



Taxes: A Policy Tool In The New Economy

Congress has been busy working with President Obama to pass a stimulus package which includes tax provisions impacting individuals and their businesses. The tax law has always been one of the Federal Government's principal tools in promoting desired economic policies. The current crisis will rely heavily on the tax laws to promote the President's recovery objectives. Below are a few of the tax laws which have recently been extended or which are included in the recently enacted American Recovery & Reinvestment Tax Act of 2009 (the "Act") and which are intended to assist recovery of the real estate and housing industries.



Maury B. Reiter
Managing Principal

by **Maury B. Reiter**

Maury B. Reiter is the Managing Principal and founding member of the firm. His practice areas include business, commercial and real estate law, mergers, acquisitions, financing and other transactions, tax planning wealth preservation and estate planning, employment law and estate planning and administration. Mr. Reiter is a member of the Pennsylvania Institute of Certified Public Accountants and uses his experience as a CPA to provide additional insight to, and understanding of transactions. He is a regular lecturer on various legal and tax-related topics on behalf of the State CPA Societies and the Pennsylvania Bar Institute. Mr. Reiter can be reached at 610.941.2476 or by email to mreiter@kaplaw.com.

Discharge of Indebtedness Income.

Homeowners who have some or all of their debt forgiven on their home mortgage during a foreclosure or workout may be able to exclude this "debt forgiveness" from income. This relief from getting "kicked while you're down" was created as part of the Mortgage Forgiveness Debt Relief Act in 2007, but had been set to expire this year. The law will now run at least through 2012.

Residential Real Estate Taxes.

Homeowners who do not itemize their deductions generally do not get any tax break from the real estate taxes they pay on their home. For both 2008 and 2009, taxpayers can

take a deduction for real estate taxes (\$1,000.00 for joint filers and \$500.00 for singles) even if they do not itemize their deductions.

Amortization for Leasehold and Restaurant Improvements.

The 15 year amortization period for certain qualified leasehold and restaurant improvements has been extended through the end of 2009. This special provision allows depreciation of these qualified leasehold improvements over a 15 year period rather than the normal 39 year period. The same 15 year amortization period applies to certain improvements to retail space.

NOL Carryback Period.

Businesses that generate net operating losses ("NOLs") can carry those back to the 2 prior taxable years if there were any profits in those years. To the extent there are still unused NOLs, businesses can carry those forward for 20 years to use against future profits. The lawmakers had discussed extending the carryback from 2 years to 5 years, but this was rejected as part of the recent Senate proposal. Instead, under the Act only businesses with average gross receipts of \$15 million or less will have the choice of carrying back NOLs incurred in 2008 up to 5 years. The change to a 5 year carryback allows smaller businesses such as real estate

developers who had significant profits in the first part of this decade to recover the taxes paid on those profits by the significant losses they incurred in 2008. Without the extension of the carryback, the ability to use these NOLs any time soon is lost.

Tax Credit for

Homebuyers.

Under current law, first time home buyers (any one who has not owned a home in the last 3 years) can take up to a \$7,500 "credit" against their income taxes, but the credit gets repaid to the Government over a 15 year period (i.e., \$500 additional tax per year). The Act has increased

this credit to \$8,000 and extended it at that level through November 2009. The Act also eliminates any required repayment of the "credit" after 36 months in the home. These enhancements only apply to purchases of homes after December 31, 2008.



These provisions are just some examples of the Government's use of the tax laws to promote the regime's current economic policies and to help jumpstart the economy. Which provisions actually provide true "stimulus" is a question which can only be answered after the fact.

Attorney & Paralegal News

Gregg I. Adelman, Mohammad A. Ghiasuddin, Joshua C. Quinter and Dirk M. Simpson, were selected as Pennsylvania Super Lawyers Rising Stars 2008 by *Law & Politics*. Mr. Adelman is a member of the Land Use, Zoning & Development group, Mr. Ghiasuddin and Mr. Quinter are members of the Construction & Surety and Commercial Litigation groups, and Mr. Simpson is a member of the Trusts & Estates, Tax and Business groups. We are pleased that their accomplishments have been recognized and we congratulate them!

William D. Auxer, a principal in the Construction & Surety and Environmental groups, has been appointed to the Board of Directors for the Associated Paving and Excavating Contractors located in Central, Pennsylvania.

Mohammad A. Ghiasuddin, a principal in the Construction & Surety and Business & Commercial Litigation groups, has been elected to the Board of Directors of the Montgomery County Bar Association. Mr. Ghiasuddin is also an active member of the Bar Association's Diversity Committee.

Maury B. Reiter, a principal in the Corporate, Estates and Tax groups, was a guest speaker on the Jay Lamont radio show on February 1, 2009. Mr. Reiter is a frequent guest on Mr. Lamont's show "All About Real Estate" on WPEN 950 AM on Sunday mornings from 10:00 until Noon.

Dirk M. Simpson, a member of the Trusts & Estates, Tax and Business groups, has been nominated to the Board of Directors of Ludington Library in Bryn Mawr, PA. Ludington Library serves not only as the community library for Bryn Mawr and its environs, but also as the headquarters library for the Lower Merion Library System.

Deborah Arbuckle, a paralegal in the Land Use, Zoning & Development group, has been elected as First Vice President of the Board of Directors of the Montgomery County Paralegal Association for a one-year term.

Lisa M. LaPenna, a paralegal in the Real Estate & Title Litigation group, will be bike riding for two charity events this year – Carol for Heart and Multiple Sclerosis. Lisa is a member of the Bicycle Coalition of Greater Philadelphia, which promotes bicycling as a healthy, low-cost and environmentally-friendly form of transportation and recreation. She rides in the "Bike Philly" event every year. Lisa is active in the Montgomery County Paralegal Association and co-chairs the Mentoring Committee for its student members.



Seminars

William D. Auxer, a principal in the Construction & Surety and Environmental groups, presented a seminar to the members of the Associated Paving and Excavating Contractors on January 12, 2009. The topic was "Strategic Ways to Avoid Payment Disputes and Collect Overdue Payment."

Neil A. Stein, George W. Broseman and Barbara Anisko, principals in the Land Use, Zoning & Development group, were presenters at the 12th Annual Real Estate Institute sponsored by the Pennsylvania Bar Institute in Philadelphia on December 4 and 5, 2008.

Robert A. Korn, a principal in the Construction & Surety group, was a presenter at a program sponsored by the Alternative Dispute Resolution Committee of the Montgomery Bar Association on December 4, 2008. The program focused on the Legal and Practical Issues of Mediation and Arbitration.

Dirk M. Simpson, a member of the Estate Administration and Planning group, presented "Applying Integrated Estate, Financial and Asset Protection Planning Techniques" to the Virginia Society of Certified Public Accountants in Springfield, Virginia on December 9, 2008.

Do You Know –

why Pennsylvania is officially a Commonwealth, not a state?

Other than "it always has been," there is no clear answer to this question; obviously, first-person accounts are hard to come by nowadays. Pennsylvania is one of four states that call themselves Commonwealths. Can you name the others? (This question makes a great bar bet. Read on for the answer.) According to the Pennsylvania House's Parliamentarian, "the word 'Commonwealth' is synonymous with 'state.'" It implies "... a special devotion of the government to the common 'weal,' or the welfare of its citizens." Of course, mere states should be similarly devoted to the welfare of their citizens, rendering this explanation less than helpful. According to the Parliamentarian, William Penn's colony was known as the "Quaker Commonwealth," and Pennsylvania's constitutions continue to use the term. Strangely, Pennsylvania's present-day seal contains the words "State of Pennsylvania" – not Commonwealth. Kentucky's Department for Libraries and Archives (yes, Kentucky is another of the four) says that Commonwealth "...is an elected title deemed by the states' legislatures. To be a Commonwealth rather than a state grants no differences legally or economically." The remaining Commonwealths? Virginia and Massachusetts. So get out there and win some free drinks!

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Attorney Spotlight

This month, Kaplin Stewart shines the spotlight on Dan Utain, a principal of Kaplin Stewart's Commercial and Real Estate Litigation Department. Dan handles a wide variety of real estate and business disputes, including title litigation, contract disputes, business torts, and landlord-tenant matters. He practices his skills in both state and federal courts in Pennsylvania and New Jersey, in alternative dispute forums such as arbitration and mediation, and before various governmental agencies. In addition to his litigation abilities, Dan also excels at the inter-office prank, where his antics cross-over to all departments in the office.



Dan Utain

Dan grew up across the bridge in Cherry Hill, New Jersey. Despite his parents' wishes, Dan refused to attend any college that did not require his parents to board an airplane to visit, and ultimately matriculated at Washington University in St. Louis, Missouri where he was a member of the Sigma Alpha Mu fraternity and the Washington University Lacrosse Team. Dan also participated in various internships, including an internship with the Boys and Girls Club on an Indian reservation in South Dakota and congressional internships with Representative Dick Gephardt and Senator Bill Bradley. Thankfully, he was not blamed for either Dick Gephardt's or Bill Bradley's failed presidential bids! In his freshman year, Dan quickly realized that he would not be ready to join the "real world" after a four

year stint in college, and needed to choose a career path that would require additional schooling. Considering he was (and still is) afraid of needles, Dan selected the next obvious choice – law school, and selected not one, but two majors that would virtually guarantee that he would have to attend

graduate school – political science and psychology. After college, Dan returned east to attend the Villanova University School of Law. At law school, he served as an editor of the *Villanova Environmental Law Journal*, and co-authored a Comment, "You Can Teach an Old Dog New Tricks: The Application of Common Law in Present-Day Environmental Disputes." Dan knew immediately that he wanted to be a litigator, and originally considered practicing criminal law. In his

second and third years of law school, Dan interned with the Montgomery County Public Defenders Office, and represented clients at various hearings before the Court of Common Pleas of Montgomery County. It was shortly after one of his client's mistook him for a district attorney and threatened to "kill" him that Dan decided it would be a good idea (and, hopefully, safer) to practice commercial litigation. After law school, in 2000, Dan joined the safer confines of Kaplin Stewart's litigation department.

Dan currently resides in Harleysville with his wife, Tara, and their two sons, Jaxson and Noah.

partner involvement, big firm experience, personal service, responsiveness, an entrepreneurial approach, and greater value.

Kaplin Stewart was selected to be the member firm of MSI Global Alliance in the Philadelphia area.



Announcement

Kaplin Stewart was invited to join MSI Global Alliance, a leading international network of independent mid-size law and accounting firms. Our association with MSI Global Alliance will enable us to provide you with legal, audit, tax, accounting and general business advisory services through a network of 250 firms located in 100 countries, giving us contacts in every major business center in the United States and worldwide. Firms within the MSI network are specifically chosen for their ability to compete with larger firms by offering high quality services characterized by

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