Legacy M & A ADVISORS LLC

M & A UPDATE®

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Ending the Tax Year the Right Way

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The Center for Financial, Legal & Tax Planning, Inc.

Introduction

It is that time of year again! Time to put up the holiday displays, be merry, spend money, and get ready for tax season! A lot of people don't want to think about it, but (if you plan properly) the happiest time of the year is just around the corner. The actions you take in these final months of 2012 can have a big effect on your taxes. This advisory will identify some key strategies that should be implemented prior to the end of the year to effectively limit your tax liability.

Deferring Income

As with any other tax year, the more taxable income your company earns in 2012, the more taxes you and your company will pay. Therefore, it is logical to defer any ordinary income you can until next year. This is especially true if you or your business will be in a lower tax bracket this year as a result of your tax planning.

For business tax planning, send out monthly billing later in the month of December. Because it takes, on average, 25 days to receive payment, any payments received after January 1, 2013 are credited and recognized as income in 2013, provided your business is on the cash method of accounting.

For individuals, if you are to receive a bonus, defer it until next year. (BE CAREFUL – if you have a retirement plan that is based on a percentage of your gross pay for the year, you do not want to reduce your retirement contribution because of your deferred bonus.) Finally, you may decide to defer income using more traditional means, by participating in a deferred compensation plan, buying tax deferred treasury securities, or some specific certificates of deposit that allow for deferral of interest income.

Accelerating Deductions

We all hate paying bills, but now is the best time to pay them. Even if you wait to pay a given bill on December 31, you can still deduct the payment in 2012. For business tax planning, buy supplies in December and stock up for the next few months. In addition, the IRS will allow you to deduct the expense if you have charged the item and not yet paid for it as long as you are on the accrual method of reporting. For example, use your company credit card to purchase supplies for January, deduct the expense now, and pay the bill in January. Continued on page 2

A CASE STUDY

The Tax Court only allowed doctors who donated stock in their practice to a newly formed tax-exempt professional services corporation (PSC) a small portion of the charitable contribution deduction they had original claimed. The Court found that the value of the donated stock to be too high and should not have been valued because it was going to be too high and should not have been valued because it was going to be consolidated into the PSC.

The Court also assessed a 40% accuracy penalty to each taxpayer because they did not act in good faith when valuing the stock. While the taxpayers claimed that they relied on professional appraisers and advisors, the Court found that they were educated and should have known of problems in valuing the stock so high when the medical group was not likely to continue operating.

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The Center for Financial, Legal & Tax Planning, Inc.

Mike Ertel is a Certified M & A Advisor and a Principal Broker with Legacy M&A Advisors, LLC, a full-service M & A Advisory firm with an office in Tampa, Florida specializing in representing sellers and buyers of small- to mid-sized companies. Prior to joining Legacy M&A Advisors, LLC, Mike's business career spanned 30+ years with Fortune 500 and Fortune 1000 Companies, with senior management roles in Marketing, Operations and Logistics. Mike also served as President, COO of a mid-sized Manufacturing company headquartered in Tampa. Mike also holds a BS in Electrical Engineering and an MS in Industrial Administration, both from Purdue.

Cover Story

Individuals, remember to recognize any capital losses that you may have before year end. You are allowed to offset capital gains each year with any losses you incurred, and if the loss isn't fully utilized this year, it can be carried forward to offset future gains to the extent of $3,000 per year. Pay your investment expenses early, including any mortgage interest, real estate taxes, and any state and local taxes.

Beefing up Section 179 Deductions

Section 179 is an advanced form of depreciation. In 2012, the maximum Section 179 deduction is $139,000. Investing now allows you to utilize this valuable enhanced deduction. In 2013, the deduction drops to $25,000. Don't wait; purchase equipment and have it delivered before the end of the year.

Bonus Depreciation

On January 2012, the bonus depreciation became limited to 50% of the qualifying, original use property. On January 1, 2013, Bonus depreciation once again disappears just as it has in the past. We do not foresee Congress reissuing bonus depreciation for at least a few years. It is therefore recommended that for those that are interested in utilizing bonus depreciation, attempt to utilize the deduction sooner rather than after the New Year.

Capital Gains and Dividends

While Congress and The President have had all year regarding how to face the sunset provisions on capital gains and dividend tax rates, they have chosen to push the issue off to early in 2013. On January 1, 2013, the dividend and capital gains tax rates are slated to go up substantially. Very likely, this issue will not escape the federal government. For the taxpayer with large capital gains and large retained earnings accounts, it is worth a second look as to how to take the capital gains / dividends now as opposed to risking increased amounts in 2013.

Conclusion

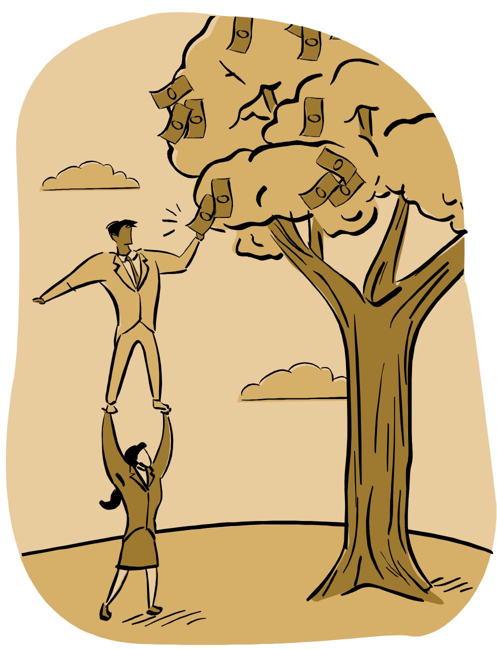
By utilizing these year-end tax strategies, you can reduce your tax liability for the year. Lowering taxable income by deferring income, accelerating deductions, giving to charity, and utilizing tax credits, results in lower tax liability. These methods work not only this year, but also year-to-year.

The Center routinely examines tax situations and engages in tax planning, business succession, and estate planning. If you are considering beginning estate planning, keep in mind that you have until December 31 to take advantage of 2012's gift exemption of $13,000. If you wait until 2013, you will forfeit the opportunity to take advantage of the 2012 gift exemption amount! If you need assistance, contact the professionals at The Center.

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.

Points of Interest

- **The actions you take in these final months of 2012 can have a big effect on your taxes.**
- **We all hate paying bills, but now is the best time to pay them.**
- **For the taxpayer with large capital gains and large retained earnings accounts, it is worth a second look as to how to take the capital gains / dividends now as opposed to risking increased amounts in 2013.**



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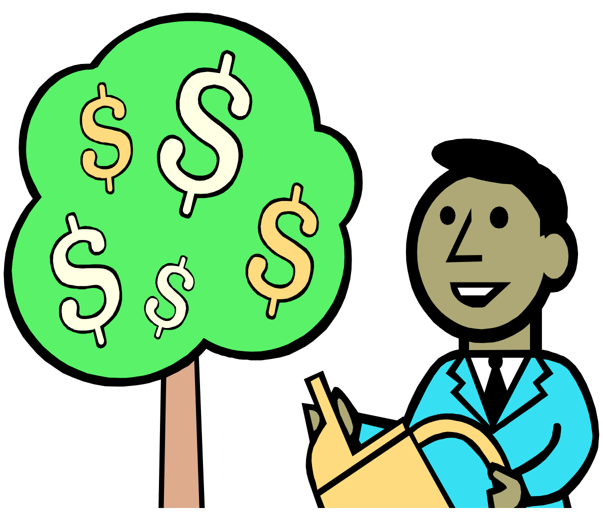
A CASE STUDY CONTINUED:

Editor's Comment:

This case demonstrates the expensive consequences of improperly valuing stock. It is important to always act in good faith in disclosing information to the IRS. While the taxpayers in this case were trying to save money by overstating a charitable contribution deduction, it ended up costing them more in the long run when they were ultimately assessed with a 40% penalty.

Remember, the valuation of stock in a private company should not be left to general predictions and/or individuals who are not independent of the operation. It's important to retain valuation professionals that are knowledgeable about the industry that the business is in. Contact the valuation professionals at The Center for an analysis of your company's worth.



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THREE MOST IMPORTANT FACTORS IN DETERMINING THE VALUE OF ANY BUSINESS

I'm sure you've heard it said that the three most important factors in determining the value of real estate are: Location, Location, and Location. While many factors contribute to the value of a property, such as square footage, # of bedrooms, # of baths, other amenities, finish materials, etc.; location does seem to be by far the most important.

Businesses are similar: while many factors contribute to value, the three most important factors by far seem to be: Cash Flow, Cash Flow, and Cash Flow.

It's important to note that when valuing a business, the focus is on future cash flows. A great deal of time and energy is spent analyzing, understanding and recasting the business' historic cash flows, but its value is based on its expected future cash flows.

There are two commonly used measures of business cash flow. For smaller, owner-operator businesses the most common metric is SDCF, or Seller's Discretionary Cash Flow. This is amount of cash left over after the business owner has paid all of the normal (extraordinary items may be adjusted) fixed and variable cash expenses (depreciation is not a cash expense) of the business, but before he/she pays: (1) any wages, salary, benefits or perks to him/herself, (2) any interest, or (3) any income taxes. This is an estimate of the gross amount of cash that a new owner will have to cover financing costs, invest in growing the business, and keep for him/herself.

In larger businesses, where the buyer will most likely not be engaged as an owner-operator, the most common metric is EBITDA, or Earnings Before Interest Taxes Depreciation and Amortization. As the acronym suggests, this measure is similar to SDCF, but an additional amount has been subtracted to account for the fair market value of a general manager's salary, benefits, and perks.

Therefore, one of the most important questions a potential business buyer can ask is: What measure of cash flow are you using for this business? An excellent follow-up question, just to be certain everyone is on the same page, is: Precisely how did you calculate the cash flow?

If you , or someone you know, may be thinking about buying or selling a business, and who might benefit from a free, confidential, consultation with us, please contact me directly at 813.299.7862, or mertel@lmaallc.com

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Frequently Asked Questions…

Q: Where is the best place to store estate plan documents?

A: The best place to store estate plan documents is in a secure location that others know of and that is easily accessible. Storing the documents in a safe deposit box that a friend knows of can be a good place as long as that friend knows where to get the keys. Hiding documents in a book or in a safe that no one has the combination for renders the documents useless to both you and those that are trying to help you.

Q: I own a business that is moderately successful and would like to see it passed on to my wife and children. How and when is the best time to start the process or begin planning the transfer?

A: The best time to begin the business succession process is right now, if it is your desire to keep your business as a going concern after your leaving, or even if you do not plan for the business to stay as a going concern. If you do not plan for the succession (or even non-succession of your business), your estate or heirs can and will be subject with the burden of making decisions that may not be the best for the business or your interests.

Q: Why is it important to perform estate planning even if you do not intend to pass your business onto the next generation or exit the business?

A: It is always better to have a plan than not have a plan. Even if your business is not intended to be an entity to be passed on, certain issues arise during the process of probate. Debts of the business can be the responsibility of the estate. Another possibility arises that the business may be large enough to warrant estate tax liability. Even though you may not want your business to be a going concern after your passing, your estate may have issues to deal with that can be planned for now.