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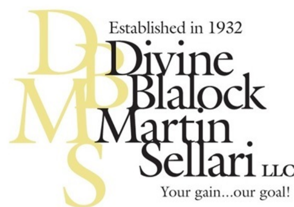

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Tax & Business Alert

MAY 2015

DEDUCTING BUSINESS BAD DEBTS

If debt collection is a problem for your business, deducting uncollectible (bad) debts from your tax bill may somewhat lessen the sting of simply writing the debt off your books. Here is some basic information on deducting business bad debts.

First, the debt must be legitimate. A bona fide debt arises from a debtor-creditor relationship and is based on a valid and enforceable obligation to pay a fixed or determinable amount of money. For debt creation, the business must be able to show that it was the intent of the parties at the time of the transfer to create a debtor-creditor relationship. In other words, the business must be able to show that at the time of the transaction, there was a real expectation of repayment, and there was intent to enforce the indebtedness.

While a formal loan agreement is not absolutely necessary to create a bona fide debt, it is a good practice to use written debt agreements. However, giving a note or other evidence of legally enforceable indebtedness is not by itself conclusive evidence of a bona fide debt. For example, if the terms of the note are routinely ignored or penalties for skipped or late payments are not enforced, the IRS could successfully argue that there was not a real debt.

For most businesses, it is common to encounter uncollectible or worthless debts. Two types of bad debt deductions are allowed by the IRS: business bad debts and nonbusiness bad debts. Business bad debts give rise to ordinary losses that can generally offset taxable income on a dollar-for-dollar basis. Nonbusiness (personal) bad debts are considered to be short-term capital losses. Because there is a limitation on

deducting capital losses, distinguishing business and nonbusiness bad debts is critical.

Business bad debts generally originate as credit sales to customers for goods delivered or services provided. If a business sells goods or services on credit and the account receivable subsequently becomes worthless, a business bad debt deduction is permitted, but only if the revenue arising from the receivable was previously included in income.

Business bad debts can also take the form of loans to suppliers, clients, employees, and distributors. Additionally, a business bad debt deduction is allowed for any payments made in the capacity as guarantor if the reason for guaranteeing the debt was business related. Here, the guarantor's payment results in a loan to the debtor, and the taxpayer is generally allowed a bad debt deduction once the loan becomes partially or totally worthless.

Worthlessness can be established when the business sues the debtor, and then shows the judgment is uncollectible. However, when the surrounding circumstances indicate a debt is worthless and uncollectible, and that legal action to collect the debt would in all probability not result in collection, proof of these facts is generally sufficient to justify the deduction. ■

TIPS ON HANDLING A WILL

Here's a list of things to consider regarding wills—

- Consult an attorney. Although wills written without legal advice are generally valid, an attorney can help ensure that the will actually accomplishes your objectives.

- If an attorney is not used, know the requirements for witnessing and executing valid wills in the state. Follow them precisely. A will is more likely to be invalidated for mistakes in execution than for mistakes in writing.
- Store the original will in a secure place, such as a safe deposit box, home safe, or with an attorney or county probate court. Inform a few trusted friends or family members of the will's location so it can be found when needed.
- Review the will periodically. Do not write changes on an existing will or it may be invalidated. To make small changes, sign a formal codicil following the state's rules for witnessing and executing wills. To make substantial changes, execute a new will.
- If you move from one state to another, have the will reviewed by an attorney in the new state.
- Include provisions for alternate dispositions of property in the event the primary beneficiary does not survive or a couple dies simultaneously. ■

FILING 2014 FOREIGN BANK AND FINANCIAL ACCOUNT REPORTS

If you have a financial interest in or signature authority over a foreign financial account exceeding certain thresholds, the Bank Secrecy Act may require you to report the account yearly to the IRS by filing a Financial Crimes Enforcement Network (FinCEN) Form 114 [Report of Foreign Bank and Financial Accounts (FBAR)].

Specifically, for 2014, Form 114 is required to be filed if during the year—

1. You had a financial interest in or signature authority over at least one foreign financial account (which can be anything from a securities, brokerage, mutual fund, savings, demand, checking, deposit, or time deposit account to a commodity futures or options, and a whole life insurance or a cash value annuity policy); and
2. The aggregate value of all such foreign financial accounts exceeded $10,000 at any time during 2014.

The FBAR is filed on a separate return basis (that is, joint filings are not allowed). However, a spouse who has only a financial interest in a joint account that is reported on the other spouse's FBAR does not have to file a separate FBAR.

The 2014 Form 114 must be filed by June 30, 2015 and cannot be extended. Furthermore, it must be filed electronically through **http://bsaefiling.fincen.treas.gov/main.html**. The penalty for failing to file Form 114 is substantial—up to $10,000 per violation (or the greater of $100,000 or 50% of the balance in an account if the failure is willful).

Please give us a call if you have any questions or would like us to prepare and file Form 114 for you. ■

REPORTING A NAME CHANGE

Have you recently changed your name? If so, it can affect your taxes. The names on your tax return must match Social Security Administration (SSA) records. If you have married or divorced and changed your name, you must notify the SSA of your name change. Also, notify the SSA if your dependent had a name change (for example, if you've adopted a child and the child's last name changed).

File Form SS-5 (Application for a Social Security Card) to notify SSA of your name change. You can get the form from **www.ssa.gov** or by calling 800-772-1213. The new card will reflect your new name with the same SSN you had before the name change. ■

TAXATION OF COLLEGE FINANCIAL AID

If your college-age child is or will be receiving financial aid, congratulations. Now, you'll probably want to know if the financial aid is taxable. Keep in mind that the economic characteristics of financial aid, rather than how it is titled, will determine its taxability. Strictly speaking, scholarships, fellowships, and grants are usually awards of "free money" that are nontaxable. However, these terms are also sometimes used to describe arrangements involving obligations to provide services, in which case the payments are taxable compensation.

Tax-free Awards. Scholarships, fellowships, and grants are awarded based on the student's financial need or are based on scholastic achievement and merit. Generally, for federal income tax purposes, these awards are nontaxable as long as (1) the recipient is a degree candidate, (2) the award does not exceed the recipient's "qualified tuition and related expenses" (tuition and enrollment fees, books, supplies, and equipment required for courses, but not room and board or incidental expenses) for the year, (3) the agreement does not expressly designate the funds for other purposes (such as room and board or incidental expenses) or prohibit the use of the funds for qualified education expenses, and (4) the award is not conditioned on the student performing services (teaching, research, or anything else).

Work-study Arrangements. If the financial aid is conditioned on the student performing services, the amount that represents payment for such services is taxable income and will be reported on a Form W-2 or Form 1099. This is true even if the work is integrated with the student's curriculum or if the payment is called a scholarship, fellowship, or grant. Students typically work for the school they're attending. However, they could work for other employers under the auspices of a work-study program.

Student Loans. Naturally, student loan proceeds are not taxable income because the borrowed amounts must be paid back. However, some college education loans are subsidized to allow borrowers to pay reduced interest rates. Fortunately, college loan interest subsidies are nontaxable to the same extent as if they were provided in the form of an outright scholarship, fellowship, or grant. An above-the-line deduction (i.e., available whether or not the borrower itemizes) of up to $2,500 is allowed for interest expense paid by a taxpayer on a loan to fund qualified higher education expenses. The deduction is phased out for taxpayers with adjusted gross income exceeding certain amounts.

What Happens When Financial Aid Isn't Free? Fortunately, taxable scholarships, fellowships, grants, and compensation from work-study programs count as earned income. Assuming the student is your dependent, this means that for 2015 he or she can offset this income by his or her standard deduction of the greater of (1) $1,050 or (2) earned income plus $350, up to the $6,300. Since taxable scholarships, fellowships, grants, and compensation count as earned income, they increase the student's standard deduction. If the student isn't anyone's dependent for 2015, he or she can offset earned income of up to $10,300 with his or her personal exemption ($4,000) and standard deduction ($6,300). (Dependents are not entitled to a personal exemption.)

Taxable financial aid in excess of what can be offset by the student's personal exemption (if any) and standard deduction is usually taxed at only 10%. (For 2015, the 10% bracket for single taxpayers applies to taxable income up to $9,225.)

Warning: The Kiddie Tax rules may cause investment income (such as interest, dividend, and capital gains) received by students who are under age 24 to be taxed at the parent's higher rates instead of at the student's lower rates. The student's earned income (including taxable scholarships, fellowships, grants, and compensation) is not subject to the Kiddie Tax.

Please give us a call if you have questions or want more information. ■

IRA ROLLOVERS

An IRA rollover occurs when a taxpayer receives a distribution from one IRA and within 60 days deposits the assets in another IRA. This transfer to the receiving IRA is called a *rollover contribution*. Any portion of the distribution not rolled over within 60 days is taxed on the date it was received, not on the 60th day after the withdrawal.

Generally, if any part of a distribution from an IRA is rolled over tax-free to another IRA, you must wait one year before you can make another tax-free rollover. Before 2015, the one-rollover-per-year rule applied on a per-IRA basis. Starting in 2015, the one-rollover-per-year rule applies to an individual's IRAs in the aggregate (rather than on a per-IRA basis). Thus, from now on, individuals who withdraw IRA funds and roll them over tax-free to another IRA can't withdraw funds from any other IRA during the following 12 months and complete another tax-free rollover. A 2014 distribution properly rolled over in 2015 will not count toward the new one-rollover-per-year rule that's effective starting in 2015.

Trustee-to-trustee transfers are preferable because they are not subject to the one-year waiting period that applies to rollovers to and from IRAs. Also, since the IRA owner never takes possession of the assets, there is no danger that the distribution will be taxed because it is not rolled over within the required 60-day period.

Roth IRAs and traditional IRAs are basically subject to the same rollover rules. However, a Roth IRA can only be rolled over to another Roth IRA. A traditional IRA can be rolled over to a Roth IRA, but it is taxable as if it were not rolled over. ■

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