TAX PLANNING FOR INDIVIDUALS

With tax year 2021 coming to a close, we need to consider what can be done to help lower your tax bill for this year and next. With the uncertainty of pending legislation, here are some tax planning ideas for individuals:

Income/Deduction Deferral or Acceleration

Consider the following to accelerate income into the current year:

- Consider converting an IRA to a ROTH IRA during 2021.
  - Note the current tax laws allow all employee after tax contributions to qualified plans as well as after-tax IRAs to be converted to a ROTH IRA. Under the Build Back Better Act that is currently pending, this "Back Door ROTH IRA Conversion" is proposed to be eliminated for all retirement distributions, transfers, and contributions made after 12/31/2021. Please note the conversion to a ROTH IRA may increase your income.

- Recognize capital gains earlier than planned if you may be in a higher tax bracket in 2022.

Deductions will be more valuable in tax year 2022, if tax rates increase.

- As the standard deduction increases from year to year, more and more individuals are benefiting by the higher amounts and not itemizing their deductions on their return. As a result, they are not taking advantage of any charitable donations. However, individuals may consider "bunching charitable gifts" whereby gifts that would normally be made over a two or three year period instead were significantly made in one year, resulting in potential tax savings. With this concept, taxpayers may benefit by alternating between claiming the standard deduction in some years and itemizing deductions in other years. If possible, "lumping" as many as those deductions into those years when itemizing.
- If you are bunching deductions, pay your January mortgage payment at the end of December to get an extra month of interest on your mortgage.
- Taxpayers age 70 ½ or older can make a qualified charitable distribution, up to $100,000, directly from their IRA, other than a SEP or SIMPLE IRA, to a qualified charitable organization. It's generally a nontaxable distribution made by the IRA trustee directly to a charitable organization. A qualifying deduction may also count toward the taxpayers required minimum distribution requirement for the year. Since the distribution is not taxable there will be no charitable deduction either.
- Gift appreciated assets such as stock. Do not gift stock that has decreased in value since acquisition. For this specific situation, it is better to sell the stock, claim a capital loss on your personal tax return and donate the cash proceeds from the sale of the stock to a charitable organization.

Other ways to lower income in 2021 to minimize the tax impact:

- Consider increasing contributions to a health savings account (HSA), provided you are covered by a high deductible health plan, if you have not already maximized the current year contributions.
- Consider increasing your retirement plan contributions to reduce your taxable income, if you have not already maximized the current year contributions.

Charitable Deductions – CARES Act Extensions

For 2021, individuals who do not itemize deductions can claim up to $300 as an above the line deduction for cash contributions made to a qualified organization. Married couples who file a joint return may claim an above the line deduction up to $600 for their cash charitable contributions. This was originally only for 2020, but was extended for tax year 2021.

Also for 2021, the CARES ACT temporarily increased the individual AGI limit for cash contributions made to qualified public charities. Individuals will be able to deduct cash contributions up to 100% of their adjusted gross income (AGI). Please note the pre-CARES AGI limits will return in 2022.

Therefore, if an individual is considering a large cash donation with a possibility of being limited by AGI in tax year 2022, they may want to consider expediting the donation for this year.

Annual gift exclusion and Estate Tax Exemption

The annual gift exclusion remains at $15,000 per person for 2021, but will increase to $16,000 in 2022. Married couples who elect to split gifts can give $30,000 per person in 2021 and $32,000 in 2022. There is no limit to how many donees can receive gifts in a calendar year, and there are no gift tax filing requirements as long as the annual gift exclusion per person limit isn't exceeded.

There is also an unlimited gift exclusion for payments made on behalf of a donee as medical payments or tuition paid to an educational institution, as long as the payment is made directly to the medical care provider or educational institution.

For 2021, the Unified Gift & Estate Tax Exemption is $11,700,000 per individual.

Capital losses to offset capital gains

Triggering capital loss harvesting from your investment portfolio can help offset any capital gains incurred in the same tax year. If capital gains are expected, it may be a good time to rid your portfolio of assets that are currently worth less than their initial purchase price. Capital gains and losses arising from the sale of business assets follow special tax rules, so it's important to discuss expectations surrounding those gains and losses with an experienced tax advisor. The limit on deducting capital losses in excess of capital gains remains at $3,000 for tax year 2021 and forward.

Retirement Plans / Required Minimum Distributions

A required minimum distribution (RMD) is an IRS-mandated amount of money that you must withdraw from a tax-deferred retirement account which include: traditional IRA's, rollover IRA's, SIMPLE IRA's, SEP IRA's and most 401(K) and 403(b) plans or an employer sponsored retirement account each year, starting at age 72.

The CARES ACT temporarily waived the required minimum distributions (RMDs) for all types of retirement plans for calendar year 2020. The waiver expired December 2020 and therefore RMDs will once again be due for the current year.

For 2021: There is no deferral of RMDs for calendar year 2021. Therefore, if you were taking RMD's before 2020 then you need to take them again in calendar year 2021 before year end. RMDs for 2021 are calculated as if the 2020 waiver had not occurred. This means that no make-up 2020 RMDs are required for 2021.

When must you take RMDs: If you reach age 72 by July 1, 2021 you must take your first RMD, by April 1, 2022, with subsequent RMDs by December 31st annually thereafter. Keep in mind, if you delay your initial RMD until April 1, 2022 you'll be responsible for 2 withdrawals that year (one by April 1 and one by December 31), which could result in a larger tax liability.

For additional information on Retirement Plans, see CARES Act changes for Eligible Retirement Plans on the TBC Web page.

Child Tax Credit /Advance Child Tax Credit Payments 2021

The American Rescue Plan raised the maximum child tax credit in 2021 to $3,600 for qualifying children under age 6 and to $3,000 each for children ages 6 through 17. Previously, the credit was worth up to $2,000 per child and 17-year-olds weren't eligible.

In addition, part of the expansion of the child tax credit was to advance a portion of the 2021 child tax credit to families by sending direct payments to them in 2021. Up to one-half of the total credit was paid in advance monthly payments to families from July to December 2021. The other one-half of the credit is available to be claimed as a credit when filing the 2021 individual tax return.

How is this reported: The amount that families receive as advance payments will be reconciled to the amount of the child tax credit that they are eligible to claim when preparing the 2021 tax return in 2022. Most families will receive about one-half of their tax credit through the advance payments. In addition, the allowable credit (total credit less amounts previously received) is fully refundable for 2021. This means that eligible families can get it, even if they owe no federal income tax.

Note: If the advanced payments received are smaller than the actual amount of child tax credit calculated on the 2021 return, the excess amount will be due to families by way of a credit. In the unlikely event that families receive more than the amount being reported as a child tax credit on the 2021 return, families may have to pay the excess back, depending on your income level.

Coronavirus related Distributions (CRD)

The CARES Act allowed eligible individuals to take up to $100,000 from their retirement accounts, without being subject to the 10 percent penalty that typically applies to early withdrawals. December 30th, 2020 was the last day to take a coronavirus-related distribution and Congress didn't extend this into 2021.

Individuals who took a Covid related distribution in 2020 had the option of deferring tax on the distribution by reporting 1/3 of the total distribution amount as income in tax year 2020, 2021 and 2022 and paying tax on that income in those years. Individuals who chose to defer the reporting of the income over a 3 year period will have additional income to report for tax year 2021.

Also note – eligible taxpayers who took qualified CRDs in 2020, or qualified disaster distributions, will have up to three years to repay all or a portion of the funds to an eligible retirement plan. The amount of repayment reduces the amount of the distribution that would otherwise be taxable in the year of repayment.

If a repayment for a year is more than the includible amount for that year, individuals may either carry the excess forward to another installment year or carry it back to a previous installment year. If you carry it back, you will need to file an amended return if you have already filed your return for that year to claim a refund.

While there is no requirement to recontribute the funds, there are several good reasons to do so. First, if the distribution is taxable income, repaying all or a portion of it will reduce or eliminate the associated tax liability. Second, even if the distribution is not taxable (certain Roth distributions), repaying the distributed amount(s) would enable those funds to grow on a tax-deferred basis. Remember, the longer those funds sit outside of your retirement account, the longer it may take to reach your retirement planning goals.

Prior to year- end, individuals should consider if recontributing part or all of their CARES Act distribution to an IRA or an eligible retirement plan if feasible given their tax situation for the current year.

Exercising Incentive Stock Options (ISO)

If your company grants you stock options, it simply means they are giving you the opportunity to buy shares of stock in the company at a specific price (the exercise price) during a specific window of time.

When you exercise Incentive Stock Options, you buy the stock at a pre-established price, which could be well below actual market value. The advantage of an ISO is you do not have to report taxable income when you receive a stock option grant or when you exercise that option if you meet specific holding requirements. In addition, if holding requirements are met, the gain on the future sale of exercised options will be subject to preferential capital gain rates.

Important to Note: When a taxpayer exercises ISOs, and there is no taxable income to report, the ISOs are still counted as income for calculating the Alternative Minimum Tax (AMT). This additional amount to be reported for AMT purposes could lead to unexpected AMT tax for the individual, particularly if the exercise (without a sale) occurs at year end. It should also be noted that the sale of stock acquired through ISOs also need to be reported for AMT purposes. AMT calculations can get complicated very quickly—so if you are exercising ISOs, speak with your tax advisor first to help understand the tax implications.

These are just some planning ideas to consider for 2021 or 2022 and are general in nature. If you have any questions or need further information please contact your TBC advisor.

THE DEPARTMENT OF LABOR GUIDANCE ON LOCATING MISSING PARTICIPANTS

The Department of Labor (DOL) issued guidance and best practices on January 12, 2021 to pension plans in hopes that Plan Sponsors can locate missing participants. The guidance provides various communication strategies and ways to search for missing participants. The end goal is to have zero missing plan participants, which may be difficult to accomplish, but hopefully they can be minimized.

Uncashed 401(k) distributions are a focus area for the Department of Labor as they view this as a fiduciary responsibility of the Plan. When a Plan changes record keepers, this could be an issue that gets overlooked. Many workers will have different jobs over their lifetime, unlike previous generations, which may make it difficult to keep participant data current.

The process of maintaining current participant data includes:

- Maintain multiple points of contacts (e.g. phone, email, address)
- Update beneficiary information regularly
- Identify missing and unresponsive participants
- Establish a method for tracking missing participants

For those who use third party administrators (TPA's) to maintain plan records and handle communications, Plan Sponsors should ensure the TPA's are performing the agreed upon services and identify and correct any issues discovered.

Credit for Small Employer Pension Plan Startup Costs

Eligible small employers (those with 100 or fewer employees) may be able to claim a tax credit of up to $5,000, for three years, for the ordinary and necessary costs of starting a SEP, SIMPLE IRA or qualified plan (like a 401(k) plan.)

You may claim the credit for costs to set up and administer the plan and educate your employees about the plan. A tax credit reduces the amount of taxes you may owe on a dollar-for-dollar basis unlike a tax deduction which reduces your tax liability.

If you have any questions regarding setting up a retirement plan, please contact us for assistance.

INDIVIDUAL TAX IMPLICATIONS OF CHARITABLE CONTRIBUTIONS

People support charitable organizations for a variety of reasons: they believe strongly in the organization's mission, they're an alumnus of a school, a business associate or a friend has asked for support, etc.

Tax deductions may also be part of the decision to make charitable contributions.

If you itemize deductions on your individual return, you can deduct contributions to qualified charities in an amount up to 100% of your Adjusted Gross Income (AGI). Even if you don't itemize deductions, and use the standard deduction on your return, you may still reduce your taxes when you make contributions. For 2020, individuals who didn't itemize deductions were allowed to deduct up to $300 of charitable contributions. In 2021, this $300 deduction is also allowed, and the limit is increased to $600 on a joint return.

Standard deduction amounts allowed on state returns are different from the amounts allowed on federal returns. Taxpayers who use the standard deduction on their federal tax return may still be able to itemize deductions, including charitable contributions, on their state return.

Older taxpayers who must withdraw Required Minimum Distributions (RMD) from IRAs may distribute up to $100,000 directly from the IRA to a qualified charity. The distributions must be made directly from the trustee to the qualified charity. These distributions will not be deductible as itemized deductions, but will reduce the RMD for the taxpayer, and will also reduce the taxpayer's AGI. This can be important because the amount of AGI is the starting point for computing certain deductions, credits and other tax benefits that are limited by income. Reducing AGI could increase other applicable tax benefits. If you have plans to make charitable contributions, and you must take an RMD, it may make sense to contribute directly from your IRA. It won't cost you any more money, and the tax benefits could be valuable. Please contact your trusted TBC advisor for more information.

By: Katharine K. Doran, CPA, Shareholder

NY PTE TAX – ELECTIONS DUE

On August 25, 2021 the New York State Department of Taxation and Finance issued TSB-M-21(1)C, (1)I providing guidance on the Pass-Through Entity Tax (PTET). See prior article HERE. In that guidance it was advised that elections need to be made by March 15 of the tax year, ie. 2022 tax year is due on March 15, 2022. However, since the PTET is new in 2021, the election for 2021 must be made by **October 15, 2021**.

Some information to know before making your election:

- It is an annual election.
- It is irrevocable for each tax year it is made.
- Payment through an electronic bank account is required under this election.
- Filing of the PTET tax return will occur through the taxpayer's NYS online account.
- A Tax professional cannot make this election for a taxpayer. Only an authorized person can.

Once you are ready to make your election please follow the below instructions:

1. Go to and log into your NYS Online Tax account. This username and password is your ID username and password. You will have this ID if you file sales tax, employment or withholding taxes, or make online corporate tax payments. Additionally, the same log in is used for the Department of Labor and the NYS Health Insurance Marketplace.

(If you do not have a NYS ID, you can follow the video HERE by NYS Tax and Finance to create your ID.)

Once logged in Click on Services in the top left hand corner.

2. In the resulting menu, click on the triangle next to either Corporation Tax (S Corporations) or Partnership Tax and then PTET webfile.

(Remember only an authorized person can elect into the regime.)

3. When in the PTET Web File – click on select in the PTET Forms next to the Annual Election.

4. On the next Screen, you will be required to enter the name and Social Security number of the authorized person making the election and then actually make the election by clicking Yes and then Continue.

5. On the next screen, you will be asked to enter your physical and mailing address. Enter the appropriate information and then click submit to finalize your election.

6. Print your confirmation page and keep for your records. Send a copy to your accountant.

Please make sure your election for 2021 is completed no later than October 15, 2021. If you have any questions please contact your TBC advisor.

NYS COVID-19 SMALL BUSINESS GRANT

On August 25, 2021, the NYS COVID-19 Small Business Recovery Grant Program expanded its criteria for grant eligibility. Specifically, the grant program now allows businesses to apply with:

1. Annual gross receipts of less than $2,500,000, and
2. Who received PPP funds in amounts of $250,000 or less.

Please see below for more details. The program is accepting applications at:

Updated Grant Amounts

Grant awards will be calculated based on a business's annual gross receipts for 2019 (subject to change by Empire State Development).

- Award is $5,000 / business if annual gross receipts: $25,000 – $49,
- Award is $10,000 / business if annual gross receipts: $50,000 – $99,;
- Award is 10% of gross receipts if annual gross receipts: $100,000 – $2,500,000;
- The maximum grant is $50,000

Eligibility

To qualify the small business must:

1. Have begun operations on or before March 1, 2019.
2. Have 2019 or 2020 Gross Receipts of between $25,000 and $2,500,000 per annum
3. Demonstrate positive net profit on 2019 Business Return ($1 or greater)
4. Demonstrate at least 25% loss in Annual Gross Receipts in a year-to-year gross receipt comparison as of December 31, 2020 to the same period in 2019.
5. Demonstrate that the total business expenses on the 2020 business income return are greater than the grant amounts.
6. Not have qualified for business grant assistance programs under the federal American Rescue Plan Act of 2021 or any other available federal COVID-19 economic recovery or business assistance grant programs, including loans forgiven under the federal Paycheck Protection Program, or are unable to obtain sufficient business assistance from such federal programs. However, the applicant will not be disqualified from this Program if they have received or been awarded any of the following federal assistance:
   1. United States Small Business Administration ("SBA") Paycheck Protection Program loans totaling $250,000 or less;
   2. COVID-19 Economic Injury Disaster Loan ("EIDL") Advance Grant of $10,000 or less;
   3. COVID-19 EIDL Supplemental Targeted Advance Grant of $5,000 or less; or
   4. SBA Shuttered Venue Operators Grant.
7. The applicant must submit a formal certification with NYS. A PDF copy of the Applicant Certification can be found here:

Taxability

NYS has passed a law (NYS Senate Bill S7230) providing an exclusion from NYS taxable income for the amounts received pursuant to the COVID-19 pandemic small business recovery grant program, to the extent includable in

federal taxable income.

Ineligible Businesses

1. Landlords and passive real estate businesses
2. Businesses that received awards from the SBA Restaurant Revitalization Grant Program
3. All Non-Profits, Churches and other religious institutions
4. Government-owned entities or elected official offices
5. Businesses primarily engaged in political or lobbying activities
6. Illegal businesses or enterprises
7. Other industry or business types as specified by Empire State Development

Eligible Use of Grant Funds

The grants must be used for COVID-19 related losses or expenses incurred between March 1, 2020 and April 1, 2021. These include:

1. Payroll costs
2. Commercial rent or mortgage payments for NYS-based property (but not any rent or mortgage prepayments)
3. Payment of local property or school taxes associated with a small business location in NYS
4. Insurance costs
5. Utility costs
6. Costs of personal protection equipment (PPE) necessary to protect worker and consumer health and safety
7. Heating, ventilation, and air conditioning (HVAC) costs
8. Other machinery or equipment costs
9. Supplies and materials necessary for compliance with COVID-19 health and safety protocols
10. Other documented COVID-19 costs as approved by Empire State Development

Ineligible Uses of Funds

Grants awarded under the program may not be used to re-pay or pay down any portion of a loan obtained through a federal COVID-19 relief package for business assistance or any New York State business assistance programs.

Please contact your TBC Advisor to discuss whether your business qualifies for this program and other COVID-19 relief options.

NY PTE TAX – UPDATE

New for the 2021 tax filing, New York implemented a Pass-Through Entity Tax (PTET) that is an optional program allowing a pass through entity to pay NYS taxes, provide a full Federal Tax Deduction on those taxes, and provide a credit for taxes paid on the owners/members/partners tax returns. You can find a summary of the program here.

On August 25, 2021 the New York State Department of Taxation and Finance issued TSB-M-21(1)C, (1)I providing guidance on the PTET and this post provides the highlights of this guidance.

Highlights of the TSB are as follows:

- **Annual election** – eligible entities must opt in to this program annually and it is irrevocable.
- **Election Due date** – by March 15 of the tax year, ie. 2022 tax year is due on March 15, 2022.
  - 2021 election only – due October 15, 2021. Since the PTET is new in 2021, the election for 2021 must be

made by October 15, 2021.

- **How do you make the election? –** An authorized person MUST opt in to PTET on behalf of an eligible entity through the entity's Business Online Services account, now through October 15, 2021. If the entity does not have a Business Online Services account, the authorized person will need to create one. You can create one at this link.
- **Who is an authorized person?** – Only an authorized person may make this election on behalf of an eligible partnership or S corporation. Please note that an authorized person does not include your tax professional.
  - **New York S corporation** – any officer, manager, or shareholder of the New York S corporation who is authorized under the law of the state where the corporation is incorporated or under the S corporation's organizational documents to make the election and who represents to having that authorization under penalty of perjury.
  - **Partnership/ Limited Liability Company** – If the entity is a partnership any member, partner, owner, or other individual with authority to bind the entity or sign returns under Tax Law § 653.
- **How do you calculate the income subject to the tax?** – PTET is imposed on the PTE taxable income of an electing entity. Generally, PTE taxable income includes all income, gain, loss, or deduction of an electing entity that flows through to a direct partner, member, or shareholder for New York personal income tax purposes.
  - **New York S corporation** – calculates its PTE taxable income by aggregating amounts of income, gain, loss or deduction that flow through for New York income tax purposes to direct members or shareholders who are taxable under Article 22 (Personal Income Tax).
  - **Partnership** – An electing partnership is required to classify all direct members or partners that are taxable under Article 22 (Personal Income Tax) as a resident or nonresident of New York. To compute its PTE taxable income, an electing partnership must compute both a resident PTE taxable income pool and a nonresident PTE taxable income pool and add these amounts together.
- **What is the tax rate paid?** – The PTET is % on $2,000,000 or less of PTE taxable income, and the tax rate increases at various levels up to a maximum of 10.9% on PTE taxable income greater than $25,000,000.
- **Are Estimated Tax Payment Required?** An electing entity is required to pay estimated tax on the amount of PTET calculated for the current taxable year. Estimated payments are due on or before March 15, June 15, September 15, and December 15 for that calendar year.
  - 2021 only – An electing entity is not required to make any estimated tax payments for PTET for tax year 2021. However, it may choose to make optional online estimated tax payments prior to December 31, 2021 (cash basis taxpayers that want to deduct the PTET on the 2021 tax return). **An online estimated tax application for PTET will be available by December 15, 2021**.
- **Should I stop paying my personal estimates for NY in 2021?** NO – Regardless of whether an electing entity chooses to make optional estimated tax payments for tax year 2021, personal income tax estimated payments must be made by or on behalf of partners, members, or shareholders under Article 22 calculated as if they were not entitled to the PTET credit. Failure to pay personal estimates in 2021 will result in tax penalties. **Personal income tax estimated payments are not considered prepayment of PTET and may not be applied to PTET liabilities.**
- **What tax return is required?** On or before March 15, an electing entity must file an annual PTET return using the online return application to report the information required for the PTET taxable year. All PTET tax returns are filed on a calendar-year basis. An electing entity may make an online request by March 15 for a six-month extension of time to file its annual PTET return. At this time it is not clear whether this return will be filed with the entity CT3S or IT-204, or whether a separate filing within NYS online services will be required.
- **How do I claim the credit on my personal return?** Eligible taxpayers that receive a PTET credit from an electing entity may claim the credit on Form IT-653, Pass-Through Entity Tax Credit, and attach it to their New York State personal income tax return.
  - A partner, member or shareholder that is not subject to tax under Article 22, including but not limited to a corporate partner, is not eligible for the PTET credit. Additionally, a partner that is itself a partnership is not eligible for the PTET credit.
- **Is the PTET tax deductible on the NYS return?** NO – An eligible taxpayer claiming the PTET credit must make an addition modification to federal adjusted gross income or federal taxable income on the eligible taxpayer's New York State personal income tax return for an amount equal to the amount of the PTET credit

claimed.

- **What about PTET paid to another state?** For tax years beginning on or after January 1, 2021, resident partners, members, or shareholders will be allowed a resident tax credit against their New York State personal income tax for any pass-through entity tax imposed by another state, local government, or the District of Columbia, that is substantially similar to the PTET imposed under Article 24-A8 paid by a partnership or New York S corporation to another jurisdiction.

This information is just a summary of the long awaited guidance. Additional guidance and required forms will be posted on the department's website as it becomes available.

If you have any questions please contact your TBC advisor.

THE NYS COVID-19 SMALL BUSINESS RECOVERY GRANT PROGRAM

The NYS COVID-19 Small Business Recovery Grant Program offers approximately $800 million in funding for qualified small businesses and organizations. The businesses must have been in operation on or before March 1, 2019 and continue to operate as of the date of the application. The program is now accepting applications at:

Grant Amounts

Grant awards will be calculated based on a business's annual gross receipts for 2019 (subject to change by Empire State Development).

- Award is $5,000 / business if annual gross receipts: $25,000 – $49,
- Award is $10,000 / business if annual gross receipts: $50,000 – $99,:
- Award is 10% of gross receipts if annual gross receipts: $100,000 – $500,000:
- The maximum grant is $50,000

Eligibility

To qualify the small business must:

1. Have 2019 or 2020 Gross Receipts of between $25,000 and $500,000 per annum
2. Demonstrate positive net profit on 2019 Business Return ($1 or greater)
3. Demonstrate at least 25% loss in Annual Gross Receipts in a year-to-year gross receipt comparison as of December 31, 2020 to the same period in 2019.
4. Demonstrate that the total business expenses on the 2020 business income return are greater than the grant amounts.
5. Not have qualified for business grant assistance programs under the federal American Rescue Plan Act of 2021 or any other available federal COVID-19 economic recovery or business assistance grant programs, including loans forgiven under the federal Paycheck Protection Program, or are unable to obtain sufficient business assistance from such federal programs. However, the applicant will not be disqualified from this Program if they have received or been awarded any of the following federal assistance: (a) United States Small Business Administration ("SBA") Paycheck Protection Program loans totaling $100,000 or less; (b) COVID-19 Economic Injury Disaster Loan ("EIDL") Advance Grant of $10,000 or less; (c) COVID-19 EIDL Supplemental Targeted Advance Grant of $5,000 or less; or (d) SBA Shuttered Venue Operators Grant.
6. The applicant must submit a formal certification with NYS. A PDF copy of the Applicant Certification can be found here:

Taxability

NYS has passed a law (NYS Senate Bill S7230) providing an exclusion from NYS taxable income for the amounts

received pursuant to the COVID-19 pandemic small business recovery grant program, to the extent includable in federal taxable income.

Ineligible Businesses

1. Landlords and passive real estate businesses
2. Businesses that received awards from the SBA Restaurant Revitalization Grant Program
3. All Non-Profits, Churches and other religious institutions
4. Government-owned entities or elected official offices
5. Businesses primarily engaged in political or lobbying activities
6. Illegal businesses or enterprises
7. Other industry or business types as specified by Empire State Development

Eligible Use of Grant Funds

The grants must be used for COVID-19 related losses or expenses incurred between March 1, 2020 and April 1, 2021. These include:

1. Payroll costs
2. Commercial rent or mortgage payments for NYS-based property (but not any rent or mortgage prepayments)
3. Payment of local property or school taxes associated with a small business location in NYS
4. Insurance costs
5. Utility costs
6. Costs of personal protection equipment (PPE) necessary to protect worker and consumer health and safety
7. Heating, ventilation, and air conditioning (HVAC) costs
8. Other machinery or equipment costs
9. Supplies and materials necessary for compliance with COVID-19 health and safety protocols
10. Other documented COVID-19 costs as approved by Empire State Development

Ineligible Uses of Funds

Grants awarded under the program may not be used to re-pay or pay down any portion of a loan obtained through a federal COVID-19 relief package for business assistance or any New York State business assistance programs.

Please contact your TBC Advisor to discuss whether your business qualifies for this program and other COVID-19 relief options.

by: Ben Henderson, CPA, Manager

THINKING ABOUT RENTING YOUR RESIDENCE OR VACATION HOME?

If you've ever considered renting out your family's vacation home, or your personal residence, you're in luck! The IRS has special provisions in the tax code for both vacation home rentals and the short-term rental of your personal residence that could result in you receiving tax-free income.

There is a special section in the Internal Revenue Code known colloquially as the "Augusta Rule". If you own a vacation property or reside in a highly desirable location, you can choose to rent your residence out for fourteen days or less and collect the rental income tax–free. The only caveat is that the total amount of income received *must* be deemed reasonable. For example, you cannot rent your home for $1,500 per night when the local market rates are only $500 per night.

For the purposes of this tax section, a residence is defined as any dwelling unit used for personal purposes more

than 14 days, or more than 10% of the number of days during the year the unit is rented at a fair rental price. For example: if you rent your home for 14 days, you would have to use it for personal purposes for 1 day to qualify for treatment as a personal residence. If the home qualifies as a residence, and as long as you do not exceed 14 total rental days during the year, you do not have to report the income on your tax return.

Unlike a regular rental business, if you qualify under this exclusion you cannot take any of the home's expenses as a rental deduction on Schedule E of your personal tax return. The reason for this is this specific rental activity does not qualify as a business for income tax purposes to be reported. Therefore the expenses are considered personal and nondeductible. However, you can still take the mortgage interest and real estate taxes as an itemized deduction on Schedule A to the extent allowed, as well as home office deduction if applicable.

What happens if you exceed 14 rental days?

The rules are a bit more complicated. Step one is you must determine how many days the property is used for personal use. If the property is used for personal use during the year for the greater of 14 days or 10% of the fair rental days, then the property qualifies for "vacation home" treatment and the rental expenses will be limited to the rental income generated. If the property does not meet the "vacation home" criteria, and wasn't used for enough personal days during the tax year, it would be reported as a regular rental property on Schedule E.

If the property does qualify as a vacation home, step two is to allocate the applicable expenses of the home for the tax year on a pro rata basis between personal and rental use based on the number of days used/rented. After allocating the expenses between rental use and personal use, the rental portion of the deductions is allowed only to the extent rental income was generated. Essentially, if the rental activity generates a profit, it must be reported as income, but if the activity generates a loss, the loss is not deductible. The best you can do is report a *zero* net profit. The allocable personal portion of the real estate taxes and mortgage interest are still reported as an itemized deduction on Schedule A, to the extent allowable.

Moreover, the IRS has a generous definition of personal use. It is generally defined as:

- property used by a taxpayer or spouse,
- another person with an interest in the unit,
- or any family member of the taxpayer or other person with an interest in the unit

The above definitions all qualify as personal use days under the vacation rental guidelines. Note: this does not apply if the property is rented under a rental arrangement at a fair rental price, and is being used as the tenant's principal residence, regardless if the tenant is related to the property owner.

What's the one piece of information to take away?

Go rent your personal residence for 14 days or less and use that money to go on an income tax-free vacation!

Consult your tax advisor for questions about your specific situation.

by: Heather Mallette, CPA

2020 INCOME TAX REFUNDS

The IRS has acknowledged that numerous 2020 refunds have been held up and are still being processed, with even some taxpayers that filed at the start of the filing season still waiting for their refunds. The IRS has clarified that some tax returns take longer to process than others, including when a return:

- Includes errors such as an incorrect recovery rebate credit (RRC) amount;
- Was filed with missing information;
- Is affected by identity theft or fraud;

- Includes a claim filed for an earned income tax credit or an additional child tax credit using 2019 income;
- Includes a Form 8379, Injured Spouse Allocation (this can take up to 14 weeks to process); or
- Needs further review in general

The IRS has indicated that the majority of the returns delayed this year are held up due to incorrectly reporting the recovery rebate credit amount. If there is a discrepancy between what was reported on the tax return and what the IRS has on file for the RRC amount (stimulus payments one and two) the IRS is manually reviewing the tax return for credit eligibility. If the eligibility has not been met, the IRS will generate a letter (Letter 105C or Letter 106C, Correspondence for Disallowing a Claim) explaining the taxpayer's appeals rights. The taxpayer will have to reply to the correspondence before the IRS will continue processing the return. This manual review process could add a significant amount of time to a taxpayer's return processing depending on the discrepancies.

Another common cause for delay is a suspicion of identity theft. In the last several years the IRS has been particularly mindful of identity theft, with something as simple as an address change or change in filing status alerting the IRS that identity theft may have taken place. If the IRS suspects that a return may be fraudulent, they will send a verification letter to the taxpayer asking them to confirm the return on file was indeed filed by the taxpayer. If you receive a verification letter (typically 5071C, 4883C or 6331C listed as the letter number), please note that these are legitimate letters from the IRS and need to be addressed in order for the IRS to complete their review process.

You can check on the status of your return at or call the IRS hotline at 800-829-1954. If you have any further questions please contact your TBC tax advisor.

NEW YORK STATE'S PASS THROUGH ENTITY (PTE) TAX

A controversial provision of the Tax Cuts and Jobs Act (TCJA) limited the itemized deductions related to state taxes (real property taxes plus state & local income taxes). Since its enactment, individual taxpayers have been limited to a maximum deduction of $10,000 on their federal income tax return.

A number of states responded by enacting a pass through entity (PTE) tax on S corporations and partnerships (including multi-member LLCs) to help benefit the direct owners impacted by the tax limitation. Since most states do not tax the income from a PTE (it flows out to the owners), the thought was this tax would decrease the flow through income reported on the owner's federal income tax return. In addition, this tax would be reported as a credit on the owner's state income tax return to offset personal state income taxes.

One of the uncertainties of having a state tax on the flow through income of a PTE was – would the IRS accept this as a deduction against the PTE income. In November 2020, the IRS issued Notice 2020-75 allowing PTEs a deduction for the state taxes imposed on their income for federal tax purposes; the Notice states that this deduction would not be limited to the $10,000 cap imposed by the TCJA.

Based upon this favorable position, New York State has created their own PTE tax effective for tax years beginning on or after January 1, 2021. Partnerships (other than publicly traded partnerships), LLCs treated as partnerships (or LLCs who have made an election to be an S corporation for federal and New York State purposes) and New York State S corporations can now elect to pay the PTE tax.

How does the New York State PTE work?

To file and pay PTE tax, the eligible partnership or S corporation must make an irrevocable annual election by the first estimated payment due date, which is March 15 of the calendar year prior to the year in which the PTE tax return is required. The election is made annually and will be effective for the current taxable year. For the 2021 tax year only, an election must be made by October 15, 2021. A fiscal year filer is required to make the election by October 15, 2021, if the fiscal year filer's final date of the entity's taxable year falls before the December 31,

2021, calendar year-end. The PTE tax return will be due March 15 of the following year (the 2021 return is due March 15, 2022); fiscal year taxpayers will file by March 15 following the close of the calendar year that contains the final day of the entity's tax return.

Electing entities are required to make four equal estimated tax payments for every quarter of a calendar year. For the 2021 tax year only, no estimated taxes will be required to be made. Beginning with March 15, 2022, estimated tax payments are to be made by March 15, June 15, September 15 and December 15, regardless of whether the entity has a calendar or fiscal year-end.

A partnership's NYS taxable income is the sum of the entity's adjusted net income (all items of income gain, loss, or deduction) allocated to NYS to the extent included in a nonresident partner's taxable income and adjusted net income to the extent included in a resident partner's taxable income. Similarly, an S corporation's NYS taxable income includes "all items of income, gain, loss, or deduction derived from or connected with New York sources to the extent they would be included in the taxable income of a shareholder subject to tax under Article 22."

The tax is imposed at a graduated rate from % on the first $2 million of a PTE's taxable income up to a maximum of 10.9% on taxable income in excess of $25 million.

The tax is imposed on the entity; however, each partner or shareholder would have joint and several liability for their share of the PTE tax. As such, the owners would be liable for the tax if the entity fails to make the payment.

A NYS tax credit is available for a direct partner or shareholder of an electing PTE; the credit is based on their distributive share of the PTE taxes paid by the entity. Both resident and non-resident owners may be entitled to this credit. If an individual is a partner/shareholder in multiple electing entities, his or her total credit is equal to the sum of such credits calculated separately for each entity. If the credit exceeds tax due for the taxable year, it should be treated as an overpayment, which can be credited or refunded, without interest.

Note: Any individual that is claiming a tax credit for PTE taxes paid must have a corresponding NY addback of the amount of the PTE tax deduction (while the PTE tax is deductible in computing a PTE owner's federal taxable income, it is not allowed as a deduction in computing such owner's NYS taxable income).

The New York legislation provides that a resident credit will be allowed for any PTE tax paid that is "substantially similar" to NYS's PTE tax.

Please note that this is a high level summary of the PTE tax. We are currently awaiting official guidance and forms from NYS regarding the PTE tax. As more information becomes available we will update our website.

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