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In times of uncertainty, here are tips for yearend tax planning

Dennis Monroe

IF IT'S DECEMBER, THAT MEANS I'M thinking and writing about yearend tax planning. Being a tax lawyer, it is always one of my most enjoyable articles to write. This year, however, is the hardest tax article I have written because of all the uncertainty. So, I am going to start off with what we know for sure, and based on that, what I think you should do.

Uncertainty

There have been myriad different thoughts, proposals and general ideas relating to what the tax law changes will be. But even with all this uncertainty, there are some things we should plan for, and they all involve trying to get business matters settled in 2021.

• If you are going to sell your business in either a stock or asset sale and you hoped for a capital gains treatment, try to get it closed this year. This doesn't mean you have to get all your cash—there is an installment note on the sale—but there is a fair chance capital gains rates will go up. Various dates are being tossed about for when that will happen, but at this point, trying to complete business transactions before yearend is the best you can do in the current climate.

• Something we always talk about at yearend is making capital investments so you get Section 179 plus bonus depreciations. Again, we don't know what is going to happen with these accelerated depreciation methods for businesses, especially restaurant businesses, but making capital investments if you can is more important than ever this year. Hopefully by the time yearend comes we will have a more definitive answer.

• We are fairly certain estate tax laws are going to change in a less favorable way next year, so if you are looking at doing any kind of estate planning, particularly for large estates, do it this year. If you have the ability to make gifts, spousal transfers or sales to defective trusts, implement these in 2021. This is particularly important for large estates and married individuals that have the benefit of the exemptions for each spouse.

Tried and true ideas

• Prepay expenses to be used in the first two-and-a-half months of the next tax year.

• Because of the difficulty of securing employees, investigate various kinds of yearend compensation plans. Non-cash items, such as deferred compensation or appreciation rights (something used frequently for multi-unit franchisees), are not going to provide a deduction until they are paid, but at the same time may be something you'll want to implement before yearend. Also make sure you have a Board of Directors' resolution to accrue key employees' yearend bonuses.

• If you have multiple entities where you have restaurants and a management company and/or real estate as separate entities, look at how you can move income and expenses between those entities. It will have to be done with cash, but it still may generate tax savings.

• Look at the value of using a C-corporation, particularly if you have significant debt payments. But note that C-corporations will probably have an increased tax rate going forward. It may be more important in the future to set up these multiple entities to have flow-through entities and to have a C-corporation entity to accumulate money. I do believe the corporate rate, particularly for lower taxable income, is still going to be lower than the maximum individual rate.

• Make sure you have all your accounting for the year in, so there is no issue of the forgiveness on your PPP loans, and that you have applied for all of your Employee Retention Credit for 2020 and 2021. In many cases, you can amend your tax return, but it is best to file with the original 941 form. Also, don't forget your yearend reporting for your RRF dollars.

• Since most individuals have a significant limitation on deductibility, some states, like Minnesota, allow for state and local taxes of flow-through entities to be taxed for state purposes as a C-corporation, thus providing a federal deduction and no state tax.

• If you have a unique business that doesn't have inventory, look at trying to convert from accrual to cash. This normally gives you a significant one-time advantage. Again, something to keep that in mind.

It's a juggling act this year, so make sure all these tried and true ideas are utilized and keep your eyes and ears open for new changes. FSN