Tax Short Shorts

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I. Be Careful of Social Media

The dangers of social media cannot be exaggerated. Recently, two tax items give warnings to users of social media.

1. **(a) Obtaining Advice on Social Media:** Taxpayers often decide to be their own tax advisors by "going on line" and researching an issue. More often, taxpayers get bad advice, make bad conclusions, and ruin what may be a good case. Taxpayers who would not think of going to Home Depot and replacing their roof somehow feel confident that they can identify the issues, make critical decisions, and reach intelligent conclusions when it comes to tax matters. The IRS recently warned taxpayers that the internet is lurking with fraud and bad advice. Taxpayers who rely in good faith on bad advice usually receive tax delinquencies, tax penalties, and interest.

(b) Be Careful What You Disclose on Social Media: Everyone has read about postings on social media that boomerang and injure the unsuspecting person. People who post on social media learn the hard way years after they post ill-considered statements. Recently, a taxpayer regretted her postings in a U.S. Tax Court case. The case concerned a Taxpayer seeking "innocent spouse" status. Frequently, a married couple files a joint return. A joint return makes both spouses liable for any tax deficiencies, tax penalties, and interest. A spouse can avoid joint liability if the spouse can claim that he/she is not responsible for items included (or not included) in the tax return because he/she is an "innocent spouse." In the current case, the tax years at issue were 2012-2014. The Taxpayer created a personal blog between November 2016-January 2022. The posts included information about the Taxpayer's relationship with her husband for the years at issue, her assets, lifestyle, and other personal information. These posts were not helpful to the Taxpayer's assertion of being an "innocent spouse." The Taxpayer, who was representing herself in the case, later retained a lawyer to represent her. The Taxpayer through her attorney attempted to exclude the posts from evidence in the case. The IRS discovered the posts after the Taxpayer filed her case in the United States Tax Court. Ultimately, the Tax Court permitted the introduction of the blogs after the Tax Court case was filed. This case should be a warning not to post any sensitive, adverse, unhelpful information on the internet. Is it now apparent that the IRS researches social media when gaining information about a taxpayer.

II. Recent Tax Scams

Each year the IRS publishes its list of "Dirty Dozen Tax Scams." Sometimes, scams make the list several years in a row. One interesting tax filing that has made the list as both a legitimate opportunity and a tax scam is the Employee Retention Credit ("ERC"). The IRS website provides guidance for Taxpayers to determine if they qualify for the ERC, and it also contains a warning of aggressively marketed ERC schemems. This is no doubt due to the expansive advertising by advisors. The IRS warns taxpayers on its website:

Employers should be wary of ERC advertisements that advise them to "apply" for money by claiming the ERC when they may not qualify. Anyone who improperly claims the credit has to pay it back and may owe penalties and interest. The only way to claim the ERC is on a federal employment tax return.

The ads are all over radio, TV and social media. You may even get ads that look like official government letters, or texts, emails and phone calls advertising ERC eligibility.

These promoters may lie about eligibility requirements. In addition, those using these companies could be at risk of someone using the credit as a ploy to steal the taxpayer's identity or take a cut of the taxpayer's improperly claimed credit.

The IRS also notified taxpayers that it has begun to audit ERC claims. If a taxpayer has received an ERC payment, a disallowance under audit will require the taxpayer to pay back the erroneous amount, plus penalties and interest. The best advice to employers is to file for the ERC if you think you qualify. However, first obtain the assistance and advice of a quality firm that will be there and assist you in an audit.

III. The Right Way to Send Documents to the IRS

Taxpayers frequently send documents to the IRS. Never send anything to the IRS by regular mail. When you send a document by regular mail you have no proof of mailing. While the IRS accepts mailings by *private delivery services*, FED EX, UPS, and DHL, the author does not recommend using private delivery services. The author always uses Registered or Certified Mail from the U.S. Post Office, and always obtain a receipt from the Post Office as proof of mailing. The Internal Revenue Code specifically provides that the sending by Registered or Certified Mail constitutes that the document is considered delivered to the IRS where it is addressed, and the date of registration or certification is deemed the postmark date. A Taxpayer who sends documents not by Registered or Certified mail, should not rely on extrinsic evidence to prove that the document was sent.

IV. If the IRS Contacts You

If you are contacted by the IRS, or contacted by someone who purports to be the IRS, never give them any personal information, and never discuss your tax filings with them. Specifically:

2. (a) If the IRS contacts you by an unsolicited phone call, it is always a scam.
3. (b) If the IRS contacts you by email, it is always a scam.
4. (c) If persons purporting to be IRS agents call upon your house, ask them politely for their business cards and tell them that you will have your representative contact them. Do not engage them in any way.

Recently, *The Wall Street Journal*, in an editorial, told the story of a Taxpayer who was visited by a person who called himself "Bill Haus." Mr. Haus informed that Taxpayer that he was investigating an estate for which the Taxpayer was a fiduciary. Only later did Mr. Haus reveal to the Taxpayer that Bill Haus was a fictitious name, that he visited the taxpayer for an entirely different purpose, and other troubling facts arose. In the words of *The Wall Street Journal*,

"If true, this is something else. An agent of the Treasury, wielding the power of tax enforcement, shows up unannounced at a taxpayer's home. He lies about his identity and his purpose

to get inside, then threatens the taxpayer with punishment if she doesn't pay a tax bill that she doesn't owe. The IRS agent leaves only after an intervention by her lawyer, and when local police call the agent he sics the Treasury Department on the officer."

Just remember, if the IRS contacts you, always have your professional representative contact them. Do not call them, even if you receive a letter that asks you to call. Never deal with the IRS directly.