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OCTOBER 2022

CHRISTOPHER A. WILLIAMS, CPA

We are pleased to welcome a new CPA to the Firm. Chris Williams joined our accounting staff in late September after previously working for three and a half years in public accounting. Chris was born and raised in Louisiana, is a graduate of LSU in Baton Rouge, and lives in Shreveport with his wife, Kathryn. We are grateful for the opportunity of working with him.

EMPLOYEE RETENTION CREDIT
AMENDING FORM 941

The Employee Retention Credit (the Credit) is a federal payroll tax refundable credit established to help small businesses keep paying employees during the COVID-19 pandemic. Initially, a business could not benefit from both a Paycheck Protection Program loan and the Credit, but the rules were changed retroactively to allow both. The maximum Credits per employee for 2020 and 2021 are $5,000 and $21,000, respectively.

In general, to qualify for the Credit a business had to have been affected in one of two ways. One way was to have experienced either (1) a more than 50 percent decline in gross receipts during a quarter in 2020 compared to the same quarter in 2019, or (2) a more than 20 percent decline in gross receipts for at least one of the first three quarters in 2021 compared to the same quarter in 2019. Alternatively, the Credit might be applicable if your business experienced a full or partial suspension of operations due to a government order related to COVID-19, but the business continued paying payroll during the suspension.

If the Credit was not claimed on an original quarterly payroll tax return (Form 941), it may be claimed on an amended quarterly payroll tax return (Form 941-X) generally during the three years following the due date of the Form 941.

You might have recently heard radio ads or received phone calls or emails from "service providers" or "consultants" promising large tax Credits from their preparation of an amendment to your Form 941 in exchange for a percentage of your resulting tax refund. Please be aware that some of these "experts" are taking abusive positions and making claims about eligibility that are improper. You might want to be skeptical of consultants who (1) fail to ask how your business was impacted by COVID-19 government orders, (2) claim IRS guidance is incorrect, or (3) guarantee IRS "approval" of your claimed Credit before

(*Continued on reverse*)

reviewing your particular facts and circumstances.

The IRS has begun auditing Credit claims and, in general, has five years to initiate an audit. We believe that some unscrupulous service providers will be "long gone" before the IRS shows up. If you receive a cold contact from someone offering large Credit refunds from Form 941 amendment service, please be on alert. Please contact us if you have any questions.

Innocent Spouse

It is frequently or even almost always advantageous for married couples to file joint returns; particularly, in the absence of community property with diversity in the amount of income. The tax law generally holds both spouses liable for the payment of the entire tax resulting from a joint return – even if only one of the spouses is responsible for the tax deficiency. However, if a spouse can establish the right to be treated as an "innocent spouse" under the tax law, the joint liability will not be imposed.

Generally, for "innocent spouse" status, a taxpayer must meet all of the following requirements:

1) the understatement of tax must be due to an erroneous item by the other spouse (or former spouse),
2) the spouse seeking the innocent spouse status did not know and had no reason to know there was an understatement of tax, and
3) considering all the facts and circumstances it would be unfair to hold the innocent spouse responsible for payment of the understated tax.

Even if a spouse fails to meet one or more of the above innocent spouse relief requirements, that spouse may still qualify for equitable relief as demonstrated in a recent Tax Court case.

A married couple with a long history of a strained relationship finally divorced after well supported allegations against the husband of long-term physical and verbal abuse. The husband had prepared and filed returns falsifying the amount of income and income tax withholding in the 11 years ended in 2005. The Internal Revenue Service issued to the couple refund checks totaling over $1,093,000. The wife was unaware of the fraud, having totally relied on her husband to handle the income tax filings for all the years after their 1973 marriage.

At the time of the trial, the wife owned a small residence with very few other assets and only a modest retirement income. The Tax Court concluded that if required to pay the tax liability, in whole or in part, she would experience economic hardship (be unable to meet her reasonable basic living expenses). Although the Tax Court found that the wife did not meet the basic statutory requirements mentioned above and benefited from the fraudulent refunds, she did meet the equitable relief requirement of the Internal Revenue Code. Accordingly, she was fully released from liability for the tax deficiency, penalties and interest.

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Tax & Business Alert

OCTOBER 2022

RENTING OUT YOUR VACATION HOME? KNOW THE TAX IMPLICATIONS

If you're fortunate enough to own a vacation home, you may want to rent it out when you're not using it. But how might that affect your taxes?

The answer lies in keeping good records. Before you post the "for rent" sign, consider how many days you, your relatives (even if they pay market rent) and nonrelatives use the home if market rent isn't charged.

UNDER 15 DAYS

In the right circumstances, renting the property out can produce revenue and significant tax benefits. If the property is rented out for less than 15 days during the year, it's not treated as "rental property," and the rent you collect isn't included in your taxable income at all. On the other hand, you can only deduct (as itemized deductions) property taxes and mortgage interest — no other operating costs or depreciation. (Mortgage interest is deductible on your principal residence and one other home, subject to certain limits.)

If you rent the property out for more than 14 days, you must include the rent received in income. However, you can deduct part of your operating expenses and depreciation, subject to certain rules. First, you must allocate your expenses between the personal use days and the rental days. For example, if the house is rented for 90 days and used personally for 30 days, 75% of the use is rental (90 out of 120 total use days).

You may allocate to rental 75% of your costs such as maintenance, utilities and insurance, plus 75% of your depreciation allowance, interest and taxes for the property. The personal use portion of taxes is separately deductible as an itemized deduction. The personal use part of interest on a second home is also deductible (if eligible) where the personal use exceeds the greater of 14 days or 10% of the rental days. However, depreciation on the personal use portion isn't allowed.

CLAIMING A LOSS

If the expenses exceed the income, you may be able to claim a rental loss (subject to the passive activity rules), depending on how many days you use the house for personal purposes. Here's the test: If you use it personally for more than the greater of 14 days or 10% of the rental days, you're using it "too much" and can't claim your loss. In this case, you can still use your deductions to wipe out rental income, but you can't create a loss. Deductions you can't use are carried forward and may be usable in future years. If you're limited to using deductions only up to the rental income amount, you must use the deductions allocated to the rental portion in this order: 1) interest and taxes, 2) operating costs, and 3) depreciation.

If you "pass" the personal use test, you must still allocate your expenses between the personal and rental portions. In this case, however, if your rental deductions exceed rental income, you can claim the loss. (The loss is "passive" and may be limited under passive loss rules.)

PLANNING AHEAD

These are the basic rules. There may be other rules if you're considered a small landlord or real estate professional. Contact us if you have questions. We can help plan your vacation home use to achieve optimal tax results. ■

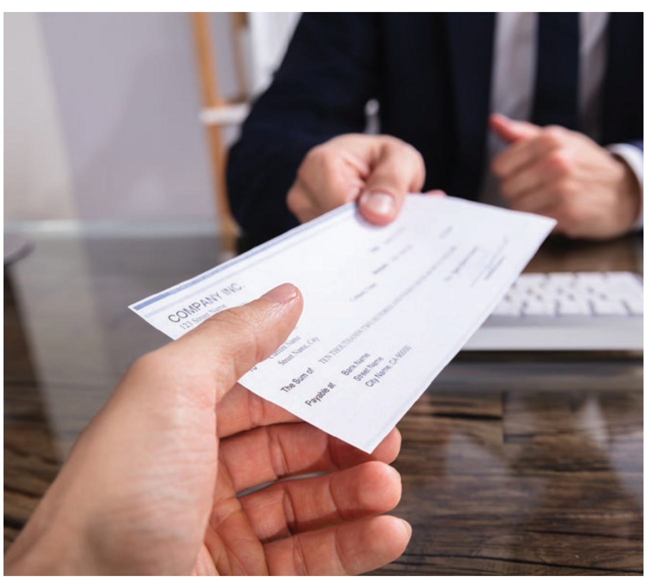
CHECK KITING IS NO SMALL MATTER

A check kiting scheme relies on "float" time, which is the period between when a check is deposited and when the bank collects the funds on the check. Some banks accept check deposits and release funds immediately, in the interest of good customer service. That's similar to providing accountholders with interest-free loans.

In recent years, the float time has narrowed, but there's still opportunity to capitalize on that delay and some unethical businesses take advantage of that time. Check kiting schemes typically involve two or more banks, though some schemes can involve multiple accounts at one bank if there's a lag in how the institution processes checks. The perpetrator's goal is to falsely inflate the balance of a checking account so that written checks that otherwise would bounce, clear.

STRATEGIES FOR GROUNDING THE KITE

Check kiting is a federal crime that can lead to up to 30 years in federal prison, plus hefty fines. Even if a bank doesn't press charges, it may close the account and report the incident to ChexSystems (similar to a credit bureau), making it difficult to open a new business account.



Here are five strategies your organization can implement to keep people from using your company's accounts for check kiting:

1. Educate employees about bank fraud. Describe the types of transactions that qualify as bank fraud and their red flags. That makes workers aware of suspicious activities and demonstrates management's commitment to preventing fraud.

2. Rotate key accounting roles. Segregate accounting duties. Rotate tasks among staffers if possible to help uncover ongoing schemes and limit opportunities to steal.

3. Reconcile bank accounts daily. Make sure someone trustworthy, who isn't involved in issuing payments, reconciles every company bank account.

4. Maintain control of paper checks. Store blank checks in a locked cabinet or safe and periodically inventory the blank check stock. Also limit who's allowed to order new ones.

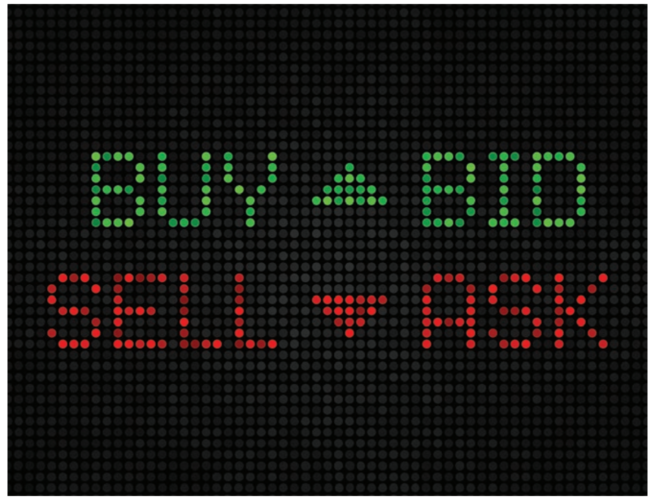
5. Go digital. The most effective way to prevent most check fraud is to stop using paper checks altogether. Consider replacing them with ACH payments or another form of electronic payments.

TIGHTEN UP

Check kiting is relatively easy to perpetrate, particularly if your company isn't vigilant about its check stock and bank account activity. For help tightening your internal controls, contact us. ■

BEWARE OF "WASH SALES" WHEN SELLING SECURITIES

If you're planning to sell capital assets at a loss to offset gains you realized during the year, beware of the "wash sale" rule. Under this tax rule, selling stock or securities for a loss and buying back substantially identical stock shares or securities within 30 days before or after the sale date means the loss can't be claimed for tax purposes.



THE RULE

The wash sale rule is designed to prevent taxpayers from benefiting from a loss without actually parting with ownership. Note that the rule applies to a 30-day period before or after the sale date to prevent "buying the stock back" before it's even sold. (If you participate in dividend reinvestment plans, the wash sale rule may be inadvertently triggered when dividends are reinvested under the plan, if you've separately sold some of the same stock at a loss within the 30-day period.)

Although the loss can't be claimed on a wash sale, the disallowed amount is added to the cost of the new stock to increase its tax basis for future disposition. So, the disallowed amount can be claimed when the new stock is finally disposed of (other than in a wash sale).

AN EXAMPLE

Assume you buy 500 shares of XYZ Inc. for $10,000 and sell them on November 5 for $3,000. On November 29, you buy 500 shares of XYZ again for $3,200. Since the shares were "bought back" within 30 days of the sale, the wash sale rule applies. Therefore, you can't claim a $7,000 loss. Your basis in the new 500 shares is $10,200: the actual cost plus the $7,000 disallowed loss.

If only a portion of the stock sold is repurchased, only that portion of the loss is disallowed. In the example above, if 60% of the shares sold were bought back, you'd be able to claim 40% of the loss on the sale. The remaining loss would be disallowed and added to your cost of the repurchased shares.

NO SURPRISES

The wash sale rule can deliver a nasty surprise at tax time. Contact us with questions. ■

TAX CALENDAR

October 17

Personal federal income tax returns for 2021 that received an automatic extension must be filed today and any tax, interest and penalties due must be paid.

- The Financial Crimes Enforcement Network (FinCEN) Form 114 "Report of Foreign Bank and Financial Accounts" (also known as the "FBAR") must be filed by today, if not filed already, for offshore bank account reporting. (This report received an automatic extension to today if not filed by the original due date of April 18th.)
- If an extension was obtained, calendar-year C corporations should file their 2021 Form 1120 by this date.
- If the monthly deposit rule applies, employers must deposit the tax for payments in September for Social Security, Medicare, withheld income tax and nonpayroll withholding.

October 31

Employers must file Form 941 for the third quarter (November 10 if all taxes are deposited in full and on time). Also, employers must deposit FUTA taxes owed through September if the liability is more than $500.

November 15

If an extension was obtained, calendar-year tax exempt organizations should file their 2021 returns. If the monthly deposit rule applies, employers must deposit the tax for payments in October for Social Security, Medicare, withheld income tax and nonpayroll withholding.

December 15

Fourth quarter 2022 estimated tax payments are due for calendar-year corporations. If the monthly deposit rule applies, employers must deposit the tax for payments in November for Social Security, Medicare, withheld income tax and nonpayroll withholding.

TALKING ABOUT THE "SANDWICH GENERATION"

The term "sandwich generation" was originally coined to describe baby boomers caught between caring for their aging parents and their children. These days the term applies to whichever generation is grappling with the problem. If you're in the middle of the sandwich, it may be time for some honest discussions with the other parties about pressing issues.

It's a good idea to start the talks with the "bottom" of the sandwich: your children. Assuming they're still in their formative years, make them your top priority. At this stage, you'll still have most of the control over decisions that affect their lives. These involve personal choices that are different for every family.

The "top" half of the sandwich can be more problematic. Depending on their health status, finances and other factors, your parents may not welcome assistance. They may be dismissive of your concerns and may display attitudes ranging from cooperative to highly resistant.

To initiate a family meeting, invite all the key players — your parents, siblings, their spouses if appropriate and, possibly, others. Generally, it's best to hold such a meeting face-to-face. But if distance or other factors make this unrealistic, an online video chat might work as well.

What should you discuss? Cover the entire tax and financial planning gamut. The dialogue should be frank and honest. Many issues can be sensitive and emotions may run high. So be prepared for some handwringing or pushback.

You may find that one session isn't enough to accomplish your objectives. In fact, you might discover a need to include additional family members to resolve the issues. You may even want to broaden the circle to include your CPA or attorney. ■