 2008 and, in some instances, for 2009, tax code items of interest to individuals:

- Provided relief from the alternative minimum tax;
- Retroactively resuscitated and extended tax breaks for deduction of sales taxes (in lieu of deducting state income taxes), for above the line deductions for certain tuition expenses, and the up to \$100,000 exclusion from income of IRA minimum distributions to qualified charities;
- Improved certain deductions of energy saving home improvements; and
- Granted new tax relief for victims of presidentially declared disasters.

Given the above changes and other continuing tax laws in effect, we have compiled a checklist of actions based on current tax rules that may help you save tax dollars if you act before year-end. Not all actions will apply in your particular situation, but you will likely benefit from many of them. We can narrow down the specific actions that you can take once we meet with you to tailor a particular plan. In the meantime, please review the following list, which is a shortened list from our website article at http://www.bnf-law.com/pdfs/2008_Year-end_Tax_Planning.pdf. Please feel free to contact us at your earliest convenience

so that we can advise you on which tax-saving moves to make.

- If you become eligible to make health savings account (HSA) contributions in December of this year, you can make a full year's worth of deductible HSA contributions for 2008.

- Realize losses on stock while substantially preserving your investment position. There are several ways this can be done. For example, you can sell the original holding, then buy back the same securities at least 31 days later. It may be advisable for us to meet to discuss year-end trades you should consider making.

- Postpone income until 2009 and accelerate deductions into 2008 to lower your 2008 tax bill. This strategy may enable you to claim larger deductions, credits, and other tax breaks for 2008 that are phased out over varying levels of adjusted gross income (AGI). These include IRA and Roth IRA contributions, conversions of regular IRAs to Roth IRAs, child credits, higher education tax credits, the above-the-line deduction for higher-education expenses, and deductions for student loan interest. Postponing income also is desirable for those taxpayers who anticipate being in a lower tax bracket next year due to changed financial circumstances. *Note, however, that in some cases, it may pay to actually accelerate income into 2008.* For example, this may be the case where a person's marginal tax rate is much lower this year than it will be next year *or if tax rates are expected to rise next year.*

- If you own an interest in a partnership or S corporation which has incurred losses over several years, you may need to increase your basis in the entity so you can deduct a loss from it for this year.

- Consider using a credit card to prepay expenses that can generate deductions for this year but postpone payments until next year.
- If you expect to owe state and local income taxes when you file your return next year, ask your employer to increase withholding of state and local taxes (or pay estimated tax payments of state and local taxes) before year-end to pull the deduction of those taxes into 2008.
- If you think you might have under paid estimated tax for 2008 and could face a penalty for underpayment, you may be able to eliminate or reduce it by increasing your withholding.
- Estimate the effect of any year-end planning moves on the alternative minimum tax (AMT) for 2008, keeping in mind that many tax breaks allowed for purposes of calculating regular taxes are disallowed for AMT purposes. This includes the deduction for state property taxes on your residence, state income taxes (or state sales tax if you elect this deduction option), miscellaneous itemized deductions, and personal exemption deductions. Other deductions, such as for medical expenses, are calculated in a more restrictive way for AMT purposes than for regular tax purposes. As a result, in some cases, deductions should be deferred rather than accelerated to keep them from being lost because of the AMT. (See the discussion of above of AMT changes enacted recently.)
- If you are thinking of making energy saving improvements to your home, such as putting in extra insulation or installing energy saving windows, postpone your move until 2009. A credit of up to \$500 may be available for such improvements if made next year (but not this year).
- If you are thinking of buying a hybrid vehicle eligible for a tax credit, check to see if it's eligible for the credit, and, if so, purchase it before year-end. Note that for many previously popular hybrids, the tax credits have diminished or vanished based on the number of vehicles previously sold. Some newer hybrids, such as from US manufacturers, still may have higher tax credits available.
- Businesses should consider making expenditures that qualify for the up to \$250,000 business property expensing option for assets bought and placed in service this year; the maximum expensing amount will drop to \$133,000 for assets bought and placed in service next year (higher expensing amounts apply to certain specialized assets). Businesses also should consider making expenditures that qualify for 50% bonus first year depreciation if bought and placed in service this

year. This bonus write-off generally won't be available next year (some exceptions apply, such as for businesses affected by federally declared disasters).

- If you are self-employed and haven't done so yet, set up a self-employed retirement plan.
- You can save gift and estate taxes by making gifts sheltered by the annual gift tax exclusion before the end of the year. You can give \$12,000 in 2008 to an unlimited number of individuals but you can't carry over unused exclusions from one year to the next. The exclusion for 2009 will be \$13,000.
- If you are age 70 1/2 or older, own IRAs (or Roth IRAs), and are thinking of making a charitable gift before year-end, consider arranging for the gift to be made directly by the IRA trustee. Such a transfer can achieve important tax savings.

These are just some of the year-end steps that can be taken to save taxes. We can help tailor a particular plan that will work best for you.

*For more information, please contact
John Cytron, Chair of our Tax Law Department*

2008 Year End Estate Tax Law Changes

There have been some significant changes regarding estate tax law, which will become effective on January 1, 2009. The Federal estate tax exemption will be increased from \$2,000,000.00 to \$3,500,000.00. The generation-skipping tax exemption will also be increased to \$3,500,000.00. The gift tax exemption remains at \$1,000,000.00 and the gift tax annual exclusion will be increased from \$12,000.00 to \$13,000.00 per donee. The top rate for Federal estate tax, generation-skipping tax and gift tax will remain at forty-five percent (45%).

There have also been significant changes in Illinois estate tax law. In recent years, Illinois decoupled the Illinois estate tax from the Federal estate tax. Whereas under the prior law, the State of Illinois estate tax and the credit allowed against Federal estate tax were identical, the Illinois estate tax is now only a deduction rather than on credit. In addition, Illinois froze the exemption amount at \$2,000,000.00. The new Illinois law may result in an increase of total Federal and Illinois estate taxes in estates greater than \$2,000,000.00. As always, it is important that each person understand how these provisions may apply to their own estate plan.

*For more information, please contact Alan
Garland, Chair of our Estate Planning and
Probate Law Department*

Published for clients and friends as a source of information about current developments in the law. The material contained herein is not to be construed as legal advice or opinion. More information may be obtained by contacting the writers of the newsletter. © 2008 Berger, Newmark & Fenchel, P.C. All rights reserved.