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The Fall or Thanksgiving Newsletter 2012

With the election over just about 100% of my sources are predicting tax-rates will go up. From what I hear over the news, that is a pretty good bet. There are already two items in place that unless something is done we'll see a tax impact for almost everyone. That is the payroll tax is set to go up 2% and the 3.8% tax on capital gains. Outside of those, 2 more are expected and just to let you know, 90% of my clients are considered higher in income than that middle-class and ½ of you are in that dreaded class of people with the crosshairs on their back called "wealthy". And if you want to go to one of the 20 states that want to go thru succession you have to move to Indiana and still relatively close. The plus side is they do run their state government much better over there than we do here. The biggest change in my practice I am seeing now is the year- end advice I am giving my clients. I have been in business 29 years, for the past 28 I have always said try to accelerate expenses in the current year and defer income into next year. This may be the first year we need to reverse that. We do not have a clear picture of what is ahead but just the uncertainty forces a rethinking of tried and true patterns. And you think the rest of this newsletter is going to make you feel better????

Constitution we don't need any stinking Constitution

When the IRS gets their paws into something nothing and I mean nothing gets in their way. The most recent attack is our Constitution and what is worse - the courts are agreeing with them. This happened in the area of foreign back accounts and if you keep up with these newsletters that are the IRS's current favorite chew toy. The case is centered around a grand jury investigation and a request for the records of the foreign bank accounts and the taxpayer plead the 5th amendment privilege against self incrimination. The Ninth Circuit said "foreign back account holders have no 5th amendment right to avoid production of their account records even if the very act of producing those records would incriminate them". Now the 9th circuit is not the supreme- court and that would only be a law in that circuit, but the ramification of this could be devastating. So what is the solution to this-if you have a foreign account never and I mean NEVER get any Statement of this account. Where this can go after that who knows if even the constitution is no longer valid in the attacks of the IRS.

I'll say it again

The estate laws have changed sharply over the last 3 years. The most publicized aspect of the current law is if you don't have an estate over 5 million you don't have to file. While that is true the most overlooked possible impact are those with estates not quite over 5 million but still over 2 million. The reason is a new part of this law called Portability. What this is if a spouse dies the unused portion of the five million can be transferred to the surviving spouse BUT ONLY IF AN ESTATE TAX FORM IS FILED. Since no one is ever sure what how long they will live and what the value of their estate may

be at the point where they die this could save millions down the road. If this does pertain to you we should sit down and talk because like insurance a little payment now could save a bundle down the road.

And here they come

The articles about the changes everyone expects to the tax law are coming in hot and heavy as I said. The biggest beach ball being tossed around in the mix is itemized deductions. You can almost guarantee something will be done here. The Obama- plan calls for a unique never been done before cap on itemized deductions, where you would only get a credit for your deduction at a specified rate. For instance let's say the credit is at 25%, then if your tax rate is over that you would still only get all of your deductions at a 25% tax rate. Beyond the complication this would cause, it does fit his platform to a T so expect something like this.

So where is the cash?

I get this question quite a bit so I thought I would put it in a newsletter. I see many times where clients pull money from their 401K and get killed in taxes where you could get the much needed cash and not pay taxes on it by borrowing from your 401K. Now first and foremost the plan must provide that this can be done but if it does you can borrow up to ½ of your account up to a max of \$50,000. Just think what that can do for college bills and home repairs. Also if you don't have that much in the account you can borrow up to 10,000 even if it is 100% of your account balance. Now you do have to pay it back but you are in a paying yourself back and you do have to be careful because if you terminate participation in the plan, usually by leaving the company any remaining loan balance would be declared a taxable deduction and the 10% penalty would also apply if applicable. If you do pay it off this could be a great way of getting those bills paid and keeping Uncle Sam completely out of it.

Sandy

My jaw still drops when I see the pictures of what hurricane Sandy did. That was amazing. I do have clients on the East coast and I have clients with property out east. So I want to say again there is a special provision in the casualty loss section of the tax code that allows for taking the loss on LAST YEARS tax return in federally declared disaster areas. The whole idea behind this is to make it so you can get a tax refund sooner and use that money to finance your recovery. If this affects you please call. This could be a big help at this time.

Don't you get tired?

I am so glad I don't have to listen to all of the candidate's commercials anymore. But even more I have to laugh as how our media handles all of this. One week before the election the Washington Post ran a story about how the Obama administration was putting together a tax cut package. This story hit the internet almost immediately. The only problem is this was dead wrong. So how did our President handle this incorrect but favorable newspaper article? Sent a small group of reporters who work for publication you most likely never read on Air Force One with a deputy Press Secretary I never heard of to New Hampshire of all places where he denied the article. It took 5 days before this ever got out and it never hit the internet. I am sure the Obama administration was very busy at this time and just couldn't handle this is any other way so we might have known how false this was.

Kinder Gentler IRS, Bah Humbug

The IRS has tried to tell us they are much more responsive to the unusual and critical circumstance we find ourselves in due to the rough economy. After all they are here to help. Wow and if you believe that..... An elderly widow living alone fell and broke her shoulder. She also became mentally impaired because of the accident and needed assisted living. The facility needed a considerable amount up front and the only way she could pay it was by cashing out her IRA. There was no way she could afford to get the care she needed and still pay taxes on the IRA distribution so, the intent was to sell her house and repay the IRA within the 60 day period therefore no tax would be due. With the housing market not what it used to be it took longer than 60 days to get the house sold. And how did our kinder gentler IRS respond to this. Why they figuratively grabbed this little old lady by the throat and said we don't care if you have to live on the street- pay up now. And how many days do you think she missed paying back the IRA in the required 60 days by 17 lousy days. Yea!!! They are here to help alright.

Why not keep it going?

I have told you many times-notices from the IRS are wrong about 70% of the time. Many times it is resolved with a simple letter and a copy of some documents. However last year alone the Treasury Inspector General for Tax Administration (so you think our government is way too big when you get a title as long as that one. We will call him for now and future newsletters the TIGTA) that 1,450,000 notices were sent out assessing \$181,000,000 in penalties that were ALL WRONG. The IRS expects you to panic when you get a notice and they hope that panic will result in you writing a check. If you get a notice first of all it is most likely wrong and second ALWAYS give it to me before you do anything! We have always kept our charge for responding to one of these notices to just \$45. That does even come close to the time we put in to do this for you but we don't want the cost to ever stop you from getting fair and just treatment from our government.

Housecleaning

About now all the new figures for 2013 came out. I have included the ones that apply to some of my clients.

- Kiddie tax (the tax on your kid's unearned income like dividend and interest) now gives up to \$2,000 but a flat rate still applies to junior on income over \$1,000.
- Foreign earned income exclusion is now \$97,600.
- IRA is at \$5,500 plus \$1,000 for those over 50 years old yes I call this the geezer pleaser cause I is one.
- 401K contributions limit goes to \$17,500 but the over 50 catch up is still at \$5,500.

Finally some good news

TIGTA – (remember him) also issued a report that says that several taxpayers who had collection cases that went to the Taxpayer Advocate division of the IRS get closed as not collectible prematurely. This is why I also say we never do anything to wake a sleeping bear. You never know where some IRS employee decides to write-off your case and of course if that happens you will never be notified. Therefore you never want to give them any reason to think they should have come after you all along. Yes this is a reactionary position but when there is a chance this could magically just go away- it is foolish to proceed any other way.

And some more...

This has gone on with some of my business clients. TIGTA (him again) has noted the IRS is so slow in processing claims of net operating losses that it caused over 334 million of interest payments being made to taxpayers that could have been avoided. I could go on about waste in government and how horrible it is that our government operates so poorly but do keep in mind-that interest is taxable.

And more...

The TIGTA guy was really busy. His budget must have been due and he had to prove he was worthwhile. Whatever that means when you work for the IRS. He also called for a competency database to be developed because without the critical skills and competency the IRS is more susceptible to fraud. Well I have a ton of questions here. First is that why the identity theft fraud was the highest it has ever been in 2012? The IRS just doesn't employ people smart enough to figure out when over 10,000 refund checks are being delivered to the same apartment address- something is wrong? By the way it was the postal carrier that finally tipped off the IRS to this. And what about the fact you did catch some of the fraud but still could only recover a little more than ½ of what you found still leaving over 1 BILLION \$\$ worth for people that proved themselves to be smarter than you and get away with it? So therefore, who in the world at the IRS is going to determine what is competent in this group? I would think the standard set would be scary low.

And Finally

TIGTA- (I should have called this the TIGTA newsletter-this guy gave me more than anybody ever has for any single newsletter) found where the IRS assesses taxes against you , 21% if the total taxes assessed he said "there was no evidence for the basis of the assessment" The IRS is the only group that can create a liability for you just because they want to. No controls no court actions, if the little IRS agent is sitting at his desk and he thinks you owe something you will legally owe it. And of course it is up to you to prove otherwise, maybe in court where the cost to you will not be cheap. But believe it or not I have always supported this power the IRS has and you want to know why? Because if they didn't have this awesome and extremely far reaching power-we as a country would have gone bankrupt years ago. If the IRS had to prove their position before they ever started to collect money- they would never be able to do it. OK so maybe I am not really happy with the IRS right now and that is the reason for the rag on the IRS newsletter. But don't just blame me- The TIGTA did start this.

As we are entering into the holiday season, please have safe travels and most importantly be close to the ones you love. See you in December for the 3rd and last editions of the 2012 newsletter.

Tom & Dorothy
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