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NEWSLETTER

BRANDON S. COLLIER, Editor

30195 Chagrin Blvd., Suite #100, Cleveland, Ohio 44124 | Phone: 216/765-1199 | Fax: 216/831-8279 | Email: newsletter@csanews.com | Website: www.csanews.com

Volume XXXIX, No. 2, January 15, 2011

Aspen-Snowmass Ski Seminar: Seminar space is still available for the upcoming ski seminar at the upscale Snowmass Viceroy hotel (Feb. 28 to Mar 4). Roundtrip airfare has been falling (we bought our tickets recently for less than $400), and we have arranged for lift ticket savings of more than 20% for members of our group. Contact Collier, Sarner & Associates or visit our website for more information.

Unrestricted Roth IRA Conversions Have Been In Place For One Year. Now What? To reiterate: 2010 is the first (not the only) year for the removal of the $100,000 income limit on conversions from traditional to Roth IRAs. We recommend that if you who have been making non-deductible contributions to traditional IRAs, you should continue to do so in 2011 and beyond. The income limits on direct Roth IRA contributions nonsensically still apply even though unlimited conversions are permitted. (Recall, that if income is over $179,000 for joint filers and $122,000 for singles, no Roth IRA contribution is permitted.) Hence the need to maintain two IRAs going forward – the original traditional IRA, and the new Roth IRA. If the traditional IRA was emptied after the 2010 conversion, it should still be retained. Going forward it can continue to receive the annual after-tax contributions, which can immediately be converted to the Roth. Until Congress changes the rules and allows everyone to contribute directly to Roth IRAs, the dual IRA system will be needed. Instruct your broker that if the traditional IRA ends up with a zero balance, you do not want the account closed. It will be used again in 2012. (We are told that Vanguard permits zero-balance IRAs to remain in effect.)

Credit Card Processing Fees - Cost Plus Vs. Tiered Plans: Credit card fees are nasty for several reasons. The obvious one is that they are substantial and can run as high as 4% of the gross card collections. A less obvious one is that we tend not to notice them, because they are quietly withdrawn from the bank account. A quick way to see how much you are paying in total fees is to take the monthly statement and divide the gross card collections by the total monthly fee. Chances are that this will be over 3%. In the December 1st Newsletter, we wrote how most of us are significantly overpaying for credit card processing fees. We suggest re-reading that issue for a discussion of the differences between "cost plus" plans and the more expensive "tiered pricing" plans which most of us have.

We switched to a cost plus plan about six weeks ago and are generally pleased with the results. While the fees are still expensive, it appears that they have dropped by about 1% of total billings. With the cost plus plan, expenses are broken down between "cost" and "plus." The "cost" part of the equation includes the Visa/MC/AMEX/DISCOVER interchange fee and their dues and assessments which get passed straight through to the merchant. The "plus" portion is the processor's markup. With our plan, the "plus" charges include an extra 0.2% charge on gross billings plus 10 cents per transaction plus a few extra dollars each month in service charges. This is split generally between the card processing company and the broker who placed the merchant with that processor.

The new monthly statement is not transparent, but is easier to follow than the opaque statements we used to receive. We set up our cost plus plan with Dental Card Services Alliance. This is not an endorsement, however. There are many such brokers who are arranging cost plus plans for small businesses, and we recommend researching a few of them if you are thinking of making a switch. You might be able to get references from some of their clients as well as possibly lower rates on the "plus" portion of the monthly fee.

Qualified Leasehold Improvements ("QLHIs") Are Eligible For Serious Tax Benefits, But Are Not Available To Everyone: In recent Newsletters we've outlined these: (1) 15-year depreciation deductions vs. 39-year deductions for non-QLHIs; (2) then under the 2010 Small Business Jobs Act, QLHIs placed in service are eligible for $250,000 of Section 179 immediate expensing; (3) and finally under the 2010 Tax Relief Act, 100% expensing is permitted if the improvements are made by December 31, 2011. These are wonderful benefits, but they are not available to everyone. The key word is "qualified." If the leasehold improvement is not qualified, then none of the above benefits apply. Section 168(k)(3) of the tax law defines a QLHI as any improvement to an interior part of a building that is non-residential real property, the property is subject to a qualified lease, the improvement is made by the lessor, lessee or sublessee, and is made more than three years after the building was first placed in service.

Many doctors will fail to meet these tests because they don't have a qualified lease. The qualified lease rules fall under Section 168(k)(3) and Section 267(b). If the lease is between "related parties" it is not a qualified lease. Section 267(b) defines the prohibited related party relationships. These include:

(1) members of a family (i.e., husband (H) owns practice and wife (W) owns building);
(2) an individual and a family member's corporation (H owns practice corporation and wife owns building individually or in an LLC);
(3) two C corporations that are members of a controlled group (H owns C corp practice and W owns building in C corp. This structure is unrealistic. Real estate should not be owned in a C corp because the appreciation will be subject to double taxation);
(4) two S corporations (H owns practice in an S corp and W owns building in an S corp);
(5) a corporation and a partnership or multi-owner LLC (H owns the

incorporated practice and H and W jointly own building in an LLC); and **(6)** an S corp and a C corp (practice is a C corp and building owned in an S corp).

The following are examples of qualified leases:

(1) a lease with a third party landlord;
(2) a partnership (or multi-owner LLC) and an individual (or single member LLC) (i.e., H owns practice as a Schedule C taxpayer or in an LLC and H and W own building in an LLC); and
(3) a partnership (or multi-owner LLC) and another partnership (or multi-owner LLC).

267(b) disallows most related party relationships, but it is oddly silent on the partnership-individual relationship and the partnership-partnership relationship (numbers 2 and 3 just above). It does not incorporate the related party rules for partnerships contained in Section 707(b). This could be an oversight when the law was drafted, or we could be missing something. (We welcome feedback from advisors on this last point). In any case, this seems to present an opportunity for family members to avoid the related party rules and disqualification of QLHI tax benefits. For example, if the doctor is a Schedule C taxpayer or a single member LLC, then the building can be put into a family partnership or family LLC.

This is the gray area of the tax law. Our philosophy for dealing with the gray area is to be aggressive and interpret ambiguities in our favor. If this situation might apply to us, we would claim the QLHI deductions. The worst that we conceive happening is that the benefits are disallowed, and we go back to the slow 39-year depreciation rules. (Questions about how these rules apply to your specific situation should be addressed to your accountant or local attorney.)

Due Date For 1040 Individual Tax Returns Is April 18: Normally, the April 15^{th} deadline for filing and paying the tax is extended if it falls on a weekend. This year, Washington, D.C. is recognizing Emancipation Day on Friday the 15^{th}, which pushes tax date to the 18^{th}. We still recommend taking the six month extension to October 15^{th} (technically October 17^{th} this year) to lower the risk of audit.

2010 IRA And HSA Contributions Are Also Due By April 18: Make sure the brokerage designates these as your 2010 contributions to avoid an excessive 2011 contribution penalty.

Renting Out Your "Residence" For Less Than 15 Days Per Year: The Internal Revenue Code (Section 280A(g)) provides that if an individual leases out her residence for less than 15 days per year, she does not have to report the rent as taxable income and cannot deduct any expenses. This would seem to apply to a non-business vacation home that is used by the taxpayer at least 14 days per year as his residence. You might rent out the vacation home to referring doctors or even to your corporation for use as an incentive for employees (other than yourself.)

S Corporation Or LLC? Choose One Or The Other, Not Both: Both entities give the owners equally good liability protection. Our preference has been the S corporation because of the ability, in most out as a dividend distribution which is free of the 2.9% Medicare tax. This is not an option in a standard LLC. It could work however in an LLC that elects to be taxed as an S corporation by filing IRS Form 2553. So this is the best of both worlds, right? -- S corporation Medicare tax savings plus the simplicity of operating an LLC, including no separate business tax return, no annual minutes, etc.

Wrong!! The LLC that elects to be treated as an S corporation should get the Medicare tax savings, but if the doctor ever wants to bring in a junior partner, then this hybrid form of entity wreaks havoc with the transaction and the junior doctor's tax consequences. To fix this, the S election can be revoked, but this will result in the LLC being taxed as a C corporation - another bad result. The only real solution is to terminate and liquidate the LLC and start over with a standard LLC or S corporation.

Also, we like the fact that the corporation files a separate tax return. It gives the doctor an extra degree of IRS audit protection. If the doctor's personal 1040 return gets audited, then all the aggressive LLC deductions show up right on Schedule C. With the corporation, the aggressive "discretionary" expenses appear over on the corporate return, and the 1040 is relatively clean. If you have an LLC taxed as an S corporation and a partnership is never to be contemplated, then leave things as they are, unless you want the additional audit protection. If you haven't yet formed the entity, then choose one or the other, but not both.

What Ought To Happen When Multiple Doctors Wish To Retire Around The Same Time? This is the single trickiest issue we see in group practices. The two owner situation is simple. The junior partner simply cannot leave until the senior doctor has been fully bought out. However, in larger groups, two senior doctors may wish to retire close in time. If the contracts state for example that any doctor can retire when he or she reaches age 50, then the senior owners can find themselves in a race to the exit. The remaining junior partners also need to be treated fairly. If multiple retirees are in payout mode, and one or both of them cannot be replaced by new doctors, then the remaining partners may be put in an economic bind. How can two people do the work of four people and still afford to pay two partners' buyouts?

In larger group practices, the contracts should provide that both retirees will be entitled to their full buyout payments if the practice's collections remain stable. Otherwise, the remaining owners cannot afford it. You might consider an arrangement where no more than, say, 10%-15% of the practice's collections will be used to fund retiree buyouts. If collections stay high, both doctors get their full payments. If collections drop, then the retired doctors will see their annual payments reduced (but not below the 10%-15% threshold) but that buyout will continue for additional years until fully paid.