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OCTOBER 2018

BOMBS AWAY

Our title is not to bring to mind an old "war movie" but the on-going or seemingly never-ending hacker attack on technology users. This time, the attack was close to home as one of our Partner's personal e-mail account was recently "spam-bombed." In a period of about thirty minutes during lunch, his smartphone showed over 500 e-mails flooding into the account (unblocked by the spam blocker). Most e-mails appeared to be coming from foreign sources. Once back at the office, he had all foreign-source e-mails blocked. Next, all e-mails were deleted from both the e-mail Inbox and Deleted Items folders.

What the Partner did not know at that moment was that the spam bombing was camouflage for a theft. Mixed in with the spam e-mails were some from a legitimate vendor acknowledging a change of address and thanking the victim for a recent purchase, which, of course, the victim had not made. These criminals expect that their victim will not notice the real e-mails among the spam and, soon, it is too late for the victim to respond. Fortunately, in this case, the e-mails were timely retrieved, reviewed, and a fraudulent purchase was stopped.

If you are suddenly bombarded with spam e-mails, you should review them to look for any legitimate e-mails before deleting. You should then check all of your financial accounts (bank, credit cards, PayPal, etc.) for unauthorized activity and change your passwords. You should also obtain a free online credit report from one of the three credit bureaus (Equifax, Experian, and TransUnion) to look for any unauthorized credit cards, loans, or other such activity.

The e-mail spamming should stop within a few hours (or possibly days), and, hopefully, you will not have lost more than your time and some of your patience.

LAST CALL FOR 2018 INCOME TAX PLANNING

Now that we are in the last quarter of 2018, it might be appropriate to review some of the recent law changes what will affect 2018 income tax returns.

1. Charitable Donations. If your total itemized deductions are near the new standard deduction amounts ($24,000 for married couples filing jointly; $12,000 for individuals, and $18,000 for head of household), consider staggering ("bunching") your charitable donations every other year so that you claim itemized deductions (with a higher charitable contribution) one year and the standard deduction the next year.

   If you are over age 70-1/2, will be taking the standard deduction, and have an IRA with

(Continued on reverse)

required minimum distributions, consider making your charitable contributions (up to $100,000) directly from your IRA. Such IRA distributions are treated as non-taxable.

2. Business Equipment. Consider buying needed business assets before year end. The entire cost of most new or used business equipment (including software) placed in-service before December 31, 2018 is deductible this year.

3. Cash Method of Accounting. Taxpayers with less than $25 million gross receipts (increased from $5 million) generally may use the cash method of accounting rather than the accrual method.

4. Inventory Accounting. Taxpayers with less than $25 million gross receipts (increased from $5 million) are not required to account for inventories, but may deduct inventory purchases.

5. Corporate Tax Status. C corporations and S corporations each have their tax advantages, and a decision to change from one to the other requires careful and timely consideration. A C corporation now pays federal tax at 21 percent. An S corporation passes its income to its shareholders who can pay tax at a marginal rate above 40 percent. But, an S corporation shareholder may be able to claim a deduction of up to 20 percent of the S corporation's qualified business income. To change from one status to the other as of the beginning of the taxable year, an S election or revocation must be filed within the first two and a half months of the taxable year.

ESTATE PLANNING – BEYOND TAXES

The 2017 Tax Cuts and Jobs Act significantly increased the estate and gift tax exemption through 2025 to $11,180,000 (annually adjusted for inflation) effectively eliminating estate and gift tax during those years for the great majority of taxpayers. That does not mean, however, that estate planning is no longer important. There has always been much more to estate planning than just the reduction of death taxes. Following are some of the principal non-tax matters you might want to consider in thinking about your estate planning:

1. Heirs. Who will they be? Who will get what? What steps might minimize the potential conflict among them? What are your charitable intentions?

2. Business Succession/Asset Management. Who should own and/or control the operation of your businesses? Should your investments be managed by one or more responsible person(s) for the benefit of all of your heirs?

3. Confidentiality. A detailed list of your assets with dollar values will be placed in the local public records after your death. How important to you would it be to minimize the detail that is disclosed on this publicly available list? Privacy can be provided for assets and fair market values through the use of a living trust for some of your assets.

4. Minor or Special Needs Children. What provisions should be in place to provide legal representation and financial support for their future needs.

If you do not have a Will, the State of Louisiana has one for you – so the saying goes. If you want to decide the above matters rather than let Louisiana law decide them for you, you need to have a Will and to act on a plan that will accomplish your goals. We will be happy to discuss these issues with you.

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Tax & Business Alert

OCTOBER 2018

ARE YOU A MEMBER OF THE SANDWICH GENERATION?

If you're currently taking care of your children and elderly parents, count yourself among those in the "Sandwich Generation." Although it may be personally gratifying to help your parents, it can be a financial burden and affect your own estate plan. Here are some critical steps to take to better manage the situation.

IDENTIFY KEY CONTACTS

Just like you've done for yourself, compile the names and addresses of professionals important to your parents' finances and medical conditions. These may include stockbrokers, financial advisors, attorneys, CPAs, insurance agents and physicians.

LIST AND VALUE THEIR ASSETS

If you're going to be able to manage the financial affairs of your parents, having knowledge of their assets is vital. Keep a list of their investment holdings, IRA and retirement plan accounts, and life insurance policies, including current balances and account numbers. Be sure to add in projections for Social Security benefits.

OPEN THE LINES OF COMMUNICATION

Before going any further, have a frank and honest discussion with your elderly relatives, as well as other family members who may be involved, such as your siblings. Make sure you understand your parents' wishes and explain the objectives you hope to accomplish. Understandably, they may be hesitant or too proud to accept your help initially.

EXECUTE THE PROPER DOCUMENTS

Assuming you can agree on how to move forward, develop a plan incorporating several legal documents. If your parents have already created one or more of these documents, they may need to be revised or coordinated with new ones. Some elements commonly included in an estate plan are:

Wills. Your parents' wills control the disposition of their possessions, such as cars, and tie up other loose ends. (Of course, jointly owned property with rights of survivorship automatically pass to the survivor.) Notably, a will also establishes the executor of your parents' estates. If you're the one providing financial assistance, you may be the optimal choice.

Living trusts. A living trust can supplement a will by providing for the disposition of selected assets. Unlike a will, a living trust doesn't have to go through probate, so this might save time and money, while avoiding public disclosure.

Powers of attorney for health and finances. These documents authorize someone to legally act on behalf of another person. With a durable power of attorney, the most common version, the authorization continues after the person is disabled. This enables you to better handle your parents' affairs.

Living wills or advance medical directives. These documents provide guidance for end-of-life decisions. Make sure that your parents' physicians have copies so they can act according to their wishes.

Beneficiary designations. Undoubtedly, your parents have completed beneficiary designations for retirement plans, IRAs and life insurance policies. These designations supersede references in a will, so it's important to keep them up to date.

SPREAD THE WEALTH

If you decide the best approach for helping your parents is to give them monetary gifts, it's relatively easy to avoid gift tax liability. Under the annual gift tax exclusion, you can give each recipient up to $15,000 (for 2018) without paying any gift tax. Plus, payments to medical providers aren't considered gifts, so you may make such payments on your parents' behalf without using any of your annual exclusion or lifetime exemption amount.

MIND YOUR NEEDS

If you're part of the Sandwich Generation, you already have a lot on your plate. But don't overlook your own financial needs. Contact us to discuss the matter further. ■

AVOID PENALTIES BY ABIDING BY THE NQDC TAX RULES

Nonqualified deferred compensation (NQDC) plans pay executives at some time in the future for services to be currently performed. If you participate in such a plan, or your business offers one as an employee benefit, it's critical for everyone involved to abide by the applicable tax rules. Of course, in the hectic course of the average exec's schedule, keeping up with the details isn't always easy.

HOW THEY DIFFER

NQDC plans differ from qualified plans, such as 401(k)s, in a variety of ways. First, these plans can favor certain highly compensated employees. And though the executive's tax liability on the deferred income also may be deferred, the employer can't deduct the NQDC until the executive recognizes it as income. What's more, any NQDC plan funding isn't protected from the employer's creditors.

WHAT YOU NEED TO KNOW

NQDC plans also differ in terms of some of the rules that apply to them. Internal Revenue Code (IRC) Section 409A and related IRS guidance have tightened and clarified some of these rules. Specifics to study up on include:

Timing of initial deferral elections. Executives must make the initial deferral election before the year they perform the services for which the compensation is earned. So, for instance, if you wish to defer part of your 2019 compensation to 2020 or beyond, you generally must make the election by the end of 2018.

TAX CALENDAR

October 15

Personal federal income tax returns that received an automatic six-month extension must be filed today and any tax, interest and penalties due must be paid.

- The Financial Crimes Enforcement Network (FinCEN) Report 114, "Report of Foreign Bank and Financial Accounts" (FBAR), must be filed by today, if not filed already, for offshore bank account reporting. (This report received an automatic extension to today if not filed by the original due date of April 17.)
- If a six-month extension was obtained, calendar-year C corporations should file their 2017 Form 1120 by this date.
- If the monthly deposit rule applies, employers must deposit the tax for payments in September for Social Security, Medicare, withheld income tax and nonpayroll withholding.

October 31

The third quarter Form 941 ("Employer's Quarterly Federal Tax Return") is due today and any undeposited tax must be deposited. (If your tax liability is less than $2,500, you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until November 13 to file the return.

- If you have employees, a federal unemployment tax (FUTA) deposit is due if the FUTA liability through September exceeds $500.

November 15

If the monthly deposit rule applies, employers must deposit the tax for payments in October for Social Security, Medicare, withheld income tax, and nonpayroll withholding.

December 17

Calendar-year corporations must deposit the fourth installment of estimated income tax for 2018.

- If the monthly deposit rule applies, employers must deposit the tax for payments in November for Social Security, Medicare, withheld income tax, and nonpayroll withholding.

Timing of distributions. Benefits must be paid on a specified date, according to a fixed payment schedule or after the occurrence of a specified event — such as death, disability, separation from service, change in ownership or control of the employer, or an unforeseeable emergency.

Elections to change timing or form. The timing of benefits can be delayed but not accelerated. Elections to change the timing or form of a payment must be made at least 12 months in advance. Also, new payment dates must be at least five years after the date the payment would otherwise have been made.

EMPLOYMENT TAX ISSUES

Another important NQDC tax issue is that FICA taxes are generally due when services are performed or when there's no longer a substantial risk of forfeiture, whichever is later. This is true even if the compensation isn't paid or recognized for income tax purposes until later years.

So, if you're the plan participant, your employer may withhold your portion of the tax from your salary, or ask you to write a check for the liability. An employer may also pay your portion, in which case you'll have additional taxable income.

CONSEQUENCES OF NONCOMPLIANCE

The penalties for noncompliance with NQDC plan rules can be severe. Plan participants may be taxed on plan benefits at the time of vesting, and a 20% penalty and potential interest charges also will apply. So, if you're receiving NQDC, check with your employer to make sure it's addressing any compliance issues.

PUTTING IT ALL TOGETHER

Whether you're a busy exec who participates in an NQDC plan or an employer offering one, please contact our firm. We can help incorporate your plan or other executive compensation into your year-end tax planning. ■

DOL HAS INCREASED SCRUTINY OF DEFINED BENEFIT PLANS

Sponsors of defined benefit plans — commonly known as pensions — might be facing tighter scrutiny from the U.S. Department of Labor. Just last year, at an ERISA Advisory Council meeting, the agency's Employee Benefits Security Administration (EBSA) announced that it had ramped up pension audit operations in its Philadelphia office and later decided to do so elsewhere. If your organization offers its employees a defined benefit plan, here's what you should know.

REQUIRED STATEMENT

The focus of the audits is on pension plan sponsors' efforts to deliver benefits to terminated vested participants. According to EBSA's *Reporting and Disclosure Guide for Employee Benefit Plans*, plan administrators must provide a "Statement of Accrued and Nonforfeitable Benefits" to participants on request, on termination of service with the employer or after the participant has a one-year break in service. However, only one statement is required in any 12-month period for statements provided on request.

BEST PRACTICES

Timothy Hauser, EBSA's Deputy Assistant Secretary for Program Operations, offered some best practices for satisfying the agency's notification requirements. He advised, first and foremost, that plan sponsors keep good records on how to reach plan participants and relay those records to other corporate entities in a merger or acquisition.

A good starting point, according to Hauser, is for plan sponsors to send participants a certified letter using the participant's last known address. If mail is returned from the former employee's last known address, he suggested trying to contact the participant by phone. It's possible the phone number on record is a mobile phone that wouldn't be pinned to a previous mailing address.

When other methods fail, Hauser recommended reaching out to former co-workers of the separated participant who might have remained in contact. With so much information available through social media, employers should also consider using the Internet to help find terminated missing participants.

UP TO SPEED

Pension plans may not be as widely used as they used to be, but the compliance rules related to them remain strict. Make sure you stay up to speed on everything that's required. ■

CATCHING UP WITH THE HOME MORTGAGE INTEREST DEDUCTION

A home is the most valuable asset many people own. So, it's important to remain aware of the tax impact of homeownership and to carefully track the debt you incur to buy, build or improve your home — known as "acquisition indebtedness."

Among the biggest tax perks of buying a home is the ability to deduct your mortgage interest payments. But this deduction has undergone some changes recently, so you may need to do some catching up.

Before the passage of the Tax Cuts and Jobs Act (TCJA) late last year, a taxpayer could deduct the interest on up to $1 million in acquisition indebtedness on a principal residence and a second home. And this still holds true for mortgage debt incurred before December 15, 2017. But the TCJA tightens limits on the itemized deduction otherwise.

Specifically, for 2018 to 2025, it generally allows a taxpayer to deduct interest only on mortgage debt of up to $750,000. The new law also generally suspends

the deduction for interest on home equity debt: For 2018 to 2025, taxpayers can't claim deductions for such interest, unless the proceeds are used to buy, build or substantially improve the taxpayer's principal or second home.

Step carefully if you own a second residence and use it as a rental. For a home to qualify as a second home for tax purposes, its owner(s) must use it for more than 14 days or greater than 10% of the number of days it's rented out at fair market value (whichever is more). Failure to meet these qualifications means the home is subject to different tax rules.

Please contact our firm for assistance in properly deducting mortgage interest, as well as fully understanding how the TCJA has impacted other aspects of personal tax planning. ■