



# The Tax Installment

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Hyden, Miron & Foster, PLLC stands ready to assist you with the new issues that abound in tax, estate, trust, business and litigation matters. "The Tax Installment" is only part of our commitment to serve our clients and friends. Our goal is to educate you on the options available for your specific circumstances and the reasoning behind those options. You remain our top priority and we will continue to serve you throughout the years to come.

## Recent Legislation Offers Help to Homeowners

Reacting to the housing woes affecting many Americans, Congress passed and the President signed into law the Housing and Economic Recovery Act of 2008. The tax portion of the Act, which contains the assistance to homeowners, is titled the Housing Assistance Tax Act of 2008 (hereinafter "HAT Act").

The HAT Act provides help to first-time homeowners in the form of the first-time homebuyer tax credit. This provision gives first-time homebuyers throughout the nation a temporary refundable tax credit equal to 10 percent of the purchase price of a home, up to \$7,500 (\$3,750 for married individuals filing separately). The credit is effective for homes purchased on or after April 9, 2008, and before July 1, 2009, and is phased out for taxpayers with adjusted gross income in excess of \$75,000. However, the credit is essentially an interest free loan from the government which must be repaid in equal installments over 15 years.

Also provided is an extension of the property tax deduction to taxpayers who do not itemize deductions. The deduction will appear as an increase in the taxpayer's standard deduction of the amount of the real property taxes paid during the year or \$500. This limited deduction is only available for 2008.

The HAT Act contains many provisions relating to low-income housing. First, it increases and simplifies the low-income housing tax credit. This is a credit that state and local housing agencies may issue to developers for the acquisition, rehabilitation or construction of lower-income rental housing. The credits are sold to raise capital for the project—money that would otherwise have to be borrowed.

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## Recent Legislation (continued)

Second, it simplifies the rules for tax-exempt housing bonds. Finally, the mortgage revenue bond program is expanded to permit refinancing of existing subprime loans.

To offset the tax incentives contained in the HAT Act, the gain from the sale of a principal residence home will no longer be excluded from gross income under section 121 of the Internal Revenue Code for periods that the home was not used as the principal residence. This new rule applies to homes sold after December 31, 2008 and is based on nonqualified use periods that begin on or after January 1, 2009.

The amount of gain allocated to periods of nonqualified use is determined on a pro rata basis and will not require a valuation of the home as of the date when qualified use stopped.

## It's Not Too Late for Economic Stimulus Payments

Taxpayers who wish to qualify for economic stimulus payments but have not yet filed a tax return for tax year 2007 still have time. The deadline for filing a tax return is October 15, 2008. According to the Internal Revenue Service, filing by this deadline will ensure that you receive your payment this year. However, filing a tax return is only one requirement for receiving an economic stimulus payment.

Additional eligibility requirements to receive an economic stimulus payment include that you or your family must: (1) have at least \$3,000 in qualifying income from, or in combination with, Social Security benefits, Veterans Affairs benefits, Railroad Retirement benefits and earned income (Supplemental Security Income (SSI) does not count); (2) have valid Social Security numbers (if listed on the tax return); and (3) are not a dependent or eligible to be dependent on someone else's federal tax return.

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## Mid-Year Increase in Standard Federal Mileage Rate

The optional standard mileage rate for all business miles driven will increase 8 cents for the remainder of 2008. Effective July 1, 2008, the new optional standard mileage rate will be 58.5 cents per mile. The rate for computing deductible medical and moving expenses will also increase by 8 cents, rising to 27 cents.

This rate change is a special adjustment made by the Internal Revenue Service mainly due to increasing gas prices. Typically, the optional standard mileage rate for the year is set in the fall of the preceding year and is not adjusted.

The new rate will apply to all business miles driven between July 1, 2008, and December 31, 2008. A new rate will be set in the fall of 2008 to be effective January 1, 2009.

*This newsletter presents general informational material only and is not intended to offer legal advice. You should not rely on or use information presented here without consulting an attorney regarding your specific circumstances, changes to applicable laws, rules and regulations, and other legal issues.*

*Receipt of this newsletter does not establish an attorney-client relationship. If you desire representation, please contact our office.*

## What's Next for the Estate Tax?

One of the most talked about taxes in the country is the estate tax, or “death tax,” as some call it. As most are aware, the federal estate tax is being phased out and will be fully repealed in 2010. Until complete repeal, estate tax rates will decrease and the lifetime estate tax exemption will increase. Without any other action from Congress, the estate tax is set to return in 2011.

Currently, the lifetime estate tax exemption, the amount a taxpayer is allowed to pass tax free, is \$2 million and the highest estate tax rate is 45%. The lifetime estate tax exemption will rise to \$3.5 million in 2009 and the estate tax rate will remain the same (45%). There will be no estate tax in 2010. In 2011, however, the estate tax will return with a lifetime estate tax exemption of \$1 million.

In addition to changes to the estate tax, Congress also made changes to other taxes that are commonly associated with estate taxes. The first of these is the gift tax. Although, it has not been repealed by Congress, the gift tax lifetime exemption has been raised and the maximum tax rate has been lowered. The current lifetime exemption is \$1 million, which means that you may make up to \$1 million in taxable gifts during your lifetime before you will owe any federal gift tax. This lifetime exemption is in addition to the \$12,000 annual gifts that you may make an unlimited number of over your lifetime.

Congress has also made changes to the generation-skipping tax. In 2010, the generation-skipping tax will also be repealed. This is an extra federal tax on transfers which skip a generation, i.e. grandparents to grandchildren and not children. The exemption amount is the same as the estate tax exemption amount.

Finally, Congress has provided for the elimination of the “stepped-up basis” rule. This marks a significant change that will affect beneficiaries of inherited property in this country. Currently, when you inherit property, your tax basis in the property is the market value on the date of the former owner’s death. There is no limit on the amount of property that will qualify for a stepped-up basis. Receiving a stepped-up basis in property is especially helpful when the property’s value has gone up significantly since the former owner acquired it. However, this rule will end in 2010 with the estate tax. From that point on, you may choose to take a stepped-up basis for only the first \$1.3 million of the property you inherit. For amounts over the \$1.3 million level, your basis will be the former owner’s basis or the market value on the date of death, whichever is smaller. Under this scheme, when the value of the assets is over \$1.3 million, you will be able to select which assets you will take a step-up in basis on, however.

In addition to being complex, the current scheme also makes estate planning difficult. Most experts in the area agree that the current scheme is not the final solution from Congress and that more legislation in this area should be expected.

It is anticipated that the upcoming elections will shed some light on when and how Congress plans to act on the estate tax matter. Until that time, everyone is watching and waiting for the next chapter in the story of the estate tax.

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## Importance of Titling Assets Properly

One of the most important parts of estate planning is the proper titling of assets. However, this is often the most overlooked part of estate planning.

Having assets titled correctly is most important when dealing with funding a trust. If your assets are not titled correctly, then your trust may not be funded. If the trust is not funded, then it will not be effective at your death. The result is that all of your assets pass through probate which is likely what you were trying to avoid by setting up the trust.

With more and more trusts being funded with real property, it is important to make sure that the deed is correct. To properly transfer title to real property into a trust, the deed must transfer the interest to the trustee of the trust and not the trust itself.

However, real property is not the only asset that you need to be concerned with when it comes to proper title. You should also be aware of how bank accounts, savings bonds, and brokerage accounts, just to name a few, are titled.

Likewise, you should review the beneficiary designations on your retirement accounts and life insurance policies. Not only will incorrect beneficiary designations wreak havoc on your estate plan, but in some cases, incorrect beneficiary designations can cost your loved ones time and money.

A common example is when an individual designates a minor child as the beneficiary of a life insurance policy. When this is done, the insured has every reason to believe that their child will be an adult when the policy will pay out benefits.

What the insured fails to realize is that, while it is very likely their minor child will be an adult when the policy pays out benefits, there is no guarantee. If the insured knew what the

consequences would be as a result, they would have made a different designation.

By statute in Arkansas, an individual under the age of eighteen years may not own property. Therefore, an insurance company may not pay out the proceeds of a life insurance policy to anyone under eighteen years of age.

In order for the minor to receive the proceeds, a formal, court supervised guardianship must be opened for the minor. This is true even if the minor has one or both parents still living.

Once the guardianship has been opened, the insurance company will pay out the proceeds to the minor child's guardian. The funds should be placed in an account for the minor and held until the minor attains the age of majority (eighteen years of age).

While the insured had the best intentions when making the beneficiary designation, they had no idea what the consequences would be if the proceeds became payable while the beneficiary was still a minor.

You should review the title to your assets and your beneficiary designations every time you review or update your estate plan. If you have questions or are unsure about how to title a particular asset or designate a beneficiary, please consult with your estate planning professional.

### **Do You Need a Speaker?**

The attorneys at Hyden, Miron & Foster, PLLC have experience speaking to groups of all sizes. Please contact us if you would like an attorney to speak to your employees, civic group or organization regarding estate planning, business planning, asset protection, employee benefits or taxation.

## **Benefits to Businesses from the Economic Stimulus Act of 2008**

Within the Economic Stimulus Act of 2008 (hereinafter ESA), there are two provisions for businesses. Neither of these provisions is automatic, however, and both require that businesses act to take advantage of them. The first provision increases the limit up to which a business can expense property purchased and placed in service during its 2008 tax year. The second provision provides an additional 50% special depreciation allowance for property acquired and placed in service during calendar year 2008. These provisions accelerate tax benefits into the 2008 tax year that would otherwise not be available until future years.

The first provision of the ESA deals with allowable expensing under section 179 of the Internal Revenue Code. Section 179 provides that instead of depreciating property, a business with a sufficiently small amount of annual property purchases may choose to expense the cost of the property. The maximum expense deduction allowed was increased to \$250,000, from \$128,000, for qualified section 179 property that is placed in service in tax years that begin in 2008.

The total amount of qualifying property a business may purchase before expensing limits begin to be reduced was also increased by the ESA. A business may now acquire up to \$800,000 of qualifying property before the deduction amount is reduced. Prior to the ESA, the deduction amount began to be reduced when a business acquired more than \$510,000 in qualifying property.

A business is also now entitled to a special depreciation allowance of 50% for property acquired and placed in service during 2008. Depreciation is an income tax deduction that allows a taxpayer to recover the cost or other basis of certain property over several years. It is an annual allowance for the wear and tear, deterioration or obsolescence of the property. The ESA allows a business to depreciate 50% of the adjusted basis (after subtracting any section 179 deduction for the property) of qualified property during the year the property is placed in service.

This special depreciation allowance applies to certain types of property only. It may be used on section 168 property with a recovery period of 20 years or less, off-the-shelf computer software, water utility property, and qualified leasehold improvement property. In addition, the business must qualify for the allowance by meeting all of the following: (1) the property must have been acquired after December 31, 2007, and before January 1, 2009; (2) the property must be placed in service before January 1, 2009; and (3) the property must be new property (i.e. the original use of the property must begin with the business after December 31, 2007).

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## **Secretary of State Franchise Tax Alert**

The Arkansas Secretary of State's Office is now requiring that, before an individual may organize or incorporate an entity, all franchise taxes for all entities that the individual is associated with must be current.

You may check the status of your entity's franchise taxes through the Secretary of State's website at <http://www.sos.arkansas.gov>.

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### Visit Our Website

The next time you are surfing the internet, stop in and visit our website: [www.hmflaw.net](http://www.hmflaw.net). The site explains the services we provide to our clients and allows you to e-mail the firm with suggestions or questions you may have.

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