

## COBRA Insurance Continuation

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Businesses and employees of firms large enough to be subject to COBRA rules (20 or more employees) need to be aware of new provisions enacted by the American Recovery & Reinvestment Tax Act of 2009. Employers who maintain group health plans are required to offer terminated employees and their dependents the opportunity to continue to participate in the group health plan for up to 18 months. That's not new.

What is new is that the 2009 Act provides that an individual who has been involuntarily terminated (and any qualified beneficiary of that individual) is required to pay only 35% of the premium to continue COBRA coverage under a group health plan for up to nine months.

The employer must pay the remaining 65%. The employer is then reimbursed for the amount of the COBRA premium assistance it pays on the individual's behalf by claiming a credit against any federal income tax or FICA withholding taxes it owes on wages paid.

If the reimbursable amount exceeds the payroll tax liability, the IRS will reimburse the employer directly. And, the COBRA premium subsidy is *generally* not taxable to the participant.



This new provision applies to individuals who become eligible for COBRA coverage anytime from September 1, 2008 through December 31, 2009. Workers terminated between September 1, 2008 and February 17, 2009 who did not enroll for COBRA benefits at the time of their termination have a special extended 60-day period in which to elect COBRA benefits. They can make this election anytime during the period beginning on February 17, 2009 and ending 60 days after the date on which the notice regarding extended election period is provided to them. Employers, you must provide this notice.

If you as an employer or an individual find yourself in need of utilizing these new rules, the details are burdensome and they can be confusing. Know that this new provision is out there and we are available to help you with the details.



The word *generally* is used above because high income participants will have to repay the premium subsidy to the government through a recapture tax. However, a high-income individual eligible for COBRA continuation coverage may make a permanent election to waive the right to the premium subsidy for all periods of coverage to avoid being subject to the recapture tax.

## Vacation Home Owners Lose Tax Breaks

Starting in 2009, owners of vacation or second homes will lose some of the tax benefits of being able to convert their property to a primary residence, sell it, and benefit from the capital-gains exclusion afforded a primary home. To obtain the primary home gain exclusion benefits of up to \$500,000 per couple, or \$250,000 for singles, all that was necessary was for the taxpayer to move in and convert the vacation home to a primary



home for at least 2 years.

Under new rules, the gain exclusion will be prorated by the amount of time the owner actually

uses the property as a primary residence. For example, if you owned a vacation home for 10 years and during the last two years you moved into and converted the property to your primary residence you would only exclude 2 tenths of the gain on your tax return.

The new rules won't begin to count until January, 1 2009 so if you have owned a vacation home prior to the effective date those years of ownership won't be included in the calculations.

## Unlimited Gifts for Educational or Medical

Generally, tax-free gifts during 2009 are limited to \$13,000 per person, per year. Uncle Sam has made an exception if the gifts are for the purpose of providing for educational or medical expenses. There are a few requirements that must be followed to be eligible.

When making a gift to cover educational expenses, the payment must be made directly to the school. If you pay the student directly, the gift won't qualify. Additionally, the gift must only be for tuition cost and will not cover books or room and board.

When gifting to cover medical expenses, be sure to pay the medical care provider directly. Any medical expenses that are reimbursed by insurance are not eligible.

While gifting of this nature is most often found between parents, grandparents, and children, the exclusion is available for all gifts. There is no relationship required between the donor and donee.



## **Common Threshold/Limitation Changes**

YEAR	2008	2009
Annual benefit limitation for defined benefit plans	\$180,000	\$195,000
Defined contribution plan contribution limit	\$46,000	\$49,000
Annual compensation limit for qualified plan computations	\$230,000	\$245,000
Maximum 401-K deferral limit (under age 50)	\$15,500	\$16,500
Maximum 401-K deferral limit (over age 50)	\$20,500	\$22,000
Simple IRA deferral limit (under age 50)	\$10,500	\$11,500
Simple IRA deferral limit (over age 50)	\$13,000	\$14,000
IRA contribution limit (under age 50)	\$5,000	\$5,000
IRA contribution limit (over age 50)	\$6,000	\$6,000
Standard business mileage rate	1/1/08 - 6/30/08: \$0.505	7/1/08-12/31/08: \$0.585
Medical or moving mileage rate	1/1/08 - 6/30/08: \$0.19	7/1/08-12/31/08: \$0.27
Charitable mileage rate	\$0.14	\$0.14
Maximum earnings subject to social security	\$102,000.00	\$106,800

## ***Tidbits and Reminders***



- ◆ This years Federal Extension Deadlines:
  - Calendar year corporations **September 15, 2009**
  - Calendar year partnerships **September 15, 2009**
  - Personal & gift tax returns **September 15, 2009**
- ◆ Making Work Pay credit is reducing your federal withholding for 2009. Are you protected against underpayment penalties?
- ◆ Estimated tax payments due **June 15, 2009**
- ◆ Hurricane season is upon us. Are your backup procedures in place and working?

### **Defer Taxes with a Like-Kind Exchange**

Selling one property and acquiring another? You can avoid a taxable gain if you arrange to treat the transaction as an exchange. Section 1031 of the Revenue Code will allow you to trade your business or investment property for another of like-kind and defer any gain.

Properties are like-kind if they are of the same nature or character. All real estate is considered like-kind so you could trade bare land held as an investment for a duplex or trade the duplex for some commercial property. Personal properties of a like class are considered to be like-kind even if they differ in grade or quality. But is it always best to use this deferral?

To qualify for like-kind exchange treatment on a real estate transaction, you must engage the services of a qualified intermediary and you must comply with stringent time constraints with respect to identifying the replacement property and closing on the replacement property. In addition, deferral of tax on the gain results in a limited basis in the qualified replacement property, which results in lower depreciation deductions for the future.

If your tax rate on a gain from sale is substantially lower than the marginal tax rate on the ordinary income that you would shelter with depreciation deductions on newly acquired property, you may be better off forgoing section 1031 deferral. We can help you with this analysis. Call us, 863.683.0708.

### **529 Plans and Computer Costs**

Section 529 qualified tuition programs are a popular way of saving for a child's or grandchild's college. The nondeductible contributions and any account earnings will not be taxed upon distribution if the distribution is used for qualified higher education expenses (which generally include tuition, room and board, fees, books, supplies, and equipment required for the enrollment or attendance at an eligible educational institution).

The American Recovery & Reinvestment Tax Act of 2009 expands the definition of qualified higher education expenses to include expenses for certain computer technology, equipment, and related services (including Internet access) if such

technology, equipment, and services are to be used by the 529 plan beneficiary and the beneficiary's family during any of the years the beneficiary is enrolled. Expenses for computer software designed for sports, games, etc. do not qualify. This provision is effective for expenses paid or incurred in 2009 and 2010.

So, that new computer your student needs to head off to college; buy it with 529 assets.

Caution, this differs from the education credits which only apply to tuition, fees and course materials.



## **Beware of the Wash-Sale Rule**

With the recent down-turn in the stock market, many investors are holding stock valued at less than what they paid for it. The tax law won't allow these losses to be taken until the stock is actually sold. This may create a conflict because investors wanting to recognize the loss may feel the stock will bounce back and they would like to continue holding the stock. This is where you can get caught by the wash-sale rule. It denies a deduction for a loss if you purchase identical stock up to 30 days before or after the sale. When this occurs, the disallowed loss must be added to the cost of the replacement stock. If you want to claim your loss as a deduction, you need to avoid purchasing the same stock during the wash-sale period.




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