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EXCEEDING EXPECTATIONS SINCE 1926

February 2010
TAX ALERTS

Haiti Earthquake Relief Donations Deductible on 2009 Returns

On January 22, 2010, President Obama signed into law H.R. 4462 (the Act) which allows taxpayers to claim a charitable contribution deduction in tax year 2009 for donations made after January 11 and before March 1, 2010, for the relief of victims in areas affected by the January 12, 2010 earthquake in Haiti. This option is available only if the contribution is in cash and meets the requirements for charitable contribution deductions under the current tax law.

The general rules on claiming a tax deduction for charitable donations still apply: Taxpayers must itemize their deductions on Schedule A. Those claiming the standard deduction, including all short-form filers, are not eligible. The taxpayers can choose to deduct qualifying Haiti earthquake relief donations on either 2009 or 2010 returns, but the same item cannot be claimed for both years. *Cash contributions include those made by text message, check, credit card or debit card.*

Recordkeeping. The Act clarifies that for a cash contribution, the recordkeeping requirement can be satisfied by a telephone bill if it shows the name of the donee organization, the date of the contribution, and the amount of the contribution. For example, in the case of a charitable contribution made by text message and chargeable to a telephone or wireless account, a bill from the telecommunications company containing the relevant information will satisfy the recordkeeping requirement. For cash contributions made by other means, taxpayers should keep a bank record, such as a cancelled check, or a receipt from the charity showing the name of the charity and the date and amount of the contribution.

Contributions that qualify for the election. The contributions must be made specifically for the relief of victims in areas affected by the January 12 earthquake. Only contributions fully earmarked for the Haiti earthquake relief qualify for the election.

Eligible donors. It should be kept in mind that the election is not limited to individuals. Corporations and other entities also can choose to deduct otherwise deductible earthquake relief contributions as though they were made on December 31, 2009.

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COBRA Subsidy Eligibility Extended through February 2010

"COBRA" (Consolidated Omnibus Budget Reconciliation Act) coverage remains a benefit to terminated employees, allowing them to continue receiving employer health care coverage until they either find another job or secure private medical insurance coverage.

Under the American Recovery and Reinvestment Act of 2009, a new employer-provided COBRA subsidy was created to assist individuals who lose their jobs involuntarily during the current economic recession. The subsidy was originally scheduled to expire at the end of last year, but the 2010 Department of Defense Appropriations Act, enacted on December 19, 2009, extended the subsidy's eligibility period and the maximum duration of COBRA premium assistance.

As a result, individuals who lose their jobs during January and February may qualify for a 65 percent subsidy on their COBRA health insurance premiums, and these newly eligible individuals, along with those already receiving the subsidy, can now receive it for up to 15 months.

Employers must provide COBRA coverage to assistance-eligible individuals involuntarily terminated from employment between September 1, 2008 and February 28, 2010 who pay 35 percent of their COBRA premiums. The remaining 65 percent will be reimbursed through an employer tax credit.

The Department of Labor guidance provides that the special COBRA coverage period begins for individuals involuntarily terminated on or after February 17, 2009 and lasts for up to 15 months. For example, an individual involuntarily laid off on February 18, 2009 with COBRA continuation coverage may have a premium reduction period lasting until May 18, 2010.

IRS Proposal Regarding Uncertain Tax Positions

On January 26, 2010, the Internal Revenue Service announced that it intends to require certain companies with assets in excess of $10 million to report their uncertain tax positions annually with their business tax returns. An uncertain tax position is any tax position taken on the tax return that may not be sustained if challenged by taxing authority under the "more likely than not" threshold. As companies seek to legitimately reduce their

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overall tax burdens and minimize or delay cash outflows for taxes, positions taken in tax returns may be well-grounded and in good faith. However, with the complexities and varying interpretations of the tax law, these positions may not ultimately prevail. Complexity creates uncertainty regarding the actual benefit a company will receive from a position taken on its tax return, which may be considered as an uncertain tax position. Common examples of uncertain tax positions include characterizing gains or losses as capital gains or losses, claiming a tax credit, allocating income between jurisdictions (or not filing a return when a company believes it does not have nexus in a state or country), transfer pricing, excluding income the company believes is tax-exempt, and taking a tax deduction.

The proposal would apply to taxpayers who prepare financial statements or are included in the financial statements of a related entity that prepares financial statements if federal income tax reserves are determined under FIN 48, or other accounting standards. The Service is asking business taxpayers and others to submit comments on the proposal by March 29, 2010.

Under the proposed reporting requirement, taxpayers would have to report positions for which a tax reserve must be established under FIN 48 or other accounting standards, as well as positions for which the taxpayer or a related entity has not recorded a tax reserve because (1) the taxpayer expects to litigate the position, or (2) the taxpayer has determined that the Service has a general administrative practice not to examine the position.

A new schedule is being developed by the IRS to support the proposed new reporting requirement. According to Announcement 2010-9, the new schedule will ask taxpayers to provide:

- A description of each uncertain tax position "in sufficient detail that the Service can determine the nature of the issue." To be considered sufficient, the description would have to include:

    (1) the Internal Revenue Code sections potentially implicated by the position;
    (2) a description of the taxable year or years to which the position relates;
    (3) a statement that the position involves an item of income, gain, loss, deduction, or credit against tax;
    (4) a statement that the position involves a permanent inclusion or exclusion of any item, the timing of that item, or both;
    (5) a statement as to whether the position involves a determination of the value of any property or right; and
    (6) a statement as to whether the position involves a computation of basis.

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- For each position, the entire amount of United States federal income tax that would be due if the position were disallowed in its entirety on audit. This amount is the maximum tax adjustment for the position reflecting all changes to items of income, gain, loss, deduction, or credit if the position is not sustained.

Notably, the proposal would not require disclosure of the taxpayer's risk assessment or tax reserve amounts.

The Service is also considering various options for penalties or sanctions that may be imposed when a taxpayer fails to make adequate disclosure of the required information.

In recent remarks to the New York State Bar Association Taxation Section, IRS Commissioner Doug Shulman sought to alleviate the concerns that businesses and tax professionals are expected to voice about the proposal:

"We could have asked for more – a lot more – but chose not to," Shulman said. "We believe we have crafted a proposal that gives us the information we need to do our job without trying to get in the heads of taxpayers as to the strengths or weaknesses of their positions."

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