Welcome to TaxMama's® Place - Home of the

Today's Topic:

December 2019 Tax Roundtable

Welcome

- It's December and it's a little crazy this month.

- But it's a good crazy, right?

What's New?

New Director of the Office of Professional Responsibility (OPR), Sharyn Fisk

https://www.irs.gov/newsroom/irs-selects-longtime-tax-professional-sharyn-fisk-to-lead-the-office-of-professional-responsibility

Named Professor of the Year at CSUN – by the students
Northridge graduate taxation program
https://www.csun.edu/bookstein-institute/professor-sharyn-fisk-outstanding-professor-year

Karen Hawkins, former OPR director says

OPR should NEVER have a career employee at the helm.

Sharyn is someone I have known for many years,
has excellent practice and academic experience.
I think she has the potential to do a good job.

2019 IRS Criminal Investigation Report
100 Years 1919 - 2019

https://www.irs.gov/pub/irs-utl/2019_irs_criminal_investigation_annual_report.pdf

2019 SNAPSHOT

FOR MANY YEARS while practicing on the outside, I admired the investigative abilities and professionalism of every special agent and the overall strength of the entire CI organization. Since coming onboard as Commissioner, my admiration and respect have increased exponentially. CI is the backbone for the entire IRS organization – fair, impartial, diligent and, where appropriate, tenacious! The FY19 Annual Report summarizes various CI activities throughout the year but vastly understates the importance of CI to the overall IRS Mission. CI supports the efforts of compliant taxpayers by visibly demonstrating the risks of noncompliance thereby helping otherwise honest taxpayers stay honest and compliant. The best of the best!

– **CHARLES P. RETTIG** , Commissioner, Internal Revenue Service

TAX FRAUD IDENTIFIED
$1.8B

OTHER FINANCIAL CRIMES
$4.4B
PROCEEDS IDENTIFIED

CONVICTION RATE
91.2%

WARRANTS EXECUTED
1726

DIGITAL DATA SEIZED
1.24
PETABYTES

COMMISSIONER'S PROTECTION DETAIL

THE COMMISSIONER'S PROTECTION DETAIL (CPD) is a specially trained cadre of IRS-CI Special Agents, who provide personal security and protection of the IRS Commissioner. Since 1999, this dedicated team has been charged with protecting the Commissioner during official business operations. CPD agents provide protection of the Commissioner within the National Capital Region and while in travel status, foreign and domestically.

As the leader of the IRS, the Commissioner frequently attends meetings, conferences, publicized hearings and speaking engagements in locations such as the White House, U.S. Capitol, U.S. Treasury, and other venues in Washington, D.C., as well as around the globe. In a typical year, the CPD protects the Commissioner on approximately 500 protective movements, 20 domestic trips, and 2-3 international visits.

CPD agents are trained in protective service operations with an emphasis on operational planning, motorcade operations, protective intelligence, and preventing and responding to attacks. Protective operations are a team effort and require detailed advanced preparations aimed at identifying and mitigating potential risks, threats, and vulnerabilities. ◆

Cheryl Asked

- Unincorporated Business Organization/Business Trust Organization/Massachusetts Trust – a new client of mine was setup as a UBO a few years ago. EVERYTHING that I've read on this subject with the exception of organizations selling the setup of them have indicated that this is a tax evasion scheme. I have asked Tax Attorneys, EAs, and CPAs and no one has ever heard of this type of entity.
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- When I look at the companies Partnership Return and the number of UBO's they have for various other silly auxiliary companies – I go cross eyed. I've asked the two partners to pull up the Social Security statements and indeed, they have practically -0- social security earnings for a few years now. The preparer has turned them over to an EA in my area (who is his groupie) for their tax work.
- I did speak with the EA and he will not release the research XXX had given him. He is working with a tax attorney to ensure all is good and then plans on switching his clients all over to UBO's.
- I was originally referred to the partners to help with State of NJ sales tax – XXX had set this company up with a PA address and never registered them in NJ where they do 97% of their business and there are some taxable items.
- They got slammed on Sales Tax and I am helping them through. As a UBO, the preparers don't prepare State 1065 as the UBO is per Commonwealth Law.
- The State is asking for NJ 1065. I told the partners that I believe they are treading in dangerous waters. They love me and want me preparing their tax returns – not the groupie.
- I have told them that I am not buying this Kool Aid and I will not prepare taxes for them as a UBO unless **you**, as someone I highly respect in this area, tell me otherwise.

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Reply to UBO – From the IRS

- https://www.irs.gov/businesses/small-businesses-self-employed/abusive-trust-tax-evasion-schemes-facts-section-iii

- **Business trust**
- This involves the transfer of an ongoing business to a trust. Also called an unincorporated business organization, a pure trust or a constitutional trust, it gives the appearance that the taxpayer has given up control of his or her business.
- In reality, through trustees or other entities controlled by the taxpayer, he or she still runs the day-to-day activities and controls the business's income stream. Such arrangements provide no tax relief.
- The courts have held that the business income is taxable to the taxpayer under a variety of legal concepts, including lack of economic substance (sham theory), assignment of income, or that the arrangement is a grantor trust. In some circumstances, the trust could be taxed as a partnership.

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Cheryl Asked More

Cheryl is in NJ

- What is the best way to set up someone who has around 15 rental properties?
- They had several held personally and a few under an LLC.
- The client wanted to add his wife so I suggested changing the LLC to a partnership.
- I am also tempted to have each property as an LLC to protect the other properties.
- They definitely need to get the properties out of their personal names to protect their home and other assets.
- Am I on the right track?
- What do you suggest? And if each property is it’s own LLC they can all be under the Partnership LLC, correct?
- The 1065 would incorporated all the rentals and expenses.

Reply to Lots of Properties

This is a lot more complicated than you might think

- For pure income tax reporting purposes – sure, you can set up each one in its own LLC and make each individual LLC a partner in the master partnership.
  - There are a few ways to deal with that (limited partnership; LLC filing as a partnership, etc.)
- BUT you have passive loss rules, aggregation rules, active participation computations AND now, the QBI deductions.
- Then you have ownership issues, spousal issues, estate issues and exit issues.
- And what about when they sell the different properties?
- And of course, liability insurance and umbrella coverage for the combined entities.
- The truth is – you need to do some computations to see how all of those things affect your clients' tax returns.

Some Links

- Passive Activity Loss Publication – tracking hours

https://www.irs.gov/publications/p925

- QBI Real estate and safe harbor hours ,etc.
    - https://www.journalofaccountancy.com/issues/2019/aug/qbi-deduction-for-rental-real-estate.html
    - https://www.irs.gov/pub/irs-drop/rp-19-38.pdf
- QBI, real estate and REIT https://www.irs.gov/pub/irs-drop/n-19-07.pdf
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Cindy Asks (MA)

- **Re: sale of a portion of S-Corp stock to employees**
- XXX 's Boat Yard in Cape Cod, MA hauls, services, and stores boats during the winter season. It is an S Corp and XXX is the only shareholder/owner. She used to own the company 50-50 with her husband but he died in 2018.
- XXX has four full-time employees and wishes to give them **each** 5% of the company. XXX owns the outstanding 100 shares and there are 12,500 authorized shares at par value of zero.
- XXX is trying to figure out how much each employee must pay for their 5% in order to comply with IRS regulations. The company currently has approximately $60,000 in tangible assets which includes about $20,000 in cash and receivables, and the remaining $40,000 market value of fully depreciated equipment and tools.
- The company has been in business many years and has always enjoyed a good reputation in the local community, but has been losing customers since the husband died and gone from a profit of $25,000 in 2017 to a loss of $18,000 in 2018 to a projected loss of $35,000 for 2019.
- A large reason for the losses are deteriorating equipment that can't keep up with customer service needs. XXX will be investing about $75,000-$100,00 of her own money into the company in 2020 to purchase new equipment and we do expect business to improve.
- So how much must XXX charge each employee for their shares? She'd prefer to keep it reasonable as she is a big proponent of employee-owned companies and is hoping their partial ownership will motivate them to make the company more successful.
- Her attorney and her CPA are both advising her to get a formal valuation of the company and base the share sale price proportionately on the asset valuation.
- Is a formal valuation really necessary for IRS purposes? If so, would it include goodwill (customer list)
- .What if XXX only wants to charge each employee, say, $1,000, even though 5% of the tangible assets might equal $3,000? How would the employee treat the difference for tax purposes? XXX has been told that if this were the case, the employee might have to recognize a $2,000 gain on the transfer?
- Seems to us she might be able to charge them whatever she wants – even $1.00 – and that there would be no gain on the transfer but the amount paid would simply become their basis in the S Corp's stock.
- XXX would like to transfer the stock before year-end 2019.
- Way over my head – please advise! Thank you!

Answer to Cindy

- Have you ever heard of an ESOP? Employee Stock Ownership Plan?
- There is a great resource here - https://www.nceo.org/

  https://www.nceo.org/articles/employee-ownership-very-small-businesses
- https://www.nceo.org/article/start-here-business-owners

Valuation – a formal appraisal IS wise.

- The company's value, without customers and goodwill, just based on your numbers will be around $200,000
- 5% is $10,000
  - The employees can pay it
  - They can get a loan to pay it to her over time
  - She can gift them the money
  - Or she can forgive some of the loan each year?
- OR Talk to the attorney and CPA about setting up an ESOP and contributing 5% of the stock to the ESOP. I don't know if there is a tax effect, since the contribution is like deferred comp in a retirement plan.

Handout

- You can find today's handout in the Board after the session

  http://irsexams.com/board/index.php?/topic/956-taxmamas-tax-roundtables/

- And at the TaxMama site http://taxmama.com/tax-quips/taxmamas-tax-roundtables-2018/

Special Tax Update Class

This evening –
December 12, 2019 at 4:05 pm Pacific – 3 hours

Get your 3-hour federal tax update credit for the AFSP

Log in here - https://taxmama.adobeconnect.com/webinar/

AND learn about key changes
to prepare the 2019 tax returns
Save the date and time.
You will get log in information.

Other questions?

QUESTIONS?