

Disclosure of Offshore Bank Accounts

As highlighted recently in both The Miami Herald and the Wall Street Journal, the Internal Revenue Service ("IRS") will soon attempt to compel offshore banking institutions to reveal the identities of U.S. taxpayers with offshore bank accounts in order to determine if the offshore accounts have been properly disclosed to the IRS. According to IRS Agent Daniel Reeves, the objective is to catch U.S. taxpayers who are hiding assets and income in offshore accounts.

This increased effort by the IRS to locate undisclosed offshore accounts underscores the importance of complying with the disclosure requirements regarding foreign bank and financial accounts. Every United States person (a citizen or resident of the United States, a domestic partnership, a domestic corporation, or a domestic estate or trust) who has a financial interest in or signature authority (or other authority) over any financial accounts, including bank, securities, or other types of financial accounts in a foreign country must file a Report of Foreign Bank and Financial Accounts (Department of the Treasury Form TD F 90-22.1) if the aggregate value of these accounts exceeds \$10,000.00 at any time during the calendar year.

Failure to file a Report of Foreign Bank and Financial Accounts can result in civil penalties, criminal charges, or both. Fortunately, taxpayers can avoid criminal tax evasion charges and pay smaller penalties by agreeing to pay back taxes and interest through the voluntary-disclosure program. Once you are under investigation, however, it is too late to utilize the voluntary-disclosure program. We strongly recommend you seek professional guidance if you think you may need to file Form TD F 90-22.1 or utilize the voluntary-disclosure program.

Unintended Tax Consequences of Lending Money to Your Children/ Grandchildren

A loan from a parent to his or her child is so typical that people often fail to think about what issues might arise from making such a loan. And, because obtaining loans from other lending sources has become more difficult over the last few months, these types of loans have become even more prevalent. When making these loans, however, people often fail to think about the hidden tax issues involved.

Below-Market Loan Rules

Often times a parent or grandparent will forgo charging interest on a loan to a family member—an act of generosity that should be much appreciated by the recipient of the loan. Unfortunately the Internal

Revenue Code (the "IRC") is not quite as willing to overlook the interest component of the loan (or lack thereof).

The IRS calls this type of loan a "gift loan" because the forgoing of interest is a gift from the lender to the borrower. The amount of the gift is calculated by comparing the amount loaned with the present value of all payments due under the loan. In addition to the gift tax consequences, it is possible that this type of loan will also create income tax consequences for the lender.

Cancellation of Indebtedness Income

Furthermore, the forgiveness or discharge of a loan without repayment can create unintended gift tax or income tax consequences. The amount of debt discharged can be viewed as a gift from the lender to the borrower, especially in the case of a loan between family members. If the discharge of the loan is not viewed as a gift, then the discharge may create cancellation of indebtedness income for the borrower. Of course, examination of the particular facts would be needed to determine whether these or any other potential tax consequences would apply to you.

Power of Attorney and Health Care Documents for College Students

As many of your children or grandchildren will soon return home from college for the summer break, we want to remind you of the importance of having the proper planning documents prepared for your children over the age of 18. Specifically, children of this age or older should execute a Durable Power of Attorney, a Designation of Health Care Surrogate, a HIPAA Release, and, if desired, a Living Will.

Because of the Health Insurance Portability and Accountability Act ("HIPAA"), hospitals and other health care institutions may not release your child's information to you unless you have the proper release. Furthermore, a Power of Attorney and Health Care Surrogate will allow you to make decisions on behalf of your child should the need arise.

Of course, should your child ever want to change his or her documents, he or she can change the documents at any time. Also, when drafting your child's documents we would follow his or her wishes even if they conflict with your desires. If you would like us to prepare these documents for your child or grandchild, please contact our office to set up an appointment.

Any U.S. tax advice contained in the body of this newsletter was not intended or written to be used, and cannot be used, by the recipient for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions.