

A REVIEW of VARIOUS PLANNING CONCEPTS and TECHNIQUES

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DEFERRING INCOME

- Cash-method business – delay sending invoices
- Accrual method business – hold off on providing goods or services to customers
- Accrual method business paid in advance – report payments as deferred income on financial statements or (if financial statements not generated) if earned in later year. Rev. Procs. 2004-34 and 2011-18
 - Adopting this treatment will required filing Form 3115

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ACCELERATING DEDUCTIONS

- Taxpayer identifies purchases and money that can be spent on deductible expenses, such as equipment repair
- Cash-method business – pay bonuses before year end
- Accrual method business – pay bonuses before year end for related employees and before 2 ½ months for unrelated employees *if liability is fixed and determinable*
- Try to make expenses deductible rather than capitalizable
 - Sec. 179 expensing election
 - Partial disposition election
 - De minimus safe harbor election

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ACCELERATING DEDUCTIONS (Cont'd)

- Small business real estate safe harbor election
- Asset must be placed in service
- Beware mid-quarter convention
 - Sec. 179 ordering rules
 - Mid-quarter tainting assets first
 - Long-lived assets second
- Harvest Losses
 - Business bad debts
 - Casualty and theft losses
 - Losses on the sale of business assets

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EVALUATE BASIS

- Ensure sufficient basis to deduction losses from pass-through entities
 - S Corporation shareholders should consider making loans
 - Partner can guarantee loans

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DISCONTINUE EMPLOYER PAYMENT PLANS

- \$100 per day excise tax per employee
 - Abated for non applicable large employers through June 2015
 - IRS has not yet abated the penalty for the rest of 2015
 - Any company not yet in compliance should act fast

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DOMESTIC PRODUCTION ACTIVITIES DEDUCTION

- Limited to 50% of W-2 wages allocable to domestic production gross receipts
 - Accelerate salaries or bonuses attributable to domestic production gross receipts if being limited by ceiling

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RECENT ESTATE PLANNING DEVELOPMENTS

- *Mikel* – Tax Court held that gifts to a trust with an *in terrorem* clause prohibiting the beneficiaries from challenging any distributions were nonetheless completed gifts.
- Chief Counsel Advice 201442053 - ruled that the recapitalization of a limited liability company was a transfer under Sec. 2701, constituting a gift for gift tax purposes.
 - The regulations under Sec. 2701 use a very broad definition of "recapitalization". Merely changing the rights in an operating agreement will trigger application of the section.

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RECENT ESTATE PLANNING DEVELOPMENTS

- Ltr Rul 201442042 - IRS allowed trust modified to correct a scrivener's error to have retroactive effect.
 - Contemporaneous documentation helped make the case
- *Bross Trucking* – Goodwill not distributed from C Corp as no employment contract and never signed a noncompete. Also, there were no formal written service agreements with its customers.

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RECENT ESTATE PLANNING DEVELOPMENTS

- Ltr Rul 201444003 - IRS ruled taxpayer's testamentary power of appointment (POA) over principal and accumulated income was not a general POA and did not cause the value of the trust property to be included in the taxpayer's gross estate.
 - Could have easily avoided need for letter ruling had POA been drafted to include language limiting the power to appoint property.

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RECENT ESTATE PLANNING DEVELOPMENTS

- *Belmont* - estate denied a charitable deduction because the amount of income was not permanently set aside for charitable purposes
 - Tripped up on "reasonably foreseeable possibility"
- Final Portability Regulations issued
 - Must election on timely filed, complete and properly prepared return (including extensions, but only if extension procured)
 - If no executor, any person receiving property can make election. Can't be superseded by another.
 - "Proving" of carryforward amount rule implemented

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RECENT ESTATE PLANNING DEVELOPMENTS

- Final Portability Regulations issued (continued)
 - Rev. Proc. 2014-18 not made permanent
 - QTIP election interplay with Rev. Proc. 2001-38 clarification still needed
- Letter Rule 201438014 – Receipt by trust of from IRA upon death of grantor was not IRD and therefore not includible in its income.
 - Name the charity as the beneficiary of the IRA.

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