



To: Clients & Friends Of Pro@ctive CPA
From: Mark Wyssbrod, CPA – Managing Member
Date: July 1, 2009
Re: July Pro@ctive Update

Happy 4th of July

We wish our clients a safe and happy 4th of July!

Economic Update

Our July 2008 update advised our clients to review their bank accounts and the FDIC rules and protection within a few months the banking system froze. This July we take a fresh look on the economy and see multiple challenges.

Spring has definitely thawed winter's frozen grip and perhaps it has even thawed out some of the frozen parts in our economy. Attitudes appear to be more positive now than a few months ago and the news outlets are using this to try to make us feel a little better by using headlines like the market is up 30%+ from its lows. Reality is a little harsher and the old saying of jumping out of the frying pan into the fire comes to mind. Currently, the economy is in the jumping part, we feel better than when we were in the frying pan, but we are not aware of where we will land quite yet. Other headlines read the recession will most likely be over in the third or fourth quarter of 2009. Although we agree with this forecast, we believe the recovery will not be exciting, but a boring recovery. The forecasted GDP growth is 1-2% by most economists. With financial institutions (as well as the consumer and small businesses) having to deleverage from a ratio of 40 to 1 to 20 to 1 or less the recovery will be shaky and continued challenges persist.

The solution is to take advantage of any recovery by rebuilding your financial position, with an emphasis on the balance sheet. Use this time wisely to build liquidity (by building cash reserves and reducing short-term debt), pay down long-term debt and begin building equity. This focus can work for small businesses and individuals. Please contact us if you would like for us to personalize a plan for your business.

New Article Written By Mark Wyssbrod, CPA

Preparing For Back-to-Back Recessions

http://ezinearticles.com/?expert=Mark_Wyssbrod

S-corporation Basis Update

S-corporations are becoming targets by the IRS regarding basis issues. In recent tax updates, including "Economic Outlay Revisited" By Greg Porcaro and Hughlene Burton in the Tax Adviser May 2009, s-corporation shareholders are more liberal in creating basis than the IRS guidelines. The liberalization by the taxpayer is increasingly leading



the IRS to target and win positions in audits and tax court cases. This is leaving the s-corporation shareholder with increased tax, penalties and interest.

S-corporation can create basis by making capital contributions or loaning the s-corporation monies. When loaning the s-corporation monies the loan must come from the shareholder. Guarantees of loans clearly do not count as an increase in basis per IRS guidance and tax court rulings.

When a shareholder loans the corporation monies be certain to execute a note (including a fair market value interest rate), include and security for the substituted loan, make payments to the shareholder on a regular basis. For example, if a shareholder takes an equity loan from their residence and then uses the proceeds to loan the monies to the corporation, the corporation should not make the monthly payments to the financial institution. Instead the company should pay the shareholder directly and then the shareholder should pay the financial institution.

Ten important factors to consider (per the aforementioned article) when structuring loans include:

1. In order for there to be an economic outlay, the shareholder must experience a risk of an actual decrease in wealth
2. The taxpayer must originally structure the transaction as a loan and must properly document the transaction
3. The loan must be bona fide debt
4. Use of an unrelated party is preferable
5. Transaction should not be circular
6. Taxpayers cannot apply the substance-over-form doctrine to support their position
7. A shareholder should keep detailed contemporaneous records to support direct loans to the s corporation
8. In order for personally guaranteed debt to constitute basis, the shareholder must personally make payments on the loan
9. In a multi-part transaction, not all the parts of the transaction should be consummated on the same day
10. The at-risk rules of Code Sec 465 should be considered

As you can determine, the rules can get complex. Please contact us should you have any questions and/or concerns.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.