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TAX AND BUSINESS *Alert*™

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Generally, there are two ways to acquire an existing corporate business. Buyers can purchase either the business assets or the corporate stock. Buyers often prefer to purchase assets while sellers normally prefer to sell stock (which generally results in a long-term capital gain taxed at favorable rates). A principal reason for the buyer to prefer an asset deal is that the buyer is protected from unknown or contingent liabilities of the acquired business. The buyer in an asset purchase transaction generally becomes responsible only for the liabilities that encumber acquired assets (such as a mortgage on real estate) and liabilities specifically assumed in the purchase agreement. If a corporation's stock is acquired, the buyer acquires not only the equity, but also all known and unknown liabilities to which it is exposed.

For buyers, several additional factors also tend to make an asset purchase more favorable than a stock purchase. An asset purchase allows the buyer to:

- Purchase only the assets desired. With the stock purchase, all of the corporate assets are acquired.
- Take a tax basis in the assets equal to their purchase price, not a lower depreciated value.
- Terminate existing unfavorable contracts.
- Avoid minority shareholder problems that could arise with a stock purchase.

While buyers generally prefer asset rather than stock purchases for the reasons just discussed,

How to Acquire a Corporate Business

some factors favor stock purchases from the buyer's perspective. These include:

- The legal and transaction costs and difficulties of an asset purchase are normally higher than for a stock purchase. With an asset purchase, legal title to each asset must be transferred.
- Contractual rights (leases, franchises, etc.) may be unaffected by a stock purchase. With an asset purchase, the consent of other parties may have to be obtained to continue valuable contractual relationships.
- With a stock transaction, the buyer is able to retain the use of favorable tax accounting and depreciation methods used by the target corporation.
- With an asset purchase, the buyer may not receive the right to use the seller's corporate name, which can be a significant disadvantage if that name is well-recognized.

Advice of legal counsel should be obtained to evaluate the non-tax advantages and disadvantages of stock purchases. We look forward to working with your legal representative to structure any future acquisition transaction in the most favorable way, considering all legal, tax, and general business issues.



Upcoming Tax Deadlines

January 15—Individual taxpayer's final 2003 estimated tax payment is due unless by February 2, 2004, the return (Form 1040) is filed and any tax due with the return is paid.

February 2—Mail Forms W-2 to employees and Forms 1099-MISC to independent contractors. Other Form 1099 series information returns, such as for interest and dividend payments, also must be mailed to the payees by this date.

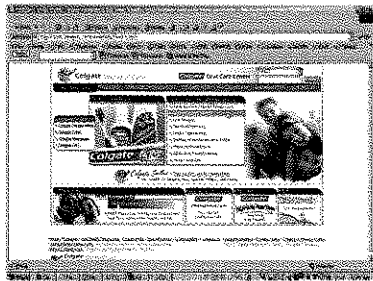
—And, finally, file the final 2003 Form 941, Employer's Quarterly Federal Tax Return, and

annual Form 940, Federal Unemployment Tax Return, by today. (If all taxes were deposited when due, the filing of either form can be delayed until February 10.)

March 1—The government's copy of Forms W-2 and Form 1099 series returns (along with the appropriate transmittal form) should be sent in by today. However, if these forms will be filed electronically, the due date is extended to March 31.

March 15—2003 income tax returns must be filed or extended for calendar-year corporations. If the return is not extended, this is also the last day for calendar-year corporations to make 2003 contributions to pension and profit-sharing plans. ●

Interesting Websites



Looking for a brighter smile as one of your 2004 resolutions? The Colgate Oral Center at www.colgateoralcare.com can help. The center offers in-depth information on *Oral Hygiene Basics* including

tooth and gum care, dental visits, brushing, flossing, and more. The *Life Stages* section covers dental care tips for people of all ages with additional information for children and seniors. The *Common Problems* area looks at the most common dental problems including gum disease, cavities, and sensitivity. The *Dental Treatments* section offers information on dental procedures, cosmetic dentistry,

orthodontics, and crowns. The *Medical Conditions* area discusses medical conditions affecting your smile including diabetes and cancer. Also included is *Oral Health News* from the American Dental Association (ADA) and a *Find a Dentist* assistance feature.

The Colgate Oral Center also includes a section designed to assist elementary school teachers instruct younger children in proper oral hygiene and features Dr. Rabbit, the world's only rabbit dentist. The center also includes a fun and games section for older children and an area for dental professionals.

Additional oral health information (structured more for dental professionals), can be found by visiting the ADA website at www.ada.org or the American Dental Hygienists' Association website at www.adha.org. ●

Inflation-Adjusted Numbers for 2004

FICA/Self-employment Tax Wage Base: \$87,900 (up from \$87,000 in 2003)

Social Security Earnings Ceiling (Below which benefits are not reduced):

Under age 65—\$11,640 (up from \$11,520 in 2003)

Age 65 and up—no limit (however, if you turn 65 this year, a \$31,080 annual limit applies to earnings in the months prior to your birthday)

Mileage Rates:

Business use: 37.5 cents/mile (up from 36 cents/mile in 2003)

Charitable use: 14 cents/mile (unchanged from 2003)
Use related to seeking medical care or for a tax deductible move: 14 cents/mile (up from 12 cents/mile in 2003)

Retirement Plan Elective Deferral Limits:

401(k) and 403(b) plans: \$13,000 (plus an extra \$3,000 if at least age 50 by year-end)

SIMPLE IRAs: \$9,000 (plus an extra \$1,500 if at least age 50 by year-end)

Estate and Gift Tax Exemption: \$1,500,000 (up from \$1,000,000 in 2003) ●

Deducting Student Loan Interest

Interest paid on a qualified education loan for qualified education expenses can be deducted (within limits) in computing the borrower's adjusted gross income (AGI). The annual maximum deduction is limited to \$2,500 and is the same regardless of how many students are in the taxpayer's family. However, as your modified adjusted gross income [MAGI (AGI before considering student loan interest and increased for certain income exclusions)] increases, the student loan interest deduction is phased out. The phase-out ranges are from \$100,000 to \$130,000 for married taxpayers filing a joint return and from \$50,000 to \$65,000 for taxpayers filing as single or head of household.

Example: Phase-out of student loan interest deduction.

Ned and Nancy file a joint return. Their combined wages are \$110,000, which is their only income source. Before considering their modified AGI limitation, they are entitled to deduct \$2,500 of student loan interest from AGI. They are \$10,000 (\$110,000 - \$100,000) into the \$30,000 phase-out range for joint filers, so their student loan interest deduction is limited to \$1,667 $[(\$30,000 - \$10,000) / \$30,000 \times \$2,500]$.

You cannot take the deduction if you are married filing a separate return or if you are claimed as a dependent on another taxpayer's return. Only the person legally obligated to make interest payments under the terms of the qualified loan can claim the interest deduction.

Qualified Education Loan. A qualified education loan is any indebtedness incurred solely to pay for your qualified education expenses or those of your spouse or any dependents (at the time the indebtedness was incurred). Therefore, mixed-use loans are not qualified education loans. Similarly, revolving lines of credit (e.g., credit card debt) are not qualified student loans, unless you use the line of credit solely to pay qualified higher education expenses. The debt must have been incurred to attend an eligible education institution at least halftime with a program

leading to a qualified degree or certificate. If you have a qualified education loan and refinance the loan by taking out a new loan, the new loan is a qualified education loan. A loan does not qualify as a qualified education loan, however, if the lender is related to you.



Qualified Higher Education Expenses.

Qualified higher education expenses for purposes of the deduction for student loan interest are generally the student's cost of attending the educational institution, including tuition, fees, room and board, and related expenses. Qualified higher education expenses must be reduced by:

- * Employer-provided educational assistance.
- * Income from U.S. savings bonds used to pay higher education expenses.
- * Non-taxed earnings on distributions from education savings accounts and qualified tuition programs.
- * Any scholarship, assistance, or other nontaxable payment received for educational expenses.

Example: Calculating higher education expenses.

Pete had a total of \$50,000 of qualified higher education expenses during his four years of college. He received scholarships of \$20,000 and borrowed \$35,000 to finance his education. In arriving at AGI, he can deduct only the interest relating to \$30,000 of the loan because the \$50,000 of qualified expenses must be reduced by the \$20,000 scholarship for purposes of the interest deduction.

Benefits of a Living Trust



Revocable living trusts are very popular and can provide several benefits. Still, a lot of misconceptions exist about the benefits of these trusts and how they operate.

A revocable (living) trust is a trust that's funded with part or all of the property of the creator (grantor) of the trust. By serving as a trustee, the grantor retains control of the property and also has the right to revoke the trust and reclaim

ownership of the trust's property. By itself, the trust does not offer any estate tax savings. However, if it is properly set up and funded, it can provide the following advantages:

Avoiding Probate. Where executor and attorney fees are based on a percentage of a person's estate that goes through probate, a living trust can cut costs significantly because assets owned by the trust are not subject to the probate process. Because the property is not titled in the decedent's name at death, it does not pass through probate. However, all of the assets in the revocable living trust are included in the decedent's estate for estate tax purposes.

Asset Administration. Another frequently touted benefit of a living trust is that it can help avoid a court-supervised guardianship in the event the trust creator becomes unable to manage his or her own affairs. Of course,

if the only reason for creating the trust is to avoid a guardianship proceeding, it may be simpler (and cheaper) to grant a durable power of attorney over all of one's assets to a trusted relative or friend, rather than to establish the trust.

Multistate Administration. An ancillary administration (meaning the administration of a person's estate in more than one state) is necessary when individuals own real property outside their state of residence. In some situations, this process is fairly simple, other times it is not. As an alternative to an ancillary administration, a living trust can be established to hold title to the property located in another state.

Privacy. An inventory of assets must be filed in a probate administration. This document becomes a matter of public record, subject to inspection by anyone. Thus, individuals who are concerned about the privacy of their financial affairs can use a fully funded living trust to prevent a public record of their assets at death.

Although a revocable living trust can be a valuable planning tool, it is certainly not for everyone. For example, the full benefits of the trust normally are not realized unless all of a person's assets are placed in the trust. Some people will find the inconvenience of having assets such as cars, boats, homes, and checking accounts titled in the name of the trust too much to deal with on a day-to-day basis. Thus, they will either not bother to properly fund the trust, or as the years go by, they will become remiss in maintaining the proper paperwork. ●

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