

KEY TAX PROVISIONS FOR THE REAL ESTATE INDUSTRY

This presentation was conducted for a group of real estate agents to give them some general tax knowledge on issues that they may encounter on a daily basis.



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Experience with organizational structure and selection, compensation issues, business reorganizations and liquidations, accounting methods and like-kind exchanges

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Tax Law

- Enacted by Congress
- IRS interpretation and compliance
- Courts provide dispute resolution and interpretation

1st Time Home Buyer Credit

- \$8,000 refundable credit
- No prior home ownership for 3 years
- Binding contract by 4/30/2010, close by 6/30/2010
- Can claim credit for 2010 purchase in 2009
- Phase-out starts at \$225K of AGI for couples
- Effective 11/6/2009, purchase price limited to \$800K
- Recapture if not principal residence during first 36 months
- 2008 “credit” was \$7,500 with 15 year payback



Extended Ownership Credit

(enacted 11/6/2009)

- \$6,500 refundable credit on new home purchase
- Primary residence 5 consecutive out of last 8 years
- Same contract dates as above
- Same income and home cost phase-outs as above

Residential Energy Credits

- 2009 and 2010
- 30% up to \$1,500 (over 2-yr period)
($\$5,000 \times 30\% = \$1,500$)
- Insulation, exterior doors, windows, furnace, heat pump, water heater, central air conditioner, certain metal roofs
- Nonrefundable credit



Residential Green Credit

(Res. Energy Efficient Property Cr.)

- 30% of the cost of qualified property
- Solar water heating, geothermal heat, wind and solar electric property
- Nonrefundable credit, but can carry forward indefinitely

Entity Selection

- Sch C sole proprietor / single member LLC
- S Corporation with wages (withholding flexibility)
- Refer to example

Vehicle Deductions

- \$25K 179 Deduction if > 6,000 lb gross vehicle weight
- If not, lease typically better than purchase
- Mileage rate if own vehicle (2009 = \$.55, 2010 = \$.50)
- Sales tax for 2009, first \$49,500 of purchase price, “above the line”

Real Estate Professional

- Treat all real estate activities as nonpassive
- > 50% of personal services in real estate activities
- > 750 hours in real estate activities

Business Use of Home Deduction

- Dedicated area
- Regular and exclusive use

Interest Expense Planning

- Sch A mortgage interest (\$1.1 mil mortgage & equity line limit)
- Sch A investment interest
- Sch E rental interest
- Capitalization election, can not retract

Property Ownership in IRA

- Generally not a good idea
- Must be investment without personal use
- Prohibited transactions disqualify entire IRA; creates income
- Unrelated business income if debt financed (possibly have to file a tax return and pay tax)



Residential cancellation of Debt Income (CODI)

- Exclude up to \$2 mil CODI (\$1 mil single)
- Qualified principal residence indebtedness
- 2007 to 2012

Cancellation of Business Debt Income - QRPBI

- Exclude CODI down to FMV of asset, also reduce basis
- Generated from foreclosure or debt modification
- Sale versus CODI
- Recourse debt = part sale @ FMV, part CODI @ debt balance
- Nonrecourse debt = sale @ debt balance
- Insolvency exclusions may be able to shelter CODI [Section 108(a)]
- CODI deferral available to 2014, then 5 year spread on qualified indebtedness income (election is irrevocable) [Section 108(i)]

Alternative Minimum Tax (AMT)

- \$150,000 to \$200,000 taxable income is typical entry level
- Sch A tax deduction adjustment is typically key factor
- Exemption \$70,950 joint, \$46,700 single

Roth Conversion in 2010

- Defer tax to 2011 and 2012, but can elect to report entirely in 2010
- Create multiple new Roth's (split investments – recharacterize losers)
- Can recharacterize back to traditional IRA by due date of 2010 tax return (10/15/11 if 2010 tax return is extended)
- Reasons to convert (favorable tax rate spread, no RMD at 70½, pay tax with outside funds, time horizon, use of funds at retirement, expiring carryovers)