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Health Notes…

February is Heart & Lung Month

Heart disease is the number one killer of men and women in America. With that in mind, it is time to eat healthy and exercise on a daily basis. Start by cutting back on "bad" carbs. Research shows that the feel-good chemical serotonin tends to run low in winter-just one more reason you will crave serotonin-boosting carbohydrates like bread, sweets (chocolate, must have chocolate!) and pasta. If you crave carbs, eat them, but "focus on less processed ones, like fruits, veggies and whole grains."

Women Swinging into Business

Several members of our firm have joined a committee with The Meadowlands Regional Chamber of Commerce to organize a clinic designed specifically for business women who are looking to learn how to play the game of golf. The clinic will help create a safe learning environment in not only getting an academic appreciation for the game, but some hands-on training. An information session will take place sometime in March. We expect to have significant response to this initiative and welcome you to contact Lauren Santora for further details.

IRS Issues Optional Sales Tax Tables

One of the changes made by the American Jobs Creation Act of 2004 is allowing a taxpayer to deduct state sales tax in lieu of state income tax. This deduction will generally appeal only to those taxpayers living in states that impose a sales tax but not an income tax, such as Florida. Taxpayers may deduct either the actual amount of sales tax paid or the amount shown by the applicable IRS table, plus any sales taxes paid on motor vehicles, boats and other items specified by the IRS.

The tables have been published in IRS Publication 600 along with an explanation of how to claim the deduction. The publication can be viewed and printed from the IRS website (www.irs.gov).

TAX CONSIDERATIONS WHEN SELLING OR BUYING A HOME

By William Angelo

Believe it or not, homeowners are the recipients of actual tax benefits from the government. Although the deductibility of mortgage interest and real estate taxes are probably the most well-known, tax savings can also be realized when it comes to the sale or purchase of a home. Thus, a general understanding of the tax law in this area is essential.

The gain realized on selling a home is considered a capital gain and, as such, is subject to federal and state income tax. The tax law enacted in 1997 allows the owner of a principal residence an exemption on the first $250,000 (for single taxpayers) or $500,000 (for married taxpayers) of gain realized on the sale. The gain in excess of the exemption is taxed at the capital gains rate. To qualify as a principal residence, a taxpayer must have owned and occupied the home for any two of the last five years prior to selling. This provision can be used once every two years; however if a sale is necessitated because of a job change or health problem, the exemption can be prorated based on the time the homeowner actually owned or resided in the home.

The gain is calculated by taking the proceeds from the sale reduced by the cost basis of the home. This basis includes the original purchase price of the property, outlays for improvements over the years of ownership, and selling expenses, such as certain closing costs and settlement fees. A permanent file of all improvements (including invoices) should be kept in order to substantiate the basis in case of an audit.

Buyers should also be aware of potential tax benefits. When purchasing a home, consideration should be given to the structure of the financing used. Mortgage interest on up to $1,000,000 worth of acquisition indebtedness (debt incurred to buy property or to make improvements to the property) is deductible. This debt must be collateralized by the property. The IRS allows financing executed within the first 90 days of ownership to be considered acquisition indebtedness. Financing obtained after the 90 day period will be treated as home equity financing, unless it is used to make improvements on the property. Only the interest on $100,000 of home equity loans is deductible. Consider this example: An individual puts $300,000 down on a $700,000 property, leaving him or her with a $400,000 mortgage. At some point in the future (more than 90 days later), the buyer takes out a $300,000 home equity loan and uses it for reasons other than home improvement. As mentioned before, the deductible interest on the equity loan is limited to $100,000 of debt. The interest on the additional $200,000 is not deductible. Furthermore, the homeowner will be able to deduct the interest on the initial $400,000 mortgage, but he or she will have $700,000 worth of debt and will only be able to deduct the interest on $500,000.

If you are interested in additional discussion of any of the above topics, please contact the professionals at Meisel, Tuteur & Lewis, PC.

IS A NEW COMPARABILITY PENSION PLAN RIGHT FOR YOU?

By Franco Fallone, CPA, MST

Providing employees with a retirement plan is imperative in today's competitive job market. Finding the plan that offers the greatest value to the employee, achieves the owner's personal retirement goals, and is the most cost effective is of paramount importance. Although 401K plans, money purchase plans, and profit sharing plans may satisfy one or more of these requirements, upon further investigation you may find that the new comparability pension plan best meets all three of these objectives.

In general, here is how this plan works. Employees are divided into two or more groups, such as owners and non-owners, with each group receiving a different contribution percentage as defined by the formula in the plan document. These differing levels of contributions are allowed only if they pass the non-discrimination testing in the IRS regulations. However, said regulations allow the discrimination testing for this type of plan to be done as if it were providing monthly benefits from a defined benefit plan. Thus, because the cost of providing annuity payments to an individual 65 years of age is significantly higher than that of a 25 year old, the contribution made for older employees is larger than that made for those younger. In addition, this type of plan requires a minimum employer contribution. The minimum contribution test is either a 5% contribution for all lower compensated employees or a lesser percentage, provided that the greatest contribution percentage for a highly compensated employee (one who earned $95,000 in the previous year or a 5% owner in the current or preceding year) is not more than three times the lowest percentage a non-highly compensated employee receives.

The main advantage of the comparability pension plan is that it can be modified in almost any way to achieve the specific goal of the company. Typically, these plans are used by small businesses to maximize contributions to owners or key employees, who, in most cases, are older, while minimizing those to other usually younger and presumably lower paid workers. The plan can also be used as an incentive to employees, compensating them for exceptional service without increasing the total cost to the company. It is important to note, however, that even though the new comparability plans work well in most instances, they will not be an effective choice in others. An example would be a case in which the owners are younger than most of the other employees.

If you feel a new comparability pension plan might fit your particular business situation, please contact your professional at Meisel, Tuteur & Lewis, P.C. for further discussion.

DUE DILIGENCE: IT MUST BE THOROUGH

By Christopher Baran

Although acquisitions are a powerful weapon in the business armory, they can be tricky and sometimes dangerous. Conducting thorough due diligence is one of the most effective ways to reduce risk and improve the success rate in this type of transaction. It is imperative to explore every aspect of the business to be purchased.

Due diligence begins in the contract negotiation of the proposed deal. Every seller or business broker will try to convince the prospective buyer to accept the shortest due diligence period. It is crucial for this period to be a minimum of twenty working days (a full calendar month) so that an effective exercise can be performed. If the buyer is not satisfied at the end of this preliminary time frame, he or she should not feel compelled to consummate the deal. The seller's reaction to a request for additional diligence time is often quite revealing.

A key factor in due diligence is asking the kind of questions that secure enough valid information to make the correct decision. Obviously only positive data is not the complete story. Moreover, focusing only on financial details might be a trap; other important areas should be fully reviewed. A good phrase to keep in mind is "leave no stone unturned."

Effective due diligence, whether it be physical or analytical, is an arduous and time-consuming process. The benefits, however, are irrefutable. It can not only result in significantly lowering the selling price but also preventing serious financial miscalculation.

We at Meisel, Tuteur & Lewis, P.C. consider due diligence to be one area of our expertise. We understand how to search precisely and thoroughly for the pertinent information and consider it essential to spend the time involved efficiently and effectively. Should you have any questions regarding the conducting of a proper due diligence exercise, please contact one of the professionals at our firm.

FEDERAL TAX EXEMPTION FOR ESTATE PLANNING

By Andrew R. Fink, CPA, MST

One of the fundamentals of estate tax planning is the maximum use of the federal exemption for estates, $1.5 million for 2005. Achieving this goal is often influenced by the manner in which assets are titled and beneficiaries designated. If proper attention is not paid to both of these areas, savings from the exemption can be greatly diminished.

In a case in which an estate falls below the taxable level, assets can be titled jointly "with the right of survivorship," thus ensuring that they pass automatically to the surviving co-owner. In this way, probate (the legal process by surrogate court overseeing the distribution of assets according to a will) is avoided, a worthwhile goal in that its administration is both costly and time consuming.

However, if the aggregate estate of a married couple exceeds the $1.5 million exemption level, it would be a costly mistake if, upon the first death, all assets pass directly to the surviving spouse. Although the amount of assets that can be given to a surviving spouse is unlimited, upon his or her death, any assets above the federal exemption level will be taxed: thus, the exemption given to the first deceased spouse will be wasted.

To rescue themselves from this dilemma, couples can create a bypass trust. Upon the first spouse's death, this trust is funded with the assets equal to his or her exemption and set up for the benefit of the surviving spouse for his or her lifetime. At the time of the second spouse's death, the assets pass to other beneficiaries, for example one's children. The bypass trust not only allows for the use of the federal exemption in the first estate, but also exempts from taxation any appreciation on the assets placed in the trust. It is important to note that this type of planning is successful only if each spouse has individual title to the assets, thereby preventing them from automatically going to the surviving spouse. Therefore, all securities, bank accounts, real estate, partnership interests and other assets funding the trust should be titled individually.

When reviewing your estate, you should be aware that certain assets are not controlled by a will because a beneficiary is designated at the time of the contract. Examples are life insurance policies, retirement accounts, pension plans and annuities. Extreme care should be taken in the clear naming of beneficiaries for all such non-probate items. If the wrong beneficiary is designated, or worse none at all, the assets may become part of the estate and be subject to probate and possible estate taxes.

Estate planning demands thorough and careful consideration. Please allow the professionals at Meisel, Tuteur & Lewis, P.C. to advise you about your particular situation.

AN INSIDE LOOK....

In November several members of the firm attended the AICPA's two day Accounting Firm Leadership Forum in Orlando, Florida. The forum focused on CPA firms providing not only external expertise and advice but applying those same fundamentals in growing a CPA practice.

Engagements

Best wishes to Lauren Santora and her fiancé, James Raniere, who became engaged on November 6, 2004. The wedding is scheduled for the fall of 2006.

Meisel, Tuteur & Lewis, P.C. announces the following new employees:

Jill Griffith grew up in West Milford and attended Ramapo College. Jill is a member of our administrative team.

Paddie Rarick, who comes to us from the state of Ohio, is currently residing in Randolph, and has joined our professional staff as an accountant.

Meisel, Tuteur & Lewis, P.C. was founded in 1946. The accounting professionals at our firm approach each client with a single goal: to build a solid financial foundation with that client...and then add to it with every subsequent contact. We believe in the value of relationships. We view every client relationship like a partnership and truly believe that our success is a result of yours.

Accounting and Auditing • Tax Planning and Compliance • Real Estate • Business Valuations • Personal Financial Planning • Consultants to Closely Held Businesses • Estate Planning • Litigation Support • Fraud Investigation • Economic Loss • Multi-State and Multi-National Tax Consulting • Mergers and Acquisitions • and many other valuable services

"Time is the scarcest resource and unless it is managed nothing else can be managed."

Peter F. Drucker

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Trademark Considerations in Starting or Expanding a Business
By Jeffrey B. Sladkus, Esq.

Selecting a new corporate name, trade name or trademark is an important decision that can ultimately have a substantial future impact on a business. State and federal laws extend trademark rights not only to words, symbols and designs functioning as trademarks, but also to corporate and trade names (collectively "Trademarks"). However, it is not atypical for a business to adopt a new Trademark with only a cursory investigation of whether or not it is available for use. For example, few businesses are aware that a state's granting a business the right to use a specific corporate name is not a guarantee that the use of that name will not infringe on third party Trademark rights. Therefore, adoption of a Trademark without adequate investigation may result in a dispute regarding the rightful "owner" of the Trademark at issue. The goal of this article is to shed some general light on Trademark law and provide precautionary steps that can be taken to adequately investigate and perfect legal rights in a new Trademark, thereby minimizing the risk of a Trademark dispute.

U.S. Trademark law recognizes three distinct Trademark rights: common law, state and federal. Common law Trademark rights accrue upon first use of a Trademark in association with goods or services and are limited to the trading area where the goods or services are actually offered for sale. These rights are denoted by use of the "™" symbol. Trademark rights may thereafter be extended to cover an entire state through registration with the specific state in which the Trademark is used. In addition, exclusive rights to use a Trademark throughout the United States may be secured by obtaining a federal trademark registration, denoted by use of the "®" symbol. Procuring a state or federal Trademark registration unquestionably provides a business with a valuable asset.

To make an initial determination whether pre-existing rights exist in a Trademark, trademark attorneys typically conduct a "screening search" by reviewing a number of computerized databases. Once a Trademark clears a screening search, a thorough investigation regarding pre-existing common law, state and federal Trademarks can be accomplished through a "comprehensive" Trademark search. Comprehensive searches provide a wealth of information germane to both business and legal considerations and therefore should be executed not only by an individual familiar with the proposed use of the Trademark, but also by a trademark attorney who can use his/her judgment and experience to determine whether any potential legal problem exists. Clearance of a Trademark through a comprehensive search will, among other things, minimize the possibility of expensive and time-consuming litigation over rightful ownership claims.

Many free resources are available on the Internet that can assist a business in conducting its own screening search. For example, if "ABC Corp" desires to use the Trademark "Magnum" in association with calculators, it may initially investigate pre-existing common law Trademark rights through simple searches of the words "Magnum" and "calculator" on Internet search engines such as Google® or Yahoo®. Further, if "ABC Corp" has not yet been formally adopted as a corporate or trade name, the Thomas Register (www.thomasregister.com) and Dun & Bradstreet's Business Directory (www.dnb.com) are two well-known resources for a variety of business related information. Data regarding registered state Trademarks and corporate names may be found within the appropriate secretary of state's office (*see* http://statetm.tripod.com), while information regarding pending or registered federal trademarks is available at the United States Patent and Trademark Office's website at www.uspto.gov.

The above Internet resources will provide only general guidance as to whether a Trademark has previously been registered or is in use. Additional professional assistance is essential.