

Major Tax Law Changes for 2009 Pertaining to Personal Income Tax in Massachusetts

Abatement for Theft Losses from Criminally Fraudulent Ponzi-Type Schemes

Federal Rules:

The IRS issued Revenue Procedure 2009-20 providing an optional safe harbor method for qualified investors to deduct theft losses under IRC § 165(c) from investments in criminally fraudulent Ponzi-type schemes; Revenue Ruling 2009-9 which describes the proper federal income tax treatment for losses resulting from these Ponzi schemes.

Massachusetts Rules:

Massachusetts law does **not** adopt the federal deduction for theft loss under IRC § 165(c)(2) or (3). Thus, Massachusetts does **not** adopt the federal safe harbor treatment for qualified investors with losses from a Ponzi scheme that is outlined in Revenue Procedure 2009-20. The Department is developing further guidance on the Massachusetts tax treatment of investments in criminally fraudulent Ponzi-type schemes and fictitious income reported there from.

At this time, pending the issuance of such guidance, the Department notes that in the case of an individual investor who paid tax in prior tax years on fictitious income from a criminally fraudulent Ponzi-type scheme, the taxpayer may submit a claim for refund from any tax paid in error by applying to the Commissioner for an abatement of tax. Taxpayers should attach whatever substantiation they have available, such as relevant investment statements, 1099s, and other tax documents relating to the year for which an abatement is claimed.

Federal Change for Voluntary Disclosure of Unreported Offshore Accounts or Assets

Federal Rules:

US taxpayers are required to annually report their financial interest in, or signature authority over, a financial account that is maintained with a financial institution located in a foreign country if the aggregate value of all such accounts exceeded \$10,000 at any time during the year.

Those seeking to take advantage of the voluntary disclosure initiative must pay back-taxes and interest for six years and pay accuracy/delinquency penalties on all six years; they must also pay a penalty of 20% of the amount in the foreign bank accounts in the year with the highest aggregate account or asset value. Persons complying with the voluntary disclosure will avoid any potential criminal prosecution. This reporting requirement is met by filing Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as "FBAR"). This penalty framework is effective until September 23, 2009.

Persons with signature authority over, but no financial interest in, a foreign financial account, and persons with a financial interest in, or signature authority over, a foreign commingled fund, will have until June 30, 2010, to file an FBAR for the 2008 and earlier calendar years with respect to these foreign financial accounts.

Massachusetts Rules:

If the federal government finally determines that there is a difference from the amount previously reported in the taxable income of a person or estate, the final determination must be reported by such person or estate accompanied by payment of any additional tax due with interest. DOR defines a "federal determination" as including "an agreement between the

taxpayer and the Commissioner of Internal Revenue to an assessment of any type of liability, including an accepted offer in compromise on an issue of liability.” A “federal determination” is “final” when there is no right of administrative or judicial appeal. Such determination requires a personal income tax filer to report the change in federal taxable income resulting in increased Massachusetts tax liability within one year of the date of notice of the federal government's final determination. A federal change is reported on Form CA-6, Application for Abatement/Amended Return. The failure to do so will trigger additional penalties and interest.

Health Insurance, Penalty for Failure to Purchase – Tax Year 2009

Pursuant to G.L. c. 111M, § 2, the Massachusetts Health Care Reform Act requires most adults 18 and over with access to affordable health insurance to obtain it. In 2009, individuals must be enrolled in health insurance policies that meet minimum creditable coverage standards defined in regulations adopted by the Commonwealth Health Insurance Connector Authority (the Connector). Individuals who are deemed able to afford health insurance but fail to comply are subject to penalties for each month of non-compliance in the tax year (provided that there is no penalty in the case of a lapse in coverage of 63 consecutive days or less). The penalties, which will be imposed through the individual's personal income tax return, shall not exceed 50% of the minimum monthly insurance premium for which an individual would have qualified through the Connector.

These penalties apply *only* to adults who are deemed able to afford health insurance. On an annual basis, the Connector establishes separate standards that determine whether individuals, married couples and families can afford health insurance, based on their incomes and affordable health

insurance premiums. Those who are not deemed able to afford health insurance pursuant to these standards will not be penalized. Individuals also have the opportunity to file appeals with the Connector asserting that hardship prevented them from purchasing health insurance (and thus that they should not be subject to tax penalties).

Real Estate Tax Credit for Persons Age 65 and Older (Circuit Breaker)

Certain taxpayers age 65 or older may be eligible to claim a refundable credit on their state income taxes for the real estate taxes paid during the tax year on the residential property they own or rent in Massachusetts that is used as their principal residence. If the credit due the taxpayer exceeds the amount of the total income tax payable for the year by the taxpayer, the excess amount of the credit will be refunded to the taxpayer without interest. For tax year 2009, the maximum credit allowed for both renters and homeowners is \$960.

To be eligible for the credit for the 2009 tax year: the taxpayer or spouse, if married filing jointly, must be 65 years of age or older at the close of the 2009 tax year; the taxpayer must own or rent residential property in Massachusetts and occupy the property as his or her principal residence; the taxpayer's "total income" cannot exceed \$51,000 for a single filer who is not the head of a household, \$64,000 for a head of household, or \$77,000 for taxpayers filing jointly; and for homeowners, the assessed valuation as of January 1, 2009, before residential exemptions but after abatements, of the homeowner's personal residence cannot exceed \$788,000.

Major Federal Tax Law Changes for 2009 That Do Not Pertain to Personal Income Tax in Massachusetts

New Car Purchases (IRS Update Only: IR-2009-30)

Taxpayers who buy a new passenger vehicle in 2009 may be entitled to deduct state and local sales and excise taxes paid on the purchase on their 2009 tax returns next year. The deduction is limited to the state and local sales and excise taxes paid up to \$49,500 of the purchase price of a qualified new car, light truck, motor home or motorcycle. The amount of the deduction is phased out for taxpayers whose modified adjusted gross income is between \$125,000 and \$135,000 for individual filers and between \$250,000 and \$260,000 for joint filers. The vehicle must be purchased after Feb. 16, 2009, and before Jan. 1, 2010, to qualify for the deduction. The special deduction is available regardless of whether a taxpayer itemizes deductions on their return. The IRS reminded taxpayers the deduction may not be taken on 2008 tax returns.

Unemployment Benefits (IRS Update Only: The American Recovery and Reinvestment Act; IR-2009-29)

Under the new economic stimulus law, the first \$2,400 of unemployment benefits received in 2009 will not be subject to federal taxes. The exemption will be reflected on those tax returns filed in 2010.