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Tax & Business Alert

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CONSIDER SEPARATING REAL ESTATE ASSETS FROM YOUR BUSINESS

Many companies choose *not* to combine real estate and other assets into a single entity. Perhaps the business fears liability for injuries suffered on the property. Or legal liabilities encountered by the company could affect property ownership. But there are valid and potentially beneficial tax reasons for holding real estate in a separate entity as well.

AVOIDING COSTLY MISTAKES

Many businesses operate as C corporations so they can buy and hold real estate just as they do equipment, inventory and other assets. The expenses of owning the property are treated as ordinary expenses on the company's income statement. However, when the real estate is sold, any profit is subject to double taxation: first at the corporate level and then at the owner's individual level when a distribution is made. As a result, putting real estate in a C corporation can be a costly mistake.

If the real estate were held instead by the business owner(s) or in a pass-through entity, such as a limited liability company (LLC) or limited partnership, and then leased to the corporation, the profit upon a sale of the property would be taxed only once — at the individual level.

MAXIMIZING TAX BENEFITS

The most straightforward and seemingly least expensive way for a business owner to maximize the tax benefits is to buy the property outright. However,

this could transfer liabilities related to the property directly to the owner, putting other assets — including the business — at risk. In essence, it would negate part of the rationale for organizing the business as a corporation in the first place.

So it's generally best to hold real estate in its own limited liability entity. The LLC is most often the vehicle of choice for this, but limited partnerships can accomplish the same ends if there are multiple owners. No matter which structure is used, though, make sure all entities are adequately insured.

THE BENEFITS OF SEPARATION FOR FAMILY BUSINESSES

Family businesses face many distinctive challenges. One is that several family members may participate in the ownership of the company. Under such circumstances, separating real estate ownership from the business creates more options to meet the needs of multiple owners.

Let's say that a family business is passing from one generation to the next. One child is very interested in owning and operating the business but doesn't have the means to finance the purchase of both the business and its real estate.

If the two are separated, it's possible for one sibling to take over the business while other siblings hold the real estate. In this case, everyone can benefit: The child who buys the business doesn't have to share control with the other siblings, yet they can still reap benefits as property owners.

TAILORING THE RIGHT STRATEGY

There are many complexities to a company owning real estate. And there's no one-size-fits-all solution to protecting yourself legally while minimizing your tax liability. But if you do nothing and treat real estate like any other business asset, you could be exposing your business to substantial risk. So please contact our firm for an assessment of your situation. We can help tailor a strategy that's right for you. ■

FACING THE TAX CHALLENGES OF SELF-EMPLOYMENT

Today's technology makes self-employment easier than ever. But if you work for yourself, you'll face some distinctive challenges when it comes to your taxes. Here are some important steps to take:

Learn your liability. Self-employed individuals are liable for self-employment tax, which means they must pay both the employ*ee* and employ*er* portions of FICA taxes. The good news is that you may deduct the employ*er* portion of these taxes. Plus, you might be able to make significantly larger retirement contributions than you would as an employee.

However, you'll likely be required to make quarterly estimated tax payments, because income taxes aren't withheld from your self-employment income as they are from wages. If you fail to fully make these payments, you could face an unexpectedly high tax bill and underpayment penalties.

Distinguish what's deductible. Under IRS rules, deductible business expenses for the self-employed must be "ordinary" and "necessary." Basically, these are costs that are commonly incurred by businesses similar to yours and readily justifiable as needed to run your operations.

The tax agency stipulates, "An expense does not have to be indispensable to be considered necessary." But pushing this grey area too far can trigger an audit. Common examples of deductible business expenses

for the self-employed include licenses, accounting fees, equipment, supplies, legal expenses and business-related software.

Don't forget your home office! You may deduct many direct expenses (such as business-only phone and data lines, as well as office supplies) and indirect expenses (such as real estate taxes and maintenance) associated with your home office. The tax break for indirect expenses is based on just how much of your home is used for business purposes, which you can generally determine by either measuring the square footage of your workspace as a percentage of the home's total area or using a fraction based on the number of rooms.

The IRS typically looks at two questions to determine whether a taxpayer qualifies for the home office deduction:

1. Is the specific area of the home that's used for business purposes used *only* for business purposes, not personal ones?
2. Is the space used regularly and continuously for business?

If you can answer in the affirmative to these questions, you'll likely qualify. But please contact our firm for specific assistance with the home office deduction or any other aspect of filing your taxes as a self-employed individual. ■

4 MYTHS ABOUT MANAGING YOUR DEBT

Debt is a reality for many Americans. Median household debt was estimated at $2,300 as of May 2016, according to consumer information provider ValuePenguin. And debt isn't limited to those earning lower incomes; households with a net worth of $500,000 and over had an estimated $8,139 in credit card debt, per the same source.

Underestimating or ignoring your obligations can delay or even prevent you from accomplishing many financial goals. Here are four myths about managing your debt.

1. MY CREDIT REPORT IS FINE, AND SO AM I

Many people glance at their credit reports, see a decent score and move on. But credit reports often contain inaccuracies that blur your true debt picture.

Review your report regularly and follow up with the issuing credit agency if there's an inaccuracy. For example, make sure your report doesn't reflect a lower credit limit than your actual one.

2. SHUT IT DOWN … SHUT IT DOWN NOW

Closing out credit cards may seem like elementary debt management. But eliminating them isn't necessarily the way to go. Instead, you should limit your number of open cards, pay them off or maintain low account balances, and avoid or renegotiate high interest rates.

The major credit-reporting agencies use a combination of metrics to establish your credit score, including credit history and debt utilization (ratio of debt to available credit). Closing out a card reduces your credit history, limiting the data by which you're evaluated, and increases your debt utilization, which hurts your credit score.

3. I HOLD THE GOLDEN TICKET

The easiest way to deal with debt may seem a broad, sweeping strike to pay it down. Unfortunately, gathering the funds to make that move may only worsen the overall situation.

For instance, home equity loans typically offer lower interest rates than credit cards and large available balances. Plus, the interest paid on a home equity debt may be tax deductible, while credit card debt generally isn't. But the greater obligation isn't really wiped out — only transferred. And the borrower's home is at risk.

Similarly, taking out a 401(k) loan offers easy, low-interest access to funds. But a significantly negative tax impact and marked reduction in one's retirement savings are downsides. Also, interest paid on such a 401(k) loan wouldn't be tax deductible.

4. BANKRUPTCY = FAILURE

Well, it certainly doesn't equal success. And a bankruptcy filing should undoubtedly form the last line of defense in any debt management plan. But, rather than considering it an outright failure, you might want to look at bankruptcy as a last-chance opportunity.

In many cases, a person's credit score can recover surprisingly quickly — sometimes as soon as three to five years. In addition, some tax liabilities that meet certain requirements may be discharged in bankruptcy.

ASK FOR HELP

Sound, timely advice can help you avoid getting in over your head when it comes to debt. Please contact our firm for a detailed assessment of your situation. ■

PHASEOUTS AND REDUCTIONS: A TAX-FILING REMINDER

As tax-filing season gets into full swing, there are many details to remember. One subject to keep in mind — especially if you've seen your income rise recently — is whether you'll be able to reap the full value of tax breaks that you've claimed previously.

What could change? If your adjusted gross income (AGI) exceeds the applicable threshold, your personal exemptions will begin to be phased out and your itemized deductions reduced. For 2016, the thresholds are $259,400 (single), $285,350 (head of household), $311,300 (joint filer) and $155,650 (married filing separately). These are up from the 2015 thresholds, which were $258,250 (single), $284,050 (head of household), $309,900 (joint filer) and $154,950 (married filing separately).

The personal exemption phaseout reduces exemptions by 2% for each $2,500 (or portion thereof) by which a taxpayer's AGI exceeds the applicable threshold (2% for each $1,250 for married taxpayers filing separately). Meanwhile, the itemized deduction limitation reduces

otherwise allowable deductions by 3% of the amount by which a taxpayer's AGI exceeds the applicable threshold (not to exceed 80% of otherwise allowable deductions). It doesn't apply, however, to deductions for medical expenses, investment interest, or casualty, theft or wagering losses.

If your AGI is close to the threshold, AGI-reduction strategies (such as making retirement plan and Health Savings Account contributions) may allow you to stay under it. If that's not possible, consider the reduced tax benefit of the affected deductions before implementing strategies to accelerate or defer deductible expenses. Please contact our firm for specific strategies tailored to your situation. ■

EXECUTIVE MEMORANDUM
"WHY EXTENSIONS ARE GOOD!"
BY GARY SELLARI, CPA/PFS, MSM
UPDATED JANUARY 2017

When I first started working for the Firm of Divine & Blalock in the early 1970s, only about 15% of the Firm's income tax returns were filed under extension. That was at a time when getting an extension needed a reason and IRS approval. It was also a time prior to the introduction of Internal Revenue Code Section 444, which largely eliminated fiscal year-ends for most flow-through business entities and Trusts. As a result of Code Section 444, the tax profession "lost" some planning flexibility, techniques and strategies. The profession also lost much of its ability to spread out its workload. When Internal Revenue Code Section 444 went into effect, workload compression for the tax preparation industry went up - especially for CPA firms, which generally deal with the more complex business, entities and individual issues.

Workload compression for the Internal Revenue Service also increased with the introduction of Code Section 444 because of its need to deal with literally millions of additional calendar-year entities that, at one time, would have been fiscal year-ends. Also, the rate of tax law change, which has always been high, still continues to increase. The present Trump administration dynamic will undoubtedly be bringing on more (hopefully, mostly "taxpayer friendly") changes. The pressure on the IRS to create, distribute and be ready to accept new and changed Forms, the need to change significant amounts of source Code by tax software companies and the need for tax professionals (inside the IRS and outside) to "absorb" all the changes, for simple and more complex matters, only further exacerbates the work period compression problems. In response to such type pressures, **I have been "pressing" for the increased use of extensions, for our Firm's clients, for years**. Also, the IRS remains receptive (and even desirous) that taxpayers use extensions.

The standard federal extension forms of today automatically extend the filing due date to October 16 (for 2016 returns) for most Forms 1040 and to September 15 for most calendar-year Partnerships and S Corporations. Calendar-year Estates and Trusts' extended due dates are October 2. Starting with the 2016 tax year, calendar year-end C Corporations are due April 18, with the extended due date being October 16.

The IRS continues to make obtaining an extension(s) easy. Today's federal "automatic extension" form does not even ask for a signature – just an estimate of the amount due. The taxpayer(s) no longer even needs to give a reason to pay the estimated tax due in order to get the extension. The current extension forms (which are now normally "e-filed") basically just ask, "How much do you think you will owe?" and, separately, "How much are you paying?" A timely-filed extension is still valid, even if no estimated tax due payment is made. The taxpayer may have to pay interest and an underpayment penalty on any underpayment amount, but the large, late-filing penalties will not be applicable. The extension is valid. Again, these rules reflect IRS attempts to ease the extension process from their end.

Federal tax return extensions are generally advisable for numerous tactical reasons that extend well beyond workload compression issues. Based on past and more current discussions with numerous tax professionals (both within and outside our Firm), coupled with my own experiences, despite the "file early" in order to file before an identity crook files using your name etc. logic, I continue to come to the conclusion that, with very few exceptions, the general "rule" is there simply are no adverse consequences, exposures or reasons to using an extension. In fact, quite to the contrary, **there are numerous potential benefits that can be obtained by getting a**

Federal (and where applicable, a State(s)) tax filing extension. Such potential benefits include:

1. Filing returns beyond the sometimes rushed "crunch time" constraints of "Tax Season" **decreases** the **possibility of error** and/or the overlooking of a planning opportunity(s).

2. Often times, **amended** or initial, extended business returns, **K-1s**, 1099s, etc., are received after the initial filing due date. **The chance of IRS audit is definitely lessened** by using the final correct amounts, as the IRS computer-matching mechanisms will be far less likely to "flag" an inconsistency. The reporting details that must accompany the tax reporting schedules from financial institutions on security sales continue to increase. The IRS continues to try to "push" more and more of their work and the details for "computer verify" onto tax preparers, via added reporting requirements on the actual returns and increasing e-filing requirements.

3. We do not like to complete a personal return prior to all of that return's related entity's returns being completed, in order to **make sure there is "consistency" amongst the various returns.** Tax position decisions are sometimes changed, based upon subsequently found facts, circumstances or later realizations. Your/our **ability to "change our minds"** is compromised, at best, if a return has already been filed. Filing all related returns, using a coordinated overall perspective, significantly increases our ability to defend tax return positions taken, if an IRS audit thereon later arises. Extensions definitely help make that result more possible.

4. Numerous commentators have historically, continually stated their belief that filing an extension **lowers one's exposure to IRS audit** because of how the IRS processes, organizes and ranks returns for review and/or possible audit. (There is no official way to confirm this, but it continues to be a widely-held belief in the professional tax preparation industry.)

5. There have been numerous instances in the past where tax law, Court cases, Regulation(s) or Congressional legislative actions have **changed tax law**, with potentially retroactive application. More often than not, such later developments have been favorable to taxpayers.

6. If one does get an extension, it is true that might delay a refund. However, in general, refunds arise from overpaying one's taxes. From a tax-planning perspective, **our goal is not to get refunds – it is to minimize our clients' overall taxes**.

7. The only specific election I can think of, which could be adversely affected by getting an extension, is the election to take a tax deduction for a casualty loss in the year prior to the tax year the loss actually occurred. That election must be made by the related return's initial due date.

8. **Extensions often provide more time to make tax-deductible retirement plan contributions**. Such contributions are generally still deductible if made by the due date of the related return, including extensions.

9. Whenever a "flow-through" entity return is filed by the initial due date, an extension of the personal return **will shorten the statute of limitations' audit exposure period** of the Form 1040, as to the flow-through entity return's impact on the 1040.

10. If an IRA was rolled over to a **Roth IRA**, the Roth IRA can be re-characterized back to a traditional IRA by the due date of that year's return, including extensions. Thus, an extension provides **added "hindsight"** ability to the **"re-characterize or not"** decision.

11. One major reason to extend, which often results in significant benefit by filing later in the following tax year, is the sometimes very useful **perspective gained by having more hindsight and more perspective on the current year** to make tax return preparation decisions for the prior year. Decisions such as – "Should I capitalize now or write-off?" "Should a particular payment be classified as a loan, distribution, reimbursement or other?" "Should a certain election be made or not that affects more than one year?" "Should a carry-back be used or instead be saved for carry-forward purposes?" Has the law changed in ways that affect 2016 tax reporting positions advisability? The ability to have an increased **"hindsight/current year perspective window"** can only be obtained by using extensions.

12. Starting this year, the Foreign Bank and Financial Account FBAR Form 114 is automatically extended to October 16. A request for this extension is not even required.

Our Firm continues to file well over half of our clients' returns using extensions. **Purely from a tax-planning, client-oriented, consultative, taxpayer advocate perspective, I would like to see us use extensions for even more of our returns, other than the very simplest ones**. I regularly encourage the use of an extension, even when a return has otherwise been completed. We want to take as much advantage as possible of the above-listed, client-oriented, potential benefits. Of course, we realize that some clients, for various reasons, do not want to extend. We try to accommodate them – sometimes even despite our belief that such may not be in that client's ultimate best interest.

(Note – many States are not as "accommodating or lenient" with their extension rules and procedures as the IRS. Special care may be needed for clients with State tax return filing obligations.)

We continually strive to meet, and more often than not achieve, our Firm's stated goal – "*To make or save for you far more than you invest in us.*"