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WHAT IS DIFFERENT ABOUT 2023 INDIVIDUAL INCOME TAX RULES

"Not much" is an accurate and short answer. Although the limitations on many deductions, credits, etc. have increased as a result of inflation indexing, we had almost no tax legislation (none of broad interest or significance) in 2023. As a result, federal 2023 individual income tax returns will be prepared under almost identical rules to the 2022 returns. Return due dates remain unchanged as pass-through entities (partnerships, LLCs, subchapter S corporations, etc.) are due on Friday, March 15, 2024 and individual, corporate, and trust returns are due on Monday, April 15, 2024. With payment of the estimated tax due, extensions are available, generally, for six months.

Louisiana tax rules also did not change significantly for 2023 returns and continue with a maximum rate of 4.25 percent with no deduction for federal income taxes and are due by May 15, 2024. The first quarterly installment of 2024 estimated Louisiana income tax, the accuracy of which is enhanced by completion of the 2023 return, is due on April 15, 2024.

IRS VS. GAO

Do you think that the IRS sometimes might be too aggressive in its enforcement of rules that are overly burdensome to taxpayers? Well, the United States Government Accountability Office (GAO, an independent agency that works for Congress) believes that the IRS is not tough enough when it comes to sole proprietorship small businesses. In its October 2023 report to Congressional Requesters (Senators Tom Carper and Jon Ossoff), the GAO states that approximately $80 billion of the $496 billion in estimated annual uncollected federal tax (averages for years 2014 to 2016) was attributed to sole proprietors who underreported income or over-claimed deductions. A sole proprietor is an individual operating a business and reporting the income and deductions on Schedule C of the individual income tax return (i.e., not in the corporate form nor in a partnership or LLC with other owners).

Among the GAO's recommendations for the IRS are the following: (1) Implement voluntary tax withholding from nonemployee (independent contractor) compensation that is reported on Forms 1099-NEC; (2) Require sole proprietors to use a business bank account to conduct all business; (3) Expand its capacity to send notices to sole proprietors when it sees potential compliance issues; and (4) For a first-time sole proprietor who did not use a professional tax return preparer, send a notice that their tax returns are now more complex and have a higher risk of noncompliance.

(*Continued on reverse*)

After reviewing a draft of the GAO's report, the IRS thanked the GAO for the opportunity to respond and disagreed that "the compliance challenges associated with sole proprietors are separate and distinct from those facing other small business taxpayers." The IRS told the GAO that its existing programs adequately address the compliance needs for sole proprietors. From this public written exchange between two federal agencies, one senses a bit of rivalrous contention, and, for once, we side with the IRS that more intrusive rules and tax reporting would not be a welcomed development.

CIVIL FRAUD OF OTHERS

Generally, the Internal Revenue Service (IRS) has three years from the filing of a federal income tax return to assess additional tax. However, where the IRS has received a "false or fraudulent return with the intent to evade taxes" (Internal Revenue Code Section 6501(c)), the three-year limit does not apply. A recent Tax Court case demonstrates that fraud by someone other than the taxpayer can indefinitely extend the statute of limitations.

Mr. and Mrs. Murrin relied on a tax return preparer, Duane Howell, to prepare their joint federal income tax returns as well as two partnership returns. Without the knowledge of the Murrins, Mr. Howell added fraudulent deductions to these returns with the intent to evade tax. The Murrins did not provide any false or fraudulent information to Mr. Howell for inclusion in their returns nor did they have any intent to evade tax. They filed timely returns prepared by Mr. Howell for 1993 through 1999. The IRS did not discover that Mr. Howell was producing fraudulent returns until after the expiration of the usual three-year statute of limitation period. In 2019 (19 years after filing the last of the returns that Mr. Howell prepared), the IRS notified the Murrins that they owed back taxes, interest, and penalties for 1993 through 1999.

The Tax Court opined that "limitations statutes barring the collection of taxes otherwise due and unpaid are strictly construed in favor of the government." The Court concluded that the limitation provisions do not restrict their application to cases where the taxpayer personally had the intent to evade taxes. The Court stated "nothing in the plain meaning of the statute suggests the limitation period is to be extended only in the case of taxpayer fraud" and, accordingly, concluded that Mr. Howell's preparation of the false and fraudulent returns with the intent to evade taxes is sufficient to allow the IRS to assess tax to the Murrins at any time after the filing of fraudulent returns.

While imposing additional tax and penalties on taxpayers seems unfair in this case, it does instruct taxpayers that they are indefinitely liable for the civil fraud of their tax preparer and possibly of managers, appraisers, and others who furnish information through Schedules K-1 for pass-through entities.