RRBB ACCOUNTANTS + ADVISORS


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## RRBB Announcement

### New Team Members

We at RRBB would like to announce the hiring of two very experienced and seasoned professionals who will add significantly to our services. Carole Baron CPA/ABV comes to us with more than 25 years experience in public accounting, including some time at Deloitte in their tax and audit departments. She has an extensive background in many disciplines, and we expect she will offer much help to our litigation and valuation practice, as well as working with our tax and audit teams. Carole certainly complements our performance in these three practice areas, and as a holder of the Accredited in Business Valuation designation, she will be a great asset. We also want to welcome Tatyana Blecic CPA, CGMA to the RRBB team. With her vast experience and expertise in Hedge Funds, Broker–Dealers and Private Equity companies, Tatyana will be a great help working with our FINOP practice unit. She has extensive experience working within the financial services industry, most recently with American International Group (AIG) and Eisner LLP's Financial Services group. She holds the Chartered Global Management Accounting designation, and she speaks Russian. We are very excited to have Tatyana as a part of our FINOP, Hedge Fund and B/D practice.

Please join me in welcoming our two new team members to RRBB Accountants and Advisors.

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## IRS Issues New Taxpayer Bill of Rights

### Document summarizes existing principles

Following the format of the Bill of Rights, the first ten amendments to the U.S. Constitution, the IRS has published a new "Taxpayer Bill of Rights." The document—also called Publication 1 (Your Rights as a Taxpayer)—incorporates several tax law provisions and summarizes taxpayer rights as follows:

1. The Right to Be Informed. Taxpayers have the right to know what they need to do to comply with the tax laws. They are entitled to clear explanations of the laws and IRS procedures in all tax forms, instructions, publications, notices and correspondence. Taxpayers have the right to be informed of IRS decisions about their tax accounts and to receive clear explanations of the outcomes.

2. The Right to Quality Service. Taxpayers have the right to receive prompt, courteous and professional assistance in their dealings with the IRS, to be spoken to in a manner they can easily understand, to receive clear and easily understandable communications from the IRS, and to speak to a supervisor about inadequate service.

3. The Right to Pay No More Than the Correct Amount of Tax. Taxpayers have the right to pay only the amount of

tax legally due, including interest and penalties, and to have the IRS apply all tax payments properly.

4. The Right to Challenge the IRS's Position and Be Heard. Taxpayers have the right to raise objections and provide additional documentation in response to formal IRS actions or proposed actions, to expect that the IRS will consider their timely objections and documentation promptly and fairly, and to receive a response if the IRS does not agree with their position.

5. The Right to Appeal an IRS Decision in an Independent Forum. Taxpayers are entitled to a fair and impartial administrative appeal of most IRS decisions, including many penalties, and have the right to receive a written response regarding the Office of Appeals' decision. They generally have the right to take their cases to court.

6. The Right to Finality. Taxpayers have the right to know the maximum amount of time they have to challenge the IRS's position, as well as the maximum amount of time the IRS has to audit a particular tax year or collect a tax debt. They have the right to know when the IRS has finished an audit.

7. The Right to Privacy. Taxpayers have the right to expect that any IRS inquiry, examination or enforcement action will comply with the law, and be no more intrusive than necessary, and will respect all due process rights, including search and seizure protections, and will provide, where applicable, a collection due process hearing.

8. The Right to Confidentiality. Taxpayers have the right to expect that any information they provide to the IRS will not be disclosed unless authorized by the taxpayer or by law. They have the right to expect that appropriate action will be taken against employees, return preparers, and others who wrongfully use or disclose taxpayer return information.

9. The Right to Representation. Taxpayers have the right to retain an authorized representative to represent them in their dealings with the IRS. Taxpayers have the right to seek assistance from a Low Income Taxpayer Clinic if they cannot afford representation.

10. The Right to a Fair and Just Tax System. Taxpayers have the right to expect the tax system to consider facts and circumstances that might affect their underlying liabilities, ability to pay or ability to provide information in a timely manner. They have the right to receive assistance from the Taxpayer Advocate Service if they experience financial difficulty or if the IRS has not resolved their tax issues through its normal channels.

*The IRS has posted the Taxpayer Bill of Rights on its Web site. It will also include a printed version in correspondence it mails to taxpayers.*

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## How to Avoid a Last-Quarter Tax Trap

Maximize depreciation deductions for business

Under the "midyear convention," business assets placed in service during the year are treated as being placed in service on July 1 for depreciation deduction purposes. Thus, you may be able to claim the equivalent of a half-year's worth of depreciation—besides any Section 179 deduction (see below)—even if you use the equipment for only a few days in December.

However, there is a hidden tax trap if you overdo this at year-end. In effect, your annual depreciation deduction may be drastically reduced. Astute tax planning can avoid this pitfall.

Details: A special rule applies if the cost of business assets placed in service during the last quarter of 2014 exceeds 40% of the cost of all assets placed in service during the year (not counting real estate). In that case, your depreciation deductions for all assets placed in service during the year are figured under the midquarter convention.

Thus, the depreciation deduction for equipment is based on the equivalent of one-half the quarterly period the property is placed in service (plus a full amount for any subsequent quarters). For instance, a company that places equipment in service during the last three months of the year—either October, November or December—is entitled to 1½ months' worth of depreciation. But equipment purchased earlier in the year—January, February or March—may be entitled to 10½ months' worth of depreciation (1½ months for the first quarter and nine months for the next three quarters).

Example: XYZ Co. buys a new machine on October 1 costing $10,000. Using the table for seven-year property, the first-year depreciation deduction is normally $1,429 under the half-year convention.

However, the machine is the only equipment XYZ places in service during the year. Since more than 40% of the cost of equipment is placed in service during the last quarter, XYZ must use the midquarter rule. Result: The depreciation deduction is reduced to $357.

Depending on your situation, it may be tax-wise to purchase equipment earlier than usual and make sure it is placed in service before the last quarter of the year. Just a few days before October can make a big tax difference.

*This discussion is absent the application of any Section 179 deduction. At this writing, Section 179 can provide a maximum first-year write-off of only $25,000 for qualified property placed in service in 2014. We will keep you posted on any new developments in this area.*

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## Hot Topic: Family Medical Leaves

Q's and A's on the workplace law

Earlier this year, an incident involving a major-league baseball player taking time off from "the job" after the birth of his son triggered a national debate. Absent collective bargaining agreements, like the one in place for major-league baseball, this issue remains a lightning rod for controversy.

The major controlling federal law in this area is the Family and Medical Leave Act (FMLA). Under the FMLA, an eligible employee is entitled to take up to 12 workweeks of unpaid leave to care for a newborn child or a qualified relative with a serious health condition. Here are the answers to some common questions on this topic.

Q. Does the FMLA apply to every business?

A. No. It does, however, apply to all public agencies—including state, local and federal employers, and local education agencies—as well as private employers who currently employ 50 or more employees for at least 20 workweeks or did so in the preceding calendar year. This includes joint employers and successors of covered employers.

Q. Is every employee eligible for coverage?

A. No. To be eligible for the FMLA, an employee must work for a covered employer and:

- Have worked for that employer for at least 12 months;
- Have worked at least 1,250 hours during the 12 months prior to the start of the FMLA leave; and
- Work at a location where at least 50 employees are employed at the location or within 75 miles of the location.

Q. When does coverage apply?

A. The employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave in a 12-month period for one or more of the following reasons:

- Birth of a son or daughter and to care for the newborn child;
- Placement with the employee of a child for adoption or foster care and to care for the newly placed child;
- To care for an immediate family member (spouse, child or parent, but not a parent "in-law") with a serious health condition; and
- If the employee is unable to work because of a serious health condition.

A leave to care for a newborn child or for a newly placed child must end within 12 months after the birth or placement. Other special rules may apply to spouses employed by the same company.

Q. Can employees take leave intermittently or work a reduced schedule?

A. Yes, under certain circumstances. An intermittent or reduced schedule is allowed when it is medically necessary to care for a seriously ill family member or because of the employee's own serious health condition. Also, such a leave may be taken to care for a newborn or newly placed adopted or foster care child, but only with the employer's approval.

*Of course, this is only a general overview of the rules. For a determination of the rights and responsibilities under the FMLA in any given situation, employers and employees alike should obtain professional assistance.*

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## Tax Pitfalls Facing Real Estate Investors

Beware of special tax law limits

For years, the passive activity loss (PAL) rules have plagued real estate investors who prefer to sit on the sidelines. But now, another tax wrinkle, the 3.8% Medicare surtax, may force you to re-examine your ways.

Background: Generally, losses from passive activities can only offset income earned from other passive activities. For this purpose, a passive activity is any undertaking that involves the conduct of a trade or business in which you do not materially participate. This requires participation in the business activity on a regular, continuous and substantial basis. The IRS has issued regulations detailing the requirements for attaining this status. As an example, you are considered to be a material participant if you work more than 500 hours a year at the activity.

A rental real estate activity is automatically treated as a passive activity. However, under a special tax law provision, an "active participant" in rental real estate may be able to use up to $25,000 of loss to offset nonpassive income. This exception is phased out for investors with an annual adjusted gross income (AGI) between $100,000 and $150,000. The tax benefit disappears completely if your AGI reaches $150,000.

Note that the active participation test is more stringent than the material participation test. The participation must be in a significant and bona fide sense. For instance, you might make management decisions, approve new tenants, arrange for repairs and so on. But simply listing yourself as a real estate manager or rental agent is not enough.

Now comes yet another tax consideration for real estate investors. Effective for 2013 and thereafter, the 3.8% Medicare surtax applies to the lesser of net investment income (NII) or the amount by which your modified adjusted gross income (MAGI) exceeds $200,000 for single filers and a MAGI of $250,000 for joint filers. The definition of NII covers many income items such as capital gains, dividends, interest and the like. Significantly, NII also includes income from a passive activity. But there are several key exceptions, such as income from an active trade or business, as well as distributions from qualified retirement plans and IRAs (although these generally will increase your MAGI in the calculation).

Therefore, it can make an even bigger tax difference if you are characterized as a passive investor in real estate as opposed to an active investor.

One possible way to avoid an adverse tax outcome is to increase your level of participation to qualify as a real estate professional. Typically, to satisfy this test, you have to spend more than 750 hours on the activity during the year. Depending on your personal circumstances, it may be well worth the extra effort, when appropriate.

*Analyze your situation with the assistance of your tax advisers. They can help you chart a course of action.*

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## Facts and Figures

Timely points of particular interest

Rollover Ruling—Earlier this year, the Tax Court ruled that the once-a-year limit on IRA rollovers applied to all traditional IRAs owned by the taxpayer, instead of applying this rule to each separate IRA. The ruling was controversial because it contradicted the IRS's own interpretation in Publication 590 (Individual Retirement Arrangements). Initially, the IRS was expected to enforce the Tax Court position immediately, but it is postponing implementation until 2015.

Hiring from Within—A national survey of 400 business leaders by the nonprofit College for America (CFA) indicates that 71% prefer to develop skills of current employees to move them up the ladder rather than hire external candidates. CFA also discovered that external hires are often paid 18% to 20% more than an internal candidate would be paid for performing the same job. Of course, building skills to fit the job is critical to this approach.

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## Here's a Tax Tip on Gratuities

A little-noticed change for restaurants and other personal-service establishments could have a big tax impact this year.

Beginning in 2014, automatic gratuities charged for large parties generally are treated as "service charges," triggering new payroll obligations. As a result, employers are required to withhold income tax on the payments.

Check with your tax advisers concerning all the implications under federal and state laws.

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