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LEGAL
insights

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**TO DEFER OR
NOT TO DEFER**

That is the question if you decide a Roth conversion is a good thing. In 2010 only, you have the option of treating half the conversion income as realized in 2011 and half in 2012. This puts off the tax for a long time. BUT at what cost? How high will taxes be in *THOSE* years? Call us. We can help.

**Roth IRA Conversions
Are Not For Everyone**

For someone in the right position, a Roth IRA conversion can preserve substantial wealth. The Roth conversion deal is trading income taxes due immediately in exchange for the opportunity to grow more wealth tax free for longer. Good candidates for this conversion include those that can afford the upfront tax from sources other than the IRA and are:

- Either not expecting a significant decline in their effective tax rate in retirement, or;
- Making the conversion at a young age, or;
- Not expecting to spend meaningfully from their IRA, or;
- Are transferring the IRA at death to beneficiaries who will then "stretch" the IRA payments over their lifetimes.

The reason why these individuals are better off making the conversion is that the Roth IRA distributions are tax-free and minimum distributions are not required to the account holder. These benefits are generally enough to overcome the initial sting of the upfront income tax payment.

The conversion may not be good for individuals who are unable to pay the income taxes on the conversion from non-IRA sources. It is also probably not a good plan for someone who expects their tax bracket to decrease, including retirees who plan to move to a low or no-tax state. A taxpayer who needs to consume a substantial part of the IRA money in retirement may not be a good candidate.

Roth IRA conversions also can effect estate planning. IRAs tend to be toxic assets for estate planning, since they may be subject to both estate taxes (Federal and some states) plus income taxes. Normally this means IRAs should go to spouses or charities who can shelter the funds from these taxes. On the other hand, a Roth IRA no longer has the built-in income tax problem, and is a highly desirable asset for the next generation.

As usual, this tool should be used with caution and with an eye on your individual situation. Generalizations, like this article, are dangerous. Give us a call and we can help you decide if a Roth IRA conversion is right for you.

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REAL ESTATE VALUE INVESTING

Some folks are panicked by the current market and believe that it is not a good time to begin or continue investing in real estate. These same people have created opportunities for the dispassionate, rational investor.

BUYING OPPORTUNITIES

Currently foreclosures are at or close to all time highs for most states. This means that there is a greater opportunity to buy real estate for less than true values. This is especially advantageous to someone interested in positive cash flow from an investment. In the current market it is not uncommon to find investment properties that may provide a 15-20 percent return on investment.

TAX PLANNING OPPORTUNITIES

In order to take advantage of these undervalued properties, sometimes it is necessary to sell a more mature piece of real estate. Normally this would result in a large tax bill; however, setting this transaction up as a 1031 "like-kind" exchange (see sidebar on opposite page for more on 1031 exchanges) can greatly reduce or eliminate current tax costs. Another way your portfolio can benefit from the purchase of value properties is by using their positive rental income to soak up unused passive losses you already have. This can result in significant long-term tax savings, and can be a better alternative to selling your loss properties.

HOW WE CAN HELP

Our tax and real estate attorneys can help you evaluate properties and close the deal. Give us a call. You'll be glad you did.

Mind the Tax Gap, Part Deux

THE ESTATE TAX IS STILL DEAD (FOR NOW)

As you may know, Congress has yet to deal with the expired estate tax and the sunset of the expiration next year. Therefore, as of January 1, 2010, there is no federal estate or generation-skipping transfer tax. The gift tax remains in effect and the rate is now 35% (for lifetime gifts in excess of \$1 million, and over \$13k per person in any one year). In 2011, this one year repeal automatically expires, and the old pre-2001 estate tax comes back, with only a \$1 million estate tax exemption and a 55% top rate (for estates over \$3 million. This was formerly a \$3.5 million exemption and a flat rate of 45% on the excess, in 2009).

STATE ESTATE TAXES STILL MATTER

Most states decoupled from this crazy federal scheme shortly after it was passed in 2001. Currently, many states have an estate tax after a smaller exemption, such as \$1 million in New York and Massachusetts. Rates range typically from about 6% up to 16% for very large estates. Some states, like Wyoming, Florida and Texas, currently do not have estate taxes. Other states (like New Hampshire) that had repealed estate taxes are bringing them back to fight deficits from the current economic debacle.

WHAT SHOULD A CONCERNED CITIZEN DO RIGHT NOW?

Currently there is no estate tax. Despite the popular belief that the estate tax would be enacted this year, Congress has dragged their feet and it currently seems unlikely that there will be

any estate tax in 2010. However, Congress is in the process of limiting several important estate planning tools in anticipation of the dramatically lower estate tax exemption in 2011.

Bad planning:

Do nothing and wait for Congress to settle on their new rules. This is a bad strategy because the window for fully utilizing important estate planning tools is closing rapidly and by the time the new rules are enacted it may be too late.

Good planning:

There is no time like the present to get your affairs in order. In addition to the peace of mind you will experience, there may be many once-in-a-lifetime opportunities available in 2010 because of this unprecedented temporary repeal.

Since we happen to be in a low value, low interest rate era as well, this allows taxpayers to make very effective estate planning transfers, with the added bonus that perhaps no estate, gift or GST taxes will ever apply to these transfers if the tax is not retroactively reinstated (unlikely). So, in addition to being a great time to do your normal estate planning, you may have a temporary freebie from Congress as well.



MIND THE TAX GAP

SELLING A COMPANY IN A DOWN MARKET

Business owners that are considering selling their businesses generally make their decisions based on three major factors: market, financial and personal.

When reviewing the market, the business owner needs to evaluate his or her situation and ask if there are new sales in the pipeline or if a new competitor has emerged. Most experts agree that just because the market is in a downturn does not mean that a seller will have trouble finding a buyer or that the buyer will not pay full price. The bigger factor for buyers is the company's own financial performance.

When reviewing the company's financial performance, the business owner needs to evaluate the company's direction (are sales increasing or decreasing?) and whether the company's books are in order. Buyers are more interested in buying a company with growth or at least stability than one with declining sales. If the company has growth or stability in revenue it will generally receive full value no matter what the market.

In addition to factors involving the market and the financial state of the company, the owner also has to evaluate his or her own personal situation. Many personal factors can affect a business owner's decision to sell including retirement, ill health, family issues, partner dissension, divorce, difficult competitive environment or burnout. Some of these situations can develop unexpectedly which could leave the owner unprepared. One of the ways to prevent this is to periodically review the business as if preparing for a sale. That way if an unexpected situation occurs, the business owner has a head start on a plan.

Lavelle & Finn, LLP can help with every step of this process. From performing routine reviews to closing on the sale, we have you covered.

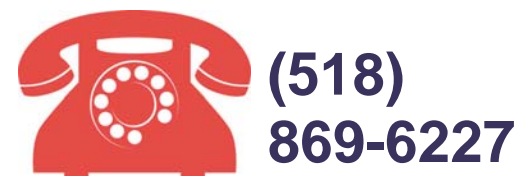
HOW 1031 "LIKE-KIND" EXCHANGES CAN SAVE YOU MONEY

Many people have heard of 1031 exchanges and know that they have something to do with taxes but are not quite sure how they work. In order to qualify for a 1031 exchange you must be selling a piece of property and plan on buying another. After the sale of your real estate you have 45 days to identify a new piece of real estate and 180 days to close on it. If this is all done properly you won't recognize any capital gains on the sale of your real estate as long as the real estate you are buying is of greater or equal value.

This process may seem simple, however if any step is done improperly or any date is missed then the entire transaction is a taxable event. One of the most important things to remember if you are thinking of doing a 1031 exchange is not to close on the sale of your property before the transaction is properly set up. If you close on the sale of your property before properly setting up the 1031 exchange, then the opportunity for tax deferral of the gain is gone forever.

HOW WE CAN HELP

Lavelle and Finn practices in both tax and real estate. Give us a call. We will help guide you through this important and complex transaction.



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