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TAYLOR DEVICES INC
Form 10-K/A
April 10, 2009

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
F O R M 10-KSB/A
Amendment No. 1

ANNUAL REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended May 31, 2008

TRANSITION REPORT UNDER SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number 0-3498

TAYLOR DEVICES, INC.

(Name of small business issuer as specified in its charter)

New York

(State or other jurisdiction of incorporation or organization)

16-0797789

(I.R.S. Employer Identification No.)

90 Taylor Drive, P.O. Box 748, N. Tonawanda, New York 14120-0748

(Address of principal executive offices)

Issuer's telephone number (716) 694-0800

Securities registered under Section 12(b) of the Exchange Act:

Title of each class

None

Name of each exchange on which registered

None

Securities registered under Section 12(g) of the Exchange Act:

Common Stock (\$.025 par value)

(Title of class)

Check whether the issuer is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Check whether the issuer (1) filed all reports required to be filed by Section 13 or 15(d) of the Exchange Act during the past 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Check if there is no disclosure of delinquent filers in response to Item 405 of Regulation S-B contained in this form, and no disclosure will be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-KSB or any amendment to this Form 10-KSB .

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

Issuer's revenues for its most recent fiscal year are \$18,593,831.

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The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was sold, or the average bid and asked price of such common equity, as of August 13, 2008 was \$18,030,860.

The number of shares outstanding of each of the issuer's classes of common equity as of August 13, 2008 3,219,923

Explanatory Note

This Amendment No. 1 to Form 10-KSB is being filed to correct the disclosure of the following:

- ITEM 8A(T). CONTROLS AND PROCEDURES - The disclosure in paragraph (a) was amended to reflect the requirements of Exchange Act Rule 13a-15(e).
- Exhibit 31(i) and Exhibit 31(ii) were each amended to (a) remove the title of the certifier from the introduction and (b) to conform the introduction for paragraph 4 to the text of Exhibit 31(i).

No other changes are being made to the Form 10-KSB in connection with this amendment.

ITEM 8A(T). CONTROLS AND PROCEDURES

(a) *Evaluation of disclosure controls and procedures.*

The Company's principal executive officer and principal financial officer have evaluated the Company's disclosure controls and procedures as of May 31, 2008 and have concluded that, as of the evaluation date, the disclosure controls and procedures were effective to ensure that information required to be disclosed in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms and that information required to be disclosed in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our chief executive officer and chief financial officer to allow timely decisions regarding required disclosure.

(b) *Management's report on internal control over financial reporting.*

The Company's management, with the participation of the Company's CEO and CFO, is responsible for establishing and maintaining adequate internal control over financial reporting. The Company's management has assessed the effectiveness of the Company's internal control over financial reporting as of May 31, 2008. In making this assessment, management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control -- Integrated Framework. Based on this assessment management has concluded that, as of May 31, 2008, the Company's internal control over financial reporting is effective based on those criteria.

This annual report does not include an attestation report of the company's registered public accounting firm regarding internal control over financial reporting. Management's report was not subject to attestation by the company's registered public accounting firm pursuant to temporary rules of the Securities and Exchange Commission that permit the company to provide only management's report in this annual report.

(c) *Changes in internal controls.*

There have been no changes in the Company's internal controls over financial reporting that occurred during the fiscal quarter ended May 31, 2008 that have materially affected, or are reasonably likely to materially affect, the Company's control over financial reporting.

ITEM 13.EXHIBITS

DOCUMENTS FILED AS PART OF THIS REPORT:

Index to Financial Statements:

- (i) Report of Independent Registered Public Accounting Firm
- (ii)

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Consolidated Balance Sheets May 31, 2008 and 2007

- (iii) Consolidated Statements of Income for the years ended May 31, 2008 and 2007
- (iv) Consolidated Statements of Stockholders' Equity for the years ended May 31, 2008 and 2007
- (v) Consolidated Statements of Cash Flows for the years ended May 31, 2008 and 2007
- (vi) Notes to Consolidated Financial Statements May 31, 2008 and 2007

EXHIBITS:

- (2) Plan of acquisition, reorganization, arrangement, liquidation or succession
 - (i) Agreement and Plan of Merger by and between Taylor Devices, Inc. and Tayco Developments, Inc. dated November 30, 2007, incorporated by reference to Registration Statement on Form S-4, File No. 333-147878, filed with the Securities and Exchange Committee on January 4, 2008.
 - (3) Articles of incorporation and by-laws
 - (i) Restated Certificate of Incorporation incorporated by reference to Exhibit (3)(i) of Annual Report on Form 10-K, dated August 24, 1983.
 - (ii) Amendment to Certificate of Incorporation incorporated by reference to Exhibit (3)(iv) to Form 8 [Amendment to Application or Report], dated September 24, 1993.
 - (iii) Amendment to Certificate of Incorporation creating Series A Junior Participating Preferred Stock, \$.05 par value, incorporated by reference to Exhibit (3)(i)(viii) to Quarterly Report on Form 10-QSB for the period ending November 30, 1998, dated January 12, 1999.
 - (iv) Certificate of Change incorporated by reference to Exhibit (3)(i) to Quarterly Report on Form 10-QSB for the period ending November 30, 2002.
 - (v) Proxy Review Guidelines incorporated by reference to Exhibit (3)(ii) to Quarterly Report on Form 10-QSB for the period ending February 28, 1998, dated April 10, 1998.
 - (vi) By-laws incorporated by reference to Exhibit (3)(i) to Quarterly Report on Form 10-QSB for the period ending February 28, 2004, dated April 14, 2004.
 - (4) Instruments defining rights of security holders, including indentures
 - (i) Mortgage to Marine Midland Bank dated May 28, 1993 incorporated by reference to Exhibit (10)(vii) to Annual Report on Form 10-KSB, dated September 10, 1993.
 - (ii) Master Indenture between Niagara County Industrial Development Agency and Bankers Trust Company, as Trustee, dated as of November 1, 1994 (\$1,250,000 Niagara County Industrial Development Agency, 1994 Adjustable Rate Demand, Industrial Development Revenue Bonds, Series A [MMARS Second Program]), incorporated by reference to Exhibit (4)(iv) to Annual Report on Form 10-KSB, dated August 21, 1995.
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- (iii) Series Supplemental Indenture between Niagara County Industrial Development Agency and Bankers Trust Company, as Trustee, (\$1,250,000 Niagara County Industrial Development Agency, 1994 Adjustable Rate Demand, Industrial Development Revenue Bonds, Series A [MMARS Second Program]), incorporated by reference to Exhibit (4)(v) to Annual Report on Form 10-KSB, dated August 21, 1995.

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- (iv) Series Mortgage from Niagara County Industrial Development Agency, Tayco Realty, Inc. and registrant to Marine Midland Bank, as Letter of Credit Bank, dated as of November 1, 1994, incorporated by reference to Exhibit (4)(vi) to Annual Report on Form 10-KSB, dated August 21, 1995.
 - (v) Mortgage from Niagara County Industrial Development Agency, Tayco Realty, Inc. and registrant to Marine Midland Bank, dated January 3, 1998, incorporated by reference to Exhibit (4)(v) to Annual Report on Form 10-KSB, dated August 25, 1998.
 - (vi) Rights Agreement by and between registrant and Regan & Associates, Inc, dated as of October 5, 1998 and letter to shareholders (including Summary of Rights), dated October 5, 1998, attached as Exhibits 4 and 20, respectively to Registration Statement on Form 8-A 12G, filed with the Securities and Exchange Commission on October 6, 1998.
- (10) Material Contracts
- (i) 1998 Taylor Devices, Inc. Stock Option Plan attached as Exhibit 4.1 to Registration Statement on Form S-8, File No. 33-6905, filed with the Securities and Exchange Commission on December 24, 1998.
 - (ii) 2001 Taylor Devices, Inc. Stock Option Plan attached as Exhibit A to Definitive Proxy Statement, filed with the Securities and Exchange Commission on September 24, 2001.
 - (iii) 2005 Taylor Devices, Inc. Stock Option Plan attached as Appendix B to Definitive Proxy Statement, filed with the Securities and Exchange Commission on September 27, 2005.
 - (iv) Loan Agreements between the registrant and Marine Midland Bank, dated December 2, 1992, incorporated by reference to Exhibit (10)(viii) to Annual Report on Form 10-K, dated September 10, 1993.
 - (v) Series Lease between Niagara County Industrial Development Agency and registrant, dated as of November 1, 1994 (\$1,250,000 Niagara County Industrial Development Agency, 1994 Adjustable Rate Demand, Industrial Development Revenue Bonds, Series A [MMARS Second Program]), incorporated by reference to Exhibit (10)(ix) to the Annual Report on Form 10-KSB, dated August 21, 1995.
 - (vi) Lease Agreement between registrant and Tayco Realty Corporation, dated November 1, 1995, incorporated by reference to Exhibit (10)(ix) to Annual Report on Form 10-KSB, dated August 22, 1996.
 - (vii) Employment Agreement dated as of December 1, 2000 between the Registrant and Douglas P. Taylor, incorporated by reference to Exhibit (10)(x) to Annual Report on Form 10-KSB, dated August 22, 2001.
 - (viii) Employment Agreement dated as of December 1, 2000 between the Registrant and Richard G. Hill, incorporated by reference to Exhibit (10)(xi) to Annual Report on Form 10-KSB, dated August 22, 2001.
 - (ix) The 2004 Taylor Devices, Inc. Employee Stock Purchase Plan, incorporated by reference to Exhibit 4.1 to Registration Statement on Form S-8, File No. 333-114085, filed with the Securities and Exchange Commission on March 31, 2004.
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- (x) Post-Effective Amendment No. 1 to Registration Statement on Form S-8, File No. 333-114085, for the 2004 Taylor Devices, Inc. Employee Stock Purchase Plan, filed with the Securities and Exchange Commission on August 24, 2006.
 - (xi) First Amendment to Employment Agreement dated as of December 22, 2006 between the Registrant and Douglas P. Taylor, incorporated by reference to Exhibit 10(ii) to Quarterly Report on Form 10-QSB for the period ending February 28, 2007.
 - (xii) First Amendment to Employment Agreement dated as of December 22, 2006 between the Registrant and Richard G. Hill, incorporated by reference to Exhibit 10(iii) to Quarterly Report on Form 10-QSB for the period ending February 28, 2007.

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- (xiii) Indemnification Agreement between registrant and directors and executive officers, attached as Appendix A to Definitive Proxy Statement, filed with the Securities and Exchange Commission on September 27, 2007.
- (xiv) Consent Agreement by and between Taylor Devices, Inc. and HSBC Bank USA, National Association, dated November 30, 2007, attached to this Annual Report on Form 10-KSB.

(11) Statement regarding computation of per share earnings

REG. 228.601(A)(11) Statement regarding computation of per share earnings

Weighted average of common stock/equivalents outstanding - fiscal year ended May 31, 2008

| | | |
|---|--------------------|--------------|
| Weighted average common stock outstanding | | 3,170,715 |
| Common shares issuable under stock option plans using treasury stock method | | 16,306 |
| Weighted average common stock outstanding assuming dilution | | 3,187,021 |
| Net income fiscal year ended May 31, 2008 | (1) | \$ 1,533,285 |
| Weighted average common stock | (2) | 3,170,715 |
| Basic income per common share | (1) divided by (2) | \$.48 |
| | | |
| Net income fiscal year ended May 31, 2008 | (3) | \$ 1,533,285 |
| Weighted average common stock outstanding assuming dilution | (4) | 3,187,021 |
| Diluted income per common share | (3) divided by (4) | \$.48 |

Weighted average of common stock/equivalents outstanding - fiscal year ended May 31, 2007

| | | |
|---|--------------------|------------|
| Weighted average common stock outstanding | | 3,151,166 |
| Common shares issuable under stock option plans using treasury stock method | | 8,226 |
| Weighted average common stock outstanding assuming dilution | | 3,159,392 |
| Net income fiscal year ended May 31, 2007 | (1) | \$ 619,273 |
| Weighted average common stock | (2) | 3,151,166 |
| Basic income per common share | (1) divided by (2) | \$.20 |
| | | |
| Net income fiscal year ended May 31, 2007 | (3) | \$ 619,273 |
| Weighted average common stock outstanding assuming dilution | (4) | 3,159,392 |
| Diluted income per common share | (3) divided by (4) | \$.20 |

(13) The Annual Report to Shareholders for the fiscal year ended May 31, 2008 will be filed with the Company's Proxy Statement to be issued in connection with the Annual Meeting of Shareholders to be held on November 7, 2008.

(14) Code of Ethics, incorporated by reference to Exhibit 14 to Annual Report on Form 10-KSB for the period ending May 31, 2004.

(20) Other documents or statements to security holders

- (i) News from Taylor Devices, Inc. Shareholder Letter, Summer 2008.

(21)

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Subsidiaries of the registrant

Tayco Realty Corporation is a New York corporation organized on September 8, 1977, owned by the Company.

- (23) Report and Consent of Independent Certified Public Accountants
 - (31) Officer Certifications
 - (i) Rule 13a-14(a) Certification of Chief Executive Officer.
 - (ii) Rule 13a-14(a) Certification of Chief Financial Officer.
 - (32) Officer Certifications
 - (i) Section 1350 Certification of Chief Executive Officer.
 - (ii) Section 1350 Certification of Chief Financial Officer.
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Exhibit 31(i)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULE 13a - 14(a) OF THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Douglas P. Taylor, certify that:

1. I have reviewed this annual report on Form 10-KSB/A of Taylor Devices, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. [Intentionally omitted];
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such

evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 13, 2009

/s/ Douglas P. Taylor
Douglas P. Taylor
Chief Executive Officer

Exhibit 31(ii)

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO RULE 13a - 14(a) OF THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Mark V. McDonough, certify that:

1. I have reviewed this annual report on Form 10-KSB/A of Taylor Devices, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. [Intentionally omitted];

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

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(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 13, 2009

/s/ Mark V. McDonough
Mark V. McDonough
Chief Financial Officer
