

TAX UPDATE

By Eric Morgenthal, Esq.

Thanksgiving is only a few weeks away and the holidays are right around the corner. Without fail, magazines and newspapers will begin publishing a barrage of tax articles entitled "Year-End Tax Tips." And like last year, the same advice will probably be given... Accelerate deductions. Defer income. Blah. Blah. Blah.

So here are a few useful year-end tips that you may not find in your ordinary tax and investment publication.



Eric L. Morgenthal

Withholding & Estimated Payment Issues

Many self-employed taxpayers as well as others with significant income that is not ordinarily subject to withholding tax (e.g., interest and dividends) are responsible for remitting estimated payments in anticipation of their current tax liability. If a taxpayer has determined near year-end that they had not made adequate estimated tax payments, then a common knee-jerk reaction is to increase the amount of their payment voucher for the fourth quarter of this year. But not so fast.

It may be advisable to first determine if the client will fall prey to the Alternative Minimum Tax (AMT). If so, they would not benefit from any increased state tax payment in the current year and would likely be better off deferring their state payment until the January 15th deadline.

However, even if additional state payments can be made in the current year without losing the federal deduction, then another decision needs to be made. Should the shortfall be remitted via an estimated payment or wage withholding? Well, all businesses aren't structured to pay wages; some are merely taxed on their net self-employment earnings. However, if wages are typically drawn, it is often more beneficial for the taxpayer to increase their tax withholding for the remainder of the year in lieu of increasing their estimated voucher amount. This is because withholding is deemed paid ratably throughout the year and could minimize or eliminate underpayment penalties attributable to earlier quarters.

Double Check for Inactive Entities

Every March and September it happens. A taxpayer finds out that the New York corporation he or she had established (but never found a use for) would be subject to an \$800 annual inactive fee in lieu of the usual minimum tax of \$100 applicable to most small corporate entities. To add insult to injury, inactive "C" Corporations may be required to pay a supplemental \$136 Metropolitan Surcharge fee instead of the standard \$55.

Could this have been avoided? Absolutely. From a legislative standpoint, New York State is attempting to prevent taxpayers from setting up shell corporations. As a result, these higher annual fees are imposed upon organizations which have less than \$1,000 in payroll, total gross receipts of less than \$1,000 or with an average value of gross assets at less than \$1,000. So unlike standard tax advice which

dictates the deferral of income, consider the inclusion of merely \$1,000 of corporate level gross revenue or the contribution of assets because it could lead to a \$781 reduction in New York State Corporation Tax.

Remember to Mail the Crummey Letters

No I'm not talking dirty. I'm referring to a case entitled *Crummey v. Comm'r*. Typically used with Irrevocable Life Insurance Trusts (ILIT's), *Crummey* provisions allow trust beneficiaries to exert potential demand rights. These rights trigger a sufficient present interest for beneficiaries which enable the settler to qualify for the annual gift tax exclusion (currently \$11,000). So if you have implemented an ILIT as part of an estate plan, remember to mail your Crummey Letters to the beneficiaries before year end. These demand rights should be provided for each transfer to the trust to prevent the beneficiary's exercise powers from becoming "illusory."

Final Note

My last tax tip is to attend our Taxation Law committee meetings. They are informative and serve as a helpful exchange of tax information. Our next meeting is scheduled for 6 p.m. on December 3 at the Bar Association. Our guest speaker, Paul Hammerschmidt, CPA of BDO Seidman, LLP will be lecturing on establishing Tax-Exempt Private Foundations for the high net worth client. We are currently in the process of establishing this as a CLE qualifying event. In our January meeting, our featured presenter will be Patricia Riegger, Esq. from the Internal Revenue Service. She will be discussing IRS Tax Procedure - Audit through Litigation. Please contact Marion to confirm your attendance if you are interested in being present at either of these events.

Editor's Note: The author, Eric L. Morgenthal, Esq., CPA, M.S. (Taxation) is a Tax Attorney in Smithtown, NY and Chair of the SCBA Taxation Law Committee. He is a member of the New York State, Nassau and Suffolk County Bar Associations, the American Institute of Certified Public Accountants and the NYS Society of Certified Public Accountants.