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DECEMBER 2023

INCOME TAX RETURNS - PUBLIC OR PRIVATE?

"The sovereign American citizen in his land of the free and home of the brave has little enough privacy as it is. He ought to be allowed to hug his own little income to his bosom, in glee or sorrow, without the public sniffing around him."

unattributed from the Minnesota Morning Tribune, 1923

You might recall in June 2021 the public disclosure of specific tax information of wealthy individuals (Buffet, Bezos, Bloomberg, Griffin, and Musk) by ProPublica in its article "The Secret Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax." ProPublica claimed to have obtained a "vast trove of Internal Revenue Service Data on the tax returns of thousands of the nation's wealthiest people, covering more than 15 years." Earlier, in September 2020, The New York Times published then President Trump's 2016 and 2017 income tax information. Hedge fund manager, Ken Griffin, has sued the Internal Revenue Service over the disclosure of his tax information in a case that is pending in Florida federal court.

More than two years after the above wrongful disclosures, an IRS contract worker, Charles Littlejohn, pleaded guilty to one count of unauthorized disclosure of tax information and faces a maximum of five years in prison. A recent Wall Street Journal editorial asserts that, after Mr. Littlejohn's admission of guilt, the Justice Department's prosecutors have recommended a sentence of 8 to 14 months and a fine of from $4,000 to $40,000. Federal District Court Judge Ana Reyes, however, told Mr. Littlejohn in open court there would be "severe consequences to this illegal act." It remains to be seen (on January 29, 2024) what sentence the judge will impose. However, the judge is, we understand, limited to a five-year sentence as Mr. Littlejohn is charged with only one count and not multiple counts for the thousands of returns he released.

We all assume, correctly, that by law our income tax returns and information are to be kept private. Federal law prohibits the Internal Revenue Service and tax professionals from disclosing your tax return information to others without your written consent unless compelled by law to do otherwise. Such nondisclosure, however, has not always been prohibited.

Privacy for tax returns was not required for our nation's first federal income tax law in 1861. From 1861 to 1864, newspapers published lists of taxpayers and their taxes. Subsequently, however, Congress prohibited the publication of this information but allowed public inspection of individual tax returns. But, due to public backlash, Congress prohibited disclosure of tax returns in 1894.

In 1923 and 1924, Congress required public disclosure of individuals' income tax payments, but not the entire tax returns. Supporters of the disclosure asserted that it would encourage compliance and reduce improper business conduct. "Secrecy is of the greatest aid to corruption," said Robert Howell, senator from Nebraska at that time. This disclosure requirement, however, was eliminated as President Calvin Coolidge and Treasury Secretary Andrew

(*Continued on reverse*)

Mellon successfully argued that such disclosure puts wealthy citizens at risk.

Through the years (even recent years) there have been other calls by some for public disclosure of individual and corporate tax information in the interest of everyone paying their "fair share." We agree with the 1923 editorial quoted above – income tax returns "ought to be" private. We also agree with Judge Reyes that illegal acts publicly disclosing thousands of income tax returns should have severe consequences.

TIMELY FILED – ALMOST

"So close, yet so far . . ." (Elvis)

Antawn Sanders received on September 12, 2022 an IRS notice asserting that he owed additional income tax. The notice stated that the last day to file a petition in Tax Court to contest the assessment was December 12, 2022. Prior to December 12, Mr. Sanders prepared to file his petition electronically by setting up an account through the Court's electronic filing system.

On the evening of December 12, 2022, Mr. Sanders began the process to electronically file his petition using his cellphone. Shortly before midnight, after several failed attempts in the process, Mr. Sanders switched over to his desktop computer. After carefully reading and re-reading the online instructions and completing additional steps, he began the upload process at 9.493 seconds after midnight. At 11.693 seconds after midnight, the upload was completed.

At Tax Court, the IRS argued that Mr. Sander's case be dismissed because his petition was not timely filed. The record showed that the Tax Court's electronic filing system was functional and accessible throughout the day of December 12. Mr. Sanders argued that he timely began the online filing process, and, through no fault of his own, the upload was delayed by the Tax Court's computer system.

The Court ruled against Mr. Sanders saying that electronic filing is not accomplished merely by logging into the system or beginning the filing process. A petition is filed when the Court's server receives the transmission.

Most of us are familiar with the longstanding rule that a paper tax return timely mailed is timely filed. But, as we transition increasingly to electronic submission of time-sensitive documents and payments of all types, an awareness of the possibilities of an unfamiliar online process and technical glitches suggests that "last minute" attention to such matters should be avoided.

IRS UNDERPAYMENT PENALTY NOW EIGHT PERCENT

Both federal and Louisiana income tax laws require (except for farmers and fishermen) pay-as-you-go by tax withholdings (W-2, 1099, etc.) during the calendar year or estimated tax payments made quarterly. A penalty (the equivalent of non-deductible interest) is imposed on the failure to timely pay estimated tax during the year. At three percent equivalent interest, the federal penalty rate through October 1, 2023, was considered by some taxpayers as a reasonable "borrowing" cost. At the current eight percent equivalent interest, the non-deductible penalty is much less attractive.

As mentioned in the last article in the enclosed Tax & Business Alert, taxpayers who will have paid 2023 estimated taxes equal to at least 100 percent of their 2022 income tax liability (110 percent for taxpayers with adjusted gross income of $150,000 or more) will not incur the federal penalty for 2023 regardless of the amount of their 2023 tax. However, if the penalty exception will not apply, taxpayers who expect to have significant increases in 2023 income, or for any reason expect to owe a significant 2023 income tax balance due at April 15, 2024, might want to consider making a January 15, 2024 estimated tax payment.

Tax Deferred Savings Quick Reference

Qualified Plans And Simplified Employee Plans (SEPs)	Calendar Year 2023	Calendar Year 2024	Fiscal Year Ending 2023	Fiscal Year Ending 2024
Maximum Sec. 415 Limit for Defined Contribution Plans:				
General Limit-All Plans	$ 66,000	$ 69,000	$ 66,000	$ 69,000
With 401(k) Feature-Age 50 and over	$ 73,500	$ 76,500	$ 73,500	$ 76,500
Maximum Compensation	$330,000	$345,000	$305,000	$330,000
Taxable Wage Base	$160,200	$168,600	$147,000	$160,200
DC Percent for Max. Dollar Contribution (Integrated Plan-Highly Compensated Earned Maximum Compensation)	17.067%	17.0855%	18.6866%	17.9761%
SEP Participation Threshold	750	750	650	750

Maximum Employee Deferrals (Excludes IRAs, SIMPLEs)	Calendar Year 2023	Calendar Year 2024
(401(k)+403(b)+SIMPLE+SARSEP Combined); 457(b)	$ 22,500	$ 23,000
Age 50 and Over Catch Up (N/A for 457(b) Tax Exempt Plans)	7,500	7,500
Total with Catch Up	$ 30,000	$ 30,500

IRA Limits

"Active" Participants Deductible IRA Phase-Out Range	2023	2024
Head of Household and Single Returns	$73,000 - 83,000	$77,000 - 87,000
Joint Return	$116,000 - 136,000	$123,000 - 143,000
Married Filing Separate	$0 - 10,000	$0 - 10,000
Spouse of an Active Participant	$218,000 - 228,000	$230,000 - 240,000

Roth IRA Phase-Out Range	2023	2024
Head of Household and Single Returns	$138,000 - 153,000	$146,000 - 161,000
Joint Return	$218,000 - 228,000	$230,000 - 240,000
Married Filing Separate	$0 - 10,000	$0 - 10,000

	2023	2024
IRA (Traditional, Non-Deductible and ROTH)	$ 6,500	$ 7,000
Age 50 and Over Catch Up	$ 1,000	$ 1,000
SIMPLE IRA and SIMPLE 401(k)	$ 15,500	$ 16,000
Age 50 and Over Catch Up	$ 3,500	$ 3,500

High Deductible Health Plans (HDHPs)

	2023	2024
Annual Deductible Limit		
Individual Coverage	$ 1,500	$ 1,600
Family Coverage	$ 3,000	$ 3,200
Maximum Out of Pocket Expenses		
Individual Coverage	$ 7,500	$ 8,050
Family Coverage	$ 15,000	$ 16,100

Health Savings Account (HSAs)

While eligibility for an HSA remains dependent on being covered by an HDHP (see above), the maximum annual contribution is not limited to the annual deductible under the HDHP. The HSA contribution limit is the following dollar amount:

Maximum Contribution	2023	2024
Individual Coverage	$ 3,850	$ 4,150
Family Coverage	$ 7,750	$ 8,300
Age 55 and Over Catch Up	$ 1,000	$ 1,000

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Tax & Business Alert

DECEMBER 2023

USE THE TAX CODE TO MAKE BUSINESS LOSSES LESS PAINFUL

Whether you're operating a new company or an established business, losses can happen. The federal tax code may help soften the blow by allowing businesses to apply losses to offset taxable income in future years, subject to certain limitations.

QUALIFYING FOR A DEDUCTION

The net operating loss (NOL) deduction addresses the tax inequities that can exist between businesses with stable income and those with fluctuating income. It essentially lets the latter average out their income and losses over the years and pay tax accordingly.

Eligibility for the NOL deduction depends on having deductions for the tax year that exceed your income. The loss generally must be caused by deductions related to your:

- Business (Schedules C and F losses, or Schedule K-1 losses from partnerships or S corporations),
- Casualty and theft losses from a federally declared disaster, or
- Rental property (Schedule E).

The following generally aren't part of the NOL determination:

- Capital losses that exceed capital gains,
- The exclusion for gains from the sale or exchange of qualified small business stock,
- Nonbusiness deductions that exceed nonbusiness income,
- The NOL deduction itself, and
- The Section 199A qualified business income deduction.

Individuals and C corporations are eligible to claim the NOL deduction. Partnerships and S corporations generally aren't eligible, but partners and shareholders can calculate individual NOLs using their separate shares of business income and deductions.

LIMITATIONS

Prior to the Tax Cuts and Jobs Act (TCJA), taxpayers could carry back NOLs for two years and carry forward losses 20 years. They also could apply NOLs against 100% of their taxable income.

The TCJA limits NOL deductions to 80% of taxable income for the year and eliminates the carryback of NOLs (except for certain farming losses). However, it does allow NOLs to be carried forward indefinitely.

A LIMIT ON EXCESS BUSINESS LOSSES

The Tax Cuts and Jobs Act (TCJA) established an "excess business loss" limitation, effective beginning in 2021. For partnerships or S corporations, this limitation is applied at the partner or shareholder level, after applying the outside basis, at-risk and passive activity loss limitations.

Under the rule, noncorporate taxpayers' business losses can offset only business-related income or gain, plus an inflation-adjusted threshold. For 2023, that threshold is $289,000, or $578,000 if married filing jointly. Remaining losses are treated as a net operating loss (NOL) carryforward to the next tax year. That is, you can't fully deduct them because they become subject to the 80% income limitation on NOLs, reducing their tax value.

Important: Under the Inflation Reduction Act, the excess business loss limitation applies to tax years beginning before January 1, 2029. Under the TCJA, it had been scheduled to expire after December 31, 2026.

If your NOL carryforward is more than your taxable income for the year you carry it to, you may have an NOL carryover. That's the excess of the NOL deduction over your modified taxable income for the carryforward year. If your NOL deduction includes multiple NOLs, you must apply them against your modified taxable income in the same order you incurred them, beginning with the earliest.

PLANNING AHEAD

The tax rules regarding business losses are complex, especially the interaction between NOLs and other potential tax breaks. We can help you chart the best course forward. ■

EDUCATION BENEFITS HELP ATTRACT, RETAIN AND MOTIVATE YOUR EMPLOYEES

One popular fringe benefit that an employer can offer is an education assistance program that allows employees to continue learning, and perhaps earn a degree, with financial help from the employer. Your business can attract, retain and motivate employees by providing education benefits that enable team members to improve their skills and gain additional knowledge. An employee can receive, on a tax-free basis, up to $5,250 each year under a "qualified educational assistance program."

For this purpose, "education" means any form of instruction or training that improves or develops an individual's capabilities. It doesn't matter if it's job-related or part of a degree program. This includes employer-provided

education assistance for graduate-level courses, as well as courses normally taken by individuals pursuing programs leading to a business, medical, law, or other advanced academic or professional degree.

MORE REQUIREMENTS

The educational assistance must be provided under a separate written plan that's publicized to your employees and meets specific conditions. A plan can't discriminate in favor of highly compensated employees.

In addition, not more than 5% of the amounts paid or incurred by the employer for educational assistance during the year may be provided for individuals (including their spouses or dependents) who own 5% or more of the business.

No deduction or credit can be claimed by an employee for any amount excluded from the employee's income as an education assistance benefit.

JOB-RELATED EDUCATION

If you pay more than $5,250 for educational benefits for an employee during the year, that amount must be included in the employee's wages and he or she must generally pay tax on the amount over $5,250. However, in addition to, or instead of applying, the $5,250 exclusion, an employer can satisfy an employee's educational expenses on a nontaxable basis if the educational assistance is *job-related*. To qualify as job-related, the educational assistance must:

- Maintain or improve skills required for the employee's then-current job, or
- Comply with certain express employer-imposed conditions for continued employment.

"Job-related" employer educational assistance isn't subject to a dollar limit. To be job-related, the education can't qualify the employee to meet the minimum educational requirements for his or her employment or other trade or business.

Educational assistance benefits meeting the above "job-related" rules are excludable from employees' income as working condition fringe benefits.

ASSISTANCE WITH STUDENT LOANS

Some employers also offer student loan repayment assistance as a recruitment and retention tool. Starting in 2024, employers can help more. Under the SECURE 2.0 law, an employer will be able to make matching contributions to 401(k) and certain other retirement plans with respect to "qualified student loan payments." The result of this provision is that employees who can't afford to save money for retirement because they're repaying student loan debt can still receive matching contributions from their employers.

Contact us to learn more about setting up an education assistance or student loan repayment plan at your business. ■

CONSIDER THE FLEXIBILITY OF A SELF-DIRECTED IRA

Traditional and Roth IRAs can be relatively "safe" retirement-saving vehicles, though, depending on what they're invested in, they limit your investment choices. For more flexibility in investment choices (but also more risk) another option is a self-directed IRA.

GAINING MORE CONTROL

A self-directed IRA is simply an IRA that provides greater control over investment decisions. Traditional and Roth IRAs typically offer a selection of stocks, bonds and mutual funds. Self-directed IRAs (available at certain financial institutions) offer greater diversification and potentially higher returns by permitting you to select virtually any type of investment, including real estate, closely held stock, limited liability company and partnership interests, loans, precious metals, and commodities (such as lumber, oil and gas).

A self-directed IRA can be a traditional or Roth IRA, a Simplified Employee Pension plan, or a Savings Incentive Match Plan for Employees. Other possibilities include a self-directed individual 401(k) plan, Health Savings Account or Coverdell Education Savings Account. The tax-*free* growth these accounts offer makes them powerful estate planning tools.

NAVIGATING TAX TRAPS

To avoid pitfalls that can lead to unwanted tax consequences, exercise caution when using self-directed IRAs. The most dangerous traps are the prohibited transaction rules. These rules are designed to limit dealings between an IRA and "disqualified persons," including account holders, certain members of their families, businesses

controlled by account holders or their families, and certain IRA advisors or service providers.

Among other things, disqualified persons can't sell property or lend money to the IRA, buy property from the IRA, provide goods or services to the IRA, guarantee a loan to the IRA, pledge IRA assets as security for a loan, receive compensation from the IRA, or personally use IRA assets.

The penalty for engaging in a prohibited transaction is severe: The IRA is disqualified and its assets are deemed to have been distributed on the first day of the year in which the transaction took place, subject to income taxes and potentially, to penalties. This makes it very difficult to manage a business, real estate or other investments held in a self-directed IRA. Unless you're prepared to accept a purely passive role with respect to the IRA's assets, this strategy isn't for you.

CONSIDERING THE OPTION

If you'd like to invest in assets such as precious metals, energy or other alternative investments, a self-directed IRA may be worth considering. Contact our firm to discuss this further. ■

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3 STRATEGIES FOR HANDLING ESTIMATED TAX PAYMENTS

Many individuals today are self-employed or generate income from interest, rent, dividends and other sources. If you're in this situation, you could be risking penalties if you don't pay enough taxes during the year through estimated tax payments and withholding.

Note: The due date for the final estimated payment for 2023 is January 16, 2024.

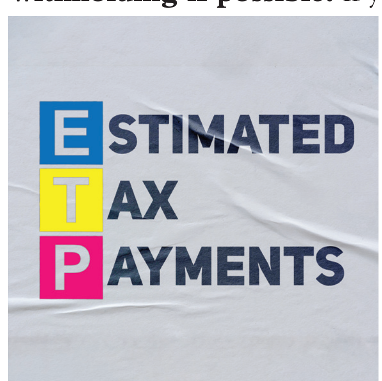
Here are three strategies to help you pay enough taxes and avoid underpayment penalties:

1. Know the minimum payment rules. Your estimated payments and withholding must equal at least:

- 90% of your tax liability for the year,
- 110% of your tax for the previous year, or
- 100% of your tax for the previous year if your adjusted gross income for that year was $150,000 or less ($75,000 or less if married filing separately).

2. Use the annualized income installment method, if eligible. This method often benefits taxpayers who have large variability in income by month due to bonuses, investment gains and losses, or seasonal income — especially if it's skewed toward year end. Annualizing calculates the tax due based on factors occurring through each quarterly estimated tax period.

3. Estimate your tax liability and increase withholding if possible. If you find you've underpaid your 2023 taxes, consider having the tax shortfall withheld from your salary or year-end bonus by December 31. Withholding is considered to have been paid ratably throughout the year, so this could allow you to avoid penalties, whereas trying to make up the difference with a larger quarterly tax payment could trigger penalties.



Estimated tax payments can be tricky. Please contact us for help. ■