

# Absolutes

## Planning for Death and Taxes

### Our Mission Statement

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

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PLANS
- ▶ IRS COLLECTION ..... 2  
PROCEDURES
- ▶ TAX PLANNING TIPS..... 3
- ▶ NOTICES AND UPDATES ..... 4

## Medical Reimbursement Plans

Generally, if a taxpayer has expenses for medical care, those expenses can be deducted from adjusted gross income. However, there are two significant restrictions: the deductions must be itemized; and only the total expenses in excess of 7.5% of adjusted gross income are allowed to be deducted.

However, in 1982, Congress inserted a tax break into the Code allowing a corporate employer to take a trade or business expense for medical reimbursement payments to employees. These reimbursement payments are excluded from the employees' gross income. Under such a plan, the corporation can reimburse the employee for expenses incurred, by the employee, for medical care expenses incurred by the employee or the employee's spouse or dependents.

There are some distinct tax advantages associated with medical reimbursement plans. For example, medical expenses are paid with corporate pretax dollars. The 7.5% of AGI floor for individual deductions no longer applies because the medical expenses are now covered by the medical reimbursement plan. Consequently, the employee is not required to itemize medical deductions which may be phased out depending on income level.

In 2003, this tax break became even more valuable. In Revenue Ruling 2003-102, released September 5, 2003, the IRS announced that various employer sponsored medical plans, including a corporate medical reimbursement plan, can reimburse employees for "over-the-counter" medicines, drugs and dietary supplements that are purchased without prescriptions. Prior to that point, medical reimbursement plans provided that employees could be reimbursed for purchases of medicines and drugs only if they were obtained by prescription from a licensed physician.

As a result of the 2003 IRS interpretation, there is no requirement that medical expenses be reimbursable only if purchased by prescription. Today, purchases of over-the-counter drugs, such as cold medicine and pain relievers, are eligible for reimbursement under duly enacted medical reimbursement plans.

### **Benefits of a Medical Reimbursement Plan**

- ◇ It pays for 100% of your medical insurance premiums.
- ◇ Allows you to deduct 100% of your health plan deductibles, out-of-pocket expenses and co-pays.
- ◇ You can even deduct the costs of pre-existing conditions.
- ◇ Deduct the costs of braces and other dental work.
- ◇ Deduct the costs of driving to and from the doctor.
- ◇ Deduct the costs of hearing aids and glasses.
- ◇ Deduct the costs of nontraditional forms of medicine such as chiropractic, acupuncture, and massage therapy.
- ◇ It covers you, your spouse and your children.

For many people, these expenses can add up to thousands of dollars every year. If you have a business, and have not setup a legal entity, this is one more reason to look at incorporating your business.

The 2003 IRS interpretation makes an important distinction on exactly which medical expenses are reimbursable. Medicines and drugs are reimbursable, regardless of whether they are purchased on prescription. However, items considered "merely beneficial" to the general good health of the em-

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What happens when you are unable to pay your tax liability? The IRS generally attempts to collect unpaid taxes first through voluntary payment arrangements. However, if this approach fails, the IRS may then turn to enforced collection methods such as liens, levies, and seizures. The IRS has powerful methods to enforce collection of the debt, including seizing your personal or business assets.

The best strategy is to work with the IRS to come to a mutually satisfactory payment arrangement. The arrangement can be met through one of the following methods:

- ◇ An extension of time to pay;
- ◇ Borrowing against loans, credit cards, 401(k) plans, life insurance, and/or home equity;
- ◇ Paying over time under an installment agreement, or
- ◇ Submitting an offer in compromise.

Under limited circumstances, the IRS will temporarily stop collection actions if this causes a hardship to you or your family. If all else fails, you may consider filing for bankruptcy protection.

## Short-Term Payment Extension

If you are temporarily unable to pay your tax liability, you may be eligible for a short-term extension of time to pay of up to 120 days. There is no fee, you can make the request online through the IRS's website, and you usually will receive written confirmation within 10 days.

## Installment Agreements

If you cannot fully pay within 120 days, you may be able to pay in monthly installments.

The IRS *must* accept an installment agreement if you meet the following conditions:

- ◇ Owe \$10,000 or less;
- ◇ Have filed and paid all tax returns during the five years prior to the year of liability;
- ◇ Can fully pay the tax liability within three years;
- ◇ File and pay all tax returns during the agreement; and
- ◇ Have not had an installment agreement within the last five years preceding the year of liability.

You can apply for a “streamlined” installment agreement through the IRS website without having to contact the IRS or provide extensive financial disclosure if your unpaid liability (including tax, assessed penalties, and interest) is \$25,000 or less and you can fully pay the liability within 60 months. You can also apply for the more traditional type of installment agreement, but you will need to provide extensive financial disclosure and the IRS will conduct a fairly detailed financial

analysis to determine the amount and duration of any payment plan.

## Offer in Compromise

You also have the right to submit an “offer in compromise” (OIC). The IRS may compromise your tax liability, *i.e.*, accept less than full payment, on one of several grounds:

- ◇ Doubt as to liability for the amount owed;
- ◇ Doubt as to the collectability of the amount owed;
- ◇ To promote effective tax administration in exceptional circumstances; or
- ◇ To avoid economic hardship.

Doubt as to the liability for the amount owed must be supported by evidence and the amount acceptable to the IRS depends upon the degree of doubt found in the particular case. In the case of inability to pay, the amount offered must exceed the total value of your equity in all your assets, and must give sufficient consideration to present and future earning capacity.

## Economic and Other Hardships

If you can show that collection of the tax debt would cause a financial or other hardship for you or your family, such as preventing you from meeting necessary living expenses, the IRS may temporarily delay collection until your financial condition improves (*i.e.*, classify the account as “currently not collectible”). After approximately one year, the IRS will review your case to determine if the hardship still exists. However, penalties and interest will continue to accrue during such period.

## Bankruptcy

You may also consider bankruptcy. The filing of a bankruptcy petition serves to place a “stay” on further IRS collection actions. The IRS may then file a claim for the unpaid taxes with the bankruptcy court. The court will determine whether and when these taxes are to be paid. Certain taxes that cannot be paid from the bankruptcy estate may be discharged. Discharge is generally limited to taxes incurred more than three years before the bankruptcy petition is filed. Before filing for bankruptcy, you should first consider all of the consequences that such filing may have on your overall financial situation.

## Enforced Collection Action

The IRS has a formidable array of powers to enforce collection. It's authority to take enforcement action arises 10 days after the first notice and demand for payment of the unpaid tax. The IRS usually sends several notices asking for voluntary payment of the tax before any enforcement actions are

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taken.

If you have not contacted the IRS by this time, the IRS will send a notice of intent to levy by certified mail. Upon receipt of this notice, you have thirty days to requested an Appeals Office Collection Due Process hearing to consider collection alternatives before the IRS may begin enforcement actions. Enforced collection actions include:

- ◇ Filing of a Notice of Federal Tax Lien;
- ◇ Service of a Final Notice of Intent to Levy; and/or
- ◇ Seizure and sale of your property.

Levy can be made on property in the hands of third parties (employers, banks, etc.) or property in your possession (automobile, house, etc.).

The IRS must obtain court approval to seize your personal residence. Once the property is seized, the IRS will send notice of intent to sell and then will sell the property to satisfy the tax bill. The sale is canceled if you redeem the property

before the sale, or make other arrangements to pay the tax bill.

The following property cannot be levied upon:

- ◇ Personal belongings such as clothing and furniture;
- ◇ Business or professional books and tools;
- ◇ Unemployment compensation;
- ◇ Certain welfare benefits;
- ◇ Certain pension benefits;
- ◇ Court-ordered child support payments;
- ◇ Undelivered mail; and
- ◇ A small portion of wages.

When negotiating with the IRS, it is important to hire an attorney to protect you from IRS error, abuse and intimidation. An attorney is in a better position to negotiate for you and is not likely to be intimidated or bullied by overzealous IRS agents.

If you currently have a tax controversy with the IRS, please contact us to schedule a consultation.

## Year End Tax Planning Tips

Here are some tax planning opportunities to keep in mind before the end of the year.

### Defer Income

Any income received prior to the end of the year will increase your tax burden for that year. In some cases, it may make sense to defer income until the first week of the next fiscal year. Our accounting firm can help you make this determination.

You can postpone your income into the following year by:

- ◇ Delaying the collection of debt;
- ◇ Deferring compensation;
- ◇ Deferring year-end bonuses;
- ◇ Deferring the sale of capital gain property; or
- ◇ Increasing contributions to tax-deferred savings plans.

### Section 179 Expenses

In certain circumstances, it may be possible for the full cost of last-minute purchases of equipment to be deducted currently by taking advantage of Section 179 Deductions.

For eligible business property, the Section 179 (election to expense otherwise depreciable assets) limit was recently increased to \$250,000 for tax years beginning in 2008 only. However, the Section 179 deduction phases out, dollar-for-dollar, after eligible equipment purchases reach \$800,000 for the same period. So, the \$250,000 deduction is completely phased-out when eligible equipment purchases total \$1,050,000.

### Business Structure

One of the best strategies for tax planning is having the right legal structure in place for your business. There are advantages and disadvantages to each type of business entity whether it be a corporation or limited partnership. It is equally important to understand when each type of structure is appropriate.

We can help you make the most of your business structure and take advantage of some great planning opportunities. Please call us to schedule an appointment.

# Medical Reimbursement Plans

ployee, the employee's spouse, or the employee's dependents are not reimbursable. For example, the guidance specifically excludes vitamins purchased to maintain general health. Toiletries such as toothpaste, cosmetics and face creams, and sun-dry items are also not reimbursable. Therefore, items purchased for the diagnosis, cure, mitigation, treatment, or prevention of disease, or affecting the structure or function of the body, are reimbursable. Conversely, items deemed "merely beneficial to general good health," are not reimbursable. In most instances, the distinction will be a fairly bright line. However, there are inevitably some gray areas where there is room for interpretation.

It is important to note that medical reimbursement plans are only available to corporations and not partners in a partnership and members of an LLC. One of the requirements in the Internal Revenue Code for a medical reimbursement plan is that the plan is intended to benefit "employees." The Code defines employees in different ways for different purposes throughout the Code.

An owner, director, or corporate officer of a privately held corporation can be, and invariably is, an employee of the corporation. But for medical reimbursement plan purposes, a partner in a partnership (or a member in a LLC treated as a partnership) is not deemed to be an "employee." Therefore, a partnership or LLC cannot provide the same medical reimbursement plan to its owners that a corporation can.

An LLC can pay medical insurance premiums for its owners with entity pretax dollars. This provision is allowed under a different Code section dealing with "self-employed medical insurance deduction." However, any payments by the LLC

## Unusual Medical Deductions Allowed By Courts

- ◇ Clarinet and lessons bought to correct tooth defects.
- ◇ Contact-lens insurance.
- ◇ Elastic stockings for varicose veins.
- ◇ Legal fees incurred for the commitment of a mentally ill spouse.
- ◇ Extra rent for a larger apartment required to make room for a nurse/attendant.
- ◇ Sex counseling
- ◇ Trained cat to alert its hearing impaired owner to unusual sounds.
- ◇ Transportation costs to an Alcoholics Anonymous meeting.
- ◇ Weight-loss programs
- ◇ Wigs to alleviate stress over hair loss.

applied toward the owner co-pays are considered taxable income to the owner. Self-employed individuals are not treated "employees" and consequently do not benefit from the tax break.

Fortunately, it is fairly simple to restructure a non-corporate entity, or self-employed individuals, so that the owners or the self employed individual, too may enjoy the benefits of paying for their medical expenses with pre-tax dollars.

Please call us if you have any questions about Medical Reimbursement plans.

## Important Dates

### October 2008 through December 2008:

Schedule a tax planning meeting before the end of the year to take advantage of tax savings for 2008. It is also time to update annual meeting minutes and resolutions if you have busi-

ness entities. This must be done to keep your entities in good standing. We can help.

Please call us and schedule your appointment today.

### We Can Help Make Your Decisions Work For You. We Provide the Following Services:

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