



2008 Financial Bailout and Tax Package: Highlights of Tax Law Changes

At least 11 new tax related laws have been enacted since December, 2007 including the recently enacted Emergency Economic Stabilization Act of 2008.

Individual and Family Issues

- For 2008, tax rates for individuals, and estates and trusts, range from 10% to 35%. Net long term capital gain tax rates are limited to 15% (except gain on collectibles, Section 1202 gain and unrecaptured Section 1250 gain).
- For 2008, the standard deduction for joint filers is \$10,900 (\$5,450 for single and married filing separately). The personal and dependent exemption amount is \$3,500.
- The Economic Stimulus Checks of up to \$600 per taxpayer are considered to be advance rebate checks. An additional \$300 credit is available for each qualifying child. Credits may be claimed on the 2008 return if the eligible credit amount exceeded the advance rebate. If the advance rebate exceeded the eligible amount, no repayment is required.
- The election to take an itemized deduction for state and local sales tax in lieu of state and local income taxes has been extended through 2008 and 2009.
- Beginning in 2008, non-itemizers may

claim an increased standard deduction for the lesser of real property taxes paid or \$500 (\$1,000 for a joint return).

- The deduction of up to \$250 for out of pocket expenses of teachers and other educators is extended for 2008 and 2009.
- The above the line deduction for qualified tuition (up to \$4,000) paid for the taxpayer, spouse or dependents is extended through 2008 and 2009.
- The maximum income that is subject to social security tax for 2008 is \$102,000. There is no upper limit for the Medicare portion of the tax. The FICA tax for employee and employer is 7.65%. Self employment tax for 2008 is 15.3%.
- The maximum that may be contributed to retirement plans for 2008 (subject to a variety of limitations) is \$5,000 for IRAs, \$10,500 for Simple, \$15,500 for 401k, 403b and SEP, and \$46,000 for defined contribution plans. For persons age 50 and over, catch-up contributions are permitted of up to \$1,000 for IRA, \$2,500 for Simple Plans, and \$5,000 for other types of plans.
- The provision allowing direct distributions to charity of up to \$100,000 from a traditional or Roth IRA of a person who has reached age

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70 ½ to be tax free has been extended for 2008 and 2009. Without this provision, some of the distribution may be taxed due to the percentage limit on charitable deductions and all of the distribution would be taxed for Ohio income tax purposes.

- The rules for exclusion of gain from sale of a personal residence have been tightened to limit exclusion of gain when a taxpayer converts a rental or vacation home into a personal residence. The new law foils a tax-planning technique that permitted a taxpayer to convert a rental or vacation home into a personal residence for at least two years and exclude all the gain on a subsequent sale.

- Subject to certain exceptions, cancellation of debt is considered to be taxable income. One exception is for discharge of certain qualified home mortgage debt. The exception is limited to funds used for acquisition, construction or substantial improvement of the principal residence.

- A first-time home buyer credit equal to 10% of the purchase price (up to \$7,500) for a personal residence. The credit is phased out for incomes between \$75,000 and \$95,000 (\$150,000 and \$170,000 for joint filers). This credit is not really a credit at all but in effect is an interest free loan. The credit is recovered over 15 years or in the earlier year that the home is sold or no longer used as a residence.

- The kiddie tax (which taxes children's unearned income over \$1,800 at



the parent's higher marginal tax rate) originally applied to children under age 14. It was later extended to most children under age 18. Now, the "kiddie tax" applies to most children through age

18 and many full time students age 19 to 23. Congress expects this change to increase tax revenue by \$1.4 Billion over 10 years.

- The new tax laws extend through 2016 and expands the credit for residential energy efficient property. In

addition to qualified solar electric property, solar water heating property and fuel cell property, the credit is expanded to qualified small wind energy property and geothermal heat pump property. The credit is 30% of qualifying expenditures subject to dollar limits on each. However, after 2008 the limit is removed for qualified solar electric property.

- The Alternative Minimum Tax (AMT) Exemption amounts have been increased for 2008 from \$45,000 to \$69,950 for married filing jointly, and from \$33,750 to \$46,200 for single or head of household. Certain non-refundable personal credits may be used to offset AMT tax liability.

In addition to the higher AMT exemption amounts and increased offset of nonrefundable personal credits against tax, a variety of other AMT relief was included in the 2008 Financial Bailout and Tax Package. This includes relief with respect to phantom income associated with incentive stock options, and use of the energy efficient residential property credit to offset AMT.

Business Issues

- The standard mileage rate for business use of a vehicle is \$0.505 from January 1 through June 30, 2008 and \$0.585 from July 1 to December 31, 2008. As of January 1, 2009, the standard mileage rate will be \$0.55.

- 50% Bonus Depreciation returns for 2008 purchases of qualifying new tangible personal property (for Ohio tax, bonus depreciation is deducted over 5 years rather than in the first year). The first year depreciation limit for new cars placed in service in 2008 increases from \$2,960 to \$8,000 if the taxpayer does not elect out of bonus depreciation.

- The Section 179 expensing election limit is increased to \$250,000 for 2008; the limit is reduced to the extent that total qualifying purchases for the year exceed \$800,000. Section 179 expensing is available for both new and used qualifying property. Section 179 expensing is limited to the taxpayer's net income from active trades or businesses.

- Effective dates for the new bonus depreciation and increased Section 179 limits are different for fiscal year taxpayers.

- For 2009, new farm equipment will be depreciated over 5 rather than 7 years.

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2008 Financial Bailout and Tax Package (cont.)

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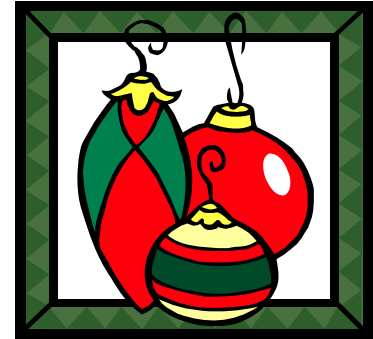
- The work opportunity credit applies to qualified first year wages paid to an employee who is a member of a targeted group. The credit of 25% to 40% of eligible wages is subject to limits, including being limited to the employer's tax liability. State certification is required (by first day of work) and documentation is essential for this program.
- Real property taxes for property taxed under CAUV rules will be increasing over the next couple years as a result of a significant increase in value as calculated by the Ohio Department of Taxations. The increases have begun in some counties.

Estate and Gift Issues

- The annual exclusion from gift tax is \$12,000 per donee for 2008 and \$13,000 for 2009.

- The gift tax exclusion amount (lifetime cumulative amount per taxpayer) remains at \$1 Million.
- The federal estate tax exclusion amount is \$2 Million for deaths that occur in 2008 and \$3.5 Million for 2009 deaths.
- The federal estate tax rate is 45%.
- The generation skipping transfer exemption amount is \$2 Million for 2008 and \$3.5 Million for 2009.
- The Ohio Estate Tax exclusion amount is \$338,333.
- The Ohio estate tax rate is 6% for estate amounts between \$338,333 and \$500,000 and 7% for amounts over \$500,000.

Please feel free to contact our office if you would like additional information on the new tax law or if you would like to discuss your individual tax situation in more detail.



Please visit www.ohiocounsel.com to view copies of the legislative summaries for new Ohio laws related to the following topics:

1. Increased exemptions related to protecting assets from creditors.
2. Corporate voting rights.
3. Fence law.



Cash Rent Farm Land Leases — 10 Things to Remember

- 1) HAVE A WRITTEN LEASE!! A written lease is important to both the tenant and landlord.
- 2) Include a clear definition of the lease term and amount of rent.
- 3) Make certain there is a detailed explanation of how (and why) the lease can be terminated.
- 4) Include how the property will be managed. What decisions will require the mutual agreement of both parties?
- 5) Include a detailed list of the tenant's and landlord's obligations under the agreement.
- 6) Delineate how and why the landlord can enter the property during the tenancy.
- 7) Provide detailed default provisions and explain what will happen if either party defaults.
- 8) If the landlord performs some due diligence in advance of contracting with a tenant, Ask for references and perhaps have a credit check done.
- 9) Consider alternative dispute resolution, such as arbitration or mediation, for potential problems that might arise.
- 10) Note which party will be eligible for the farm program payments related to the property.

OHIO LIVESTOCK OWNERS: THE NEW CRIMINAL CLASS

Ohio livestock owners need to be aware that some local prosecutors have taken the position that a livestock owner can be criminally prosecuted if livestock escape regardless of how or why. Several livestock owners in Ohio have recently been charged with crimes based upon this so-called “strict liability” theory.

Ohio law has long contained a statutory rule governing the confinement of certain species of livestock. The animals running at large statute, Ohio Rev. Code § 951.02, provides as follows:

Animals running at large on public roads; grazing on another's land

No person, who is the owner or keeper of horses, mules, cattle, sheep, goats, swine, or geese, shall permit them to run at large in the public road, highway, street, lane, or alley, or upon unenclosed land, or cause such animals to be herded, kept, or detained for the purpose of grazing on premises other than those owned or lawfully occupied by the owner or keeper of such animals.

The running at large of any such animal in or upon any of the places mentioned in this section is prima facie evidence that it is running at large in violation of this section.

Ohio Rev. Code § 951.99 provides that a violation of Section 951.02 is a misdemeanor of the fourth degree.

If the animals running at large statute creates a strict liability offense, then the State (*i.e.*, the prosecutor) is merely required to show that one or more of the species of livestock [note that some livestock now found in Ohio such as alpacas and llamas aren't covered by the statute] set forth in the statute have escaped the premises regardless of the cause and that the ordinary care of the person who is the owner or keeper of the livestock is irrelevant. Under this theory, a livestock owner would have criminal liability even if the livestock were intentionally let out by someone opening a gate or cutting a fence. Liability would also result in the event of natural disasters or other events beyond the control of the livestock owner. The strict liability theory ignores common sense and ignores the history of livestock ownership in Ohio.

Unfortunately, at least two Ohio appellate courts have ruled that the animals running at large statute does create a strict liability offense. At least two other Ohio appellate courts have ruled that the statute does not create a strict liability offense. While our firm believes the strict liability theory is contrary to both the in-



tent of the statute and contrary to the interpretation of the statutory language made by the Supreme Court of Ohio in some other cases, the fact is that livestock owners are subject to these varying interpretations of the law and subject to the attitudes of local law enforcement officers as to whether or not to charge the owners of escaping livestock even if someone cut the fence or opened a gate through no fault of the livestock owner.

Criminal Roulette – the Winners: Counties within the Ohio appellate districts ruling that the animals running at large statute does not create strict criminal liability include Ashland, Coshocton, Delaware, Fairfield, Franklin, Guernsey, Holmes, Knox, Licking, Morgan, Morrow, Muskingum, Perry, Richland, Stark and Tuscarawas.

Criminal Roulette – the Losers: Counties within the Ohio appellate districts ruling that that animals running at large statute creates strict criminal liability include Adams, Allen, Athens, Auglaize, Crawford, Gallia, Defiance, Hancock, Hardin, Henry, Highland, Hocking, Jackson, Lawrence, Logan, Marion, Meigs, Mercer, Paulding, Pickaway, Pike, Putnam, Ross, Scioto, Seneca, Shelby, Union, Van Wert, Vinton, Washington and Wyandot.

Criminal Roulette – the Undetermined: the Ohio counties not listed above.

PLEASE NOTE THAT WE ARE NOT SAYING THAT LAW ENFORCEMENT WILL TAKE ACTION IN THE “LOSER” COUNTIES. HOWEVER, WE ARE SAYING THAT LIVESTOCK OWNERS ARE AT INCREASED RISK OF BEING SUBJECT TO “STRICT LIABILITY” PROSECUTIONS IN THE “LOSER” COUNTIES BECAUSE OF THE DECISIONS ISSUED BY THE APPELLATE COURTS COVERING THOSE COUNTIES. LEGISLATIVE ACTION MAY BE NECESSARY TO CLARIFY THAT LIVESTOCK OWNERS SHOULD NOT BE SUBJECT TO STRICT LIABILITY PROSECUTIONS.

Ensure Charitable Contributions Are Properly Acknowledged

Daniel and Ruth Gomez faithfully tithed to their church and claimed a corresponding charitable deduction on their timely filed 2005 tax return. The IRS disallowed a portion of the charitable deductions in an audit because the Gomezes “failed to adequately substantiate the charitable contributions” of more than \$250. Contributions of less than \$250 were allowed to be used as itemized deductions. The Gomezes appealed their case to U.S. Tax Court.

In the appeal, the IRS did not question whether the Gomezes had made the contributions. Nor did it question the legitimacy of the contributions to the church. The taxpayers had corroborated their contributions to the church, both those less and more than \$250, with canceled checks.

However, the IRS argued it could not recognize the contributions of \$250 or more as deductions because the “substantiation requirements” were not met. The IRS code and regulations require a “contemporaneous written acknowledgment for contributions of \$250 or more in order for a charitable contribution deduction to be allowed,” the judge wrote. For this reason, the judge agreed with the auditor, and the charitable contributions of more than \$250

Canceled checks may not be enough to substantiate gifts of \$250 or more

were not allowed as deductions.

While the decision is not reviewable by any other court and is not to be treated as precedent for any other case, the judge’s ruling sends a warning to all donors and their recipient charitable organizations. Make certain you have a written acknowledgment for all donations of \$250 or more that meets the following requirements:

- (1) Is prepared by the donee organization and sent to the taxpayer (unless the donee files a return and includes the required information);
- (2) States the amount of cash and describes any property contributed other than cash;
- (3) States whether the charity provided any goods or services in consideration for the contributions, and

if so, describes and sets forth a good faith estimate of the value of the goods and services provided (if goods and services consist solely of “intangible religious benefits,” includes a statement to that effect); and

(4) Is contemporaneous, which means the taxpayer obtains the acknowledgment on or before the earlier of (a) the date the taxpayer files a return for the year in which the contribution was made or (b) the due date for filing the return (including extensions).

For more information on these sections, find the link to the IRS Code and Treasury Regulations at irs.gov or refer to Section 170(f)(8)(A) of the Code and Section 1.170A-13(f)(1) of the Regulations at a local library.



Thank you for allowing us to serve you.

We wish you all Happy Holidays and a Healthy and a Prosperous 2009!

Carolyn

Cheryl



Rhonda

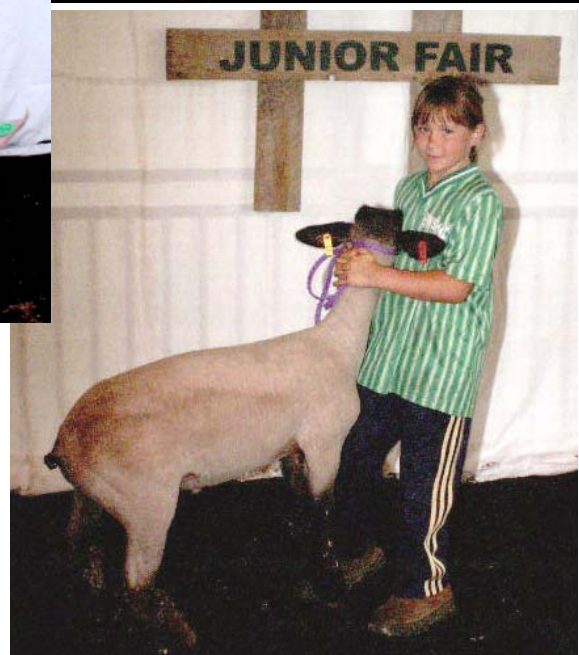
Rhonda

Tracy

John

Russell

We Supported the Delaware County Junior Fair



BECE supported youth participants in the Delaware County Junior Fair Lamb and Pig Sale on Sept 17, 2008. We purchased one lamb and teamed up with "City Barbecue" to purchase two market hogs. The animals were exhibited by: Zach White, Luke Kleilein, and Melissa Williamson.

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Farm Bill addresses Treatment of Conservation Reserve Program(CRP) payments for self employment tax.

This year's federal farm bill addressed part of the question of whether CRP payments are subject to self employment tax. Under the new provision, CRP payments to taxpayers who are receiving certain social security benefits are not included in net earnings from self employment for 2008. Under the provision, CRP payments received by an active farmer who is receiving social security benefits would not be subject to self employment tax. The farmer's other net income from active farming would remain subject to self employment tax. The bill did not clarify the self employment tax treatment of CRP payments received by non-participating landowners.



Managing for Risk

Farming businesses have seen unprecedented times during 2008. Crop farmers have seen commodity prices at record levels followed by substantial price declines. Prices for farm input and expenses have increased dramatically. Increased prices have prompted rent adjustments. Fuel prices have skyrocketed to record levels before settling back recently. Real estate markets are being pulled in two directions, buoyed by increased commodity price levels and pummeled by record levels of non-farm financial distress and home foreclosure. Heightened demand for land due to residential or commercial development or from 1031 exchange buyers has softened substantially in most markets. Livestock farmers have felt the sting of record feed prices along with increased energy and other costs. Credit standards are being scrutinized as fallout from the general credit crisis and the free-falling stock markets. The bottom line is that farm business is being influenced by a combination of factors we would not have dreamed of a few years ago. As attorneys (not economists) we have a few thoughts on managing risk, particularly on keeping the big picture items in focus. Sometimes, a focus on all the details prevents us from seeing the big areas in perspective. In that light, we have assembled a few thoughts and suggestions for consideration in these times of risk and volatility.

- Don't under-utilize your attorney and other professionals. Yes, we are being just a little bit facetious. However, paying unnecessary estate tax, failing to put in place an estate and business succession plan, or suffering losses due to another business's failure or fraud can kill a successful business just as easily as an extended drop in commodity prices. It is usually cheaper to do things right to begin with rather than to fix them later.

Farm Bill Updates Optional Method for Self Employment Tax.

To allow farmers and ranchers with variable income to establish eligibility for social security programs, the optional method has allowed voluntary payment of at least a minimum level of social security tax. Generally, social security benefits were available to taxpayers who had accumulated 40 quarters of eligibility. The optional farm method had become outdated and did not allow farmers and ranchers to earn 4 quarters of credit per year. For 2008, the Farm Bill has increased the limits used under the optional method to allow participants more opportunity to receive credit for 4 quarters for the year. Farmers and ranchers whose *gross farm income* is less than 150% of the amount of net income required to earn 4 quarters of credit could elect to pay SE tax on two-thirds of their gross income. Farmers and ranchers whose gross farm income is greater than the foregoing 150% amount may use the optional method to receive credit for 4 quarters if their net income would not permit them to do so.

- Protect gross receipts. Get paid for your product. Negotiating a great sale is wonderful, as long as the other party completes their side of the transaction and pays you. Counter-party or default risk occurs when you deal with someone who is unable or refuses to fulfill their part of the bargain. Know who you are dealing with. Make agreements in writing. Obtain written confirmations or agreements for sales of grain and other commodities. For grain sales, deal with licensed dealers.
- Protect expense dollars. In high income years, it is tempting to prepay expenses at year end. This can be good tax planning, but not if the vendor goes out of business or is unable to deliver next year. Again, know your supplier: be knowledgeable about their financial condition, have written agreements, spread your risk, and limiting your exposure.
- Manage income taxes by stabilizing taxable income from year to year. In a business where timing of receipts and expenses can be controlled, it can be tempting to try to reduce tax to zero. It may be better to try to achieve a consistent level of taxable income to reduce variability, have predictable tax payment amounts, and avoid jumping into higher marginal brackets in future years. Control timing of sales and prepayment of expenses, make use of bonus depreciation and Section 179 expensing, and use farm income averaging as tax management tools.

Control collection and contract enforcement costs. The best approach is to deal with reputable parties and use clear written agreements to avoid collection and contract issues. Keep good records to establish proof for your case. Consider inclusion of arbitration provisions in contracts and agreements. In many cases, dispute resolution under arbitration can be less expensive and faster than in a court.

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We are located in Dublin, Ohio, a northwest suburb of Columbus.

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