BHBM ACC CLE WEBINAR

July 16, 2020

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TODAY'S AGENDA

Recent Tax Law Updates in the COVID-19 Era

Speaker: Leon Rittenberg III

- *12pm-1pm*
- The program will review a plethora of statutory and regulatory changes in tax laws and rules as well as a few recent cases of interest including matters relating to Net Operating Losses, Corporations, Partnerships, Individuals and a few related subjects.

The SECURE Act

Speakers: John Rouchell & Matthew Treuting

- *1pm-2pm*
- The Setting Every Community Up for Retirement Enhancement Act (the "SECURE Act") was signed into law by President Trump in December of 2019. The SECURE Act was passed to expand the opportunities for individuals to increase their savings and to make administrative simplifications to the retirement system. This presentation will provide a discussion of several key provisions of the SECURE Act.

RECENT TAX LAW UPDATES IN THE COVID-19 ERA

Leon Rittenberg III

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BIDEN TAX PROPOSALS

- The Biden campaign has proposed a number of changes to the United States Tax Code aimed at increasing taxes on the top one percent of wage earners and on corporations.

THE PAYCHECK PROTECTION PROGRAM

- The SBA issued revised guidance for the Paycheck Protection Program (PPP).
  - Covered Period
  - Maturity Date
  - Deferral Period
  - Loan Forgiveness
  - Loan Forgiveness Safe Harbors
  - Payroll Tax Deferral
  - No Deductions
  - Not Treated as Income

QUALIFIED IMPROVEMENT PROPERTY UNDER THE CARES ACT

- The IRS released an advance version of Revenue Procedure 2020-25 to instruct taxpayers how to change the depreciation of QIP.
- The IRS released Revenue Procedure 2020-22 relating to elections to be an electing real property or farming trade or business.

NET OPERATING LOSS CARRYBACKS UNDER THE CARES ACT

- The IRS issued guidance on the five-year NOL carryback provided for in the CARES Act.
  - Getting Cash
  - Waiver of the Five-Year Carryback Rule
  - Repatriation Concerns
- The Joint Committee on Taxation issued a report which in part explains the S corporation tax provisions of the CARES Act.

CHARITABLE CONTRIBUTIONS UNDER THE CARES ACT

- The CARES Act created tax benefits for donors to non-profits.

REPORTING REQUIREMENTS FOR PARTNERSHIPS

- The IRS released an advance version of Notice 2019-66, which provides relief from the requirement to report all partners' shares of partnership capital on the tax basis method for 2019.
- The IRS released an advance version of Notice 2020-43 regarding a proposed requirement for partnerships to use only one of two alternative methods to satisfy the Tax Capital Reporting Requirement.
  - The Modified Outside Basis Method
  - Modified Previously Taxed Capital Method
- All partnership agreements and operating agreements should be reviewed to ensure they are in compliance with partnership audit regulations.

TAX-EXEMPT ORGANIZATIONS

- The IRS provides guidance on how the Taxpayer Certainty and Disaster Tax Relief Act may apply to tax-exempt organizations' current and previous tax years.
  - Repeal of Parking Lot Tax
  - Tax Simplification for Private Foundations
  - Benefits for Utility Co-Ops
- The IRS published proposed regulations that enable tax-exempt entities (and any related for-profit corporations) to avoid Section 4960's 21% excise tax.
  - The Limited Hours Exception
  - The Non-Exempt Funds exception

TAX-EXEMPT ORGANIZATIONS

- The IRS released final regulations regarding the calculation of unrelated business taxable income (UBTI) for voluntary employees' beneficiary associations (VEBAs) and supplemental unemployment benefit trusts (SUBs).
- The IRS published proposed regulations under the Tax Cuts and Jobs Act (TCJA) that provide guidance on how a tax-exempt organization-owned S corporation subject to unrelated business income tax determines if it has more than one unrelated trade or business, and how to calculate UBTI.
  - Use of NAICS Codes for Siloing
  - Investment Activities

DEDUCTIONS

- The IRS released proposed regulations which clarify that business meals are 50% deductible if receipts differentiate food and event costs.
- The IRS issued regulations that permit trusts and estates certain deductions.

QUALIFIED OPPORTUNITY ZONES

- The IRS extended deadlines for investing in qualified opportunity funds (QOF) and relaxed some requirements for QOF investors.

NON-EMPLOYEE COMPENSATION

- The IRS issued Tax Tip 2020-80 to remind business taxpayers that starting in tax year 2020, business taxpayers who pay nonemployee compensation of $600 or more to a payee must complete Form 1099-NEC to report the payment.

LOUISIANA FRANCHISE TAX

- The Louisiana Legislature suspended the corporate franchise tax.

FALLOUT FROM *SOUTH DAKOTA V. WAYFAIR*

- Beginning July 1, 2020, marketplace facilitators and sellers who meet the nexus requirement must comply with Louisiana sales and use tax laws.
  - Nexus Requirement
  - Marketplace Facilitator Responsibilities
  - Opting Out
- Other states in the Gulf South have imposed taxes on digital goods and services.

REPORTING EXCESS DEDUCTIONS

- On July 10, 2020, the IRS provided an explanation on how to report excess deductions on termination of an estate or trust on series Form 1040.

IRS LITIGATION

- The IRS announced a settlement offer to taxpayers with pending docketed Tax Court cases involving syndicated conservation easements.
- *Hewitt v. Commissioner*, T.C. Memo 2020-89 (6/17/2020)—The Tax Court held that the violation of the in perpetuity requirement negated the conservation easement deduction.
- The IRS continues to win captive cases.

IRS LITIGATION

- *Cavallaro v. Commissioner*, T.C. Memo 2019-144 (10/24/2019)—The Tax Court held that an error by an IRS valuation expert caused the expert to overvalue gifts and rendered the IRS's valuation of the stock arbitrary and excessive.
- *Provitola v. Commissioner*, No. 12357-16, No. 16168-17 (1/24/20)—The Tax Court held that Payments to a related entity were non-deductible start-up expenditures.
- *Bordelon v. Commissioner*, T.C. Memo 2020-26 (2/20/2020)—The Tax Court held that a personal guarantee is sufficient risk to entitle a guarantor to take losses.

IRS LITIGATION

- *Grieve v. Commissioner*, T.C. Memo 2020-28 (3/2/2020)—The Tax Court accepted the taxpayer's method for valuing the nonvoting interests held by a family limited partnership and gifted to various estate planning tools.
- *Estate of Bolles*, T.C. Memo 2020-71 (6/1/20)—The Tax Court held that the personal advances a mother made to her son before she realized he would be unable to repay them were loans.

IRS LITIGATION

- *Simpson v. Commissioner*, T.C. Memo 2020-100 (7/7/20)—The Tax Court denied the unreimbursed partnership expense deduction because the partnership was not engaged in a trade or business.
- *Nelson v. Commissioner*, T.C. Memo 2020-81 (7/7/20)—The Tax Court found that certain transfers of fixed dollar amounts were in fact transfers of specific percentage interests, and it also indirectly ratified Wandry-type clauses.

IRS LITIGATION

- *Estate of Bolles v. Comm'r*, T.C. Memo 2020-71 (6/1/2020)—The Tax Court found that loans become unreported gifts when they are uncollectable.
- *Estate of Moore v. Comm'r*, T.C. Memo 2020-40 (4/7/2020)—The Tax Court made several holdings concerning the treatment of the decedent's estate.
- PLR 202010001—Inadvertent Terminations.

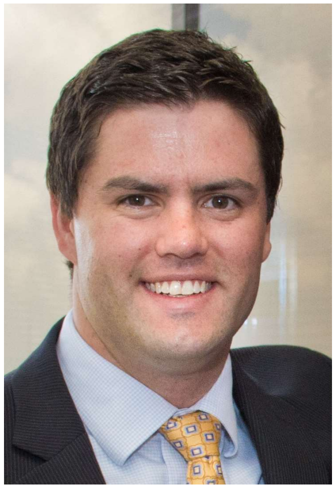
OTHER TOPICS OF INTEREST

- Appraisers fear penalties from altered valuation appeal process.
- Low interest rates present gift planning opportunities.
- Business that provide retirement benefits for employees are being sued for fiduciary-type issues.

RETIREMENT PLANS UNDER THE CARES ACT

- The CARES Act and IRS Notice 2020-50 provide enhanced access to retirement plan distributions and retirement plan loans.
- The CARES Act and IRS Notice 2020-51 temporarily adjust the rules regarding required minimum distributions (RMD).

THE SECURE ACT



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DISCLAIMER

- This is not a substitute for legal advice.
- This presentation is intended only to provide an overview of the SECURE Act.
- This presentation does not cover all changes made by the SECURE Act.

SECURE ACT

- Further Consolidated Appropriations Act 2020 (Public Law No. 116-94).
  - Signed on 12/20/19 to prevent shutdown on 12/20/20.
  - Provided funding for the federal government through 9/30/2020.
  - Calls for $1.7 Trillion of spending.

- Division 0 of Public Law No. 116-94 is "Setting Every Community Up for Retirement Enhancement" – the SECURE ACT.

SECURE ACT

- SECURE passed unanimously as a stand alone bill by House Ways and Means Committee on April 2, 2019.
- Passed by House of Representatives by vote of 417-3 on May 23, 2019.
- Passed by Senate by vote of 71-23 on 12/19/19.
- Signed into law by President on 12/20/19.
- Effective date of 1/1/2020 (11 days after passage).

SECURE ACT OVERVIEW

- Assorted provisions intended to expand and simplify access to various retirement benefits and plans.
  - Adds new subparagraph (H) to IRC Sec. 401(a)(9), and new definitions to Sec. 401(a)(9)(E).
  - Uses term “employee” but also applies to IRA owners.
- Limits use of Stretch IRAs as mechanism to cover the revenue loss attributable to the SECURE reforms. Except for a few beneficiaries, the life expectancy payout is eliminated.

RETIREMENT PLAN DISTRIBUTIONS

- Sec. 108. Plan Loans and Credit Cards
  - Plan loans effected through the use of a credit card are treated as a taxable distribution, not as a loan.
- Sec. 109. Portability of Certain Plan Assets
  - Certain annuities may be transferred to a new plan if the old plan does not allow it to be held. Previously, only cash was allowed to be rolled over.
  - The change will permit participants to preserve their lifetime income investments and avoid surrender charges and fees.
- Sec. 113. Withdrawal for Birth or Adoption
  - $5,000 of expenses related to a birth or adoption of a child are free of the 10% early withdrawal penalty if a distribution is made before the age of 59 ½.
  - Each spouse may withdraw $5,000, so a married couple could double this distribution.

RETIREMENT PLAN DISTRIBUTIONS

- Sec. 114. Increase in Age for Required Beginning Date for Mandatory Distributions
  - The bill increases the required minimum distribution age from 70 ½ to 72.
  - Effect is that no one has an RBD in 2021.
  - RMD from a qualified retirement plan or IRA must generally begin by April 1 of the year following the year in which the taxpayer turns 72 (formerly 70 ½).
  - Surviving spouse beneficiary may defer first RMD until April 1 of the year following the year in which the deceased plan participant would have turned 72.

PLAN ELIGIBILITY AND CONTRIBUTIONS

- Sec. 106. IRA Contribution Eligibility
  - Compensation now includes taxable non-tuition educational fellowships and stipends.
  - The change will enable these students to begin saving for retirement and accumulate tax-favored retirement savings.
- Sec. 107. Maximum age for Traditional IRA Contributions
  - Starting in 2020, the new rules allow an individual of any age to make contributions to an IRA, as long as the individual has compensation.
  - Eliminates prior law that disallowed traditional IRA contributions after age 70 ½, the age set in the 1960's.
  - Effective for Qualified Charitable Distributions made in a tax year beginning after 2019, the $100,000 QCD limit for that year is reduced (but not below zero) by the aggregate amount of deductions allowed for prior tax years due to the aforementioned Secure Act change. In other words, deductible IRA contributions made for the year you reach age 70 ½ and later years can reduce your annual QCD allowance.

PLAN ELIGIBILITY AND CONTRIBUTIONS

- Sec. 112. Qualified Retirement Plan Eligibility for Part-Time, Long Time Employees
  - Employers with a 401(k) plan are required to have dual eligibility to allow part-time workers (more than 500 but less than 1,000 annual hours) to be eligible to contribute.
- Sect. 205. Qualified Plan Nondiscrimination Rules
  - Modifies rules for closed plans to permit existing participants to continue to accrue benefits to protect older, longer-service employees.

PLAN SET-UP, ADMINISTRATION & FUNDING

- Sec. 101. Multiple Employer Plans
  - The "common interest" standard is eliminated.
  - Allows employers in unrelated businesses to create a single plan for plan years after 2020.
  - Multiple employer plans (MEPs) provide an opportunity for small employers to band together to obtain more favorable pension investment results and more efficient and less expensive management services.
- Sec. 102. Qualified Automatic Contribution Arrangement
  - Increases cap from 10% to 15% of employee compensation for plan years after 2019.
- Sect. 103. Safe Harbor 401(k) Status
  - Provides greater flexibility, employer protection and facilitates plan adoption.

PLAN SET-UP, ADMINISTRATION & FUNDING

- Sec. 104. Small Employer Pension Plan Startup Cost Credit
  - Tax credit to help defray qualified plan startup costs.
  - The legislation increases the credit by changing the calculation of the flat dollar amount limit on the credit to the greater of: (1) $500, or (2) the lesser of (a) $250 multiplied by the number of non-highly compensated employees of the eligible employer who are eligible to participate in the plan, or (b) $5,000. The credit applies for up to three years.

PLAN SET-UP, ADMINISTRATION & FUNDING

- Sec. 105. Small Employer Automatic Enrollment Credit
  - Automatic enrollment is shown to increase employee participation and higher retirement savings.
  - The legislation creates a new tax credit of up to $500 per year to employers to defray startup costs for new section 401(k) plans and SIMPLE IRA plans that include automatic enrollment.
  - The credit is in addition to the plan start-up credit allowed under present law and would be available for three years.
  - The credit would also be available to employers that convert an existing plan to an automatic enrollment design.

PLAN SET-UP, ADMINISTRATION & FUNDING

- Sec. 201. Plan Adoption After Year End
  - The legislation permits businesses to treat qualified retirement plans adopted before the due date (including extensions) of the tax return for the taxable year to treat the plan as having been adopted as of the last day of the taxable year.
  - The additional time to establish a plan provides flexibility for employers that are considering adopting a plan and the opportunity for employees to receive contributions for that earlier year and begin to accumulate retirement savings.

PLAN SET-UP, ADMINISTRATION & FUNDING

- Sec. 202. Combined Annual Reports for Group of Plans
  - The legislation directs the IRS and DOL to effectuate the filing of a consolidated Form 5500 for similar plans.
  - Plans eligible for consolidated filing must be defined contribution plans, with the same trustee, the same named fiduciary (or named fiduciaries) under ERISA, and the same administrator, using the same plan year, and providing the same investments or investment options to participants and beneficiaries.
  - The change will reduce aggregate administrative costs, making it easier for small employers to sponsor a retirement plan and thus improving retirement savings.
  - Effective for returns and reports filed in plan years beginning in 2022.

PLAN SET-UP, ADMINISTRATION & FUNDING

- Sec. 203. Disclosure Regarding Lifetime Income
  - The legislation requires benefit statements provided to defined contribution plan participants to include a lifetime income disclosure at least once during any 12-month period.
  - The disclosure would illustrate the monthly payments the participant would receive if the total account balance were used to provide lifetime income streams, including a qualified joint and survivor annuity for the participant and the participant's surviving spouse and a single life annuity

PLAN SET-UP, ADMINISTRATION & FUNDING

- Sec. 204. Fiduciary Safe Harbor for Selection of Lifetime Income Provider
  - The legislation provides certainty for plan sponsors in the selection of lifetime income providers, a fiduciary act under ERISA.
  - Under the bill, fiduciaries are afforded an optional safe harbor to satisfy the prudence requirement with respect to the selection of insurers for a guaranteed retirement income contract and are protected from liability for any losses that may result to the participant or beneficiary due to an insurer's inability in the future to satisfy its financial obligations under the terms of the contract.

EDUCATION PLANNING

- For Sec. 529 plans, definition of “qualified higher education expenses” now includes the expenses of registered apprenticeships or student loan repayments for distributions made after 12/31/18 (applies retroactively).
- Definition of “Qualified Distributions” expanded to pay the principal or interest on a qualified education loan of the beneficiary, or a sibling of the designated beneficiary.

KIDDIE TAX

- Beginning on 1/1/18, under prior TCJA, the taxable income of a child attributable to net unearned income is taxed according to the brackets applicable to trusts and estates, not parents' rates.
- Concern some children, including recipients of unearned income from deceased military personnel – "gold star children"—were subject to new rates.
- SECURE repeals the TCJA changes. Starting on 1/1/20, unearned income again at parents' rates. Also reduction of reduced AMT exemption retroactive to 2018.

STRETCH IRA PLANNING (PRE-SECURE)

- Make your IRA or retirement plan payable to a younger non-spouse designated beneficiary or trust.
- Have the beneficiary leave the plan in its tax-deferred status, allowing tax-deferred growth.
- Beneficiary withdraws benefits only gradually by annual required minimum distributions using the beneficiary’s life expectancy.
- The Stretch has been utilized for the last 30 years.

STRETCH IRA PLANNING (PRE-SECURE)

- Two types of trusts formerly used to “stretch” IRAs:
  - Conduit Trust
    - All distributions made from the retirement plan to the trust during the lifetime of the beneficiary of the trust must be passed out more or less immediately to the individual beneficiary. The conduit beneficiary is used for purposes of minimum distribution rules.
  - Accumulation Trust
    - Trustee can accumulate retirement plan distributions in the trust for possible later distribution to another beneficiary. All entitled beneficiaries are counted for purposes of minimum distribution rules.

STRETCH IRA PLANNING (POST-SECURE)

- Life expectancy payouts replaced with 10-year payout rule.
- Exceptions for 10-year payout rule to certain "eligible designated beneficiaries":
  - Surviving spouse
  - Minor child of participant
  - Disabled beneficiary
  - Chronically ill individual
  - Beneficiary less than 10 years younger

10-YEAR RULE

- Borrows the "5-year" rule of Sec. 401(a)(9)(B)(ii) to create the 10-year rule.
  - Presumed to operate in a similar manner:
    - All amounts must be distributed by 12/31 of the year that contains the 10^{th} anniversary of the date of death.
    - In the interim, no distributions are required as long as funds are out of the plan by the end of the period. No apparent requirement that annual distributions are required.
      - Bunching of distributions v. Deferral to end of 10-year term

10-YEAR RULE

- Application to Pre-2020 Deaths
  - SECURE generally applies to participants who die after 2019.
  - However, if the initial designated beneficiary dies after 2019 and before plan assets are totally distributed, the remaining benefits must be paid within 10 years of when the designated beneficiary dies.
- Death of the "Eligible Designated Beneficiary"
  - If the eligible designated beneficiary dies before the plan is entirely distributed, then the exception no longer applies.
  - The plan must then be distributed within 10 years after the EDB's death or cessation as and EDB (even if the successor is an EDB at that time).

NEW SECURE PLANNING

- Is the beneficiary an "eligible designated beneficiary"?
  - Client's existing plan may likely work.
- Was a conduit trust used?
  - If the desire was to have gradual payments over a lifetime, this will no longer achieve that goal because of the 10-year payout rule.
  - Use of an accumulation trust might allow long-term payout, but will have accelerated taxes at high trust rates.

NEW SECURE PLANNING

- Was a ROTH IRA used?
  - Accelerated distributions won't increase taxes since distributions are tax-free, but will result in a loss of future tax-free growth.
  - If IRA owner is anticipated to be in a lower tax bracket than beneficiary, consider Roth conversion.
- Are there charitable motivations?
  - Use of a charitable remainder trust may have more appeal, as one can use a Charitable Remainder trust to leave income for lifetime to an individual, instead of 10 years.

QUESTIONS?

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