

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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2008 Taxes

Time is running out to gather your 2008 tax documentation and schedule a meeting with one of our tax professionals. To make your tax preparation as quick and easy as possible, it is important to gather and bring all the information necessary to complete your taxes.

Business Tax Returns

The following list of items are needed for business tax returns:

- Financial Statements;
- QuickBooks company files;
- Mileage logs for autos;
- Bank statements; and
- Year-end bank reconciliations.

Personal Tax Returns

The following list of items are needed for personal tax returns:

- W-2's and 1099's;
- Alimony received or paid;

- Statements for commissions received;
- Statements for brokerage accounts;
- Records of estimated payments;
- Records of stock options sales;
- Rental property income and expenses;
- Statements for partnerships, S Corps, trusts, or estates;
- Lottery winnings and losses;
- Donation receipts;
- IRA contributions;
- Child care expenses;
- Medical expenses;
- Unreimbursed employment related expenses;
- Casualty or theft losses; and
- Foreign taxes paid.

We can also provide a detailed tax organizer that includes the items listed above and a list of questions which will provide us with important information in preparing your 2008 tax returns.

Please email sarah.ware@absoluteplanning.com to request a copy of the tax organizer. If you have any questions, we can guide you through the process.

Important Dates

April 15, 2009

- Tax returns due for individuals and partnerships with a December year end.
- File for an automatic extension for 2008 tax returns. Taxes must still be paid to avoid penalty.
- Estimated quarterly tax payment for the first quarter of 2009 is due.

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Misconceptions About Trusts

A Trust is an arrangement in which someone, the Settlor, transfers property to a Trustee who agrees to hold the property for the benefit of one or more beneficiaries. A Trust can be either revocable or irrevocable by the Settlor.

A *Testamentary Trust* is created upon or after the death of the Settlor, under the terms of the will. A *Living Trust* is a Trust created while the Settlor is living. A Living Trust may be revocable or irrevocable. Revocable Trusts allow for changes to be made by the Settlor prior to his or her death. Conversely, Irrevocable Trusts are unchangeable once executed. When most people speak of a Living Trust, they are referring to a Revocable Trust created during the Settlor's lifetime for the management and disposition of all, or substantially all, of the Settlor's property.

In our experience, many people who have Trusts were advised to form the Trust for one or all of three reasons:

- To avoid probate;
- To save on estate taxes; or
- To protect their assets from creditors.

While Trusts are an important part of estate and asset protection planning, the three reasons above only partially accomplish the intentions of the Settlor. In some cases, they do not accomplish the Settlor's intentions at all.

Probate

Texas has a simple administration process to probate a Will. Probate is the process where a court oversees the distribution of property that belongs to a deceased person upon death and after the deceased's debts and taxes have been paid. In Texas, the probate process is known as *Independent Administration*. It means there is no court involvement in the administration of the estate other than to prove the will is valid, appoint an Executor, and file an inventory of assets that pass under the will with the probate court.

The Executor handles all matters independent of court supervision and needs no approval from the court to sell property, distribute assets, pay expenses, or do anything else that might arise in the regular administration of an estate. In Texas, delays or prohibitive probate costs are not as much of a concern as they are in other states, such as California, New York or Florida.

While a Living Trust avoids the need to probate a will, our experience shows that very few clients actually transfer all their assets to the Trust. Consequently, they still need a will to transfer their non-Trust assets to the intended beneficiaries. Moreover, Living Trusts are more complicated than wills and typically cost more.

Estate Taxes

A decedent's gross estate for Federal estate tax purposes includes the value of all property to the extent of the decedent's interest at time of death. The Internal Revenue Code requires an estate to include transferred property the decedent has retained during his or her life, or any period that does not in fact end before death (e.g., a term of years that he or she does not outlive). A retained interest would be the right to possession, enjoyment of the property or its income, or the power to designate who shall enjoy the property or its income.

Where property is transferred to a Revocable Trust, enjoyment of the property is retained if the Trustee is required to pay income or corpus to the decedent, discharge the decedent's debts, or pay premiums on life insurance owned by the decedent. In short, the transfer of property to a Revocable Trust does not achieve any reduction of an Estate for purposes of Federal estate tax.

Asset Protection

Transferring the assets to a Revocable Trust in Texas means that the Grantor still has the power to get to the assets at any time. Even if there is an independent Trustee, the fact that the Trust is revocable means that the Grantor can terminate the Trust and have the assets re-

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Withholding Taxes And Liability

In light of the current financial climate, we thought it appropriate to remind our clients of the importance of remitting taxes that are withheld from your employees' wages to the IRS. As an officer/owner of your business, you are the first person the IRS will pursue to collect any unpaid withholdings. We cannot emphasize this point enough. You are personally liable for any nonpayment that is considered to be willful if the IRS determines you are the person responsible for withholding, collecting, and paying these taxes. This means that you will have to pay the taxes out of your own pocket.

Under the system established for withholding taxes, your employees are credited for any taxes withheld from their wages. Your company is deemed to hold the withheld taxes "in trust" for the federal government. This is why withholding taxes are referred to as "trust fund taxes." Many times, businesses experiencing financial troubles will use taxes withheld from employee wages to pay creditors and suppliers to keep the business afloat during troubled times. However, if the business eventually fails, the employees are not liable for the unpaid taxes. Under these circumstances, it is unlikely that the business will have sufficient funds to satisfy the trust fund tax liability.

By enacting Section 6672 of the Internal Revenue Code, Congress ensured that the government would have the means to recover trust fund taxes not paid, for whatever reason. Section 6672 imposes personal liability on any person who willfully fails to remit these taxes if that person is responsible for collecting, truthfully accounting for, and remitting trust fund taxes to the IRS. In the past, this rule has been referred to as the "100% Penalty" because the amount of liability is equal to 100% of the taxes withheld from the employee wages. More recently, the IRS calls this the "Trust Fund Recovery Penalty."

There are key elements for liability to be imposed under Section 6672. First, to be liable, a person must be a *responsible person*. There is no one factor that makes an individual a responsible person. Generally, a responsible person is the one who has the power and authority to control the decision-making process regarding the payment of creditors for the business. In most cases, the IRS looks to the officers and owners of a business as

responsible persons because they are the ones who make the decisions concerning which creditors to pay and which ones not to pay. Courts have found stockholders, directors, managers, bookkeepers, and people outside the business to be responsible persons because they had the ultimate authority over the disbursements business funds. More than one person can be held liable too.

Examples of Responsible Persons

- Officers or employees of a corporation;
- Members or employees of a partnership;
- Corporate directors or shareholders;
- Board members of a nonprofit organization;
- Any person with authority and control over the funds; or
- Any corporation with authority and control over the funds.

Willfulness is the second element required for a responsible person to be liable for the Section 6672 penalty. The condition of willfulness does not stipulate bad motive or intent. Rather, willfulness can be established if there is evidence the responsible person, or persons, knew payments were being made to creditors or suppliers at a time when withholding taxes were not being paid to the IRS. In some cases, the responsible person does not actually have to be aware that the taxes are not being paid, especially if there is a history of nonpayment of trust fund taxes at times of financial crisis.

The message you should take away from this article is that it is within the power of the IRS to impose personal liability for unpaid trust fund taxes on the person or persons the IRS deems responsible for making the financial decisions in a business. Moreover, this liability never goes away and is not cleared by declaring personal bankruptcy.

We hope that your business will continue to enjoy continued success. However, if you currently have a tax controversy with the IRS or anticipate a tax controversy, please call our firm to schedule a consultation.

Misconceptions About Trusts

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turned at any time. Texas law provides that if the Grantor has full access to Trust assets, then creditors have that same access. The Trust can be revoked and the Settlor can take the property or change the terms of the Trust as long as the Settlor is competent to make such decisions. Because the Settlor retains control of the Trust, the Settlor's creditors can take those assets during his or her lifetime if money is owed, even though there is a transfer of ownership of the assets to the Trust.

Section 505 of the Uniform Trust Code specifically provides that during the lifetime of the Settlor, the property of a Revocable Trust is subject to claims of the Settlor's creditors. While a Revocable Trust does make it more difficult for creditors to access these assets, the creditor need only to petition a court for a charging order to get to the assets held in the Trust.

If you have any questions regarding Trusts or would like to schedule an appointment please contact Steven Marcuse at 713-341-2740.

2008 Tax Law Updates

AMT Exemption Increase

For tax-year 2008, Congress raised the alternative minimum tax exemption to the following levels:

- \$69,950 for a married couple filing a joint return and qualifying widows or widowers;
- \$34,975 for a married person filing separately; and
- \$46,200 for singles and heads of household.

Standard Deduction Increases

Nearly two out of three taxpayers choose to take the standard deduction rather than itemizing deductions such as mortgage interest and charitable contributions. The basic standard deduction is:

- \$10,900 for married couples filing a joint return and qualifying widows and widowers;
- \$5,450 for singles and married individuals filing separate returns; and
- \$8,000 for heads of household.

Small Business Loss Carryback

Businesses with average gross receipts for 2006-2008 of \$15 million or less can carry back a 2008 net operating loss for up to **five years** instead of two years. Fiscal year companies can do so for a loss in the tax year that begins or ends in 2008. Firms that already filed for 2008 can amend their returns for the longer carryback. They must act by the later of April 17, 2009 or six months after the return was due, ignoring any extensions.

IRS Interest Rates Decline

IRS interest rates will decline again in the second quarter of 2009. On overdue taxes, the IRS will charge 4%. For corporations that owe the agency more than \$100K in back taxes, the interest rate will be 6%.

On refunds, the IRS will pay 4% to individuals and 3% to corporations. However, for corporate refunds exceeding \$10K the rate on the excess is 1.5%. The IRS will not pay interest on 2008 tax refunds made by May 30 for returns that are filed on time. There's a 45-day waiting period on late returns. However, the Revenue Service can lop as much as 30 days of interest off the check.

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