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We are pleased to provide you with our online informational newsletter, which we believe you will find of interest. Every month, brief articles on relevant topics are included, along with a tax calendar for the current and following month.

Interested in knowing more about our firm? Please take a minute to browse our website at www.cohensmithcpas.com.

Other helpful on-line services

www.IRS.gov

www.MyFlorida.com

www.Volusia.org

February 2009

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2009 Corporate Annual Reports

Effective 2009, all Florida corporate annual reports must be filed on-line at www.sunbiz.org. You will no longer be able to download a paper form and mail in with a payment. Online payments may either be made via credit/debit card or check. If you choose to pay the fee by check, you will be able to print out a payment page after filing the report online. You then mail the payment page with your check. Please contact our office if you have any questions or require any assistance with these new filing requirements.

Electronic Filing/Internet Access Help Desk (850) 245-6939

Consent to Disclosure of Tax Return Information

Beginning January 1, 2009 federal law requires tax preparers to obtain written consent prior to disclosing any income tax return information to third parties. The regulations also specify the exact wording to be used on the consent form as follows:

CONSENT TO DISCLOSURE OF TAX RETURN INFORMATION

Federal law requires this consent form be provided to you. Unless authorized by law, we cannot disclose, without your consent, your tax return information to third parties for purposes other than the preparation and filing of your tax return. If you consent to the disclosure of your tax return information, Federal law may not protect your tax return information from further use or distribution.

You are not required to complete this form. If we obtain your signature on this form by conditioning our services on your consent, your consent will not be valid. If you agree to the disclosure of your complete tax return information, your consent is valid for the amount of time that you specify. If you do not specify the duration of your consent, your consent is valid for one year. Also, you may request a more limited consent, rather than disclosure of your complete tax return information.

Please complete:

- Purpose for forwarding information: _____

- Name and address to whom the information is being disclosed:

- Duration of Consent: _____

I, _____, authorize Cohen, Smith & Company, P.A., to disclose to _____ my tax return information for 20____.

Signature: _____ Date: _____

If you believe your tax return information has been disclosed or used improperly in a manner unauthorized by law without your permission, you may contact the Treasury Inspector General for Tax Administration (TIGTA) by telephone at 1-800-366-4484, or by email to: complaints@tigta.treas.gov.

If you expect to request us to forward your income tax return information to a third party, please be sure to complete a consent form.

Repossessing Real Estate Sold on the Installment Basis

Recognizing real estate sales gains using the installment method is a popular way to defer taxation when seller-financing is provided. The installment method allows the seller to recognize any gain over a stated period of time as payments are received. But, given the tough current economic situation we have encountered, some of those previous installment sales may be unwound by repossession of the previously sold property.

If a taxpayer sells real property on the installment basis and later repossesses the property, a mandatory rule for reporting gain due to the repossession may apply. Generally, the result is that the seller reports all interim installment payments (i.e., principal payments received before repossession) as gain to the extent they exceed the amount of gain reported on the installment basis before the repossession. However, the gain that must be reported upon repossession is limited to the seller's gross profit calculated for the original sale, less the amount of gain previously reported as income before the repossession and any repossession costs. Typically, the seller's tax basis in the repossessed real estate is the same as when the property was originally sold, but is increased by any expenses incurred in repossessing the property. The fair market value (FMV) of the repossessed property is generally irrelevant.

Taxpayers repossessing property often view the transaction as an economic loss (since the buyer has not performed on his or her debt) and may be surprised to learn that they must recognize a taxable gain. The fact that they receive no additional cash in the repossession transaction makes gain recognition particularly onerous. Taxpayers should realize as early as possible that repossession may trigger a taxable gain and quantify the gain to the extent possible before the transaction is completed.

The repossessed property's holding period (for purposes of any subsequent sale) includes the period when the taxpayer owned the property before the original sale, plus the period after the repossession. It does not include the period that the buyer from whom the property was repossessed owned the property.

Unwinding an installment real estate sale can have a negative tax effect in addition to the problems associated with the foreclosure. Do not hesitate to call us to discuss this or any other tax compliance or planning issue.

Deducting 529 Plan Losses

Thanks to their beneficial tax treatment, qualified tuition programs (QTPs—commonly referred to as 529 plans) have become the plan of choice for many taxpayers trying to save enough money to cover the ever-escalating costs of getting their child or grandchild through college. Over the last several years, many folks have invested a considerable amount of money in these plans. Unfortunately, the market has not been any kinder to these plans than to the rest of us. So, we venture to say there are more than a few taxpayers out there who have QTPs worth less than what they put into them. That begs the question: Are the losses deductible? Better yet, can I liquidate the account, claim a loss, and then reinvest the proceeds in another QTP for my child or grandchild?

Yes—according to the IRS, a loss on a QTP is deductible by the account owner (the person who controls the account—typically the contributor), but only when all amounts from that account have been distributed and the total distributions are less than the contributor's unrecovered basis (contributions made to the account less any prior withdrawals of those contributions). Unfortunately, the loss must be deducted as a miscellaneous itemized deduction subject to the 2%-of-adjusted-gross-income limit. Also, the funds can't be reinvested too soon. The IRS indicates that distributions rolled over to another QTP for that or another related beneficiary within 60 days of the distribution are not taxable. Thus, if an account that is worth less than what was put in it is rolled over within 60 days, there are no tax consequences, meaning no loss deduction.

The bottom line is this, if you liquidate a QTP account, wait more than 60 days to reinvest the proceeds, and get back less than you put in it; the loss is deductible as a miscellaneous itemized deduction subject to the 2%-of-adjusted-gross-income floor. Not so great—at least for most taxpayers! Therefore, we suggest you use this strategy carefully.

2009 Tangible Tax

Volusia County will be sending out postcards to those businesses and individuals who *do not* need to file Tangible Personal Property tax for 2009, due to having business assets valued at less than \$25,000, based on a previously filed return. Therefore, if you receive a postcard, no filing requirement.

If you do not receive a postcard and believe you should have, you should call the property appraiser's office at (386) 254-4621.

According to the property appraiser's office, if there is any doubt, a return should be filed to avoid potential non-filing penalties.

New Pilot Loan Program Announced

SB 38A passed by the Florida Legislature includes a loan pilot program of \$10 million to support Florida's small businesses that have between 10 and 99 employees and meet certain characteristics indicating that the company has high growth potential. The loans' terms are for four years at 2-percent interest. The maximum loan amount is \$250,000. No payment is due until the 12th of each month, when interest-only is due. Subsequently, interest and principal are due each month. The loans, not to exceed \$250,000 per business, would be used for capital purchases, employee training, and salaries for new jobs. The bill also includes \$1.5 million for technical assistance. The program will be managed by the state's Office of Tourism, Trade and Economic Development. Details are still being developed and therefore, interested parties should contact the tourism office at: (850) 487-2568.

Employers Must Use New I-9 Form by February 2, 2009

On December 17, 2008, the Department of Homeland Security issued an interim final rule amending its regulations governing the types of acceptable identity and employment authorization documents that employers may accept from newly hired employees and reverifying current employees in completing Form I-9, Employment Eligibility Verification ("I-9 form").

To implement these amendments, a new I-9 form is being issued which employers must use once the interim rule takes effect on February 2, 2009. Employers will be required to use the new I-9 form, and accept only those documents listed on the new form. The current edition of the I-9 form, dated 06/05/07 (the "old I-9 form"), will no longer be valid for use after February 2, 2009. Employers who continue using the old I-9 form after this date – for new hires or reverifications – will be subject to civil money penalties.

The major changes reflected in the new I-9 form are:

- ◆ Expired documents are no longer acceptable. Under the old I-9 form, expired documents were acceptable for certain documents like U.S. passports. For the new I-9 form, all documents presented by employees must be valid, unexpired documents. A document containing no expiration date, such as a Social Security card, will be deemed unexpired.

- ◆ The following documents are now acceptable for establishing both identity and employment authorization and therefore, have been added to List A of the List of Acceptable Documents:
 - Foreign passports containing a temporary I-551 printed notation on a machine-readable immigrant visa. The pre-printed temporary I-551 notation is issued after the individual is admitted to the United States as a lawful permanent resident.
 - Passports from the Federated States of Micronesia or the Republic of the Marshall Islands with a form I-94 or I-94A.
- ◆ Form I-688 “Temporary Resident Card” and forms I-688A and I-688B “Employment Authorization Cards” are no longer acceptable documents because U.S. Citizenship and Immigration Services (“USCIS”) no longer issues them and any such documents previously-issued have now expired. Accordingly, they have been removed from List A.

The interim final rule and an informational copy of the new I-9 form is available online at www.regulations.gov (enter “employment eligibility verification” in the search field) for 45 days after publication of the rule. The new I-9 form will be available on USCIS website, www.uscis.gov, as of February 2, 2009. Paper copies of the form can be ordered by calling USCIS at 1-800-870-3676. USCIS also will be updating its *Handbook for Employers, Instructions for Completing the Form I-9 (M-274)* to reflect the amendments made by the interim final rule and the new I-9 form, and the agency will post the revised version on its website.

NEWS FLASH - UPDATE

U.S. Citizenship and Immigration Services (USCIS) announced today it has delayed by 60 days, until April 3, 2009, the implementation of an interim final rule entitled “Documents Acceptable for Employment Eligibility Verification”.

The delay will provide DHS with an opportunity for further consideration of the rule and also allows the public additional time to submit comments. A notice announcing the delay was transmitted today to the Federal Register. In addition, USCIS has reopened the public comment period for 30 days, until March 4, 2009.

FEBRUARY 2009

February 2—Most employers must file Form 941 (Employer’s Quarterly Federal Tax Return) to report Medicare, social security, and income taxes withheld in the fourth quarter of 2008. (If your tax liability is less than \$2,500, you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until February 10 to file the return. Small employers who have been notified by the IRS should file Form 944 (Employer’s Annual Federal Tax Return).

—Give your employees their copies of Form W-2 for 2008. If an employee agreed to receive Form W-2 electronically, have it posted on the website and notify the employee.

—Generally, give annual information statements to recipients of certain payments you made during 2008. You can use the appropriate version of Form 1099 or other information return. Form 1099 can be filed electronically with the consent of the recipient.

—File Form 940 [Employer’s Annual Federal Unemployment (FUTA) Tax Return] for 2008. If your undeposited tax is \$500 or less, you can either pay it with your return or deposit it. If it is more than \$500, you must deposit it. However, if you deposited the tax for the year in full and on time, you have until February 10 to file the return.

—File Form 945 (Annual Return of Withheld Federal Income Tax) for 2008 to report income tax withheld on all nonpayroll items, including backup withholding and withholding on pensions, annuities, IRAs, etc. If your tax liability is less than \$2,500, you can pay it in full with a timely filed return. If you deposited the tax for the year in full and on time, you have until February 10 to file the return.

March 2009

March 2—The government’s copy of Form 1099 series returns (along with the appropriate transmittal form) should be sent in by today. However, if these forms will be filed electronically, the due date is extended to March 31.

—The government’s copy of Form W-2 series returns (along with the appropriate transmittal form) should be sent in by today. However, if these forms will be filed electronically, the due date is extended to March 31.

March 16—2008 income tax returns must be filed or extended for calendar-year corporations. If the return is not extended, this is also the last day for calendar-year corporations to make 2008 contributions to pension and profit-sharing plans.