

TAX BEAT

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Please enjoy our first issue of Tax Beat for 2009. We hope the information included will help you weather the current economy and plan for more profitable times. In the meantime, feel free to contact us if you have any questions or concerns about your specific tax situation.

UNEMPLOYMENT COMPENSATION

As the economy has struggled and employers have cut jobs, applications to receive unemployment compensation are at near-record levels. In order to soften the blow of losing a job, The American Recovery and Reinvestment Act of 2009 has temporarily excluded part of unemployment compensation from taxation. Under the Act, the first \$2,400 of unemployment benefits received in 2009 are not taxable. There are no income limitations to the exclusion. The exclusion applies only to unemployment compensation; severance pay is still fully taxable. For married couples, the exclusion applies to each spouse separately. It should be noted that the exclusion is only for 2009. Unemployment benefits from previous years were fully taxable, and are expected to again be fully taxable in 2010.

Our Mission Statement

We are dedicated professionals working together to provide comprehensive quality services to satisfy the needs of clients, business advisors, and each other.



IDENTITY THEFT AND YOU

The Federal Trade Commission estimates that as many as 10 million people in the United States fall victim to identity theft each year, costing innocent victims \$5 million to repair their good names. To help minimize your risk of becoming a victim of identity theft, the Department of Justice recommends four basic steps. Use the word "**SCAM**" to help you remember the basic steps listed below.

1. Be **stingy** about giving out your personal information. Do not give out personal information such as social security numbers, credit card numbers, or your mother's maiden name



over the phone to a person you do not know. Ask the person to send you a written application form.

2. **Check** your financial information regularly. Examine your monthly statements and look for unauthorized charges against your accounts.

3. **Ask** periodically for a copy of your credit report. Glance through your credit report and look for accounts opened fraudulently in your name.

4. **Maintain** careful records of your banking and financial accounts. You should retain your monthly statements and checks for at least one year.

Even if you take these steps, it is still possible to be victimized by identity theft. If you do become a target, immediately take the following actions to minimize the damage:

1. Notify the fraud department of one of the credit bureaus listed below and establish a fraud alert. The bureau will contact the other two for you and each will send you a written notice of your rights. Once you receive the written notice, call each credit bureau and ask for a free credit report. Check your credit reports for any fraudulent financial activity.
2. Report the crime to your local police or sheriff's department. Speak to the head of the fraud unit or white collar crime unit and be persistent if they are reluctant to make a report. Keep a copy of the report for your records.
3. File a complaint with the Federal Trade Commission (877) 438-4338. The FTC is responsible for receiving and processing complaints from people who believe they may be victims of identity theft and for providing informational materials to those people.

The previous actions may help minimize the damage from identity theft, but in order to recover from the damages that have already been done, you may need to do one or more of the following:

1. If an imposter has opened new credit accounts in your name, contact the fraud investigator of those creditors by telephone and in writing. Request the company to close the account(s) and furnish you with copies of the fraudulent application and transaction records. You need to send the company a FTC affidavit via certified mail along with a copy of your police report in order to receive this information. A copy of the affidavit can be found at <http://www.ftc.gov/bcp/edu/resources/forms/affidavit.pdf>. When you

have resolved the fraudulent account with the creditor, ask for a letter stating that the company has closed the account and has discharged the debt.

2. If your existing credit or debit accounts have fraudulent activity, report it to the company in writing and by phone. Request the debt be discharged and request replacement cards with new account numbers
3. If debt collectors try to get you to pay unpaid bills on fraudulent accounts, ask for the name, phone number, and address of the collection company, along with the name of the person contacting you. Tell them that you are a victim of identity theft and are not responsible for the account. Ask them for contact information for the referring credit issuer, as well. Follow up by writing to the debt collector explaining your situation and ask that they confirm in writing that you do not owe the debt and that the account has been closed.
4. If you had checks stolen or fraudulent bank accounts set up, ask your bank to place a security alert on your file. Put "stop payments" on any outstanding checks that you are unsure about. Also close your banking accounts and obtain new account numbers.

If identity theft happens to you, whether large or small, remember two basic rules.

1. Keep good records when dealing with authorities and financial companies. Keep a log of all conversations including dates, names, and phone numbers. Note any expenses you incur because you may be able

Equifax Phone: (888)766-0008 Web: www.equifax.com	Experian Phone: (888)397-3742 Web: www.experian.com/fraud	TransUnion Phone: (800)680-7289 Web: www.transunion.com
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IDENTITY THEFT, CONTINUED

to obtain tax deductions for theft related expenses. Keep copies of all letters and documents.

2. Do not give in. Do not pay any bills that are a result of identity theft. Do not cover any checks that were written or cashed fraudulently. Do not file for bankruptcy.

The information provided is only a brief summary of the preventive and corrective actions for identity theft. See below for additional resources or contact your financial advisor.



Name	Phone	Web Address
Federal Trade Commission	(877)438-7338	www.ftc.gov
Privacy Rights Clearinghouse	(619)298-3396	www.privacyrights.org/identity.html
Identity Theft Resource Center	(858)693-7935	www.idtheftcenter.org
U.S. Department of Justice	(202)514-2000	www.usdoj.gov/criminal/fraud/websites/idtheft.html

SECRETARY OF STATE BUSINESS SCAM

Officials of numerous states are warning business owners of a scam in which bogus solicitation letters are being sent out to businesses requesting \$150 in fees for filing of corporate minutes in order to continue doing business. The letters are made to look like official Secretary of State correspondence, have an official-looking seal, and usually claim to come from the state's Corporate Compliance division. The scam has most recently been reported in Indiana and Illinois, but has also been found in Texas, Florida, Colorado, New York and other states.

If you call the Offices of the Secretary of State in the states where you do business, they will inevitably tell you that there is no requirement to file corporate minutes or submit the \$150 fee. If you receive what appears to be a bogus solicitation, call the state's Secretary of State Office (look up the number on their website, do not use any number provided on the solicitation), maintain a copy for your records, and do not respond to the letter.

RED FLAG REGULATIONS

The Fair and Accurate Credit Transactions Act of 2003 (FACT Act) required creditors to detect, prevent, and mitigate identity theft in connection with new or existing accounts. While intended primarily to apply to banks and issuers of credit cards, the regulations apply to any company that arranges for the extension, renewal, or continuation of credit. Many businesses have unexpectedly found themselves covered by the new rules since they extend credit to their customers. Even small businesses or non-profits that bill for products or services after delivery are considered to have extended credit. Though the law required compliance by May 1, 2009, it is not too late to implement policies before enforcement and penalties are instituted.

The new regulations require businesses that extend credit to implement a written identity theft program. Though the law lists examples of steps that may be taken, companies are expected to design their program based upon their size, their complexity, and the nature of their business.

The regulations have been called the "Red Flag Regulations" because they require companies to identify and address certain red flag events that may indicate potential identity theft. A red flag is a pattern, practice, or specific activity that indicates the possible existence of identity theft. The red flags may vary depending upon the type of business, but may include things like altered documents, irregular requests for credit, alerts from a customer about possible identity theft, or a material change in spending patterns.

Companies that do not have written policies to address identity theft or that may be unsure of their requirement to comply with the Red Flag Regulations should consult their legal counsel.

DON'T IGNORE YOUR LLC (OR YOUR CREDITORS WILL)

Establishing an LLC (limited liability company) has become one of the most attractive ways to protect business owners from liability for the debts or legal judgments against their businesses. The idea behind an LLC is that an LLC creates a legal entity that is separate and apart from the individual business owners. If the company is sued, the debts and assets of the LLC should be treated separately from those



of any individual. However, business owners should be warned that the mere act of setting up an LLC may not completely

provide the liability protection they may need.

In cases where a business is sued or being pursued for debts, the courts determine on a case-by-case basis exactly where the liability may lie. Although the establishment of an LLC may help make the case that the business is a separate

legal entity, the courts will also look at how the business was actually operated. Was the business operated as a separate legal entity? Business owners need to be sure they are operating the business as a separate entity, not merely claiming to do so.

One way in which an LLC can demonstrate that it is a separate entity is through the performance of "corporate formalities". A corporation generally maintains contracts and purchase agreements, has regular (at least annual) meetings, keeps minutes of its meetings, has an employee handbook, etc. Though an LLC is not required to perform the same actions as a standard corporation, doing so can help show that it is being treated as a separate legal entity by its members.

It is essential that organizers of an LLC sign, adopt, and follow an Operating Agreement. This document spells out the rights, duties and obligations of the members of an LLC. Besides reinforcing the idea that the LLC is a separate legal entity, the agreement also establishes ownership percentages and the distribu-

tion of profits. Even if the only members of an LLC are part of a family, there is a benefit to maintaining the formal structure of the business.

A common pitfall is the co-mingling of personal and business funds. A separate legal entity should have its own bank accounts. If business expenses are paid from a personal account or deposits from the business are made into personal accounts, a business owner may be undermining the argument that the business is a separate legal entity. If a member pays personal debts or bills from the business account, even if they reimburse the account later, it may appear to the court that he or she did not treat the business as a separate entity. It is not uncommon for creditors to pursue the personal assets of LLC members when those members have failed to keep their personal assets separate from the LLC activities.

Another common mistake is forgetting to file annual reports with the state. Failing to keep current with state filings may put the LLC in bad standing with the state. Though this status can be repaired by filing late and paying the fee, the state may simply dissolve the LLC after a few years of non-filing. This guarantees the loss of liability protection for the LLC members from the debts and judgments against the LLC.

MAKING WORK PAY TAX CREDIT

Earlier this year, the President signed into law the American Recovery and Reinvestment Act. The Act includes a provision called *Making Work Pay*, which was designed to provide an immediate tax credit for working families, with a maximum credit of \$400 for individuals and \$800 for married couples. Though the credit phases out when your income exceeds \$150,000 for married couples filing jointly (\$75,000 for single taxpayers), it is expected that over 90% of workers will benefit from the credit. For most people, the credit is provided through an adjustment in their tax withholding on their paycheck. The withholding schedules were adjusted in March and most people should have seen a small increase in their take-home pay by April 1.

While taking home additional cash is usually a good thing, some taxpayers may face a surprise next spring when the government wants some of that money back. The

new withholding tables may cause some taxpayers to receive more than they are entitled to under the credit. That money will need to be repaid when filing their taxes. Although for most people the credit will come close to equaling the decrease in their withholding, there are some situations which may require repayment of the credit:

- A married couple in which both couples work and earn more than \$13,000 may see increases in their paychecks of up to \$1,200. Since the credit is limited to \$800, they will have to pay back the \$400 difference when they file their taxes.
- A single worker who works two jobs, earning \$20,000 at each, will receive the \$400 boost in pay at each job for a total of \$800. However, since the overall credit is limited to \$400, she will have to repay \$400 of the credit when she files her taxes.

- A college student with a part-time job earning \$10,000 could see a \$400 boost in pay because of the credit. However, if he is claimed as a dependent on his parents' return, the student does not qualify for the credit. He will have to repay the \$400 when he files his tax return.

It is wise to monitor your withholding to be sure that you are withholding the proper amount of federal tax. Komisar Brady & Co., LLP has specialized software that can use your current pay stub and expected other income to determine if your withholding is appropriate. Though taxpayers with simple tax returns can use the withholding calculator at the IRS website, you may benefit from our tax projection services if you may fall into one of the categories described above.

CHANGES TO HOPE CREDIT AND SECTION 529 PLANS

Since its inception in 1998, the Hope Credit has been a great way for college students (or their parents) to earn a tax credit as they begin their college education. Though limited to the first two years of education, it provided a nonrefundable tax credit of up to \$1,800 per student. Recent legislation has greatly expanded the Hope Credit, and college students and their parents should know about these changes for tax years 2009 and 2010:

- The maximum credit per student has been expanded from \$1,800 to \$2,500.
- The credit has been expanded to include students in the first four years of schooling (not just the first two).
- The income range at which the credit begins to phase out has increased to \$160,000 for married joint filers and \$50,000 for single filers. The credit totally phases out at \$180,000 and \$60,000, respectively.

Taxpayers may now include the cost of textbooks and other course materials in the amount of ex-



penses used to qualify for the credit. Perhaps the biggest change, though, is that the credit is now refundable. In the past, as a nonrefundable credit, it could only reduce a person's tax to zero but not provide a refund. For a college student with a small part-time job earning a few thousand dollars, her exemption and standard deduction probably reduced her tax to zero. Though eligible to take the credit, there was no benefit to do so since she was already paying no tax. At the same time, there may have been no benefit to her parents taking the credit, since the credit may have totally phased out because of the parents' income. With a refundable credit, those students who were happy to have zero tax will be thrilled to be receiving a refund check.

Even with the enhanced Hope Credit, there are still many people who will be able to reduce their tax more by claim-



ing the tuition and fees deduction or the Lifetime Learning Credit. Some thought should be given to the tax benefit of the student claiming the credit or the parent claiming it, since a student who is claimed as a dependent cannot take the credit for him or herself. The best way to receive the maximum benefit to the many credits and deductions available to college students and their parents is to contact our office. We can suggest strategies for you to use the tax laws regarding education to your benefit.

529 Plans

For 2009 and 2010, the cost of computers and related technology expenses qualify as higher education expenses as long as the beneficiary is enrolled at an eligible educational institution. Distributions from 529 Plans may now be used for computers, internet access, and software (as long as it is not for games or entertainment).



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HYBRID TAX CREDIT UPDATE



NEW CAR SALES TAX DEDUCTION

Though the federal tax credit for the purchase of hybrid vehicles is available until 2010, the credit was designed to phase out once car manufacturers sold 60,000 hybrid vehicles. As a result, the credit is no longer available for popular hybrid makes such as Toyota, Honda, and Lexus.

The credit for vehicles manufactured by Ford (including Fords and Mercurys) began to phase out on April 1, 2009. The credit is reduced by 50% for Ford hybrid vehicles purchased from now until September 30 and reduced by 25% for vehicles purchased between October 1 and March 31, 2010. The credit will no longer be available for Ford or Mercury vehicles after April 1, 2010.

Be sure to check the IRS website (www.irs.gov) before purchasing a hybrid vehicle to determine how much of a credit may still be available for that specific make, model, and year.

If you purchased a new car or truck between Feb. 17, 2009 and the end of the year, you can deduct a portion (if not all) of the sales tax paid on the purchase. Taxpayers may deduct the sales and excise taxes on the first \$49,500 of the vehicle's price. The deduction applies only to new vehicles, but vehicles include cars, trucks, SUV's, motorcycles, and motor homes, provided that the vehicle weighs no more than 8,500 pounds. Sales taxes paid on a lease agreement do not qualify.

The deduction does phase out, completely phasing out at \$135,000 for single taxpayers and \$260,000 for married taxpayers. The deduction is available regardless of whether you itemize your deductions on your return. If you purchase a vehicle in a state that does not have a sales tax, you are allowed to deduct other fees or taxes imposed by the state or local government, as long as they are assessed on the vehicle's sales price or as a per unit fee.

Komisar Brady & Co., LLP offers much more than high quality tax, accounting and auditing services. We offer many types of consulting services to businesses, including business succession planning, sale or acquisition of a business, long range forecasts and budgeting, and valuation services. We also offer estate and retirement planning and aid in the choice and implementation of qualified retirement plans for business owners and sole proprietors. If you have any questions in regards to your individual or business financial matters, please give us a call and see what we can do to help, or if we can direct you to someone who can.

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