RECAP OF SIGNIFICANT DEVELOPMENTS IN THE FOURTH QUARTER 2008

While the new law tax changes in the Emergency Economic Stabilization Act of 2008 were the most significant developments in the final quarter of 2008, many other tax developments may affect you, your family and your livelihood. These other key developments in the final quarter of 2008 are summarized below.

- **New law waives required minimum distributions (RMDs) for calendar year 2009.**

  A new law enacted in late 2008 provides that retirement plan account participants, IRA owners and their beneficiaries do not have to take RMDs for 2009. Thus, taxpayers who can take advantage of this change won't be forced to sell stock or mutual fund shares held in retirement accounts when their value is exceptionally depressed. This change helps retired taxpayers who do not need to rely on their RMDs for living expenses. By not making the RMD for 2009 (or withdrawing less than the RMD) from their qualified plan accounts and/or IRAs, they will wind up with less taxable income for 2009, and, possibly, avoid (or mitigate the effect of) AGI-based phase-outs of tax breaks. They will also have more tax-sheltered amounts to leave to their beneficiaries. There's no need to show a retirement plan account or IRA is “in distress” because of stock market conditions in order to qualify for the 2009 RMD suspension. Thus, for example, the RMD suspension applies equally to IRAs invested entirely in FDIC-insured bank-CDs as well as to IRAs invested in depressed-in-value stocks or mutual funds. The suspension of RMDs for 2009 doesn't help those older taxpayers who must make regular withdrawals (sometimes in excess of the RMD) from their retirement plan accounts and IRAs in order to get by each month.

- **New law requires qualified plans to offer post-2009 rollover option for non-spouse beneficiaries.**

  A provision in late 2008 legislation requires employer sponsored qualified retirement plans to offer non-spouse beneficiaries the opportunity to roll over an inherited plan account balance to an IRA set up to receive the rollover on the non-spouse beneficiary's behalf. This rule will become effective for plan years beginning after 2009. Until then, under current rules, qualified plans may, but are not required to, offer non-spouse beneficiaries this rollover option. The rollover option will give much-needed flexibility to those who inherit retirement plan accounts from someone other than their spouse, such as a parent, an uncle or a same-sex partner. For a long time, non-spouse beneficiaries of IRAs have had access to a rollover-type option that IRS has sanctioned. While non-spouse beneficiaries can't treat an inherited IRA as their own, they can make trustee-to-trustee transfers to another IRA if the ownership of the new IRA is set up in the same way as the ownership of the old IRA, that is, in the name of the decedent for the benefit of the IRA beneficiary.

- **Corporations can gain credits by foregoing special depreciation.**

  A corporation may elect to accelerate its use of unused carry-forwards of the minimum tax credit and the research credit from tax years beginning before 2006 and obtain a refundable credit instead of claiming the special depreciation allowance on eligible qualified property. If the election is made, the corporation must forego the special depreciation allowance for eligible qualified property acquired (including manufactured, constructed or produced) after March 31, 2008, and placed in service generally before January 1, 2009, and use the straight-line method of depreciation on such property. The election is subject to a number of conditions and limitations. They are reflected in a worksheet IRS has posted on its web site. Taxpayers can use the worksheet to calculate their refundable credits from making the election.

- **Standard mileage rates down for 2009.**

  The optional mileage allowance for owned or leased autos (including vans, pickups or panel trucks) is 55¢ per mile for business travel after 2008. That's 3.5¢ less than the 58.5¢ allowance for business mileage which applied in the last six months of 2008. Further, the rate for using a car to get medical care or in connection with a move which qualifies for the moving expense deduction is 24¢ per mile, down 3¢ from the 27¢ per mile allowance for the last half of 2008.

- **Simplified per diem rates rise effective October 1, 2008.**

  Reimbursements of an employee's business travel costs (lodging, meal and incidental expenses (M&IE)) at a per diem rate are payroll-and income-tax free if simplified substantiation is provided and the daily rate doesn't exceed the federal per diem rate (the maximum amount the federal government reimburses its employees) for the locality of travel for that day. While the per diem rates vary by travel destination, employers can make reimbursements at the simplified “high-low” per diem rates, which assign one per diem rate to high-cost areas within the continental U.S. and another to non-high-cost areas. The IRS has issued the “high-low” simplified per diem rates for post-September 30, 2008, travel. An employer may reimburse up to $256 for high-cost localities ($198 for lodging and $58 for M&IE) and $158 for other localities ($113 for lodging and $45 for M&IE). The list of high-cost areas is also updated.

- **IRS regulations explain when creditors are owners when a corporation is reorganized.**

  A corporation can be reorganized in any of several ways (for example, a recapitalization or a merger with another corporation) without adverse tax consequences to the parties (including the shareholders) if numerous requirements are met. One such requirement is the continuity of interest (COI) requirement. The IRS has issued regulations explaining when and to what extent creditors of a corporation will be treated as proprietors of the corporation in determining whether the COI requirement is met. They are effective for transactions after December 12, 2008.

- **Manipulation of charitable remainder trust identified as “transaction of interest.”**

  Effective October 31, 2008, the IRS identified a new transaction and substantially similar ones as "transactions of interest" (i.e., subject to special scrutiny by the IRS for possibly inappropriate tax avoidance). They involve a sale of all interests in a charitable remainder trust (after the contribution of appreciated assets to, and their reinvestment by, the trust), which results in the grantor (the person who set up the trust) or other recipient receiving the value of their trust interest while claiming to recognize little or no taxable gain. Persons entering into these transactions on or after November 2, 2006, must disclose the transaction and material advisors who make a tax statement on or after November 2, 2006, with respect to transactions entered into on or after that date, have disclosure and list maintenance obligations. Failure to follow the disclosure rules can result in steep penalties.

- **IRS scrutinizing use of rollovers to fund new business start-ups.**

  The IRS issued guidelines to address potentially abusive retirement plan arrangements called Rollovers as Business Start-ups (ROBS). These are designed to allow individuals to convert their existing retirement accounts into seed money for funding new businesses without first paying taxes on the distributions. Having been made aware ROBS plans are being actively marketed, the IRS has issued guidelines for its employee plans specialists to follow in examining these plans. Though not stating ROBS plans do not meet IRS requirements for qualified plans in and of themselves, the guidelines signal the IRS is carefully scrutinizing these transactions, particularly with regard to the following key issues: discrimination in benefits, rights and features; improper stock valuation; and prohibited transaction payments of promoter fees.

- **Boosted 2008 housing cost allowances for those working abroad in high-cost areas.**

  Guidance from the IRS effectively increased the maximum housing cost exclusion for U.S. citizens and residents working abroad in specified high-cost locations. The increases were based on geographic differences in foreign housing costs relative to U.S. housing costs. For example, assume a U.S. taxpayer was posted to Paris, France for all of 2008. Under the new IRS guidance, his maximum housing cost exclusion is $86,084 ($100,100 full year limit on housing expense in Paris minus $14,016 base amount).

- **IRS expedites lien process for homeowners trying to sell or refinance.**

  The IRS has announced an expedited process to make it easier for financially distressed homeowners to avoid having a federal tax lien block refinancing of mortgages or the sale of a home. Filing a Notice of Federal Tax Lien is a formal process by which the IRS makes a legal claim to property as security or payment for a tax debt. Taxpayers looking to refinance or sell a home where a Federal tax lien has been filed, have two options. They or their representatives, such as their lenders, may (1) request the IRS make a tax lien secondary to the lien by the lending institution which is refinancing or restructuring a loan (subordination), and (2) also request the IRS discharge its claim if the home is being sold for less than the amount of the mortgage lien under certain circumstances. The process to request a discharge or a subordination of a tax lien takes approximately 30 days after the submission of the completed application, but in late 2008 the IRS said it will work to speed those requests in wake of the economic downturn. The IRS urges people to contact the IRS Collection Advisory Group early in the home sale or refinancing process so that it can begin work on their requests.

- **Final rules for information reporting of employer-owned life insurance.**

  The IRS issued final regulations providing guidance on the information reporting required on employer-owned life insurance contracts. In general, employers must treat death benefits from such insurance on many employees as taxable income, for contracts issued after August 17, 2006. The final regulations provide that applicable policyholders owning one or more employer-owned life insurance contracts issued after August 17, 2006, must provide certain information to the IRS by attaching Form 8925, Report of Employer-Owned Life Insurance Contracts, to the policyholder's income tax return by the due date of that return.