



MARTIN WERBELOW LP
CERTIFIED PUBLIC ACCOUNTANTS
300 NORTH LAKE AVENUE, SUITE 930
PASADENA, CALIFORNIA 91101
TEL: (626) 577-1440 FAX: (626) 577-1082

Planning Alert September 2007

Do you really need a Living Trust? – Many of us have heard about or have been asked about “Living Trusts” by attorneys, insurance agents, or CPA’s. Most frequently, Living Trusts are associated with the estate planning process and many people readily dive head first into them because “everyone else has one.” However, before setting one up, it is important to understand what it is and if it can be beneficial to you and your family. A “Living Trust” is a revocable trust arrangement where the creator of the trust retains the right to revoke the trust and reclaim ownership of trust property during his or her life. If the right to revoke is not exercised, the trust becomes irrevocable upon the creator’s death and the trust instrument controls the disposition of the trust property. Some of the reasons cited for establishing a living trust are (1) avoiding probate and the related costs, (2) asset administration and management, (3) multistate administration, and (4) privacy. Probate can be a costly process and in many states where executor and trustee fees are statutory, the costs can add up. However, this can be less costly when the executor is a family member at reduced fees or attorney costs are based on hourly rates. The probate savings factor also becomes less beneficial if the living trust is not fully funded, leaving assets in the probate estate. There can be many benefits to having a living trust, but there are also some pitfalls to avoid. These include (1) failing to fully fund the trust, (2) costs outweighing the benefits based on number of assets and time and effort of changing title, and (3) property that’s less appropriate for trust ownership (such as S corporation stock and rental real estate generating a loss). From the tax reporting side, all assets placed in the living trust are included in your estate at death, so there is no estate tax savings with a living trust, however the potential savings comes in the administration of the estate when you do pass. A living trust is a grantor trust so during your lifetime, income and deductions from assets in the trust are reported on your individual return. Finally, and probably most important, is selecting a successor trustee. This is the person you choose to be responsible for managing and investing the trust assets as well as making distributions at either your incapacity or death. This can be a trusted family member or a professional advisor, but is certainly something to be considered carefully. Should you have any questions on this or have decided to set up your own living trust, we would be happy to assist you in deciphering this process.

Some Hybrid Motor Vehicle Credits coming to an end – In a News Release issued by the IRS in August 2007, the IRS reminds taxpayers that Toyota and Lexus models reached the 60,000 unit sale threshold in mid-2006 and as a result the phase-out credit period began with the quarter ended October 1, 2006. Qualified Toyota and Lexus vehicles eligible for the credit include the Toyota Prius (2005, 2006, and 2007), Toyota Highlander 2WD and 4WD (2006 and 2007), Toyota Camry Hybrid (2007), Lexus RX 400h 2WD and 4WD (2006 and 2007), and Lexus GS450h (2007). For purchases of the qualified Toyota and Lexus vehicles through March 31, 2007, taxpayers may claim 50% of the credit amount ranging from \$775 for the Lexus GS450h to \$1,575 for the Toyota Prius. Taxpayers that purchase qualified vehicles from April 1 to September 30, 2007, the credit is 25% of the original amount. For purchases subsequent to September 30, 2007, no credit is available as the phase-out period is complete. Additional information is available on the Newsroom page of the IRS website at www.irs.gov. If you have purchased one of the above Toyota or Lexus hybrid vehicles during 2007 and want to know how much credit you may be entitled to, give us a call – we’re glad to help!

Form 1099's – To File Magnetic Media or Not? – Most of our clients that have year-end Form 1099 information return filing requirements file those forms by paper, but periodically we get the question of when is it required to file those forms on magnetic media or even *what is magnetic media?* Magnetic media is an alternative form (tape cartridges or electronic files) of filing large numbers of information returns with the IRS and is required if a company files 250 or more information returns annually. The 250-or-more requirement applies to each type of information form such as 1099-MISC, 1099-INT, and 1099-DIV and if the threshold is going to be met, a taxpayer must file an application with the IRS to file the returns magnetically/ electronically at least 30 days before the due date of the returns. If a taxpayer meets the magnetic media filing requirements but the process of magnetic filing would create an undue hardship, a request for waiver can be made by submitting Form 8508 with the IRS at least 45 days prior to the due date of the returns. An example of *undue hardship* would be added cost of filing which could include service bureau costs, software costs, and internal staff costs. If a waiver is approved, it applies for the current tax year only. Once the magnetic media application is submitted and approved by the IRS, there are several ways to file magnetically/electronically. A number of sophisticated accounting programs may have the ability to generate the information in an acceptable electronic format. In addition to this, there are service bureau companies that can provide magnetic filing for a fee. Magnetic media filing can be a burdensome process to get going and although it might seem easier to do everything by paper, the IRS has ways of encouraging taxpayers to comply. If a taxpayer is required to file on magnetic media but fails to do so, the IRS can impose a penalty of \$50 per return in excess of 250 which can become very costly depending on how many information returns are filed annually. This is just a brief overview of magnetic media filing but if you have any questions, please let us know.

Deductibility of “Away from Home” Lodging Expenses – For a business, ordinary and necessary expenses incurred while traveling away from home for business are deductible business expenses. Conversely, non-away-from-home lodging expenses are personal and hence, nondeductible expenses. Recently, the IRS has provided a narrow exception to this rule where non-away-from-home lodging expenses can be deductible. According to IRS Notice 2007-47, an employer will be allowed to deduct non-away-from-home lodging expenses provided to an employee if (1) the lodging is temporary, (2) the lodging is necessary for the employee to participate in or be available for a bona fide business meeting or employer function, and (3) the expenses are otherwise deductible by the employee, or would be deductible if paid by the employee as an ordinary and necessary business expense. If all three of these requirements are met, then the lodging will be deductible. If not, then the original provisions apply and the lodging is not deductible. Payment by the employer of these lodging expenses are also excluded from the employee's income as a working condition fringe benefit. This change is the apparent result of recurring issues the IRS has been encountering and resolving in audits and they had decided to provide additional authority to allow this type of deduction going forward.