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Client Information Bulletin

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Swapping Real Estate Through Multiple Parties

How to use a qualified intermediary

Have you ever gone to a swap meet? For some real estate investors and property owners, the stakes can be much higher. For instance, you may be able to arrange a swap of real estate properties with another person of a similar mind.

Tax bonus: If the properties are “like-kind,” you can avoid any current tax on the exchange. This term refers to the nature, character or class of the property -- not its grade or quality. For example, a swap of an office building for an apartment building of the same value can qualify as a like-kind exchange. **Result:** Neither party has to report taxable income.

However, in the real world, trading real estate properties is usually not so simple. Suppose you want to acquire real estate but the owner is not interested in any of the properties that you own. Fortunately, you can take this concept one step further. The exchange can involve multiple parties if the two owners cannot agree on the properties to be swapped.

The IRS has approved the use of a qualified intermediary to facilitate the deal as long as the intermediary is not connected with one of the other parties.

Be aware that there are time restrictions involved in a multiple-party swap. In general, (1) the property you are receiving must be identified within 45 days of the original transfer and (2) you must take title within 180 days (or your tax-return due date plus any extensions, whichever comes first).

Example: Say that Tom wants to acquire property owned by Dick. However, Tom does not own any property that Dick desires in return. After discussing a number of locations, the two of them strike a deal with Harry. Dick agrees to take Harry's property, Harry acquires title to one of Tom's properties and Tom gets the property he wanted all along.

Assuming like-kind properties are involved, the entire transaction may be tax-free if the deal is completed within the necessary deadlines.

Caution: If you receive any money or property as part of the deal, the additional amount -- called "boot" in tax lingo -- is subject to tax. However, no loss is recognized by the taxpayer who provides the boot. The assumption of a greater mortgage is also treated as boot for this purpose.

The amount of taxable boot is equal to the lesser of: (1) the realized gain (i.e., the difference between the tax basis of the property you are giving up and the fair-market value of what you have received in exchange, including any boot) or (2) the fair-market value of the boot.

This is a complex area of the tax law, so be sure to consult with a professional tax adviser before you strike a deal.

Perfectly Legal: When You Can Deduct Legal Expenses

Tax treatment based on type of fees

After reducing the size of its staff, a company may look more productive "on paper." But that leaves fewer workers to handle the workload. As a result, more companies are relying on technological advances to pick up the slack. This isn't always as easy as it seems.

To rectify this situation, the remaining workers have to work smarter. That does not simply mean working faster. It does mean working in teams, making quick effective decisions without going to a higher management level, recognizing problems and devising solutions, and pushing available technologies to the limit.

How can this be accomplished? Of course, it helps to hire qualified employ-

ees in the first place. But even the best and brightest employees may have some catching up to do. It may be necessary to implement a new training program for employees.

Of course, training methods have changed just as fast as everything else in the workplace. Here are four ways to keep workers up-to-date.

1. Classroom teaching can be an effective way to train workers, especially in more basic skill areas. Community colleges are often a good resource for companies. Almost all of them have evening classes, while many also hold classes early in the morning.

Frequently, these schools will work with your company to create specific courses

for your employees and schedule them at off-hours. In some cases, the courses are given right on the business premises.

2. Consider audio and video tapes that enable employees to improve their skills at home or in the car. Besides providing flexibility, a tape may hold an employee's attention better than a classroom lecture.

Also, a videotape may demonstrate skill techniques, present information in a dramatic and meaningful way or highlight information by means of charts and graphs in ways that might not be easily done in a classroom. It can even bring an employee into a new facility before it is completed.

3. Computer-based training may also help employees improve certain skills. For example, some educational software companies have developed courses that help employees progress at their own pace. A course may even have a built-in examination, which is graded by the computer on the spot.

4. One of the latest technological advances in training is the interactive video

disk. Computers with CD drives and video cards, as well as home interactive video systems, can be used as powerful training tools. They are designed to combine some of the best aspects of classroom instruction, videotape courses and computer-based educational software.

In effect, employees go one-on-one with the interactive course. The courses can truly be multimedia lessons, with text, graphics, voice, music, motion pictures, charts, graphs and animation aids added to the mix. Training progresses at the learning pace of each individual employee instead of the teacher's pace or the pace of the slowest learner.

Which type of training is best for your company? There are many factors to consider, such as the skill level of your employees, their current duties and your expectations.

In any event, those companies that focus on teaching their employees new skills can maintain an edge in this competitive environment.

Instant Benefits for Automatic 401(k) Plans

Arrangement may avoid nondiscrimination hassles

For a company's top wage-earners, the 401(k) plan offers a valuable opportunity for retirement savings. You can defer part of your salary within generous limits while the company matches all or part of your deferral. But there is a downside: Under the strict nondiscrimination rules in the law, contributions for highly paid employees may be limited and the company might have to pick up the slack for lower-paid employees.

One possible solution is to use an "automatic" 401(k) plan. With this arrangement, employees are automatically enrolled in the plan unless they choose to opt out. If no election is made, the plan defaults to a specific amount -- say, 3% of compensation -- being deferred to each eligible employee's account.

More often than not, other employees will simply go along for the ride. Therefore, high wage-earners can stockpile even more money for retirement without the usual restraints. The IRS has previously stated that this type of arrangement is permissible.

Background: You can defer as much as \$15,000 in salary to a 401(k) plan in 2006 on a pre-tax basis. Plus, you are entitled to an extra \$5,000 deferral if you are age 50 or over. The contributions grow over time without any tax erosion. **Icing on the cake:** The employer may provide matching contributions (e.g., 50 cents on the dollar) that also grow tax-deferred.

To qualify for these tax benefits, the plan must satisfy tough testing requirements to ensure that it does not discriminate in favor of highly compensated employees.

For starters, the plan must comply with participation, coverage and vesting rules that apply to all qualified plans. In addition, a 401(k) plan must pass two complex sets of tests: the actual deferral percentage (ADP) test and the actual contribution percentage (ACP) test.

If the 401(k) plan doesn't make the grade -- say, the disparity between the average contributions of highly paid employees and other employees is too great -- the company typically is forced to kick in contributions equal to 3% of compensation for the lower-paid group.

An automatic enrollment plan may eliminate a lot of the hassle. Due to human nature, participation is significantly greater with this type of plan than with a traditional plan. The automatic plan may even provide for annual increases in the deferral percentage. Of course, employees can always elect to set aside any other amount or no amount at all.

An automatic plan can also benefit workers who otherwise might not participate. Due to "forced saving," they can begin building a nest egg. **Caveat:** Some states have laws restricting the use of automatic enrollment plans.

***Update:** New federal legislation just enacted affects automatic 401(k)s. We will report more next issue.*

Medicare Premiums: Increases On Tap

There's a hidden "tax hike" for some retirees on the way. Beginning in 2007, you may have to pay higher premiums for Medicare Part B. As opposed to Part A covering hospitalization, participation in Part B covering doctor bills is voluntary.

Background: Participants in Medicare Part B pay monthly premiums for the benefits. This amount is adjusted annually for inflation. For 2006, it costs each covered individual \$88.50 per month. However, under a change buried in the 2003 Medicare Act, certain high-income individuals are required to pay a surcharge, beginning next year.

This surcharge is based on a complex calculation involving the recipient's modified adjusted gross income (MAGI).

The estimated new monthly premiums are shown below. **Note:** These rates will continue to increase for the next five years. However, the bracket levels are scheduled to be indexed for inflation.

MAGI for single filers	MAGI for joint filers	Monthly premium for 2007*
Under \$80,000	Under \$160,000	\$100.40
\$80,000-\$100,000	\$160,000-\$200,000	\$113.30
\$100,000-\$150,000	\$200,000-\$300,000	\$133.30
\$150,000-\$200,000	\$300,000-\$400,000	\$153.30
Above \$200,000	Above \$400,000	\$173.30

*Actual figures may vary.

Consider the Risks of Company Web Sites

Key legal issues should be examined

Does your business have its own Web site? Practically all businesses do. After all, having one can create favorable exposure for the business and help you realize new opportunities.

Potential downside: Unfortunately, business Web sites may also result in unexpected exposure to legal risks. Here are some of the key issues you should be aware of with respect to your Web site.

Names: A Web site name is a trademark. If you use a name that is the same as another well-known company, you are asking for trouble. Trademark dilution does not require competition or even the likelihood of confusion. It can be proven

by simply showing that your use diminishes the famous trademark in some way.

"Long-arm" jurisdiction: Using the Internet could subject you to the jurisdiction of any court where a Web customer is located. The courts have gone both ways on this issue, depending on whether the site is passive or whether it seeks interaction with its visitors.

Unauthorized linking: Your Web site might link to addresses of other related Web sites. All your customers have to do is click on the name and they are sent to the appropriate Web site. To make it easier for customers to find you, you use the

names in the “metatag” for your site. The metatag is the hidden language that search engines use to navigate the Web. This could lead to litigation, unless you have received permission to link another site to your site and use its name in your metatag.

Copyright violations: Say you run a small auto parts store. Your Web site features a calendar from an auto parts manufacturer with a photo of an attractive model holding tools. You may have even secured the manufacturer’s consent to use the shot.

Although the photo can draw attention to your Web site, it may not necessarily be

the kind of attention you want. The picture may be owned by the photographer who licensed it to the manufacturer only for use in the calendar. If that’s the case, you’ll need the photographer’s consent to use it. Furthermore, you may need the model’s consent, unless the photographer had the foresight to get a release for use of the picture on all media.

As you can see, putting up a Web site is more complicated than simply making a computer connection. There are numerous issues that require advance planning. Take all the requisite factors into account.

Facts and Figures

Timely points of particular interest

- **That’s Great, But...** -- One mark of good leadership is getting the most out of your employees. If possible, try to avoid the “but” part of statements designed to compliment a worker. For example, suppose you say, “You did a great job on that project, but you didn’t quite meet all of my objectives.” The employee is likely to focus on the phrase following the “but” and not the part preceding it. Give out compliments without ruining them with “buts.” If necessary, you can revisit a particular issue at a later date.
- **Corporate Reporting** -- The IRS recently announced a series of regulatory changes designed to ease the tax-reporting burden for corporations and shareholders. The announcement is part of an ongoing IRS effort to make it easier to file returns and information reports by electronic means (e.g., by authorizing electronic signatures). Many of these new revisions apply to corporate transfers, mergers, spin-offs and liquidations. Consult with a professional tax adviser for details.