

## Key developments during the first quarter of 2009

Dear Reader:

While the new law tax changes in the American Recovery and Reinvestment Act of 2009 were the most significant developments in the first quarter of 2009, many other tax developments may affect you, your family, and your livelihood. These other key developments in the first quarter of 2009 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.

*Clarifying guidance on waivers of RMDs for 2009.* Retirement plan account participants, IRA owners, and their beneficiaries do not have to take required minimum distributions (RMDs) for 2009. The IRS has issued guidance clarifying that:

If you would have been required to make RMDs for 2009 and you do make withdrawals in 2009 (that are not RMDs for 2008): (a) you might be able to roll over the withdrawn amounts into other eligible retirement plans; but (b) you must still include any previously untaxed portion of the withdrawal that you do not roll over in your gross income.

No 2008 RMDs are waived, even for eligible individuals who chose to delay taking their 2008 RMD until Apr. 1, 2009 (e.g., retired employees and IRA owners who turned 70 1/2 in 2008).

The 2009 RMD waiver applies to individuals who may be eligible to postpone taking their 2009 RMD until Apr. 1, 2010 (generally, retired employees and IRA owners who attain age 70 1/2 in 2009). However, the law does not waive any RMDs for 2010.

If a beneficiary is receiving distributions over a 5-year period, he or she can waive the distribution for 2009, effectively permitting the beneficiary to take distributions over a 6-year period.

*Getting maximum advantage from the homebuyer credit.* In two separate pieces of guidance, the IRS has explained how to take maximum advantage of the credit for first-time homebuyers. The credit is the lesser of 10% of the purchase price or \$8,000 for a qualifying 2009 purchase (\$7,500 for a qualifying 2008 purchase). The credit is refundable, meaning you get it even if you don't owe taxes. The credit has to be paid back for a home purchased in 2008 but generally not for one purchased in 2009. A credit for a 2009 purchase can be claimed on the 2008 return. In a news release, the IRS has explained the several different ways that individuals who recently purchased a home or are considering buying one in the next few months can claim the up-to-\$8,000 credit for 2009 home purchases including getting an extension, filing now and amending later, amending a previously filed 2008 return or claiming the credit on a 2009 return where higher income in 2008 would reduce the credit under so-called phaseout rules. In separate guidance, the IRS explained how unmarried co-owners can get the maximum credit amount.

*New guidance for victims of Madoff-type investment schemes.* Just days after Bernard Madoff's guilty plea, the IRS issued comprehensive guidance for the many investors caught in his (and similar) notorious Ponzi-style fraud. The guidance takes an extremely generous, pro-taxpayer position, allowing the losses to be claimed as theft losses against ordinary income and even allowing a net operating loss generated by Madoff-style losses to be treated as sole proprietorship losses potentially eligible to be carried back 3, 4, or 5 years under a business-style tax break enacted by the American Recovery and

Reinvestment Act of 2009. The guidance consists of a revenue ruling dealing with specific tax issues that victims of Madoff-type schemes must confront and a revenue procedure providing safe harbors for determining the proper time and amount of loss.

*Trademarks and the like may qualify for tax-free swaps.* A like-kind exchange is a popular way for a taxpayer to dispose of qualifying appreciated property without paying a current tax. In a complete reversal of the position it had previously taken, the IRS now says that intangibles such as trademarks, tradenames, mastheads, etc., that can be valued separately and, apart from goodwill, qualify as like-kind property that can be exchanged without incurring a current tax. Furthermore, the IRS says that except in rare and unusual situations, intangibles such as trademarks, trade names, mastheads, and customer-based intangibles *can be* separately described and valued apart from goodwill. Of course, to qualify for a like-kind exchange, various statutory and regulatory rules have to be satisfied.

*Settlement offer for disclosing unreported offshore income.* The IRS announced a settlement offer for those that voluntarily and timely disclose unreported offshore income. Those meeting the terms of the offer will have to pay back-taxes and interest for six years, and pay either an accuracy or delinquency penalty on all six years. They will also pay a penalty of 20% of the amount in the foreign bank accounts in the year with the highest aggregate account or asset value. In other words, the penalty will equal 20% of the highest asset value of an account anytime in the past six years. However, those who come forward on a timely basis will not face criminal prosecution.

*Vehicles qualifying for the hybrid credit.* On its website, the IRS has listed 2009 and 2010 model year hybrid vehicles that qualify for the hybrid credit. Due to a production-based limitation, not all hybrids qualify for a full credit. For example, the credit for qualified Toyota and Lexus vehicles was eliminated for purchases on or after Oct. 1, 2007. The phaseout of the credit for qualified Honda vehicles began for purchases on or after Jan. 1, 2008 and the credit was completely eliminated for purchases on or after Jan. 1, 2009. The phaseout of the credit for qualified Ford and Mercury vehicles began for purchases after Mar. 31, 2009.

*Courts reject blanket denial of FICA exception for medical residents.* Two Circuit Courts of Appeal have held that stipends paid by hospitals to medical residents may qualify for exemption from FICA taxes (i.e., social security taxes) under the FICA student exception. In so holding, they rejected the IRS's view that medical residents per se are ineligible for the student exception. These cases have important ramifications for the many teaching hospitals and their residents. The decisions however, don't affect the income tax aspects of medical residents' stipends. It is well settled that they are not excludible.

*More investment flexibility for 529 plans.* Section 529 Education Plans are tax-advantaged savings plans that can be used to pay qualified education expenses. In recent guidance, the IRS has determined, that for calendar year 2009 only, 529 plans may permit accounts to change their investment strategy twice (as opposed to once under prior rules) during the year, as well as upon a change in the designated beneficiary of an account. This new flexibility was prompted by concerns from 529 plan sponsors that in today's market environment the lack of flexibility in switching investments could imperil many 529 accounts.

