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Barack Obama Won the Election: Tax Planning to Consider Now

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History was made in the 2008 presidential election. Congratulations to President-elect Barack Obama on this momentous occasion, whose campaign was focused upon the need for change.

However, not to be lost among these congratulatory remarks is the fact that the Obama Administration will push Congress during 2009 for changes in our federal tax system consistent with his "Comprehensive Tax Plan." Whether all or just parts of the Plan are enacted is too early to forecast. However, there certainly will be both winners and losers from any combination of these changes.

Assuming the Plan will be enacted in some form by Congress next year for all of 2009, it is extremely important for upper income individuals to consult with their tax advisors about planning opportunities for the remainder of 2008, such as the following:

- Individual Income Tax Rate Increases: The top two income tax brackets of 33% and 35% will increase to 36% and 39.6%, respectively, under the Plan. These rate increases will impact married couples having income above $250,000 and single people with income above $200,000. In addition, a smaller payroll tax (amount not yet specified but perhaps 2% to 4%) could also be imposed at some point in the future on upper income individuals. The effect of all the foregoing, according to some commentators, could push the marginal federal tax rate as high as perhaps 43%. So, where proper circumstances exist, upper income individuals should avoid the postponement of taxable income into the 2009 year and instead accelerate non-deferred compensation and other income into 2008. Please remember, however, that it is very difficult to accelerate the receipt of deferred compensation without the imposition of a potentially worse penalty under Internal Revenue Code Section 409A.
- Long Term Capital Gains Tax Rate Increase: The tax rate for long term capital gains under the Plan would increase from 15% to 20% for families with incomes above $250,000. Again under appropriate circumstances, consider consummating capital gains producing transactions during 2008 instead of otherwise deferring the transaction to 2009. Conversely, consider deferring loss-producing transactions to 2009.
- Tax Rate Increase For Dividends: The top tax rate for dividends under the Plan would move from 15% to 20% for individuals making over $250,000. Especially with corporations that are family-owned and which have a track record of periodic dividends, consider accelerating the declaration of dividends contemplated for 2009 into 2008.
- Estate Tax Changes: The federal estate tax under the Plan would be effectively eliminated with proper planning for taxable estates under $7,000,000 per couple ($3,500,000 per person), with the current 45% tax rate applying to taxable estates in excess of that figure. Consider immediately reviewing your estate plan to take advantage of options and opportunities that may have previously been unavailable or planning opportunities that you have been deferring until after the election.
- Corporate Deductions and Tax Rates: The Obama Administration intends to repeal various deductions and tax benefits currently enjoyed by corporations with overseas operations, and may use that added revenue to lower tax rates for corporations that expand operations in the United States. Assuming the top individual tax rate does increase to 39.6%, use of the S corporation status and other flow-through entities may be less desirable in the future in certain situations.