WINTER 2008

Quill

NEWSLETTER

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Utilize Individuals not Classified as Employees? Be Informed!

Individuals are often happy to provide services as an independent contractor until the prospect of paying taxes on the income thus earned becomes a reality. Possibly, they did not budget for the taxes that would be due (self-employment tax in addition to federal and state income taxes). Worst case, they might have thought they were working 'under the table' and fraudulently did not intend to report those earnings to the taxing authorities; that is until they received a Form 1099-MISC (non-employee compensation) from the entity that purchased such services.

Independent contractor v. employee status has long been a contested area of the tax law. In 1978 Congress enacted Section 530 of the Revenue Act of 1978, which was to be a stopgap measure to reduce the controversies between the IRS and employers over worker classification status. Last year, pending further clarification by Congress, the IRS designed and made available Form 8919, *Uncollected Social Security and Medicare Tax on Wages*. It allows workers, who were treated as independent contractors, but who thought they should have been employees, to pay the employee share of Social Security and Medicare tax with their Form 1040. This provides them with an opportunity to only pay one half of what would have been 100% of self-employment tax. At the same time it alerts the IRS of a potential misclassification by the purchaser of such services.

It behooves all consumers of non-employee services in a trade or business setting, including not-for-profits and municipalities as well as for-profit enterprises, to be familiar with this form as well as Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. Like Publication 1779, *Independent Contractor or Employee*, these forms are available at IRS.gov on the WEB as well as through local IRS offices.

New Form 990, *Return of Organization Exempt From Tax*

In its first major revision since 1979, the Internal Revenue Service (IRS) has recently released the final draft (October 2008) of the 2008 Form 990 to be filed in 2009. The purpose of the revisions is to give the IRS and the giving public a more detailed view of how the tax exempt organization operates and to provide much more detailed information on the sources of income and use of funds.

The new Form 990, still in draft form awaiting OMB approval before its official release, consists of 11 pages covering 11 core parts that must be completed by all organizations required to file the form. There are over 70 pages of instructions for the core alone. A few items previously required have been eliminated, but most organizations will face new detailed reporting requirements. In addition to the core return, there are 16 new schedules and additional continuation schedules that may need to be filed with the return. The new schedules, all of which are not required by all organizations, total nearly 70 pages and carry over 160 pages of instructions.

The new form is designed to provide the public with more information regarding the operations of the entity, how decisions are made, what policies are in place, and

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Maine Residents Property Tax and Rent Refund "Circuit Breaker" Program

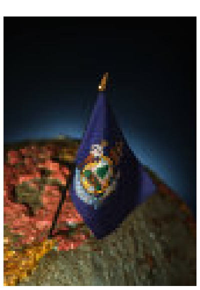
The Maine Residents Property Tax and Rent Refund "Circuit Breaker" Program began on August 1, 2008. Applications for refunds of property tax assessed or rent paid during 2007 will be accepted through June 1, 2009. The General portion of the program provides refunds of up to $2,000 to persons of any age whose household income for 2007 was not more than $60,000 for single-member households and not more than $80,000 for those who lived with a spouse or dependent(s). To qualify for a refund, the 2007 property tax must be more than 4 percent of household income or the rent paid must be more than 20 percent of household income.

Senior program refunds are available to applicants who were at least 62 in 2007 (55 or over if disabled). In addition, for persons living alone, the household income for 2007 cannot be more than $13,600; for a single person living with a dependent, or a married person who lived with a spouse, the 2007 household income cannot be more than $16,800.

Applicants who qualify for both the Senior and General refunds will receive the larger of the two.

Beginning August 1, 2008, applications may be filed by computer using I-file at www.maine.gov/revenue/netfile/TNRIfile.htm (see page 10 of the booklet). Applications may also be filed by mail.

Application booklets will be mailed to individuals who submitted applications for last year's program, and to Municipal Offices, Area Agencies on Aging, Community Action Agencies, Pine Tree Legal offices, Bureau of Elder and Adult Services, DHHS District Offices, Health Clinics, Career Centers, Public Libraries and Adult Education locations. Booklets may be downloaded at www.maine.gov/revenue/forms/tnr/tnr.htm and can also be ordered by calling the Maine Revenue Services forms line at (207) 624-7894.



Change in Rules Regarding Gain Exclusion when Vacation Homes or Rental Properties are Converted to Primary Residences and then Sold

Currently, a gain of up to $250,000 for singles and $500,000 for certain married couples can be excluded from income when a primary residence is sold and it was owned and occupied by the seller for 2 of the last 5 years at the time of the sale. In the past, many individuals who owned a primary residence and a vacation home could take advantage of this exclusion on the sale of both of their properties. First, they would sell their primary residence and exclude up to the maximum gain and then move into their vacation home and occupy it as their primary residence for at least 2 years and then sell it and utilize the exclusion once again.

Recent legislation has taken some of this benefit away. For taxpayers converting their vacation home to their primary residence after December 31, 2008 the portion of the gain that is subject to tax is based on the ratio of the time after 2008 that the property was allocated to 'nonqualified use'. Nonqualifed use includes the time the property was a second home or a rental property. The remainder of the gain will qualify for the maximum exclusion of the period of ownership and use are met.

Illustration: Bill has owned a vacation home for 10 years and converts it to his primary residence prior to January 1, 2009 and then lives in it for 2 years prior to selling it. First, assuming he sells his prior primary residence within the 5 year period, he can exclude up to $250,000 of gain. Second, he can exclude up to $250,000 on the second sale.

However, a post 2008 conversion of the property to a primary residence would have different results. If he held the same property for 2 more years as a vacation or rental property then converted it to a primary residence for 2 more years before selling it then he would have owned it for a total of 14 years. The nonqualified period after 2008 would be 2 years and the taxed gain would be 1/7 (2/14) of the total gain. The rest of the gain would qualify for the maximum exclusion. Thus for any post 2008 conversions a short ownership period can lead to more of a gain being taxed.

Tax Tidbits

Change in Extension Due Dates - The allowable extension period for entities that file Partnership (most LLC's included) and U.S. Income Tax Return for Estates and Trusts has been reduced from 6 months to 5 months. This applies to such tax returns due on or after 1/1/2009.

The Social Security wage base increases next year to $106,800, a $4,800 increase. The tax rates will remain the same.

The threshold for the nanny tax jumps to $1,700 in 2009.

Social Security benefits will rise 5.8% next year…the cost of living hike.

Earnings limits will be going up, too. Individuals who turn 66 in 2009 don't lose any benefits if they earn $37,680 or less before they reach that age. Individuals between the ages of 62 and 66 by the end of 2009 can make up to $14,160 before they lose any benefits. There is no earnings cap once a beneficiary turns 66.

The maximum 401(k) contribution rises to $16,500 in 2009. Those 50 or older can put in as much as $22,000. These contribution limitations apply to 403(b) and 457 plans as well. The ceiling on SIMPLE (Savings Incentive Match Plan for Employees of Small Employers) IRA plans will go to $11,500. Folks age 50 or older in '09 can put in $2,500 more.

There's no change in the pay-in limits for IRAs and Roth IRAs. The limits remain at $5,000, plus $1,000 more for those 50 or older.

New Form 990, Return of Organization Exempt From Tax,
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much greater transparency regarding the financial remuneration to directors and employees and transactions with other entities. More detail will be required for 501(c)(3) organizations, as well as additional information regarding contributions, political activities conducted outside the United States, gaming and fundraising details, and grants issued, as well as more detailed and categorized information regarding non-cash contributions received.

More information will have to be provided regarding: employee travel, if first class or companion travel; housing allowances; dues; personal services provided; how salaries are arrived at; substantiation requirements; and severance packages.

One of the new questions asks if the governing board has reviewed a copy of the Form 990 prior to it being filed and another relates to documentation of board meetings and decision making. These questions may prompt a need for earlier tax return preparation in order to prepare appropriate responses to the new questions and to give boards a chance to review the return before filing.

We will be assisting our clients in the near future regarding the new requirements. In the meantime we encourage all interested parties to go to www.IRS.gov and click on the Charities and Non-Profits tab and then on the following: IRS Completed 2008 Form 990 Instructions and Background Documents. Once there you can click on the form and instructions to see the final draft.

Property Tax Assistance

A new provision in the law allows a senior citizen to receive property tax credit for Volunteer Service. A municipality may adopt an ordinance to allow resident homeowners who are at least 60 years of age to earn up to $750 in benefits by volunteering to provide services to the municipality. The municipality may establish procedures and additional standards of eligibility for the program. See LD 2202, PL 2007, c. 635.

Basic FDIC Deposit Insurance Coverage Limits*

Single Accounts (owned by one person)
$250,000 per owner

Joint Accounts (two or more persons)
$250,000 per co-owner

IRAs and certain other retirement accounts
$250,000 per owner

Trust Accounts
$250,000 per owner per beneficiary subject to specific limitations and requirements

Corporation, Partnership and Unincorporated Association Accounts
$250,000 per corporation, partnership or unincorporated association

Employee Benefit Plan Accounts
$250,000 for the non-contingent, ascertainable interest of each participant

Government Accounts
$250,000 per official custodian

Non-interest Bearing Transaction Accounts
Unlimited coverage - only at participating FDIC-insured banks and savings associations **

* On January 1, 2010, the standard coverage limit will return to $100,000 for all deposit categories except IRAs and certain retirement accounts, which will continue to be insured up to $250,000 per owner.

** Unlimited deposit insurance coverage is available through December 31, 2009, for non-interest bearing transaction accounts at institutions participating in FDIC's Temporary Liquidity Guarantee Program.

Taxable Gains in a Loss Year? Your Losing Mutual Fund Could Distribute Capital Gains to you this Year

You may have had a terrible year in your taxable mutual fund accounts but you may be surprised in the next month or two when some mutual fund managers will be distributing capital gains to shareholders. These gains will show up on Forms 1099 to be sent in January and will be taxable on your 2008 tax returns. It will be a hard pill to swallow, knowing that you lost your shirt on the fund this year, yet finding out that you may still have to pay taxes on that funds' performance. It may behoove you to check with the managers of your taxable funds to see if there will be taxable distributions. How can this be? Perhaps some of the funds investments were bought several years ago, had a great run up, and although they dropped in value this year, they might still have been sold at a price above the original purchase price paid by the fund.

What can you do to avoid this? You may, after discussion with your investment advisor, decide to sell the fund before the distributions are made. You may want to check on distributions before putting new money into funds. You may want to sell some other investments and harvest losses to offset these gains. Keep in mind the wash rules that say that you cannot deduct losses if you buy the same or substantially the same securities 30 days before or after taking a loss on the security. Be informed so that you can decide accordingly.

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During this Holiday Season, we THANK YOU for letting us work with you! Our best wishes to you for a Healthy and Prosperous New Year. We would like to take this opportunity to thank you for your continued patronage and trust in Runyon Kersteen Ouellette. We continue to work every day to earn that trust. We also thank you for the many clients you have referred to us. Because of you we continue to grow. If you know of others that can benefit from our services, we welcome your referrals.

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