Supplement to J.K. Lasser’s 1001 Deductions and Tax Breaks 2010

By Barbara Weltman

The tax law is not static, and there have been a number of changes affecting 2009 returns, as well as returns in 2010. Since publication of the 2010 edition of J.K. Lasser’s 1001 Deductions and Tax Breaks, Congress enacted the Worker, Homeownership, and Business Assistance Act of 2009; Military Spouses Residency Relief Act; and Department of Defense Appropriations, 2010. The courts and the IRS have also spoken to many tax items that can impact your 2009 return. Here are key developments, some of which can apply to your 2009 return. Also factor in 2010 changes if they affect your quarterly estimated tax payments for 2010. Watch for the extension of a number of provisions that expired in 2009, taxes imposed by a health care act, and other new law changes that can impact 2010 taxes.

Chapter 1—Your Family

Dependency exemption for unmarried parents with joint custody. When parents share custody of a child, the parent with physical custody for the greater part of the year is entitled to a dependency exemption for the child. The Tax Court rejected the idea that custody should be based on “waking hours”; custody is based on the number of nights spent with each parent during the year.

Chapter 2—Medical Expenses

COBRA coverage for the unemployed. The federal government will continue to pay 65% of insurance premiums for eligible individuals for up to 15 months (increased from the former 9-month period). Eligible individuals include those involuntarily terminated in January and February 2010 (instead of through the end of 2009).

Formula for a healthy baby. The IRS has ruled privately that the cost of formula for a healthy baby is not a deductible medical expense even though the mother had a double mastectomy and was incapable of breast-feeding.

In vitro fertilization fees. An appellate court has decided these fees incurred in fathering two children are not deductible by a healthy person because they are not for the treatment of a medical condition or for the purpose of affecting any structure or function of the father’s own body. The women who carried the children may be able to claim a deduction because the procedure affected their bodies.
**Gender reassignment surgery.** The Tax Court has decided that the cost of hormones and gender-reassignment surgery paid by a person suffering from gender identity disorder (GID) is a deductible medical expense. However, the cost of breast augmentation is viewed as a cosmetic procedure, which is nondeductible.

**Surrogate fees.** No medical deduction is allowed for fees to a surrogate mother, even though the costs of in vitro fertilization are deductible. These fees do not qualify for the adoption credit either.

**Driving for medical purposes.** For 2010, the rate for medical driving is 16.5¢ per mile.

**Chapter 3—Education Costs**

**Deduction for education costs.** An itemized deduction for the cost of obtaining an MBA is allowed where the degree does not qualify the recipient for a new trade or business. For example, a nurse-administrator who obtained an MBA was allowed to deduct the cost since she was not qualified for any additional licensing positions after completing the education.

**Chapter 4—Your Home**

**First-time homebuyer credit.** The credit of up to $8,000 had been set to run only through November 30, 2009; it has been extended for homes purchased through April 30, 2010 (June 30, 2010, for homes in contract at the end of April). For individuals on qualified official extended duty outside the United States (e.g., members of the military serving abroad), there is an additional year in which to claim the credit.

The credit has been expanded to allow a reduced credit amount of up to $6,500 for long-time residents who are not first-time buyers; the limit is $3,250 for married persons filing separately. These are homeowners who have owned their previous homes for 5 consecutive years within an 8-year period ending on the date of the purchase of a new home.

The income limits have been raised to permit more buyers to qualify for the credit. For homes bought after November 6, 2009, the full credit applies to singles with modified adjusted gross income (MAGI) up to $125,000 (it had been $75,000 for homes purchased on or before this date) and for joint filers with MAGI up to $225,000 (it had been $150,000). The credit continues to phase out for MAGI of an additional $20,000, so no credit can be claimed by singles with MAGI of $145,000 or more and joint filers with MAGI of $245,000 or more.

**New restrictions.** While the credit has been extended and expanded, there are new restrictions:
• The price of the home cannot exceed $800,000 for purchases after November 6, 2009.

• The credit cannot be claimed by a dependent or anyone under age 18 (unless married to someone at least 18 years old) for purchases after November 6, 2009.

• The credit now requires buyers to attach an executed copy of the settlement statement for the home’s purchase to the tax return on which the credit is claimed for purchases after November 6, 2009.

**New penalties.** For any tax year ending on or after April 8, 2008 (e.g., 2009 returns), the IRS can assess additional penalties without the issuance of a notice of deficiency in the case of an omission of any recapture required; for the failure to meet the age requirement; for providing inconsistent information on a tax return regarding the credit; or for failing to attach the settlement statement.

**Form 5405.** This form has been revised for figuring the credit allowed for the purchase of a home by first-timers or, after November 6, 2009, for long-time residents.

**Guarantor.** Having a guarantor (such as a parent) on a mortgage to the home who is not a first-time homebuyer does not prevent the buyer from qualifying as a first-time homebuyer.

**Clarification of principal residence.** The IRS has made it clear that in case of divorce, the marital home remains the taxpayer’s principal residence until the date that the divorce is final.

**Elimination of recapture for certain homeowners.** Those who purchased a first home in 2008 generally must recapture the credit in $500 increments starting in 2010. However, this recapture no longer applies to military, Foreign Service, and intelligence personnel on extended duty service.

**Mortgage interest.** The IRS has confirmed that interest on up to $1.1 million of borrowing can be deductible. While only the first $1 million of the loan is acquisition indebtedness, the next $100,000 can be treated as home equity debt.

**Moving expenses.** Use of a vehicle for deductible moving purposes in 2010 is figured at the rate of 16.5¢ per mile.
Chapter 5—Retirement Savings

Rollovers to Roth IRAs. Conversions by means of direct rollovers from qualified retirement plans to Roth IRAs are permissible (depending on whether the plans allow them). However, for such conversions in 2009, the person must not have adjusted gross income over $100,000 (the same limit that applies to a conversion from traditional IRAs) and, if married, must file jointly. Rollovers by those under age 59\(\frac{1}{2}\), while taxable, are not subject to the 10% penalty.

Correction on page 167: The modified adjusted gross income limit for married persons filing jointly for purposes of the retirement saver’s credit in 2009 should be $55,500 (not $55,000).

Chapter 6—Charitable Giving

Donations for Haitian relief. If you made a cash contribution to an IRS-recognized charitable organization for Haitian relief after January 11, 2010, and before March 1, 2010, you can opt to deduct the contribution on your 2009 return instead of waiting until you file your 2010 return. This special rule allows you to accelerate your write-off; it does not give you any new deduction options, so those who do not itemize cannot deduct their donations.

If you made a donation via texting, you can satisfy the substantiation requirement with a telephone bill identifying the charity receiving the donation, the date, and the amount of the gift.

Chapter 8—Investing

Savings bonds. You can opt to apply your federal tax refund to the purchase of U.S. savings bonds, Series I, up to a maximum of $5,000. You make the request by completing Form 8888, Direct Deposit of Refund to More than One Account. The request must be in multiples of $50.

Chapter 9—Travel

Business travel per diem rates. The maximum federal per diem rate for travel from October 1, 2009, through September 30, 2010, covering lodging, meals, and incidental expenses (M&IE) within the continental United States (CONUS) in most locations is $116 per day ($70 for lodging and $46 for M&IE)—up from $109 ($70 for lodging and $39 for M&IE) that had applied to the prior 12-month period. A number of the rates to certain areas have changed. These rates can be found at [www.gsa.gov](http://www.gsa.gov) (click on “Per Diem Rates”).

The high-low substantiate rates for high-cost and all other areas within CONUS for the period October 1, 2009, and September 30, 2010, is $258 for travel to high-cost
localities and $2,163 for travel to all other areas within CONUS. Of these rates, the meal portion is $65 for high-cost areas and $52 for all other areas within CONUS. These rates are higher than the rates for the prior 12-month period.

Chapter 14—Your Job

Making Work Pay credit. If you had a job in 2009, you may find that you are underwithheld because of the Making Work Pay credit. The reason: The withholding tables did not take into account certain special situations, including:

- Having two jobs
- Being a dependent (who ineligible for the credit)
- Married with both spouses working
- Pension recipients
- Social Security recipients

In the instructions to Form 2210 for 2009, the IRS provides guidance on how to obtain a waiver for an underpayment penalty resulting from underwithholding due to the Making Work Pay credit.

Caution: Be sure to adjust your withholding and estimated tax payments for 2010 to reflect the Making Work Pay credit if you and/or your spouse is employed in 2010 so your withholding will more closely match your tax liability.

Correction on page 366: Table 14.2 should be titled Fringe Benefits in 2009 (not 2008).

Chapter 15—Your Business

Net operating losses (NOLs). For such losses arising in 2009, small business taxpayers can opt for a longer carryback period. The usual carryback period is 2 years; for 2009 losses, a taxpayer can choose a 3-, 4-, or 5-year carryback. For the fifth carryback year, however, only half of the income can be offset in that year.

The 90% NOL limitation that usually applies for alternative minimum tax purposes is waived for any carrybacks.

Businesses with average gross receipts of $15 million or less that used a 5-year NOL carryback in 2008 can do so again in 2009 if they so elect.

Eligible taxpayers can file amended returns for prior years or apply for a quick refund on Form 1045 for individuals (e.g., sole proprietors and owners of pass-through entities) or Form 1139 for C corporations.
Note: For partnerships, limited liability companies, and S corporations, the election of the longer carryback period is made at the entity level even though the carryback is claimed by owners on their personal returns.

Standard mileage rate. The IRS announced the standard mileage rate, used in lieu of deducting the actual costs of business driving, for 2010; it is 50¢ per mile.

Those who own their vehicles and use the standard mileage rate must reduce the vehicle’s basis by 23¢ per mile.

Chapter 16—Miscellaneous Items

Changes affecting the military and their families. Some tax laws have been liberalized to accommodate those serving in the military.

- Exclusion for certain payments. Exclusion from gross income of qualified military base realignment and closure fringe benefit.

- Residency of military spouses. A new law lets spouses of military personnel choose their state of residence if they are living in another state solely to be with the service member on military orders. A spouse may be entitled to a refund of any taxes paid through withholding or estimated taxes to the state in which the service member is stationed.

Correction on page 416: Legal fees deductible as an adjustment to gross income include claims against the federal government under Subchapter III of Chapter 37 (not 27), Title 31, of the U.S. Code.