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STRUCTURE LAW GROUP, LLP Quarterly

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Selling On eBay - What You Need To Know

The Board of Equalization is increasing its use tax education efforts in an attempt to increase tax compliance and increase revenues. It is working with online auctioneers to identify retailers that are operating without a seller's permit, and it is working with credit card companies to obtain information about sellers and buyers. If you are making sales in California, now is the time to make sure you are in compliance with sales and use tax requirements.

If you are selling items on E-Bay or another on-line auction, you are required to obtain a seller's permit if you are doing business in California and selling items that would ordinarily be subject to sales or use tax if sold in a retail store. This is true whether you are selling as an individual or an entity, whether you are a wholesaler or a retailer. You may need more than one sales permit if you have more than one location.

What if you only make occasional sales? If you make more than two sales of tangible personal property for substantial amounts during any twelve month period, you must hold a seller's permit. Also, if you make a substantial number of sales for small amounts, you must hold a permit. If you make sales during a temporary period, like selling costumes for Halloween, you must apply for a temporary seller's permit.

What is the difference between sales tax and use tax? If your business is located in California, your sales are subject to sales tax. If your business is located outside of California, sales of products delivered inside California are subject to use tax. The customer is responsible for payment of use tax, but the seller is responsible for collecting it and paying it to the Board of Equalization if it has any location in California or has a representative in the state, even temporarily. In that case, the seller must register with the Board of Equalization and obtain a Certificate of Registration – Use Tax Account.

What if you sell without a permit? A penalty of 50% of the taxes due may be imposed for the period which you engaged in business in California without a permit, but only if the tax liability during that period averaged over $1,000 per month. In addition, there is a 10% penalty for failure to file a return.

If you have any questions about registering with the California State Board of Equalization, please contact our office at (408) 441-7500.

Success Story

Structure Law Group, LLP represented a minority partner of a real estate holding company in a partnership dispute. When the relationship between the partners deteriorated over time, the minority partner's handling of the company's affairs, while acceptable although imperfect in the past, was scrutinized and challenged. SLG's client was then accused of mismanagement of the company's assets and related financial improprieties. SLG vigorously defended its client and was successful in resolving the dispute and getting a full and complete release of the asserted claims—all without the client having to make any payment in exchange.

Using Family Limited Partnerships To Transfer Your Real Estate or Business

At some point, every small business owner must decide whether to continue the business, close it down, sell it to a third party, or transfer it to the next generation. Real estate investors also need to decide if they will hold the property for life, or sell it or transfer it before death. If the goal is to transfer the business or property to one or more adult children, a family limited partnership ("FLP") is a mechanism to effectuate the transfer and save on gift taxes. However, FLPs (and family LLCs) are closely scrutinized by the IRS.

"….a family limited partnership is a mechanism to effectuate the transfer and save on gift taxes."

How does it work? First, the assets are transferred to a partnership under state law, usually tax free. In exchange for transferring the assets to the FLP, the parent receives a small (1%-2%) general partner interest, and a large (98%-99%) limited partner interest. The parent then transfers just the limited partner interest to the children or their trusts. Thanks to valuation discounts for lack of control and lack of marketability, the taxable value of that transfer is a fraction of the full value of the underlying assets being transferred. For example, Dad transfers property valued at $1 million to an FLP, retains a 1% general partner interest and transfers 20% limited partner interests to each of his four children. For gift tax purposes, we obtain a valuation showing that the 80% limited partner interests are worth not $800,000 (80% of the $1 million asset), but as little as $480,000 to $640,000, resulting in Dad's ability to transfer much more to the next generation while limiting gift taxes.

The children must have an immediate economic benefit and a legitimate capital interest in the partnership, and the assets must be actually removed from the parent's estate, otherwise the IRS can disregard the transfer for gift and estate tax purposes. So, if Dad still needs all of the income from the property, this does not work. But if Dad is ready to give away some property and does not need the income from that property, this is a useful method of transferring assets out of his estate and letting them appreciate in his children's hands. FLPs are also an excellent opportunity for parents to teach their children about the property being transferred, while maintaining control over it as the general partner.

Tax Corner

- <u>Single Member LLCs and Payroll Taxes</u>

Partnerships and corporations that are the single member of an LLC will have to get tax identification numbers for their LLCs and use those new numbers for payroll deposits for the LLC. In the past the LLC could use the owner's number. If you need a new tax ID number, contact SLG and we can get one for you the same day.

- <u>Independent Contractor or Employee?</u>

A new form makes it easier for workers to tattle on their employers if they think they were incorrectly classified as independent contractors rather than employees. Workers will file Form 8919 with their 2007 tax returns to give the IRS information about the employer, and avoid self-employment taxes for themselves. The Kiplinger Tax Letter Vol. 82, No. 24 (November 30, 2007).

- <u>Some New Numbers</u>

Mileage - The standard mileage rate for business driving is 50.5¢ for 2008, up 2¢ from last year. Parking and tolls are still deductible, but fuel and repairs are not, and you cannot use this allowance if you have depreciated or expensed the vehicle. The Kiplinger Tax Letter Vol. 82, No. 24 (November 30, 2007).

Social Security - The Social Security Wage Base is $102,000 for 2008, up $4,500 from last year. The Kiplinger Tax Letter Vol. 82, No. 21 (October 19, 2007).

- <u>New E-Filing Requirements for Nonprofits</u>

Starting this year, exempt groups with gross receipts of $25,000 or less must e-mail basic data to the IRS including mailing addresses, tax ID numbers, and information on at least one principal officer. Failure to e-file three years in a row will cost a nonprofit its exempt status. Churches and private foundations are exempt from this requirement. The Kiplinger Tax Letter Vol. 82, No. 25 (December 14, 2007).

The Latest News At SLG STRUCTURE LAW GROUP, LLP

Open House

On November 15, 2007, Structure Law Group hosted an Open House to give our clients and community members an opportunity to visit our new office. The Open House was a great success and included a ribbon cutting hosted by the San Jose Silicon Valley Chamber of Commerce. Many representatives from the Chamber attended the event including Pat Dando, the Chamber President and CEO. Sam Liccardo, our local council member, also came out to welcome us to our new office. We were fortunate to have the opportunity to visit with many of our clients outside of normal day to day business activities. We would like to thank all of those who were able to attend.

Ribbon cutting ceremony courtesy of the San Jose Silicon Valley Chamber of Commerce

Tamara Pow, Esq. and Council Member Sam Liccardo from District 3 in the City of San Jose

SLG Representatives—Esther Brumleve and Cathy Wong

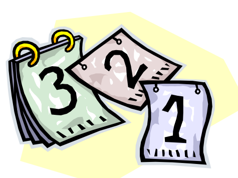
Real Estate

- <u>Plan to move into your rental house and then sell it for tax free gain? Be forewarned!</u>

Starting in 2008, pending legislation may make some gain on the sale of your personal residence ineligible for the primary residence gain exclusion of $250,000 (or $500,000 for a married couple) if the house is sold within 5 years of becoming your main residence. The profit may be taxable based on the percentage of time the house was used as a second home or was rented out. The Kiplinger Tax Letter Vol. 82, No. 20 (October 5, 2007).

- <u>Tax-free Exchanges of Second Homes under Scrutiny</u>

Only business or investment real estate qualifies for tax deferral under a Section 1031 exchange. The IRS will scrutinize these exchanges more carefully, looking for abusive situations where taxpayers take only minimal steps to convert the homes into rental properties. The Kiplinger Tax Letter Vol. 82, No. 20 (October 5, 2007).



Reminders And Other Items Of Note

- <u>LLC Fee Reminder</u>

For 2007 forward, the California LLC fee will be based on income derived from California, rather than worldwide income. However, there is still uncertainty with regards to portfolio or investment activity, managers in multiple states, or business being conducted in multiple states.

- <u>Dissolution of Entities for 2007</u>

If you missed dissolving an entity before the end of 2007, it is not too late to dissolve the entity and avoid paying 2008 franchise taxes as long as the entity did not conduct any business in 2008. Please contact us at (408) 441-7500 if you need any assistance dissolving an entity.

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Dates To Remember

February 2	Groundhog Day—will he see his shadow?
February 3	Super Bowl Sunday
February 14	Valentine's Day
February 18	Presidents Day—courts and government offices closed
March 17	St. Patrick's Day
March 21	Good Friday—some courts and government offices closed
March 23	Easter Sunday

Did You Know? Some Super Bowl Fun Facts

- New Orleans has hosted the Super Bowl the most, totaling 9 times.
- Minnesota, Buffalo and Denver have each lost the Super Bowl 4 times, the most by any team.
- Buffalo lost the Super Bowl four times in a row.
- The US consumes 8 million pounds of guacamole on Super Bowl Sunday.
- The US consumes 14,500 tons of chips on Super Bowl Sunday.
- 6% of Americans will call in sick the day after the Super Bowl.

We appreciate your referrals!

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