Signature WEALTH & TAX

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Tax-Saving Tips

BOI Reporting Deadline Is Closing In

The clock continues to tick. Here are the upcoming deadlines for filing your Business Ownership Information (BOI) reports with the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

Deadlines

If your business existed as of January 1, 2024, you must file your BOI report by January 1, 2025.

If you created your business in 2024, you have 90 days from the date of filing with your state's Secretary of State to submit your BOI report.

Entities Required to File

All limited liability companies (LLCs) and corporations must file. For example, if you own multiple LLCs, each requires a separate BOI report.

Penalties for Non-compliance

Failure to file on time can result in significant penalties, including fines of $591 per day, a potential $10,000 criminal penalty, and up to two years in prison.

Recent Updates from FinCEN

Companies that ceased to exist before January 1, 2024, are not required to file a BOI report if they completed the dissolution process before that date.

Companies created or still existing on or after January 1, 2024, must file a BOI report, even if they ceased operations before their filing deadline.

Special Considerations for Disregarded Entities

Disregarded entities, for U.S. tax purposes, must also file a BOI report using a valid taxpayer identification number (TIN), such as an EIN, SSN, or ITIN.

Employee Retention Credit (ERC) Update

Here's a recent update on the Employee Retention Credit (ERC) and the new IRS payback scheme.

New IRS ERC Payback Program

The IRS introduced a second ERC Voluntary Disclosure Program for 2021 claims. Under this program, you can say, "I didn't deserve the ERC, so I'll repay 85 percent of my claimed ERC and retain 15 percent tax-free."
The program is available only for ERC claims from 2021, and there are specific eligibility requirements. If you claimed the ERC using a third-party payer, the third party must apply on your behalf.

Eligibility Criteria for Payback

You must not be under criminal investigation or an IRS employment tax examination for 2021 returns. The IRS must not have notified you of ERC recapture or received third-party information about your non-compliance.

Steps to Participate

You need to complete IRS Form 15434 and upload it online by November 22, 2024.

After submitting the form, you will receive a closing agreement, which you must sign and return within 10 days.

No Appeals

If the IRS denies your request to participate in the payback program, you have no opportunity for judicial review or administrative appeal.

Legislative Changes Pending

H.R. 7024, currently pending in the Senate, could introduce stricter penalties for ERC promoters and extend the statute of limitations for examining ERC claims to six years.

IRS ERC Processing

The IRS is currently processing a backlog of 1.4 million ERC claims. While some payments have begun, and some have been denied, many claims are still under review. It's likely your wait for your ERC refund will continue.

The Department of Labor Makes It Harder to Hire Independent Contractors

Does your business classify workers as independent contractors instead of employees? You should know that the U.S. Department of Labor is trying to make it harder for all businesses to use independent contractors.

The Department of Labor enforces the Fair Labor Standards Act (FLSA), the federal law that requires most employers to pay employees a minimum wage and non-exempt employees time-and-a-half for overtime.

The key word here is "employee." FLSA does not apply to independent contractors. They need not be paid time-and-a-half for overtime or even the minimum wage.

The question is—who is an independent contractor? Initially, it's up to each business to decide how to classify workers. However, your decision is subject to review by the Department of Labor, other government agencies such as the IRS, and your state unemployment and workers' compensation agencies.

Bad things can happen if the government decides you've misclassified an employee as an independent contractor. The Department of Labor can make you pay back overtime pay for two years (three years if the misclassification is intentional). Your workers can also bring lawsuits for violations.

For FLSA purposes, workers are employees if, *as a matter of economic reality*, they are *economically dependent* on the hiring firm. The Department of Labor's new test contains six factors hiring firms must consider:

1. Opportunity for profit or loss
2. Investment in facilities and equipment
3. Permanency of the relationship
4. Degree of control by the hiring firm
5. Integration into the employer's business
6. Skill and initiative required

This test is complex and hard to apply. No one factor is determinative. Rather, you must examine all the circumstances of the relationship.

To make worker classification even more challenging, the Department of Labor test is only one of many. The IRS, for example, uses a more business-friendly right-of-control test. Many states use an even stricter ABC test for workers' compensation, unemployment, and state wage and hour law purposes.

A worker can qualify as an independent contractor under the IRS test but be an employee under the Department of Labor and state ABC tests.
Does this all sound like a mess? It is.
If you use independent contractors, you should review your relationship in light of the new Department of Labor test.

If your company uses many independent contractors, it should always have them sign an independent contractor agreement with a clause waiving the right to bring or join any class action suit against the company, including suing for workers' misclassification. The clause can avoid ruinously expensive class action lawsuits brought by plaintiff's lawyers.

The Supreme Court Likely Shook Up Your Buy-Sell Agreement

A recent U.S. Supreme Court decision could significantly impact your buy-sell agreement if it involves life insurance to redeem shares upon your death.

Impact on Estate Tax

The Supreme Court's ruling in the *Connelly* case established that life insurance proceeds used by a company to redeem a deceased owner's shares increase the company's value for estate tax purposes. This could result in a higher estate tax liability than anticipated.

Review Your Buy-Sell Agreement

If your buy-sell agreement uses company-owned life insurance for share redemption, reviewing the structure and terms with your estate planning advisor is crucial. The *Connelly* decision may require changes to ensure the agreement aligns with your estate planning goals.

Consider Alternative Arrangements

One potential alternative is a cross-purchase agreement, where each owner buys insurance on the others. This structure avoids increasing the company's value with life insurance proceeds and might better align with your estate planning needs.

Time-Sensitive Considerations

Keep in mind that the current federal estate tax exemption is set to decrease after December 31, 2025. This reduction could further impact your estate planning if your buy-sell agreement is not properly adjusted.

Tax Deductions for Dues and Expenses of Being a Mason or a Lion

Based on IRS regulations, club dues are generally not deductible if the organization's principal purpose is to conduct entertainment activities for its members.

However, there are exceptions for civic and public service organizations, such as the Lions, Rotary, Kiwanis, and Civitan clubs, which the IRS recognizes as not being primarily for entertainment. The situation is less clear for clubs like the Masons or Shriners because the IRS did not name them in its regulations.

The key determinant for deductibility is whether the organization's principal purpose aligns with civic and public service rather than entertainment. If a member, such as a Mason or a Shriner, can reasonably state that their involvement primarily serves a civic purpose, similar to that of the Lions or Rotary clubs, then the dues may be considered deductible.

It is also important to ensure that any dues claimed as deductions meet the "ordinary and necessary business purpose" criteria set forth by the IRS. For example, membership in these organizations could provide business networking opportunities or enhance your stature in the community, which could qualify as an ordinary and necessary business expense.

Tax Planning to Winter in Florida and Summer in Massachusetts

You can plan your tax-deductible business life to avoid cold winters and hot summers.

Spend a moment examining the following four short paragraphs containing the *Andrews* case's basic facts.

For six months of the year, from May through October, Edward Andrews lived in Lynnfield, Massachusetts, where he owned and operated Andrews Gunite Co., Inc., a successful pool construction business.

During the other six months, Mr. Andrews lived in Lighthouse Point, Florida, where he owned and operated a sole proprietorship engaged in successful horse racing and breeding operations. In addition, he, his brother, and his son owned a successful Florida-based pool construction corporation from which Mr. Andrews took no salary but where he did assist in its operations.

Instead of renting hotel rooms in Florida, Mr. Andrews purchased a home, claimed 100 percent business use of the Florida home, and depreciated the house and furniture as business expenses on his Schedule C for his horse racing and breeding business.

Mr. Andrews then allocated his other travel expenses and the costs of owning and operating this house in Florida on his individual income tax return as

- personal deductions on his Schedule A for a portion of the mortgage interest and taxes,
- business deductions on his Schedule C for the horse racing and breeding business, and
- employee business expenses on IRS Form 2106 for the pool construction business.

(Tax reform under the Tax Cuts and Jobs Act *eliminates* employee business expense deductions for tax years 2018 through 2025—so Mr. Andrews would change his strategy to obtaining expense reimbursements from the pool business.)

As Mr. Andrews did, you can tax-plan your life to spend your winters in one state and your summers in another.

In this scenario, your tax-deductible home takes the place of hotels. The other home is likely your principal residence located near your tax home.

Your travel expenses between the homes are deductible because you do business in both places. You also deduct your meals and other living costs while at the deductible travel destination.

You can have separate businesses in each state or a branch business in the second state.