NC Franchise Tax

For Franchise Tax purposes, the state of North Carolina has amended their definition of a "corporation" to include an LLC that elects to be treated as an S-Corporation. The purpose of the change was to close the loophole that permitted an entity to elect corporate status for federal income tax purposes and avoid franchise tax liability imposed under General Statute 105-122. By specifying "C-Corporation," the statute left open the possibility for an LLC to elect S-Corporation status for federal purposes and continue to avoid franchise tax liability. To close this loophole, the definition has been further amended to replace the reference to "C-Corporation" with "corporation", so that franchise tax is required for both types of corporations. The amendment is effective for taxable years beginning on or after January 1, 2009. Because the general business franchise tax imposed in G. S. 105-122 is for the tax year in which the tax becomes due, this amendment will impact the franchise tax reported on the 2008 income and franchise tax return because it is due on or before March 15, 2009.

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The Accountant's Corner

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Building Partnerships That Deliver...

Abbott, Brovet and Tiller Named Partners

Thomas, Judy and Tucker, P.A. new partners (l-r) Jeff Brovet, Caroline Abbott and Jim Tiller.

Thomas, Judy and Tucker, P.A. is proud to announce the promotion of Caroline Abbott, Jeffrey Brovet and James Tiller to the position of partner in the firm as of January 1st, 2009.

Managing Partner Chris Judy is enthusiastic about the direction of the firm. "These three individuals have both the experience and leadership skills to take this firm forward and continue our prominence in the Triangle business community. We are excited about this opportunity for them and what it means for the continued growth of Thomas, Judy & Tucker P. A."

Caroline P. Abbott, CPA—A new partner in the firm's tax practice, Caroline has spent her career serving her clients' comprehensive tax needs. Prior to joining the firm in July 2007, Caroline spent sixteen years with Ernst & Young LLP, where she worked with publicly-held and middle-market companies and was also the tax compliance leader for the Raleigh office. She has written numerous training manuals and conducted continuing professional education courses throughout the United States.

Caroline spends the majority of her time serving middle-market companies. She assists clients in complex transactional business, including mergers and acquisitions, structuring/restructuring, like-kind exchanges and other real estate transactions. Caroline also assists clients with income tax planning and compliance, multi-year and transaction tax matters, and conflict resolution with state and federal taxing authorities.

Caroline received her master of accounting in taxation and bachelor of science in business administration from the University of North Carolina—Chapel Hill in 1991. She is a Certified Public Accountant in North Carolina. Caroline lives in Fuquay-Varina with her husband and their two daughters.

Jeffrey A. Brovet, CPA—A new partner in the firm's attestation practice, Jeff has twelve years of experience in public accounting, including ten years at Ernst & Young LLP, where he was an audit senior manager specialized in serving public companies in the real estate industry. Prior to joining Thomas, Judy & Tucker P. A. in August of 2007, Jeff spent two and a half years assisting the

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Emergency Economic Stabilization Act

Several tax law changes affecting individuals were enacted Oct. 3, 2008 as part of The Emergency Economic Stabilization Act of 2008. These changes, together with several other popular tax benefits, may change your tax bill for 2008 and 2009.

Alternative Minimum Tax (AMT)

Changes to the AMT rules will provide relief for millions of individuals. The first change is an increase in the exemption amounts that are subtracted from an individual's alternative minimum taxable income (AMTI) to determine the taxable amount (if any). The exemption amounts for 2008 are $69,950 for joint filers, $46,200 for single filers, and $34,975 for married taxpayers filing separate returns. Until the lawmakers change the phase outs or exemption amounts more dramatically, this tax will continue to be an issue for taxpayers with AGI between $150,000 and $600,000 or who incur significant capital gains.

One positive change to AMT with this most recent tax act is that now taxpayers can use all their "nonrefundable personal credits" (e.g., the dependent care credit, education credits) in full to offset both the regular tax and the AMT in 2008. Before this change, which represents a one-year extension of a rule that had expired in 2007, there were a number of credits that could not be used to offset the AMT.

Other changes in the new law are aimed at a narrower but nevertheless substantial group of taxpayers. These are the many employees who paid AMT as a result of exercising incentive stock options (ISO), then later suffered losses on selling the stock after its value had declined sharply. The new law will abate AMT liability stemming from the exercise of ISOs before 2008, effective for any unpaid tax liability on the law's date of enactment. The law allows individuals to accelerate the refund of the minimum tax credit that has not been used.

Energy Tax Incentives

The new law extends a host of energy tax incentives targeted toward consumers and producers. The energy incentive impacting most individuals is the credit for the purchase of residential energy property. A credit of up to $500 is available for non-business energy property that meets requirements for qualified energy efficiency improvements. Eligible improvements include insulation, exterior windows, and exterior doors. Also, beginning in 2008, taxpayers can use the energy credit against AMT. The energy efficient credit for individuals is extended through 2016 and the energy credits related to constructing energy efficient commercial buildings is extended through 2013.

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Abbott, Brovet and Tiller Named Partners

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managing director of a community-based project in Khayelitsa, South Africa. He used his extensive business skills to build basic infrastructure for the orphanage, which serves as home to more than 120 children.

Jeff serves middle-market companies in the real estate, construction, manufacturing, distribution, and retail industries. Additionally, he has assisted clients in many areas of auditing and accounting, including due diligence, mergers and acquisitions and preparation of financial statements. Jeff has taught continuing professional education classes on technical accounting and auditing issues.

Jeff received his master of accounting and bachelor of science in business administration from the University of North Carolina—Chapel Hill in 1994. He is a Certified Public Accountant licensed to practice in North Carolina. Jeff lives in Raleigh with his wife and their two daughters.

James K. Tiller, CPA—A new partner in the firm's tax practice, Jim has over thirteen years of public accounting experience. Prior to joining the firm in 2005, Jim spent over ten years with two of the Big Four accounting firms. He started his career by working on audits of publicly-held companies and middle-market companies, but then transitioned to tax where he worked on high net worth individuals, trusts, gift taxes, privately held pass-through entities and multi-state corporations.

Serving as one of the firm's technical tax advisors, Jim spends the majority of his time serving middle market companies and their owners. Jim assists clients in complex transactional business, structuring/restructuring, partner redemptions, land and commercial development and other real estate dealings. He also assists clients with income tax planning and compliance, multi-year and transaction tax matters, and conflict resolution with state and federal taxing authorities.

Jim graduated magna cum laude and earned his bachelor of science degree in business administration and accounting from Appalachian State University in 1995. Jim is a North Carolina-licensed CPA. Jim lives in Raleigh with his wife and their two sons.

Tax Planning Tips for the End of the Year

1. It may be time to realize some benefit from a down stock market—At the end of the year, an investor may realize capital gains or losses from sales of capital assets such as securities. If the investor is showing a net loss, any realized gain is tax-free up to the amount of the loss. Conversely, a loss may offset a net capital gain plus up to $3,000 of ordinary income. With as poorly as the market has performed this year, we anticipate that many clients will be able to take advantage of these losses. For 2008, the maximum tax rate on a net long-term gain is 15% (0% for investors in the regular 10% or 15% tax brackets).

2. Charitable donations can help you and your favorite non-profit organization—Generally, a donor may deduct the full amount of cash contributions to charity, as long as the gifts are properly substantiated and the total of the gifts do not exceed 50% of the donor's adjusted gross income (AGI). If a donor gives property that has appreciated in value, he or she may deduct its current fair-market value if it has been owned for more than a year and the gift does not exceed 30% of the donor's AGI. Note: Contributions made via credit card or online by December 31 are deductible in 2008 even if they are not actually paid until 2009.

3. Minimize your AMT—The alternative minimum tax (AMT) continues to plague a growing legion of taxpayers. In brief, the AMT is based on a special tax computation involving certain "tax preference" items. After estimating AMT liability for 2008, an individual may shift tax preference items to 2009 such as paying estimated state taxes in January. Alternatively, he or she might choose to accelerate some income into 2008 if the AMT rate is lower than his or her top marginal tax rate.

4. Avoid estimated tax penalties—If an individual does not pay enough federal income tax during the year—through any combination of withholding and quarterly installments—he or she may be liable for an estimated tax penalty. However, no penalty will be assessed if annual tax payments equal at least 90% of the current year's liability or 100% of the prior year's tax liability (110% if adjusted gross income [AGI] for the prior year exceeded $150,000).

5. Bunch up medical expenses—An individual may deduct unreimbursed medical and dental expenses to the extent the annual total exceeds 7.5% of AGI. When possible, try to bunch qualified expenses in the tax year that provides the best opportunity for a deduction. For instance, if expenses will fall short of the 7.5%-of-AGI mark in 2008, postpone elective medical and dental expenses to 2009. However, if you have any money left in a Section 125 Flexible Spending Account, now may be the time to incur those medical expenses because those plans require that you use all the funds in the year contributed or they are forfeited.

6. Sell real estate on the installment basis—Generally, real estate investors are taxed on the full amount of their profit in the year the property is sold. However, if payments are received over two or more years, the seller is taxed only on the portion of each payment attributable to the gain (plus interest). Not only is a portion of the tax deferred, the overall tax may be reduced because the profit is spread out over lower tax brackets each year.

Emergency Economic Stabilization Act

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Other Provisions

Under the new law, qualifying restaurant improvements and leasehold improvements will be eligible for 15 year cost recovery rather than a 39 year period for two more years, through December 31, 2009. Similarly, Congress authorized a 15 year recovery period for depreciation of certain improvements to retail space. This treatment is extended through December 31, 2009.

In 2008, individuals who do not itemize their deductions may include, as part of the standard deduction, real property taxes of up to $500 ($1,000 for joint filers). The new law extends this rule through 2009.

Reporting by brokers has been expanded. Brokers must report the adjusted basis of publicly-traded securities when reporting sales transactions and indicate whether gain is long-term or short-term. Reporting will take effect for stock acquired in 2011, mutual funds acquired in 2012, and other securities in 2013.

The new law extends through 2009 several provisions that had expired at the end of 2007. These include:

- Research Tax Credit allows research expenses incurred in 2008 and 2009. The law also modifies the credit by increasing the alternative simplified credit and repealing the alternative incremental research credit.
- State and Local Sales Tax Deduction allows taxpayers to use state and local sales taxes as itemized deductions in lieu of state income taxes
- Deduction for Qualified Tuition and Related Expenses allows an "above-the-line" deduction (i.e., not part of itemized deductions) for certain higher education expenses. The maximum deduction is $4,000 or $2,000, depending on the taxpayer's adjusted gross income (AGI). No deduction is allowed for single filers having AGI above $80,000 or for joint filers having AGI above $160,000.
- Tax-free IRA Distributions to Charity permits direct distributions to charity of up to $100,000 from a traditional or Roth IRA maintained for an individual whose has reached age 701/2. Ordinarily, such distributions would be taxable to the individual, who would not be able to offset the income fully because of the percentage limitations on charitable contribution deductions.

If you have any questions about these new tax law changes, please feel free to contact us.