



2009 Year-End Real Estate Tax Planning Checklist

As the year draws to a close, this is an important time to consider any last minute actions which might lower your Federal tax bill. Here are some ideas to consider now.

1. **Enhanced depreciation provisions** - Under the "bonus" depreciation provisions, there is an opportunity to expense up to half the cost of certain new property placed in service prior to December 31, 2009. Under the enhanced "Section 179" provisions, there is an opportunity for some taxpayers to expense up to \$250,000 of fixed assets placed in service prior December 31, 2009. Both of these provisions are in addition to the normal tax depreciation rules.
2. **Repair vs. capitalize** - Take advantage of recent court cases which provide opportunities to expense (rather than capitalize and depreciate over many years) the costs of various building improvements (i.e. new roofs).
3. **Cost segregation studies** - Nonresidential real property is depreciated over 39 years. A cost segregation study seeks to identify those components of a building which are personal property and therefore depreciated over a much shorter period of time.
4. **Like-kind exchanges** - Even in a down real estate market, to the extent that property is sold at a gain, the ability to enter into a like-kind exchange should always be considered.
5. **Passive loss rules** - The tax codes contain provisions to enable real estate professionals from being trapped by the passive activity loss rules. However, a careful analysis of each different real estate activity is required and certain elections may be required to be made in order to receive this benefit.
6. **Sales (and use) tax** - There is a large degree of misunderstanding of sales and use tax rules when it comes to real estate matters such as capital improvements vs. repairs. It is also a good idea to file an annual use tax return (if eligible) to establish a statute of limitations with respect to sales and use tax.
7. **Domestic production deduction** - Construction firms may be able to qualify for a 6% deduction for 2009 in addition to the direct expenses associated with construction projects.

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8. **Net operating loss carryback** - Under recently passed legislations, taxpayers who have net operating losses in 2008 and/or 2009 can amend returns up to 5 years prior to the loss year and obtain a refund of prior taxes paid.
9. **Related individual tax planning** - Many businesses are operated as S corporations or Limited Liability Companies (LLCs). As such, the income or loss flows through to the owners of the business. Consider the expected income or loss by projecting your personal 2009 tax liability and consider such items such as enhanced charitable contributions and prepayment of state taxes (watch out for the Alternative Minimum Tax!)
10. **Go green** - There are a number of tax incentives for investments in clean energy such as solar, geothermal, wind, etc. While there may not be enough time by year end to implement these, consider these investments and related tax benefits for future years.
11. **Accelerate income, defer deductions** - There is widespread speculation that tax rates will increase in the future. If you believe this, then the opposite of traditional tax planning might make sense as income received today may be taxed at a lower rate than income received next year.

Of course, no steps should be taken just for the tax benefit—every move must make business sense. Please feel free to call your Wilkin & Guttenplan advisor to discuss if any of these ideas might be appropriate for your business.

Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

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