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The Hybrid Vehicle Tax Credit

*Bart A. Basi, CPA/Attorney at Law
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Introduction

Gas is now above \$4 a gallon across the country!!! The sudden rise in gasoline prices has been fairly detrimental to businesses and families alike. With the higher prices, Americans are looking to conserve gas and money in any way practical in order to make travel more budget friendly and affordable. There are many practical solutions such as: driving less, combining trips or even walking instead of driving

While cheap solutions abound, such as those listed above, many people are prone to buy fuel efficient cars such as hybrids. Hybrid vehicles convert the energy from an internal combustion engine into electrical current. In the process of utilizing energy in this manner, driving in cities and highways becomes more efficient and thus less expensive for drivers mile-by-mile. Congress has seen the need to encourage proliferation of this technology and has passed an energy based law allowing tax

credits to individuals and businesses alike who buy a qualifying hybrid vehicle.

The Hybrid Vehicle Tax Credit

As part of The Energy Policy Act of 2005, Congress provides a credit to taxpayers that purchase energy efficient property, including Qualified Hybrid Vehicles. The tax credit applies to both individuals and businesses. A list of eligible vehicles and their respective credit amounts can be found by going to www.irs.gov and searching "qualified hybrid". Generally, most hybrids sold in the United States qualify for the credit.

In order to qualify for the credit, the vehicle must: a) be placed in service after December 31, 2005 and purchased on or before December 31, 2010, b) the original use must be with the taxpayer (a used hybrid does not qualify), c) the vehicle must be acquired for use or lease

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A CASE STUDY

The Tax Court has allowed a majority stockholder to try to recover from his business partners some of the delinquent withholding taxes, interest, and penalties he paid to the IRS. In this case, the taxpayer was a majority stockholder in a corporation that owed withholding taxes. While the Court found that the taxpayer was a responsible person for the amounts owed, his

business partners were also found to have greater responsibility because they ran the day-to-day business, were aware of the taxes due, and deliberately ignored notices from the IRS. As a result, the taxpayer was able to recover 80% of the tax, interest, and penalties that he paid to the IRS from his business partners.

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by the taxpayer claiming the credit, and d) the vehicle must be used predominantly within the United States.

The credit begins phase out once each manufacturer sells 60,000 qualifying vehicles. The phase out is announced once the manufacturer meets its 60,000 car quota and then the credit lessens to 50% for two quarters, 25% for the next two quarters, and finally the credit is fully phased out. In order to take the deduction, individuals fill out form 8910 and attach it to their tax return. Businesses are also eligible to take the credit. Businesses file form 3800 as part of the General Business Credit.

Current Manufacturer Status

Many hybrids sold are still eligible for this tax credit. Since the law was passed nearly 3 years ago, some phase outs apply on some manufacturers. At the time of print of this article, Toyota and Lexus are now fully phased out and the cars are no longer eligible for the credit. Honda is in the 25% credit stage from July 1, 2008 - December 31, 2008. On January 1, 2009, the credit will be fully phased out. Nissan is not subject to any

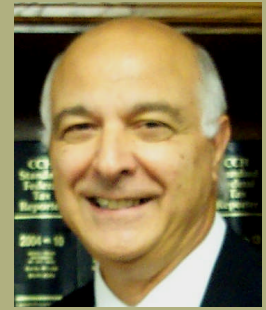
phase outs at this time. Ford and GM are also in the full credit phase. Though this information is current, be sure to double check at the time of your purchase to be sure that the credits are still available. Since gasoline prices have risen to \$4 a gallon, these hybrids have become popular items.

Conclusion

While the perception is that most hybrid cars are cramped on space, the fact is that many hybrids are larger vehicles and offer ample space. The vehicles still eligible for the deduction included in the Ford, GM, and Nissan line up are vehicles with ample room and plenty of horsepower. Further, even though the Honda and Toyota vehicles are in phase out and post phase out, respectively, the brand lineups still offer quality and fuel savings that are beneficial for both individual and business taxpayers alike. Given the tax credit and fuel savings, taxpayers are well advised at looking into hybrid vehicles to save bottom lines, taxes, and the resources of the Earth as well.

A CASE STUDY CONTINUED:

Editor's Comment: While this is a favorable holding for this taxpayer, he is still considered a responsible person as far as the taxes that were owed by the corporation are concerned. This taxpayer is able to recover some of the taxes he paid from his business partners, but there is no guarantee that he will actually be able to recover the funds. This is an important principle of business ownership to remember. While this taxpayer was not involved in the day-to-day operations of the business, he was still liable for the corporation's taxes because of his majority ownership. Now he has the problem of trying to recover some of the taxes paid from his business partners.



Dr. Bart A. Basi is an attorney, CPA, and the Senior Advisor of The Center for Financial, Legal & Tax Planning, Inc, a full service company specializing in financial, legal & tax matters. Basi is a nationally recognized author, lecturer, and advisor on how to structure deals to minimize taxes. Tax structure makes the difference between getting the deal done and watching the deal fall apart. Many of you may be familiar with Basi and the topics he covers in the Financial, Legal & Tax Advisory which may be read in various industry-specific trade publications.

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Points of Interest

- **Americans are looking to conserve gas and money in any way practical in order to make travel more budget friendly and affordable.**
- **Many hybrids sold are still eligible for this tax credit.**
- **Nissan is not subject to any phase outs at this time. Ford and GM are also in the full credit phase.**



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WHAT'S INVOLVED IN DUE DILIGENCE WHEN I SELL MY BUSINESS?

Mike Ertel, CBI/ M&AMI/ CM&AA

Due diligence is a critical phase in the sale of any business when the buyer and his/her trusted advisors perform several kinds of audits to: (1) Confirm everything the seller has represented about the business is true and (2) Make certain that there are no hidden surprises. When the buyer's due diligence uncovers serious discrepancies/ deficiencies, it is not uncommon for the buyer to require a significant reduction in the purchase price and/or a significant tightening of the terms in order to still close the deal. Frequently, the deal may fall apart altogether if the deficiency is serious enough.

Due diligence usually begins after the parties have agreed in principal to the price and general terms of a deal, and usually requires 30 to 90 days, depending upon the complexity of the business. It has at least four phases: Legal, Financial, Environmental and Operational, which typically proceed in parallel.

The buyer's attorney usually leads the legal phase, which seeks to confirm that the business is now and will continue to be properly licensed, that there are no lawsuits pending against the company, and there are no problems in transferring the company's contracts with its existing customers and vendors.

The buyer's CPA/ accounting firm will usually lead the financial phase, which seeks to confirm that the business books and records accurately represent the current financial condition of the company. The buyer's bank will also have their own list of questions regarding the business' financial condition, which must be satisfied before they will approve the acquisition loan. During this phase, the bank will also require independent appraisals of the business' assets. If these include real estate, either owned or leased, the bank will no doubt require an environmental phase one audit, depending upon the nature of the business.

Operational due diligence is usually conducted by the buyer's own management team.

During due diligence, the seller is likely to feel like the company – and perhaps even the seller personally -- is being put under a high-powered magnifying glass, which can be pretty comfortable even when it goes well. An experienced M&A advisor can be of great assistance during this phase by coordinating and simplifying the information requests from these various sources. In some cases, we can identify those requests that aren't relevant or material for this business, or by suggesting some alternate ways to get the buyer the basic information he/she requires from readily available sources/reports, rather than initiating a time consuming special study.

If you know of a business owner who's thinking of selling or buying a business and who might benefit from a free consultation with us, have them contact me, or any of the M&A professionals at www.bradwaygroup.com

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Frequently Asked Questions...



Q: If I purchase and use a hybrid vehicle for business purposes in my business, am I still eligible to use Section 179 accelerated expenses?

A: Yes, even though a hybrid car purchase can qualify for a credit, Section 179 expenses, bonus depreciation, and ordinary depreciation can still be used by the buyer.

Q: Are there nontax reasons for why I might want to buy a hybrid vehicle?

A: Absolutely. Hybrid vehicles have such good gas mileage, the fuel savings alone can be significant enough to affect cash flow for a small business. Even though Honda and Toyota are in their phase out sessions, these hybrids tend to carry their values well as of yet and can offer significant trade in value when the time comes.

Q: What is the Section 179 expense?

A: The deduction contained in the Internal Revenue Code Section 179 allows for expanded deduction of equipment purchased for the year of 2008. During the year 2008, the maximum allowable deduction is \$250,000. Bonus depreciation has also been reintroduced. To qualify for bonus depreciation, the equipment must be purchased brand new and be used within a trade or business.

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