

TAX AND BUSINESS *Alert*™

July 2011

Congress continues to discuss tax reform and whether taxes and spending should be raised or lowered. One of the topics being bantered about is whether long-term capital gain rates should be increased. Although it is difficult to say where tax rates will go in the future, we have a pretty good idea of where they will be until the end of 2012, when the current lower rates are set to expire.

The present preferential tax treatment of long-term capital gains is creating a significant planning opportunity. Clearly, for taxpayers in higher ordinary income tax brackets, shifting to investments that generate long-term capital gains rather than ordinary income should reduce taxes.


To qualify for the preferential long-term capital gain rates, the taxpayer must hold the asset for more than 12 months. The holding period generally begins the day after an asset is purchased and runs through (and includes) the date of sale. These rules must be followed exactly, because missing the required holding period by even one day prevents the taxpayer from using the preferential rates. However, the downside of holding assets (e.g., stocks) for a longer term is the risk that the price or value

Current Favorable Long-term Capital Gain Rates

will fall and money will be lost on that investment.

Note that it is important to consider owning assets that generate capital gains outside of qualified (e.g., pension or profit-sharing) plans or IRAs. Distributions from those retirement accounts are almost always ordinary income, so the benefit of the lower long-term capital gain rates may be wasted.

Generally, your ordinary income assets should be held inside the qualified plan or IRA, and capital gain assets should be held directly in taxable accounts. However, a careful analysis of your investment policy is necessary to determine how to allocate investments between your qualified accounts and taxable accounts.

Please contact us to discuss how to qualify for long-term capital gain treatment. 



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Tax Calendar

July 15—If the monthly deposit rule applies, employers must deposit the tax for payments in June for social security, Medicare, withheld income tax, and nonpayroll withholding.

August 1—If you have employees, a federal unemployment tax (FUTA) deposit is due if the FUTA liability through June exceeds \$500.


—The second quarter Form 941 (Employer's Quarterly Federal Tax Return) is also due today. (If your tax liability is less than \$2,500, you can pay it in full with a timely filed return.) If you deposited the tax for the quarter in full and on time, you have until August 10 to file the return.

August 15—If the monthly deposit rule applies, employers must deposit the tax for payments in July for social security, Medicare, withheld income tax, and nonpayroll withholding.

September 15—Third quarter estimated tax payments are due for individuals, trusts, and calendar-year corporations.

—If a five-month extension was obtained, partnerships should file their 2010 Form 1065 by this date.

—If a six-month extension was obtained, calendar-year corporations should file their 2010 income tax returns by this date.

—If the monthly deposit rule applies, employers must deposit the tax for payments in August for social security, Medicare, withheld income tax, and nonpayroll withholding. 

Rollovers from Qualified Plans to IRAs

Deciding whether it is advantageous to roll over a qualified retirement plan account [e.g., 401(k) account] to an IRA depends on the taxpayer's specific circumstances. However, there are some general advantages:

1. Postmortem Tax-deferral Opportunities.

Beneficiary designations as of the date of the owner's death control the availability of various postmortem tax-deferral opportunities. Therefore, it is important to set up these designations to maximize those opportunities. Greater flexibility generally is afforded in beneficiary designations for IRAs and in stretching out the tax-deferral period.


2. **Investment Choices.** Although some qualified plans offer self-directed accounts,

many restrict the available investment choices. However, most IRA providers offer their entire investment portfolio for the participant to choose from.

3. **Availability of Taking Withdrawals.** While most qualified plans restrict the availability of withdrawals, IRA withdrawals are available at any time and in any amount.

4. **Investment Advice.** While in recent years the availability of investment advice offered to qualified plan participants has expanded, IRAs generally will offer greater availability. However, the cost of that advice should be compared to the services that are being provided.

5. **Control over Funds.** When funds are maintained in a qualified plan, the employer has the right to amend discretionary provisions in the plan, including the right to terminate it. This is not the case with an IRA.

Please contact us if you have questions about qualified plan rollovers or the tax aspects of retirement saving. 



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Businesses that hire employees are responsible for payroll taxes, employee benefits, and the related administration and compliance tasks arising when wages are paid to employees. Businesses generally do not have these responsibilities for independent contractors; they need only file a Form 1099-MISC for the payments they make to the contractor.

For some businesses, the reduction in human resource paperwork and compliance administration is sufficient motivation to have work performed by independent contractors. If potential payroll tax and employee benefit savings are also factored into the equation, it is easy to see why many businesses prefer to hire independent contractors for specialized tasks and jobs of relatively short duration.

In today's economy, companies are looking for ways to reduce the cost of doing business. Understandably, the opportunity to cut total labor costs substantially often proves irresistible. Classifying a worker as an independent contractor can simply be too good to pass up. However, the IRS is concerned that some employers are classifying true employees as independent contractors merely to avoid payroll taxes. As the IRS continues its relentless assault on worker classification, it becomes increasingly important that businesses take precautionary steps to ensure compliance with all IRS requirements in order to avoid a costly reclassification of workers from independent contractor status to employee status.

Independent contractor status generally is available if the business meets the following requirements:


1. Files all information returns (i.e., Form 1099-MISC) for the workers or classes of workers at issue.

2. Has not and will not treat the workers at issue (or classes of workers in substantially similar job positions) as employees on income tax returns, payroll tax returns, or other returns filed by the business.

3. Has a reasonable basis for treating the workers as independent contractors. The law provides certain safe harbors to meet this requirement, or the business can rely on some other reasonable basis.

These requirements must be met each year. If the company fails to file Form 1099-MISC on a worker, it loses the independent contractor status for that worker for that year. More importantly, if the business fails to treat the workers (and workers in substantially similar job positions) as independent contractors during a particular year, it loses independent contractor status for the year of violation and subsequent years for the entire class. Thereafter, the company cannot obtain independent contractor status for that class of workers.

Changes in the business work environment, job positions, or the treatment of workers within particular classes may dramatically impact the business's eligibility to classify workers as independent contractors.

Please contact us to discuss worker classification or any tax planning or compliance issues. 



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Attaining Independent Contractor Status

Compiling and Retaining Important Records

As your personal, financial, and legal records grow in volume and importance over the years, the task of organizing such documents may seem overwhelming. Yet,



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the importance of having your vital records readily accessible cannot be overemphasized. In the event of your untimely incapacitation or death, your loved ones

will need many of these documents to ensure that your wishes are carried out. You certainly don't want them to be burdened with locating numerous documents and records during such an emotionally difficult time.

By organizing your important records, you can express your wishes, such as how you want your property to be distributed, your intentions for life-sustaining measures, and any special preferences for your funeral and burial arrangements. By completing the necessary information manually or on your computer and filing your documents in one convenient location, your family or heirs will be able to easily locate them. This helps ensure that your wishes are known and minimizes the risk of family disputes. This information will also help

expedite the settlement of your estate upon your death.

Organizing your essential records can also help you understand your financial picture, plan for the future, and communicate those plans to the appropriate individual(s). Once you have completed this project, you will have peace of mind knowing that your affairs are in order. You may wish to tackle this project all at once or a little at a time, but once you've set a goal to compile and organize your important records, you should follow through with its completion.

Although there are a number of different ways to organize your important records (for example, a notebook or CD, or paper or electronic files), we encourage you to develop a system that works for you. If you save information on your computer, be sure to let your trusted loved ones know the login information and password.

Your completed organizer should contain detailed information about your estate and wealth transfer goals and intentions. Oftentimes, we find that some of the details of estate plans (e.g., durable powers of attorney, health care directives, beneficiary designations, etc.) need to be updated or require further attention.

If you have questions as you gather your documents and information, please do not hesitate to contact us.

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