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# Criser, Gough, & Parrish

## The Advisor

Stephen M. Criser — Laura B. Parrish — Greg R. Gough

### Tax News

#### **Take the money and run.**

The IRS continues to discover mistakes on its economic stimulus rebate checks. More than 100,000 self-employed individuals received larger checks than they deserved because losses on Schedule C or F weren't properly accounted for.

*Good news:* Those self-employed don't have to return any excess amounts received.

#### **Car donations slow down.**

Recent IRS statistics show a substantial drop-off in vehicle deductions to charity. For 2005, taxpayers claimed \$470 million deductions on 300,000 returns, compared to \$2.4 billion in deductions on 900,000 returns for 2004.

*Reason:* After 2004, the deduction for a donated vehicle valued at more than \$500 generally is capped at the sale price of the vehicle if the charity sells it.

(From *The Tax Strategist*, 9/08)

### Calm in the Storm

Sometimes it is the responsibility of your accountant to be the voice of reason. This is certainly true when we offer counsel about income taxes or accounting issues. But what about financial times like these? As I write this, Congress is still wrangling over the bailout, the markets are falling, and oil had its biggest one day rise in history.

All I can say in these financially troubled times are:

- **Be Calm** – Decisions made under duress and stress are rarely good ones.
- **Be Deliberate** – Selling when the market tanks may be the natural thing to do, but is seldom the smart thing to do. There have been 13 bear markets since World War II, yet the S&P 500 is valued over 60 times higher than it was in 1947. Buying low and selling high is much harder than it seems. Be deliberate and don't overreact.
- **Be Diversified** – Take a comprehensive view of what you own. Don't invest in anything that you can make a killing on when it's doing well and, by the same measure, will kill you if it is doing badly. Get professional help to diversify your portfolio and sleep at night.
- **Be Thankful** – We live in the United States of America. It is still the greatest place on earth with the most innovative and imaginative entrepreneurs on the planet. Give them a chance to pull us out of this. Many of these businesses are our clients and I believe in them.

If you have any questions or would like a meeting to calm down, please call us. Our partners at Gough Financial Group are also here to help.

Every bull market begins from a scary bear market. Don't jump. Happy days will be here again.

*Steve Criser, CPA*

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## Section 529 College Saving Plans

by **Greg Gough, ChFC**

**Abstract:** There are many tax benefits to state-sponsored 529 College Savings Plans.

Saving for college—whether for your children or your grandchildren—has become easier in recent years with the emergence of state-sponsored savings plans. Called a Section 529 Plan, after the section of the Internal Revenue Code that created them, these plans are offered by all 50 states and provide tax benefits to college savers.

While each state plan is different, there are two general types of plans: prepaid tuition plans and college savings plans. With a prepaid tuition plan, the money you put into the plan is earmarked for tuition at your local state university. In most cases, once you make the required payments, you are guaranteed that all tuition will be covered, no matter how much it may rise in the future. What happens to the money if your child decides to go to another college? The value of your plan—although in some states, not the full value—can be transferred to private and out-of-state schools.

College savings plans are more flexible. You can use the value accrued in your plan for any accredited institution of higher learning in the U.S. and in some foreign countries. Another advantage of a college savings plan is that it may enable you to qualify for more aid than you would with a prepaid plan. The risk with these plans is that investments may lose money and may not perform well enough to cover the college costs as anticipated.

### The Benefits of a Section 529 Plan

Any earnings on the money you invest in a Section 529 Plan is tax-free for as long it stays in the plan. And withdrawals for qualified educational expenses are free of Federal tax.<sup>1</sup> In addition to the Federal tax breaks, many states also offer tax advantages to in-state residents, such as an upfront deduction on your contribution or tax-exemption on withdrawals. Some states offer tax-free withdrawals only to participants in their own state plan, while other states permit their residents tax-free qualified withdrawals from other state plans.

In addition to the tax benefits, the biggest plus of these plans is that the amounts you can put in are substantial—over \$250,000 per beneficiary in some states. Most plans are very easy to set up and are professionally administered and often

offer a choice of investment selections. You have full control over the account and can switch investment options within the same plan once a year. You can also withdraw the money if you need to, although there will be taxes and penalties owed if a withdrawal were to be made for reasons other than funding education. And there are no Federal eligibility restrictions—each state has the option to allow non-residents to invest in its plan. In fact, many states allow non-residents to invest in their plans.

### Other Considerations

While there may be additional taxes or penalties for withdrawal of the funds in the plan for non-educational purposes, that penalty is generally waived if the beneficiary has died, become disabled, or if the funds are not needed because the beneficiary has received a scholarship. Also, you can change the beneficiary by rolling the funds over. That way, if your eldest child decides not to go to college, you can put the funds to work for a younger sibling or even a niece or nephew.

For grandparents, Section 529 Plans offer estate tax benefits, because contributions are considered completed gifts and are excluded from your estate. Grandparents can also switch beneficiaries to other grandchildren. The rules are complex, however, so consult your financial professional or attorney about gift and estate tax consequences of funding a Section 529 Plan.

While a Section 529 Plan may not be the total answer to your college funding needs, it is one of the many ways you can make sure that the money to pay for college is there when you need it. To put together a comprehensive college savings plan, and to determine whether a Section 529 Plan makes sense for you, contact your financial professional.

<sup>1</sup> Under sunset provisions, current Section 529 tax rules are scheduled to expire on December 31, 2010, unless renewed by Congress. Before 2001, Section 529 Plans generally provided tax deferral, not tax-free savings.

This material is not intended as tax or legal advice. You should consult with your personal financial, tax or legal advisor regarding your specific situation before implementing any estate or business strategy.

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## Housing Act Tax Provisions for Homeowners

There are several tax provisions in the recently passed 2008 Housing Act that affect homeowners or those taxpayers who may be thinking of becoming homeowners. Below is an outline of the three provisions that you should be aware of.

### First-Time Homebuyer Credit

A taxpayer who is a first-time homebuyer is allowed a refundable credit equal to 10% of the purchase price of the residence, not to exceed \$7,500 (\$3,750 for a married individual filing separately). A first-time homebuyer is a homebuyer who has not held a present interest in a primary residence in the three-year period ending on the date of purchase.

This credit applies for qualified home purchases on or after April 9, 2008, and before July 1, 2009. However, a special election allows the taxpayer to treat a residence purchased after December 2008, as purchased on December 31, 2008, so that the taxpayer can claim the credit on the taxpayer's 2008 return. The credit phases out for individual taxpayers with modified adjusted gross incomes between \$75,000 and \$95,000 (\$150,000—\$170,000 for joint filers) for the year of purchase.

Essentially, the credit amounts to an interest free loan. This is because the credit recaptured over a 15-year period with no interest charged, beginning in the second year after the taxable year in which a home is purchased. For example, if the taxpayer purchases a home in 2008, the credit is allowed on the 2008 tax return, and the repayments begin with the 2010 return. If the taxpayer sells the home or ceases to use it as a principal residence, any remaining credit payment is due on the tax return for the year of the sale or cessation of use as a principal residence. There are limited exceptions to the recapture rule.

The taxpayer is not permitted to claim the credit if the taxpayer was or is eligible for the District of Columbia first-time homebuyer credit, the taxpayer's financing is from tax-exempt mortgage revenue bonds, the taxpayer is a nonresident alien, or if the taxpayer disposed of the residence before the close of the taxable year that the credit would otherwise be allowable.

### Additional Standard Deduction for Real Estate Taxes

For taxable years beginning in 2008, taxpayers may take a deduction of property taxes even if they do not itemize deductions on their return. Under the statute, the standard deduction

for 2008 is increased by the lesser of the amount allowable as a deduction for real estate taxes, i.e., the amount allowable as an itemized deduction, or \$500 (\$1,000 for joint filers). Any taxes taken into account in computing adjusted gross income cannot be included in the calculation of the increased standard deduction.

### Gain from Sale of Principal Residence Allocated to Non-qualified Use Not Excluded from Income

Beginning with sales or exchanges after 2008, gain from the sale of taxpayer's principal residence allocated to periods of nonqualified use is not excluded from income.

A nonqualified use is any period after 2008 during which the residence is not used by the taxpayer, the taxpayer's spouse, or former spouse as a principal residence. The amount of the gain allocated to periods of nonqualified use is the gain times the ratio of the total period of nonqualified use to the total period of time the taxpayer owned the property.

There are exceptions for: 1) periods of nonqualified use after the last time the residence was used by the taxpayer, spouse, or former spouse as the principal residency; 2) temporary absences not to exceed two years due to a change in place of employment, health, or unforeseen circumstances; and 3) service in the uniformed services, Foreign Service, or as an employee of the intelligence community, not to exceed 10 years. As you know, the gain attributable to depreciation is not eligible for the exclusion for principal residence gain; and the 2008 Housing Act specifies that such gain is not taken into account in the determination of gain allocated to nonqualified use.

Please contact our office so we can discuss how the new tax changes affect your plans and/or your current situation with regard to your home.

(Source: Larry Jurgensmeyer, Bureau of National Affairs, 8/28/08)

### Tax Facts

The Articles of Confederation, adopted in 1781, did not have a nationwide tax system. Instead, it relied on donations from states. This did not work.

(Source: [consumerist.com](http://consumerist.com))

Pursuant to federal regulations imposed on practitioners who render tax advice ("Circular 230"), we are required to advise you that any tax advice contained herein is not intended or written to be used for the purpose of avoiding tax penalties that may be imposed by the IRS.

## Audit Triggers

Specific triggers that will increase your odds of being audited:

- ◇ Unreported income.
- ◇ Cash income.
- ◇ High income.
- ◇ Self-employment.
- ◇ Sole proprietorship.
- ◇ Large deductions for business travel and entertainment.
- ◇ Claiming the home office deduction.
- ◇ Itemizing deductions that seem unusually high in proportion to your income.
- ◇ Employing a family member.
- ◇ Family limited partnership.
- ◇ Failing to sign your tax return.
- ◇ Deducting personal expenses because you're claiming

the home office deduction.

- ◇ Claiming a company guard dog or work-related uniforms or costumes.

Make sure the deductions you take are appropriate and fully documented.

You have rights if you find yourself in the IRS' cross-hairs. The IRS has an appeals system set up for people who do not agree with the results of an examination of their tax returns or with other adjustments to their tax liability. If you request an appeals conference, be prepared with records and documentation to support your position.

For further information, refer to these IRS publications: Publication 5, *Your Appeal Rights and How to Prepare a Protest if You Don't Agree*, Publication 556, *Examination of Returns, Appeal Rights and Claims for Refund*, and Publication 1660, *Collection Appeal Rights*.

(Source: *Small Business Tax Control Reference Guide, Tax Brief # Business 118*, September 2008)

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