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# The commercial classroom: Capital gains update

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Several changes occurred in 2008 and 2009 regarding capital gains taxes. In May, 2003, then President George Bush signed into law legislation that reduced individual's tax bracket percentages and lowered the capital gains tax rates by 5%. Previous to that date the Capital Gains Tax on "appreciation" was 20% and for taxpayers in the lower tax brackets 10%. The reductions specifically meant taxpayers in the 10% and 15% tax brackets would have a capital gains tax of 5%; taxpayers in tax brackets above 15% would have a capital gains tax of 15%.

As of January 1, 2008 taxpayers in the lower tax brackets (10% and 15%) had their capital gains tax reduced to zero, no federal capital gains taxes due. Taxpayers in the tax brackets above 15% have had no change; they will continue to be taxed at the current 15% capital gains tax rate.

What is important about all of these tax reductions is they are all due to expire as of December 31, 2010. It seems the intention of the current administration to let this bill sunset and phase out these reductions. It may be prudent to discuss with potential sellers that the capital gains tax rate may increase after 2010.

In the 2003 tax reduction bill tenant improvements were addressed. Prior to that time tenant improvements were being depreciated over a 39 year schedule. The bill reduced the depreciation time schedule to 15 years. This provision initially was set to expire at the end of 2005 but was extended, however it did expire at the end of 2007.

However, the Emergency Economic Stabilization Act of 2008 was signed into law on October 3, 2008. It made the 15 year depreciation schedule for tenant improvements retroactive to January 1, 2008 and extended it through December 31, 2009. The bill also expanded the eligible properties to include restaurant and retail improvements. There are some qualifications and restrictions, so be sure to recommend your client speak to their tax advisor.
The American Recovery and Reinvestment Act of 2009 extends the previously enacted 50% bonus depreciation program. For new property and leasehold improvements with a tax recovery period of 20 years or less, 50% of the cost of eligible property may be deducted in the year the property is acquired. The remaining 50% of the cost or "basis" remains eligible for future depreciation under the assets recovery rules. This provision also has qualifications and must be reviewed with one's tax advisor; this provision is currently scheduled to expire on December 31.

NYS Continuing Education
Reminder: Effective July 1, 2008, the New York State requirements for maintaining a real estate

license have been modified. It is required that 22Â½ hours of continuing education be taken every two years to renew one's license. However it is now also required that 3 hours of the 22Â½ hours be fair housing and/or discrimination training.

Prior to July 1, 2008 brokers who had been sales agents/brokers for 15 years or more were exempt from the continuing education requirements. This exemption has been eliminated. If you were not "grandfathered" before July 1, 2008 you must take the required continuing education.

Edward Smith, RECS, is the Long Island metro regional director of Coldwell Banker Commercial NRT, Eastport, N.Y.