

BUSINESS TAX COUNSELING & STRUCTURING UPDATE

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TAX INCREASES IN THE PRESIDENT'S BUDGET PLAN

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On February 26, 2009 President Obama proposed his first budget plan. The plan calls for almost \$1 trillion in higher taxes over the next decade on the highest-earning taxpayers. This Client Alert briefly summarizes a few of the tax provisions in the budget plan.

Bush tax cuts to expire: The President's budget proposal would allow the income tax cuts enacted in 2001 and 2003 to expire for single filers making more than \$200,000 a year and joint filers making more than \$250,000 a year. The rate increase would go into effect in 2011. For 2011 and later, the top two income tax rates would jump from 33% to 36% and from 35% to 39.6%.

Additionally, the tax rate applicable to capital gains and qualified dividend income would rise from 15% to 20%.

Itemized deduction caps: The budget proposal would also cap the value of deductions for various itemized deductions, presumably including charitable contributions and home mortgage interest, at 28% for people in the top brackets.

Carried interest taxed as ordinary income: The budget proposal would tax

the income from carried interests in all investment partnerships (including hedge funds, private equity funds, and real estate partnerships) as ordinary income. Under current law, income from carried interests is treated as long-term capital gain to the extent that the partnership's income is attributable to gain realized from the sale or exchange of capital assets held for more than one year. This change would apparently go into effect beginning in 2011.

Estate tax developments: The federal estate tax, scheduled to be repealed in 2010 but reinstated in 2011 with only a \$1 million exemption, would instead be preserved indefinitely at 2009 levels, with the value of estates over \$3.5 million taxed at a rate of 45%.

These and other tax proposals contained in the budget proposal are at a preliminary stage. Many of the details have yet to be determined and undoubtedly Congress will play a significant role in shaping the final tax changes. We will continue to monitor these legislative changes as they develop. In the meantime, please contact Lowenstein Sandler to discuss any questions you may have about how these tax changes could impact you or your business.

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