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JANUARY 2021 NEWSLETTER

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Happy New Year!

IN THIS ISSUE

BEGINNING OF YEAR CHECKLIST: ENSURE YOUR AFFAIRS ARE IN ORDER

By Katie Lepore, CPA, J.D., LL.M., Taxation

With the start of a new year, now may be a good time to take stock of your affairs to ensure all items are in order. This is particularly the case after closing the books on a rather hectic and unusual year that had most parents taking on several new roles in the household simultaneously such as teacher, remote employee, chef, housekeeper, etc. Below are several suggestions that should be reviewed, and some of the most common errors and mistakes seen by estate planners. With the chaos of the pandemic surrounding us all, looking over your business records, estate plan, and tax matters may provide some peace of mind.

<u>Taxation</u>

65-Day Rule: For trustees of irrevocable trusts, distributions can be made in the first 65 days of 2021 and be treated as having been distributed in 2020, under Internal Revenue Code Section 663(b). This could provide for an income tax deduction in 2020 for actions taken in 2021. Any trustees should review bank statements and Forms 1099 for the trust to determine whether using the 65-day rule would be prudent.

Estimated Taxes: For any taxpayers who make estimated income tax payments throughout the year, the fourth quarter income tax payment is due by January 15, 2021. Generally, taxpayers with non-W-2 income will make estimated tax payments, such as self-employed individuals, real estate investors, or those with large amounts of investment income.

Withholding Review: As you receive your Form W-2 in the coming weeks, you should review whether your withholding was sufficient in 2020 to cover your tax liability and adjust accordingly in 2021. 2020 was the first year of the new Form W-4 that departed from the standard "single zero" format that had been used for years, transitioning to a more streamlined method of withholding with less input or options available on the part of employees. If you find that your withholding seems low, you may wish to file a new Form W-4 and elect additional withholding for 2021. In addition, if you are a federal government employee, your Social Security withholding may be too low for 2020, but the deferred tax will be collected in 2021. The recent *Consolidated Appropriations Act, 2021 ("CAA")* allows for collection of the deferred Social Security taxes through December 31, 2021 (previously was April 30, 2021).

Property Taxes: The second installment of 2020-2021 property taxes are due in San Diego by February 1 and considered delinquent after April 10. Property tax payments for any taxpayers who are able to itemize their deductions are deductible in the year of payment so there is some strategy as to the timing of payments; taxpayers could potentially deduct three property tax payments in one year by paying the second installment of 2020-2021 in early 2021, paying the first installment of 2021-2022 timely by December 10, and pre-paying the February 1, 2022 payment by December 31, 2021. State and local property and income tax payments are currently limited to a $10,000 cap on Schedule A, so there also may be some strategy to deferring property tax payments to a later year in the event that Congress removes the $10,000 SALT cap.

Prop 19: As discussed in our December 2020 newsletter, Proposition 19 passed in November, severely curtailing the ability of family members to transfer real property to other family members while avoiding property tax reassessment. The broader ability to transfer real property to a parent or child while avoiding reassessment is only available through February 15, 2021. Parents with real property with a low property tax basis should read our December newsletter and consult with an attorney right away if they wish to transfer such property to their children while retaining the low property tax basis.

PPP Loans: Congress has finally determined that ordinary and necessary business expenses paid with PPP loans are tax-deductible. IRS Notice 2020-32 announced that a tax deduction would not be available for these expenses if paid with PPP funds, but Congress through the *CAA* clarified these expenses are in fact deductible, therefore overruling the IRS guidance. Taxpayers who borrowed money through a PPP program no longer need to worry about paying extra federal taxes in 2020. The *CARES Act* was amended by the *CAA* so that these rules are effective for the first round of PPP loans, in addition to any new loans issued. However, please beware that California enacted *AB 1577*, which prohibits deductions for business expenses paid with PPP funds for California tax purposes.

Real Property

Statewide Rent Control: Statewide rent control was instituted in late 2019. Landlords of multi-family properties are subject to these laws. Landlords of single-family homes and condos, including those in LLCs that have only individuals or trusts as members, should have included exclusion language on all leases that began or renewed after July 1, 2020 to be in compliance with the new rent control laws. See our October 2019 newsletter for the specific language.

Title: One of the most common mistakes of estate planning clients is failing to retitle real property in the name of their trust after a refinance or a purchase. Many lenders will require title to be in the homeowner's individual name for a refinance and will draft a deed to transfer ownership from the trust to the homeowner's individual name, but fail to draft a deed to transfer ownership back into the trust after the loan closes. Now is a good time to review the title of your real property to ensure it is titled as desired, and check that there are no title defects, particularly if you drafted deeds without the assistance of an attorney.

Leases: There were several changes to the laws in 2020, specifically with regard to a landlord's right to evict tenants, collect past-due rent, and other matters related to economic hardship. Landlords may wish to review their lease terms, particularly in light of the statewide rent control passed in late 2019 addressed above, to ensure the lease is current with the most recent real estate laws.

Insurance: The beginning of the year is a good time to review your homeowners' insurance to make sure that it is up-to-date and provides you adequate coverage. If you completed any renovations to your home, you should check to see that your limits are high enough to cover the replacement cost of your home in the event of damage. Additionally, if you refinanced during 2020, your current mortgage holder should be listed on your homeowner's insurance policy. You also may wish to review whether additional coverages, such as an earthquake policy or flood insurance, are prudent. Finally, if your home is titled in your living trust, you may want to see if your trust is listed as an additional insured on the policy. For properties in partnerships or LLCs, you may want to see that the general partner or manager is also covered by the insurance policy.

Liability Protection: Homeowners might wish to ensure that they have a large enough umbrella policy to meet their needs and comfort level with regard to liability protection. Real estate investors may also wish to carry umbrella insurance or review whether forming an entity which allows for limited liability may be prudent.

Property Taxes: As outlined above in the Taxation section, parents who wish to transfer real property with a low property tax basis to their children should do so before February 16, 2021. The second installment of the 2020-2021 property taxes are due for San Diego County by February 1.

<u>Estate Plan</u>

Family Changes: The COVID-19 pandemic unfortunately caused a lot of deaths in the lives of some of the people closest to us. Conversely, stay-at-home orders could have led to the birth of more babies for some couples, and divorce for others. If there was a change in your family situation or any of your named beneficiaries or successor trustees have changed, now is a good time to update your estate plan.

Agent Changes: Similarly, if any of your named agents for health care or Power of Attorney for assets have changed, those documents should also be updated.

Health Changes: If there were any changes to your health or the health of a loved one, you should review your estate planning documents now including your trust, Power of Attorney, and Advance Health Care Directive. Perhaps formation of a Special Needs Trust for a beneficiary with special needs would be wise, or you may wish to change the care choices listed on your Advance Health Care Directive in certain medical situations.

Asset Changes: The real estate market has been hot recently, with some families making the shift to a bigger home or leaving condensed cities in the midst of stay-at-home orders and a new ability to work remotely. If you purchased a home, or your bank accounts or other assets changed during the year, you should review titling information (see below) and possibly review the structure of your trust if your net worth has changed.

Titling: Oftentimes clients forget to title assets in the name of their living trust and title remains in their individual name(s). This could cause a probate issue. As mentioned above in the Real Property section, this can happen frequently after a refinance. A lot of times bank or brokerage accounts will fail to be transferred to a living trust, particularly when opening a new account. The beginning of the year is the perfect time to ensure all of your assets are titled appropriately.

Beneficiaries: Similarly, the beneficiaries on your life insurance, retirement accounts, and some bank accounts should be reviewed to check that the proper beneficiary arrangement is named as desired.

Older Estate Plans: If your estate plan has not been updated or reviewed in several years, now would be a good time to review your documents to ensure they are current. There have been several changes over the years including many tax law changes, some of which cause older estate plans to be inefficient and cumbersome. We recommend your plan be reviewed every 3-5 years at a minimum, and immediately when there is any change to your circumstances.

<u>Business Compliance</u>

Annual Filings: If you own or manage a California entity, you may wish to make sure that your annual (or sometimes semi-annual) filings are up-to-date with the California Secretary of State. Failing to comply can cause your entity to become suspended, possibly disrupting your business or allowing for another new entity to obtain your business name. Corporations must file a Statement of Information, Form SI-550, annually, and LLCs must file the Statement of Information, Form LLC-12, every other year, at a minimum.

Business Minutes: Businesses, including LLCs, are required to keep business records and minutes of any meetings. In the event your company held any meetings in 2020, they should be documented. If the company did not hold a meeting in 2020, one should be held soon even if just to report that no major changes or decisions were made in 2020.

Ownership Ledgers: Were there any transfers of ownership in your business in 2020 that need to be documented? For corporations, stock ledgers should be updated and for LLCs or partnerships, the operating agreement or partnership agreement, respectively, should be updated along with any membership or partnership ledgers.

Income Tax Compliance: California LLCs, even if a disregarded entity, require an annual California tax filing. The LLC can be suspended for failure to file a return, possibly disrupting your business or allowing for your business name to be obtained by a new company. Simply paying the $800 annual tax is not sufficient. Partnership and S-corporation income tax returns are due by March 15 and corporate returns are due by April 15.

Franchise Fee: The LLC $800 annual tax is due within 3.5 months of formation of the LLC, and then is prepaid every April for the following tax year. There were some changes to the requirement of payment for some entities formed in 2020 or 2021, so new business owners should consult with their CPA regarding the requirement and timing of payment.

Terminated Entities: If you terminated your entity, or it has no active business, it needs to be formally terminated with the Secretary of State before it is officially terminated. Check to see that your business records are in good order or else your entity could be incurring a tax bill unknowingly, and interest and penalties in addition to the tax.

Property Tax Reporting: Any entities that own real property wherein there was a “change in ownership” or a “change in control” of the entity during the year should file a Form BOE-100-B to report the change with the Board of Equalization. Failure to file can result in penalties. The second installment of San Diego property taxes are due February 1, and are delinquent after April 10.

Update Operating Agreements: The beginning of the year is a good time to review your partnership or operating agreements to be sure they are consistent with current laws and reflect current ownership of the entity. If any ownership transfers were made in recent years, these documents should be updated. Furthermore, we are still seeing many clients with “Tax Matters Partner” language in their partnership or LLC agreements, and this role was replaced with a wholly new role with broader powers called a “Partnership Representative” effective January 1, 2018 (see our <u>March 2018 newsletter</u> for additional information). Additionally, if the scale of your business changed recently (it grew or shrunk), you may wish to review whether your agreement is still appropriate.

Conclusion

Estate planning and tax planning can often get pushed to the back burner, particularly when life is busy. With the turn of the new year, now is a good time to review your affairs and get them back in order.

IN CASE OF EMERGENCY (ICE) – BE PREPARED

By Colleen S. Ergastolo, Paralegal

What happens if your health is affected by the pandemic or by an emergency? Who are your people, your “Go-To’s?” Where do you Bank? Who are your advisors? Where does Fido or Kitty go for care? Do you have professionals, a friend, relative, or neighbor who you would like to help you and an emergency crew (EMTs, firefighters, physicians, confidants)? In Case of Emergency instructions (ICE) are always an important part of your estate planning and future care. It conveys information to others about you, your life, and your desires in an emergency situation. Not every person or family has a caring person overseeing their daily needs. And, realistically, in an emergency situation, even a person who is caring for another may not be reachable when an emergency happens.

Here at Miller, Monson, Peshel, Polacek and Hoshaw, we remind clients (and their families) daily of the importance of planning for the future and having an effective estate plan. The beginning of 2021 is a good time to reflect on your current affairs in order to be prepared.

In an emergency, if you are unable to tell anyone who to contact, the ICE information handout included with this newsletter will provide that information for you. Information related in the ICE instructions can include contact information for your doctor, faith representative, agent, lawyer, bank, financial advisor, accountant, and family member(s). Your emergency care information includes as much or as little as you would like to provide on the document. Please take the time to fill out this form and have it readily available (i.e., in an envelope labeled “In Case of Emergency” inside your top desk drawer).

In addition, providing additional vital statistics, including your name, your spouse (if married), and contact information is helpful in the unfortunate case of your failure to survive. The vital statistics form for information relating to your birth, Social Security number, occupation, and other various related information, is used for preparing and obtaining a death certificate. Because this is more sensitive information, subject to possible abuse, it should be stored with your estate plan in a safe place.

If you are incapacitated, your Power of Attorney and Advance Health Care Directive are important documents granting certain persons the legal authority to act on your behalf during a time you are unable, such as during an emergency health crisis. This form can list where your estate planning documents are located and the names and contact information of your Agents.

We are sure that the important persons in your life would appreciate notification of your emergency so they can care for you as needed. For example, if you are alone and unconscious and cannot provide the name of your doctor, or hospital of choice, this form could provide it for you. Being prepared for an emergency can make that unexpected occurrence not so drastic.

We are thankful to serve your needs as they arise and believe these "In Case of Emergency" instructions will help you receive health care during this unpredictable COVID-19 pandemic (and for your future care thereafter) according to the instructions and information you communicate. Be prepared. It matters.

FEDERAL TAX NEWS

By Katie Lepore, CPA, J.D., LL.M., Taxation

Stimulus Payments. The *Taxpayer Certainty and Disaster Tax Relief Act ("TCDTR"),* passed as part of the *Consolidated Appropriations Act, 2021 ("CAA")*, provides for additional economic impact/stimulus payments. The payment is $600 for eligible single taxpayers, and $1,200 for married couples filing jointly, plus an extra $600 for eligible children. Single filers with modified adjusted gross income of under $75,000 and married taxpayers filing jointly with modified adjusted gross income of under $150,000 are eligible for the payments. The payment is reduced by $5 for every $100 of adjusted gross income above those limits, completely phasing out at $87,000 for single filers and $162,000 for joint filers. At the time of publication of this newsletter, no vote in the Senate is scheduled on an increased $2,000 stimulus payment.

PPP Funds. The *CAA* also provided clarification that any eligible business expenses paid with PPP loan funds are deductible for federal income tax purposes, as discussed above. However, the expenses may not be deductible for California taxes. Additionally, PPP loan forgiveness does not cause taxable income, and tax basis will not be affected by the forgiveness either. The PPP loans program also received additional funding of $284 billion, available through March 31, 2021, to be able to issue new loans, including a second round of PPP loans for eligible businesses.

Charitable Deduction. The *TCDTR* also extends the ability of individuals who do not itemize their deductions on their Form 1040 to take a $300 charitable deduction as an "above the line" deduction for cash payments made to charities in 2021. Additionally, charitable deductions were previously limited to 60% of the taxpayer's adjusted gross income; this amount was waived for 2020 and was waived again for 2021 in *TCDTR*.

Medical Deduction. The *TCDTR* also permanently extends the 7.5% adjusted gross income threshold to deduct medical payments as an itemized deduction, instead of the higher 10% cap.

National Evictions Moratorium Extended. The *TCDTR* also extends the federal evictions moratorium until January 31, 2021 for qualified tenants. Additionally, $25 billion is set aside for rental assistance, to be distributed by state and local governments to those in need.

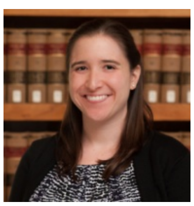
Standard Mileage Rate. On December 22, 2020, the IRS announced the 2021 standard mileage rate. A deduction of 56 cents per mile is available for business use, down 1.5 cents from 2020. A deduction of 14 cents per mile is available for miles driven in service of a charitable organization.

1031 Final Regs Issued. The IRS released final regulations regarding the changes made to Internal Revenue Code ("IRC") Section 1031 under the *Tax Cuts and Jobs Act (TCJA)*. The regs define real property and change the treatment of the receipt of personal property that is incidental to the exchange of real property. Prior to the *TCJA*, Section 1031 was not limited to real property.

IRS Priority Guidance Includes Estate and Gift Items. The IRS released their 2020-2021 Priority Guidance Plan on November 17, 2020, covering July 2020 through June 2021. New laws under the *TCJA* remain the priority, but there are several items included related to estate, gift, and trust matters. These matters include: "1) Guidance on basis of grantor trust assets at death under Code Sec. 1014; 2) Guidance on user fee for estate tax closing letters under Code Sec. 2001; 3) Regs under Code Sec. 2032(a) regarding imposition of restrictions on estate assets during the six-month alternate valuation period. Proposed regs were published in November 2011; 4) Regs under Code Sec. 2053 regarding personal guarantees and the application of present value concepts in determining the deductible amount of expenses and claims against the estate; and 5) Regs under Code Sec. 7520 regarding the use of actuarial tables in valuing annuities, interests for life or terms of years, and remainder or reversionary interests."[1] Additionally, it addresses that estates and non-grantor trusts may take deductions under IRC Section 67 and are subject to the SALT cap.

IRS Extends Availability of Digital Signature. The IRS will continue to accept certain digital signatures and e-mailed documents through June 30, 2021.[2]

Multi-Factor Security Authentication Available on Tax Prep Software. The IRS recently announced that multi-factor security authentication will be available for all online tax preparation software in 2021. This provides an additional protection against identity theft by using multiple devices or passwords to log in.



CALIFORNIA TAX UPDATE
By Katie Lepore, CPA, J.D., LL.M., Taxation

Relief for California Sales Tax. On November 30, 2020, Governor Newsom announced that the California Department of Tax and Fee Administration (CDTFA) will temporarily extend deadlines for remittance of sales tax for taxpayers reporting less than $1 million in sales tax on their return. He also extended the interest- and penalty-free rules for taxpayers with less than $5 million in taxable sales.

Grant Program for Small Businesses. On November 30, Governor Newsom announced a Grant Program for small businesses affected by COVID-19. Grants will be available to "underserved micro and small businesses" of up to $25,000. Governor Newsom also announced an increase in funding of $12.5 million to the California Rebuilding Fund, which has a $25 million balance to help small businesses rebuild after the economic crisis.

San Francisco Extends Commercial Eviction Moratorium. On November 17, 2020, the San Francisco Board of Supervisors voted to extend the commercial eviction moratorium that was in place on a new month-to-month basis. It also provides for a four-tier system based on number of employees to allow qualified tenants to pay deferred rent. Businesses must have $25 million or less in gross receipts in 2019 to qualify. Payment for those companies financially impacted from COVID-19 otherwise can defer rent for an open-ended period, at least until March 31, 2021.

[1] *See* https://www.irs.gov/pub/irs-utl/2020-2021_pgp_initial.pdf
[2] *See* https://tinyurl.com/yc4xxal9

AREAS OF PRACTICE

ESTATE PLANNING & ADMINISTRATION

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ESTATE & GIFT TAX PLANNING
INSURANCE TRUSTS
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BUSINESS & CORPORATE LAW

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FINANCING
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LITIGATION

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FIDUCIARY LITIGATION
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