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DEDUCTING THE BUSINESS USE OF YOUR HOME

The federal income tax deduction for the business use of a home has a good dollars-and-cents upside for those who qualify. Some detailed questions have to be answered correctly to get to that point, however. Not surprisingly, the IRS publication on the subject makes use of a complex flowchart filled with "yes or no" questions to guide taxpayers to a determination of eligibility for the deduction.

Qualifying for the Deduction

To pass the threshold for use of the home business deduction, a taxpayer must satisfy the following two basic sets of requirements. The first set concerns the nature of the business activities, while the second set relates more to the place itself.

First, the use of the business part of the home must be exclusive (with exceptions to be discussed below), regular, and for the business. Second, the business part of the home must be one of the following: the principal place of business—the place where the taxpayer meets or deals with patients, clients, or customers in the normal course of business—or a separate, detached structure used for business.

The exclusive use factor means that the area is used *only* for business, not for a mixture of business and personal uses. However, the exclusive use requirement need not be met when a part of the home is used for storage of inventory or product samples, or for a day-care facility. When the IRS says that the use of the home must be for a trade or business, it does not mean any activity that makes money for the taxpayer. If you use a computer in your den for day-trading of stocks or online gambling, do not count on taking the deduction. As for what constitutes a "regular" use for business, that essentially means business conducted on a continuing basis, not

occasionally. Even if a taxpayer has a place in the home used exclusively for business, the deduction is not available if the business activity is only sporadic.

As for the requirements relating to the place itself, the area in the home used for business is a "principal place of business" if it is used exclusively and regularly for the administrative or management activities of the business, and there is no other fixed location where substantial activities of that kind are carried out. If some business is transacted at more than one location, determining whether the home location is the principal place of business requires consideration of the relative importance of the activities at each location. If that does not provide an answer, the time spent at each site should be considered. Remember that the deduction is available if either the home is the place for meeting with patients, clients, or customers, or a separate structure on the premises is dedicated for business.

If the taxpayer is an employee using part of a home for business, the deduction is available if all of the requirements described above are met, plus two additional tests. The business use must be for the convenience of the employer (not just appropriate or helpful), and the employee may not rent all or part of the home to the employer while using the rented portion to perform services as an employee.

What Is Deductible?

Deductible expenses for a business use of the home include items such as the business portion of real estate taxes, deductible mortgage interest, rent, casualty losses, utilities, insurance, depreciation, painting, and repairs. This is not likely to be an all-or-nothing proposition, though. Generally, an expense is fully deductible if it is direct, that is, incurred only for the business part of the home. An indirect expense, incurred for running the home as a whole, is deductible based on the percentage of the home used for business. Any reasonable method for determining that percentage is acceptable, such as dividing the square feet used for business by the total square feet, or dividing the number of rooms devoted to business by the total number of rooms. If an expense is unrelated to the business part of the home, it is not deductible at all.

If the taxpayer's gross income from the business use of the home is lower than the total business expenses, the deduction for certain expenses will be limited. But those expenses that cannot be deducted because of such a limitation can be carried forward for the next year's home business expenses.

THE DANGERS OF EMPLOYEE INTERNET USE

By some accounts, a large majority of employees access the Internet on company computers for personal reasons while at work. The obvious adverse effects of this on productivity are only the tip of the iceberg with regard to the potential headaches that such activities can cause for employers. Personal Internet activity by employees can pose security risks to the company's computer network itself, such as by exposing a network to a computer virus.

Less immediate but just as serious is the threat of legal liability of the employer to injured third parties. Some scenarios are not difficult to imagine. An employee uses his computer as a tool for sexually harassing fellow workers by visiting pornographic websites. Or, an employee

embroiled in a bitter domestic dispute uses his office computer to communicate threats to his spouse, and the employer fails to take action.

In a recent case, one such nightmare scenario was all too real for an employer that had to defend itself against the alleged victims of an employee who used a workplace computer for conduct that was criminal, not just indicative of poor judgment. This case may be the first reported decision on the matter of an employer's liability to a third party for having failed to take action to stop an employee from using a company computer in a manner that harmed the third party. It most certainly will not be the last such case.

The case involved an employee who used his company's computer at work to visit pornographic sites, including some relating to child pornography. Over a period of time, a supervisor and some coemployees became aware of this activity and complained to management. Eventually, the offending employee was confronted and was told to stop such use of the computer, but, a few months later, he was again discovered to have accessed pornographic sites.

Eventually, the employee was arrested on child pornography charges, including allegations that he had transmitted nude pictures of his 10-year-old stepdaughter over his office computer to a child pornography site. The employee's wife, who divorced him, sued the employer for failing to investigate and for failing to report the employee's viewing of child pornography. The case was settled, but not until a precedent was set when the lawsuit survived attempts to have it dismissed before trial.

There are limits to what companies can or should do to prevent improper use of company computers, but it is only prudent to take at least some basic measures. It makes sense to have a written e-mail and Internet use policy that clearly informs employees of what, perhaps, they should already know—that the employer has and reserves the right to monitor employees' use of the company's computers and to discipline violators. In addition, there needs to be even-handed enforcement of the policy. Even the best written policy will do little to convince a jury, if it comes to that, that a company has done all it reasonably could have done, if the evidence is that the policy was toothless or rarely enforced.

INADEQUATE NOTICE OF TAX SALE

Gary bought a house that he and his wife lived in for 26 years. When the couple separated, Gary moved out, but he continued to pay the mortgage for another four years until it was paid off in full. The loan was gone, but not the property taxes--they went unpaid when the mortgage company that had previously been paying them was out of the picture.

The state attempted to notify Gary of the delinquency and of his right to redeem the property. It mailed a certified letter to him at the address of the subject property. Since nobody was home to sign for the letter, it was returned to the state marked "unclaimed." Two years later, and only weeks before the property was sold to pay the taxes, the state published a newspaper notice of public sale of the property. A buyer came forward, and the state sent Gary another certified letter stating that his house would be sold if the taxes were not paid. It, too, was returned unclaimed to the state. Only when the new owner served a notice on Gary's daughter at the house did Gary finally learn about the tax sale, but it was after the fact.

Gary sued the state, arguing that the state had sold his property for taxes without first affording him procedural due process, and the United States Supreme Court agreed with him. The Court did not lay down an ironclad rule on what procedures are to be followed in all cases. It did say that, upon the return of a notice as undeliverable, the government must take additional, reasonable steps to attempt to provide notice before it takes the drastic step of extinguishing someone's interest in his or her property.

While the extent of what is required will vary with the particular circumstances, the Court's comments indicate that it hardly expects the government to put a detective on the case of a "missing" property owner. Open-ended requirements, such as searching a telephone book or other government records, are not required of the government. But it is not too much to ask the government to do, in the Court's words, "a bit more." There were some follow-up options that the state should have explored and used. They include such simple measures as sending a notice by regular mail, for which no signature is required, posting the notice on the front door, or addressing the otherwise undeliverable mail to "occupant." Presumably, even a nonowner occupant would alert the owner of such a notice.

The Court drew an analogy to a state official handing notices meant for delinquent taxpayers to a mail carrier, then watching as they were accidentally dropped down a storm drain. One would expect new notices to be prepared and sent again. Just as it would be unreasonable for the official under those circumstances simply to shrug his shoulders and say "I tried," the state in Gary's case owed him more than inaction when the notices meant for him were returned "unclaimed."

NONOWNER CAN BE LIABLE UNDER FHA

Among the kinds of conduct prohibited by the federal Fair Housing Act is the making of any statement with respect to the sale or rental of a dwelling that indicates a preference, limitation, or discrimination based on race, religion, sex, handicap, familial status, or national origin. The most common violators of this law are the actual owners of dwellings or individuals acting as agents for owners. A federal appellate court, however, reinstated a lawsuit brought by the United States against an individual who had spoken neither as an owner nor as an agent for an owner.

The defendant worked as a housing information vendor, compiling information from classifieds and providing assistance to prospective tenants looking for rooms to rent. In the episode that got the attention of the authorities, a deaf man used a relay services operator to call the defendant for assistance. The defendant flatly told the caller that he did not provide assistance to disabled people. When the caller persisted, the defendant responded with profanity and hung up. Similar inquiries from "testers" were met with essentially the same response. In fact, the jury heard "a virtual tsunami of evidence" that the defendant routinely treated disabled people differently from those not disabled, often using profanity to underscore the point.

The court rejected the reasoning that applying the prohibition on discriminatory statements only to owners or their agents would be in keeping with the purposes of the statute. On the contrary, the statute was meant to protect against the "psychic injury" done by

discriminatory statements made in connection with the broader housing market, not just statements that directly affect a housing transaction. The limitation argued for by the defendant is not in the statute itself, which broadly refers to "any" discriminatory statement.

As for a First Amendment argument put forward by the defendant, it may be available for some forms of speech, such as a private individual's vocal opposition to having children living on his block. The defendant's speech, however, was commercial in nature, giving it less protection from government regulation.

QUALIFIED PERSONAL RESIDENCE TRUST

Federal estate tax law provides a method by which families can reduce the tax consequences of transferring the family home to the younger generation. The device for accomplishing this is called a qualified personal residence trust (QPRT).

An individual may create a QPRT by transferring his or her residence to a trust (usually for the benefit of family members), while retaining for a particular period of time the right to live in the residence for free. The tax laws treat the transaction as a gift of the remainder interest in the trust, rather than as an outright gift of the residence itself. There is a tax on that gift, but there is no later tax on the value of the whole residence at the time of the grantor's death, as there otherwise could be but for the use of the QPRT. As a rule, the more that a home can be expected to appreciate over the term of a trust, the more beneficial is the use of a QPRT.

A QPRT results in tax savings only if the grantor outlives the period of the retained interest. Even if the grantor does not survive the period established for the trust, the worst that could happen is that the full value of the residence would be taxed. The result is the same as if there had been no QPRT in the first place.

The QPRT has two generally recognized drawbacks. While the grantor, usually a father or mother of a family, can continue to occupy the residence after the period of retained interest has run, he or she must pay rent to avoid inclusion of the residence in his or her estate. Some individuals may not like the prospect of being their children's rent-paying tenants. Second, the QPRT does not provide a "step-up" in the cost basis of the residence as there normally would be if a residence is inherited. If a QPRT is used, the gain on the sale of the residence is measured against the price that the grantor paid for the property originally, rather than against the value of the residence at the time of the grantor's death. The result could be higher income tax liability when the residence is sold.

As with most estate planning issues, the advice and guidance of a qualified professional is recommended before establishing a QPRT.

FINANCIAL PLANNING FOR A DISASTER

When a natural or man-made disaster strikes, be it a hurricane affecting an entire region or a gas leak affecting one house, it is only natural and appropriate to think first of the very basics of life: safety, shelter, food, and water. But it also makes sense, in the quiet of normal daily

living, to make plans for money matters in the immediate aftermath of a disaster. As the saying goes, the best time to fix a leaky roof is on a sunny day. If you have only minutes to leave your home, advance planning for keeping your head above water financially can pay big dividends.

Here are a few pointers:

- Keep the following items in a place that is easily available to you in an emergency, but not so apparent as to invite theft: forms of identification, such as driver's licenses, insurance cards, Social Security cards, passports, and birth certificates; enough checks and deposit slips to last a month, or at least a checking account number; ATM cards, debit cards, and credit cards; telephone numbers and account numbers for providers of financial services; the key to your safe-deposit box; and some cash.
- Make copies of your most important documents, ideally on disks, and keep the copies well outside of your home area.
- Use a safe-deposit box for items that you are not likely to need in a hurry, such as birth certificates and originals of contracts. Other items can go in a sturdy safe at home.
- In the same waterproof, portable "evacuation bag" in which you can keep medications, first-aid kits, flashlights, and so forth, keep some of the up-to-date financial papers mentioned above. But secure it well, lest you inadvertently provide a treasure trove of your financial information to a thief.
- Choose automated services over dependency on writing and mailing checks and trips to your bank. You can weather a storm financially more easily with direct deposit, automatic bill payments, and Internet banking services.

STEER CLEAR OF BIG RIGS

With more and more tractor-trailer trucks on the roadways, it is prudent to be extra cautious when you encounter a big rig.

Remember that a large truck has a large blind spot. If you are driving in the truck's blind spot, the truck driver cannot see you. Either stay behind the truck or else pass it quickly.

Do not follow a big rig too closely. Large trucks block your view of hazards further down the highway, and a tired trucker might not brake soon enough to give you the warning you need to avoid a collision.

If in doubt, give the truck a wide berth. A car almost always loses in a collision with a large truck. The best way to avoid such accidents is to avoid the trucks.