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Absolutes

Planning for death and taxes

2500 WILCREST, SUITE 201
HOUSTON, TEXAS 77042
TELEPHONE: (713) 341-2740
FACSIMILE: (713) 341-2750

Our Mission Statement

*To Provide Tax and Business Consulting Services
that Drive Innovative Wealth Building Solutions*

Company Tax Liabilities: Who Can the IRS Pursue?

In general, a company officer, director or owner will not be held personally responsible for liabilities of the company. However, not all creditors are created equal. When the IRS is involved and the liability is unpaid taxes, officers, directors and owners should be aware of situations in which they can find themselves personally responsible for tax liabilities of the company.

Whether or not the IRS can collect from an officer, director or owner depends in large part on the circumstances, as well as the category of taxes owed. For example, the IRS can pursue collection of past due employee taxes from a company's officers, directors, and owners, even after bankruptcy. Employee taxes fall into three categories:

- Federal income tax withholding for employees;
- Social Security and Medicare taxes (payouts under the Federal Insurance Contributions Act, or FICA); and
- Federal unemployment tax.

The IRS doesn't even limit the personal liability of employee taxes to a company's officers, directors, and owners. It goes on to find any responsible party liable, which can include employees, sureties, lenders, and others outside of the formal corporate organization. Anyone in a position to effectively control the company's finances, or determine which bills should or should not be paid, may be vulnerable. That being said, companies should ensure that they pay employee taxes at all costs. The IRS does not take these past due taxes lightly and will go after a broad range of individuals associated with the company personally if these taxes are not paid.

The IRS has two basic legal theories that it uses to collect company tax liability from owners: the alter ego theory and

the doctrine of transferee liability.

The Alter Ego Theory

The alter ego theory allows the IRS to disregard the corporate entity as being separate from the owners by "piercing the corporate veil" under state corporation law. The most common way to "pierce the corporate veil" is to show that there was fraud. For example, if a company established for a fraudulent purpose, is used to commit an illegal act, or if its owners drain the corporate assets, limited liability may not apply and the IRS may impose liability directly on the owners.

Another way for a business entity veil to be pierced is through the practice of comingling business and personal funds. When a business owner uses business money to pay personal expenses, or moves money back and forth between his business and personal accounts, then the company is more likely to be pierced. This loose treatment of money flowing back and forth between the owner and the company is seen as a sign that the company has no true separate existence from the owner. Rather, the company was an "alter ego" of the owner.

If you as an owner don't respect the difference between the company's money and your personal money, then the court or IRS will not either. Instead, the court will presume that if the company can pay your personal expenses, then you can personally pay the company's debts. Therefore, it is important as a business owner to make sure you run your business accordingly. This includes maintaining and updating your corporate formalities and ensuring that only business expenses and income run through your business.

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Probate: Is it Something to Fear?

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When people hear the word *probate*, they tend to associate it with an extremely time-consuming, expensive, and complicated process. While in many states these fears are warranted, in Texas, the probate process is not nearly as costly or complex and is, in fact, nothing to be feared.

Probate is the process in which a court oversees the payment of a deceased person's debts and the distribution of his or her assets. The court's role is to facilitate this process and protect, when necessary, the interests of all creditors and beneficiaries of the estate. The role of the Texas probate court, and all persons hired by the court to facilitate this process, is known as probate administration. Probate is simply the process of winding up the financial affairs of a person and passing the assets on to his (or her) beneficiaries.

Generally, probate has four parts:

1. Collect the assets;
2. Pay the debts;
3. Pay the taxes; and
4. Distribute the balance to the heirs or beneficiaries.

Probate also includes "admitting a will to probate." To admit a will to probate means that a probate judge (by written order) has determined that the document is the last will of the decedent and the property should be distributed accordingly. From that day forward, anyone wanting to know who owns the decedent's property can go to the probate records and find out. Admitting a will to probate is the mechanism used to evidence the transfer of property to the next generation. Under Texas law, a will is of no force and effect until it has been admitted to probate.

Texas has a very streamlined and efficient probate system. For the simplest of estates, the total probate cost can be relatively inexpensive. Years ago, Texas did not have such a good system; It was cumbersome and inefficient. In addition, the courts abused their authority to supervise everything concerning the probate proceeding. Judges appointed their cronies to act as appraisers and administrators. Further, attorneys charged a percentage of the estate as their fees. Today, no responsible attorney charges a percentage.

A common misconception about the probate process is

that all property of the decedent is subject to probate, but that is not the case.

Non-Probate Estates

Certain assets are not distributed during probate, but are transferred in some other way. These assets are called the *non-probate estate*. These can include insurance policies, IRAs, KEOGHs, pensions, profit sharing, and 401(k) plans. These assets are transferred directly from the company or bank holding them to the beneficiary who is named in the policy or account documents.

Non-probate estates also include property owned in joint tenancy with a right of survivorship. These pass directly to the survivor if the documents are prepared properly. Assets in trusts, such as a living trust, are not part of the probate estate, but are distributed according to the provisions of the trust document. Money may be transferred at death with transfer on death (TOD) or Payable on Death (POD) bank accounts. None of these assets are part of the probate estate and should not be listed as assets in a Texas probate court.

The more of the following questions you can answer with yes, the less your probate procedure will cost your estate:

1. Has the estate been planned?
2. Is the will up to date?
3. Is the will self-proving?
4. Is the fair market value of all of your assets less than \$600,000?
5. Is there only one beneficiary of the will?
6. Are all of the surviving children also the children of the surviving spouse?
7. Are the bequests to the family made in the predictable and natural manner?
8. Did the decedent discuss and explain his estate plans to his family before his death?
9. Can the debts be resolved without delay or controversy?

Dependent and Independent Administration

Dependent administration is so named because the administration process is dependent on the Texas probate judge's approval. In that situation, the probate judge will

appoint an administrator who will submit periodic reports to the court and will seek the judge's approval before taking any action. The necessity of writing reports and seeking judicial approval drives the costs of probate administration up substantially. Depending on the size of the estate, it can cost thousands of dollars more to go through dependent administration.

The purpose of dependent administration is to protect the rights of the beneficiaries, the people who will receive the assets. Unfortunately, it often uses up much of the estate in administrative costs that would have gone to the beneficiaries.

Independent administration is administration of an estate which is independent of the probate judge. In this situation, the court appoints an administrator who submits an inventory of all assets and a list of people who owe money to the estate. After the inventory is filed, the administration of the estate continues without the probate judge's approval. More than 80% of the estates probated

in Texas are independently administered.

Texas law allows a testator (a person writing a will) to include a provision in the will for independent administration of the estate upon his or her death. Unfortunately, many people in Texas die without having a will. When this happens, Texas law steps in and determines how the estate will be distributed, which is often not always the same distribution that the person may have wanted if they had the choice.

It is imperative that someone wanting to provide for the disposition of their assets upon death should make sure that they have a well-drafted Will. This is the only way to ensure that your assets are distributed the way that he would want, rather than the way that Texas law would dictate.

If you have any questions on the probate process in Texas or need help drafting your will, please call us and schedule a meeting.

IRS Tax Resolution

No one likes to receive a letter or phone call from the Internal Revenue Service and avoiding it is not going to make it go away. Whether you have unfiled tax returns; you owe the IRS back taxes that you cannot pay; or you are the target of a tax collection action, such as a wage levy or asset seizure, we can help. The majority of taxpayers do not understand their rights before the IRS. It is critical that a tax payer have the proper representation to resolve their tax problems.

There are several ways we can work with the IRS to settle your tax liability. For example, an *Offer in Compromise* allows you to settle your liability for less than you actually owe. An *Installment Agreement* allows you to pay the IRS a monthly payment until the liability is paid off or until the statute of limitations expires for collection. The benefit of talking to a tax professional is that they can provide insight and knowledge into the whole

process of dealing with the IRS.

We offer a full range of tax controversy services related to whatever your IRS tax issues may be. These services include:

- Pre-examination audit readiness analysis;
- Examination planning and representation;
- Appeals representation and tax litigation support;
- IRS service center matters;
- Penalty and interest computations; and
- Compliance matters involving information reporting and withholding.

We can help almost everyone with their tax liability, whether it is personal income tax, business income tax, or an innocent spouse issue. E-mail or call us today to set up a free consultation.

The Doctrine of Transferee Liability

The Doctrine of Transferee Liability applies when a shareholder receives a distribution, or is responsible for making a distribution where there is an existing, potential, or pending IRS claim on the entity's assets. An individual subject to the liability is any person who receives a beneficial interest in property transferred by an entity which is unable to pay its tax liabilities after the transfer. This does not include an arms length transaction.

It is well established that an owner of an entity who receives a distribution of company assets on the liquidation of the company is liable for unpaid corporate taxes.

In addition, owners of an entity may be liable for unpaid company taxes if an employee-owner receives unreasonable compensation when the company is insolvent.

Many businesses incorporate, in part, to avoid personal liability, but when unpaid taxes are involved it's not always easy to protect your personal assets from the IRS. As an officer, director, or owner you should be aware of the potential exposure that exists and ensure that your entity is doing everything it can to avoid the personal exposure of its officers, directors or owners.

If you have any questions on your company's tax liability or any personal exposure to it, please call us and schedule a meeting.

Important Tax Dates

June 15, 2008

File Form 4868 to obtain 4 additional months to file your 2007 tax return.

Make the second payment of your 2008 estimated tax if you aren't paying your income tax for the year through withholding. Use Form 1040-ES.

September 15, 2008

Make the third payment of your 2008 estimated tax if you aren't paying your income tax for the year through withholding. Use Form 1040-ES.

October 15, 2008

If you filed Form 4868 extending the due date of your return, file your 2007 tax return by Oct. 15 and pay any tax, interest or penalties due.

Austin Office

In addition to our two offices in the Houston area, we now also have an office in the Austin market area.

The Austin office is located on the West side of Austin at the following address:

12117 Bee Caves Road, Ste 140
Austin, Texas 78738
512-263-8802 office
512-263-8804 Fax

If you know anyone in the Austin area that can benefit from our services please have them give us a call and we will schedule an appointment.

LET US HELP MAKE YOUR DECISIONS WORK FOR YOU! OUR SERVICES INCLUDE PLANNING, MAINTAINING AND IMPLEMENTING THE FOLLOWING:

Asset Protection
Wealth Preservation
Buy-Sell Agreements
Business Sales
Residential Mortgages
Business Acquisition
Personal Tax Preparation

Probate
Wills & Powers of Attorney
Business Succession Planning
Family Limited Partnerships
Commercial Mortgages
Tax Controversy
Corporate Tax Preparation

Tax & Estate Planning
Business Control
Business Organizations
Charitable Remainder Trusts
Asset/Debt Restructuring
Estate & Gift Tax Preparation
Partnership Tax Preparation