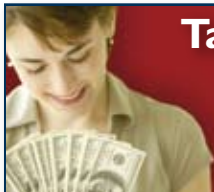


**Even More Time for Even More Returns |**  
**Special Opportunity to be Charitable ..... 2**  
**Congress Cracks Down on Charitable**  
**Contributions ..... 3**  
**Handling Investment Disputes ..... 4**  
**New Microsoft Sheriff..... 5**  
**Selling Your Business at a Maximum Price .. 6**  
**September 2006**

## **Review Outlook**



### **Tax Quiz**

Mr. Samuels is a creature of habit. He parks in the same spot at the shopping center. He eats the same meal every Tuesday night. And, for thirty years, he has dropped a twenty dollar bill in the collection plate at church on Sunday. He carefully records each gift in his home ledger. Are his weekly contributions to the church deductible? *The answer is at the end of this newsletter, but don't look until you have read the articles inside.*

## **Even More Time for Even More Returns**

Recognizing taxpayers were still struggling with many issues related to Hurricane Katrina, the IRS and the Louisiana Department of Revenue have extended the deadline for nonindividual returns and all estimated tax payments to October 16, 2006.

The due dates for 2004 individual income tax returns on extension at August 29, 2005 and for 2005 individual returns had already been extended to October 16th (although any tax owed on 2004 returns was due August 28, 2006). The new extension applies to other returns, as well as the third and fourth quarter 2005 estimated tax payments and the first second, and third quarter 2006 estimated payments. The IRS says it will also waive failure to deposit penalties for affected taxpayers who are unable to make their deposits between August 29, 2005 and October 16, 2006. Finally, the deadline for making various tax elections has been extended.

This extension automatically applies to Cameron, Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles and St. Tammany parishes. It also applies to taxpayers in 24 other parishes if the taxpayers identify themselves as impacted by the hurricane by

writing "Hurricane Katrina" in red across the top of any returns or estimated tax payment vouchers (in black on state of Louisiana returns or vouchers)

***B Recommends: If your 2005 return is not completed by October 16, 2006, you can request an additional six-month extension to file the return. However, any tax paid after October 16th will be subject to interest and penalty. We are fairly confident that the IRS will not extend the original due date for returns and estimates beyond October 16th. Therefore, any unpaid 2005 taxes, as well as your first three 2006 estimated tax payments will be due on that day. Be prepared to pay any tax due by then.***

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## A Special Opportunity to be Charitable

On August 17th, President Bush signed the Pension Protection Act of 2006. One provision in this act will benefit some taxpayers and their charitable interests.

The Act allows qualifying taxpayers to distribute to charity up to \$100,000 from their IRAs in 2006, and again in 2007. The distribution will not be taxable and the contribution is not deductible on Form 1040, Schedule A. The taxpayer does not need to itemize to qualify.

### *Who and what qualifies?*

- The taxpayer must be at least age 70 1/2 on or before the day of the distribution. Thus, this provision only applies to taxpayers already required to take a distribution from their plan.
- The payment must be made directly from the IRA to the charity. Supporting organizations and donor-advised funds are not eligible recipients.
- The taxpayer must get the required acknowledgement from the charity and neither the taxpayer nor the IRA can receive anything of value in return.
- The IRA can not be a simplified employee plan (SEP) or a Simple IRA.
- The distribution to the charity can only be from funds that would have been taxable to the taxpayer if distributed directly to him or her.

The distribution, even though tax free, counts towards the taxpayer's required minimum distribution.

*Example: Cynthia, age 72, has over \$1,250,000 in her IRA. She doesn't need the money and only takes out the required minimum distribution each year. However, she also knows that any funds left in the IRA will be subject to estate tax at her death and to income tax when her beneficiaries start withdrawing funds. She has felt trapped by these tight rules. Thanks to the new pension act, Cynthia can transfer \$100,000 from her IRA to her favorite charity(ies) in 2006 and again in 2007. She could also, if she wished, reduce her charitable bequests in her will by the \$200,000 and thus leave more to her children in a manner that is more tax-friendly than the IRA would have been.*

## Volunteers in Our Community

**George J. Panzeca**, Director, has been elected President of the Board of Directors of Broadway, Inc., a non-profit organization that operates the K-Bar-B Youth Ranch. The Ranch is a private residential treatment facility for children who are in the custody of the State of Louisiana due to the horrific environments of abuse and/or neglect in their own homes.

### New Staff Members

**Colleen Angerdina** has joined our tax staff; **Bonnie Mickal** has joined our Litigation and Business Consulting department. The Audit Department welcomed **Brooks Branham** and **Jennifer LeCoq**.

## Congress Cracks Down on Charitable Contributions

The 2006 Pension Protection Act includes some provisions tightening charitable contribution deductions. We'll be discussing these provisions over the next few issues. In this issue, we will discuss two of these changes.

According to the IRS, taxpayers claimed deductions of more than \$9 billion for donations of clothing and household items in 2003. The 2006 Act provides that no deduction will be allowed for donations of such items unless they are in "good used condition" or better. In addition, the IRS can deny, by regulation, the deduction of small items such as used socks and undergarments. Household items include furniture, furnishings, electronics, appliances, linens and other similar items. They do not include food, paintings, antiques, jewelry, gems and collections.

A taxpayer can deduct the contribution of a household item or an item of clothing not in good used condition or better if the amount claimed for the deduction is more than \$500 and the taxpayer includes a qualified appraisal with his or her return.

***3*** ***Recommends:*** *Congress has instructed the IRS, in consultation with affected charities, to "exercise assiduously" its authority to deny deductions for donations of some items of low value to charity and to ensure that donated clothing and household items are of meaningful use to the*

*charity. Even though this provision came into effect for contributions made after August 17, 2006, we don't know what "good used condition" means. Suffice it to say that, at least for now, you need not only to make a complete list of any used items donated to charity, you also need to mark each item's condition.*



In another provision, the Act provides that, in the case of a charitable contribution deduction of money, regardless of the amount, the donor must maintain as a record of the contribution (i) a bank record or (ii) a written communication from the donee showing the name of the donee organiza-

tion, the date of the contribution, and the amount of the contribution. The recordkeeping requirements may not be satisfied by maintaining other written records. For individuals, this provision is effective for contributions made in 2007.

### ***eBulletin***

*As a complimentary service to our clients and friends, Bourgeois Bennett provides individual and business tax information throughout the year via short email alerts. If you would like to receive our eBulletin, simply email Ted Stacey, Director of Tax Services at [teds@bb-cpa.com](mailto:teds@bb-cpa.com) and insert "eBulletin" in the subject line. You will be added to the list. We do not share our lists.*

## Handling Investment Disputes

By Philip Monteleone, CPA, Manager – Litigation and Forensic Accounting Services

Investors should know about the neutral process of National Association of Securities Dealers (NASD) arbitration before attempting to handle any investments dispute. Today, nearly all brokerage houses require that as a condition of opening or maintaining an account, you agree to use arbitration to resolve disputes with your broker, rather than litigate. Most securities brokers require this procedure because it is a relatively prompt and moderately inexpensive means of resolving complicated issues, especially when contrasted with litigation before a court.



Check your agreement with your brokerage firm to see if an arbitration clause exists. Assuming you are bound to arbitrate your dispute, the next step is filing a claim with NASD.

How does one get started with filing for securities arbitration (without an attorney)? Here are some of the challenging steps.

- File a Statement of Claim with the NASD Director of Arbitration. This will be a typewritten or printed document that sets forth the details of the dispute including all relevant dates and names, in a clear, concise and chronological fashion. Conclude by indicating what relief you are requesting. Attach copies of documents and supporting materials as exhibits to the Statement of Claim and provide sufficient copies for each party, the arbitrators and the NASD.
- Pay the required arbitration fees as a deposit. Some or all may be refundable if you prevail. State where you want the case to be heard and the reasons for that choice. The actual decision as to the location of the hearing is made by the Director of Arbitration. Typically, a panel of three arbitrators first participates in teleconference hearings, and then may attend a final hearing in New Orleans or other major city. Consideration is given to the convenience of the parties, the availability of necessary records or witnesses and the availability of qualified arbitrators. Generally, the hearing location is near where the customer resided when the dispute arose.
- Complete a Submission Agreement confirming you agree to submit the dispute to arbitration and to abide by the decision (the “award”) of the arbitrators. One warning - you will also agree to be bound by the decision of the arbitrators with regard to any counterclaim (a claim against you) that the broker may bring.

***Recommendation:* Both parties to arbitration must be properly represented, well prepared and informed about the process of NASD arbitration. Saving on attorney fees by handling arbitration on your own could actually become much more costly if you are not completely comfortable and informed about the process. Handling investment disputes is typically not a “do-it-yourself” project and should be handled by professionals well versed in arbitration procedures. If you have questions, please contact Philip Monteleone in our New Orleans office.**

## **A New Microsoft Sheriff** *By Les Nettleton, Director of Information Technology*

When it comes to computers, we've got a new sheriff in town. Its name is Windows Vista and it's the new Windows Operating System due from Microsoft at the end of this year for businesses and early 2007 for home users. Vista will replace Windows XP as the standard operating system loaded on all new personal computer purchases.

Users who wish to upgrade their current computers from XP to Vista should check Microsoft's website to see if their system is Vista capable. Vista needs a minimum of 512 Mb of RAM and 20 Gb of hard disk space (15 Gb must be free space) to run. Home computers older than a year may not meet these requirements. And, unless there is a feature in Vista that you just can't live without, you're better off not upgrading your Operating System. Ask around and no doubt you'll find someone who's had significant problems upgrading to Windows XP. Save yourself the headaches and get Vista when you replace your current computer.

Microsoft has adopted the term "Trustworthy Computing" as a company initiative to address the concerns about the security and reliability of previous versions of Windows. This has been Microsoft's primary stated goal with Vista and the product appears to be able to meet that goal. Vista continues the high level security instituted in Windows 2003 Server, incorporating security into every aspect of the system.

Vista will sport a new graphical user interface which is cleaner and more aesthetically pleasing than previous versions of Windows. The Start Menu has changed, removing the expanding boxes when moving through Programs. Windows Explorer has a new look with more information offered about the

computer's drives and devices. A Favorites pane has been added allowing for single click access to common files and folders. Another new feature is called Windows Sidebar, a new panel on the right-hand side of the screen where a user can place desktop gadgets (small programs designed for a specialized purpose such as displaying the news or weather).

Also shipping with Vista is Internet Explorer 7. A pre-release version of this program can be downloaded from Microsoft's website at [www.microsoft.com/downloads](http://www.microsoft.com/downloads). Vista also contains parental control features, Windows Photo Gallery, Windows DVD Maker and Windows Defender, an anti-spy ware product.

One of the more challenging parts of Vista is understanding the differences between the numerous editions (versions) - Vista Home Basic (Vista's budget edition for users who don't need high level media support), Vista Home Premium (includes high level media support and photo management), Vista Business (comparable to Windows XP), Vista Enterprise (Vista Business enhanced with high level connectivity and networking) and Vista Ultimate (contains all functions of Home Premium and Enterprise). Depending on the edition, prices will range from \$199 to \$399 for a new system. Upgrades will run from \$99 to \$250.

Overall it appears that Vista will quickly become the standard for personal computing. In the next issue, we'll take a look at Office 2007, scheduled to be released about the same time as Vista.



## Selling Your Business at a Maximum Price

*By Ralph A. Litoff, Jr., Director – Business Consulting Services*

Selling your business can be highly emotional and complex; however, through proper planning, it can also be psychologically and financially rewarding. Many contemplated sales stem from the possibility of a merger and/or acquisition. A recent trend involves small business owners selling out to finance their retirement. In fact, CNN Money reports that 35 million baby boomers are expected to retire between 2000 and 2020. Many of those boomers are small business owners contemplating the sale of their business.



The process of selling a business is often misunderstood and many of the most successful and experienced business owners are not well-versed regarding the process of selling a business. Here are common pitfalls associated with the sale of a business:

- Handling the process without professional help - Hiring a business consultant in the process of selling a business may minimize the possibility of selling the business for less than its value. A consultant can perform an accurate and reliable review of financial records. The consultant can also advise on the most tax beneficial means of concluding the transaction. Finally, a consultant can evaluate the financial stability of a potential purchaser through the due diligence process to ensure a smooth transaction.
- Not knowing the business's true market value - Different buyers will have varying perceptions of value. Some will pay far more than others based on various facts and circumstances. The critical starting point of selling a business is the seller being aware of the range of values of their company.
- Failing to prepare the business for sale before it goes on the market - Because it may take as long as two to four years to sell a small business, advance preparation and planning is critical to any successful sale. While a business is certainly not a house, the same attention to appearance prior to sale is absolutely necessary. When preparing a business for sale, be sure all legal and financial matters are current and any information that a prospective purchaser may want to review is up-to-date, accurate and available.
- Not understanding essential tax issues - The structure of a potential sale can dramatically affect the amount of after tax dollars ultimately received by the seller at closing. After-tax dollars in the sale of an entity can vary by 45% to 85% of the sales price based solely upon the structure of the sale. In order to insure that the seller receives the maximum after-tax dollars, it is critical that the tax ramifications of the sale be addressed with your CPA prior to closing.

*continued on page 7*

## Selling Your Business at a Maximum Price *Continued from page 6*

- Provide owner financing - There are a number of lenders that finance buyers wishing to purchase privately owned businesses. Since the objective of many business owners is to be “cashed out”, the amount of owner financing generally provided in connection with the sale of the business should be a small percentage of the sales price. However, there are exceptions to this general rule whereby sales transactions would not occur without a significant portion of the purchase price being owner financed. Such situations must be analyzed on a case-by-case basis.



- Neglecting the business while trying to sell - There may be a psychological tendency to “slow down” and/or to focus solely on the selling process to the detriment of the business. It is critical that a business continue to operate efficiently throughout the sales process. First and foremost, proper attention must be given to the on-going operations of the business.
- Failure to keep plans to sell confidential - Keeping the entire process confidential is essential to a

successful sale. Without confidentiality, there is a risk of losing employees, customers and vendors – all of which could be severely detrimental to the marketability and value of the business.

- Letting emotions rule rationality - Selling a business can be an emotionally wrenching experience. It is critical that the seller separate his emotions from the sales process and that rationality and reasonableness prevail.
- Failure to screen the buyer – Too often, the due diligence process is solely associated with the prospective buyer analyzing the books, records and other factors of the target company. However, an often overlooked, yet critical task is performing due diligence on the buyer. In performing due diligence related to the buyer, consider whether the potential buyer has a sustainable business model; the target company fits into the potential buyer’s business model; the potential buyer has adequate resources to finance the purchase and the compatibility of the target company’s culture with that of the potential buyer.

It is critical to remember that selling a business can be an emotionally charged and exhausting process. It is imperative that rational thinking prevail over emotions. With proper planning and professional advice, the sale of a business can be a financially rewarding and psychologically satisfying process.

***B*** *Recommends: There are many hidden pitfalls in selling a business. If you need assistance with valuing, buying or selling a business, please contact Ralph Litolff in our Metairie office.*



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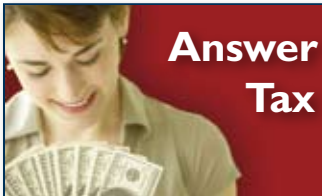
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*Review and Outlook is written by our Director of Tax Services, Ted Stacey, CPA, to give you a brief overview of pertinent  
topics. You should obtain professional advice before making financial or tax decisions.*



### Answer to the Tax Quiz

Beginning in 2007, Mr. Samuels' weekly \$20 contributions will not be deductible, since he will not have a cancelled check or other bank record to support his contribution to the church. The ledger he keeps on his own will not be enough. At a minimum, Mr. Samuels should use the church's envelope system so the church can provide an annual statement to him. He should also start using checks and not cash.

### Quote of the Month Club

*This is one of the most important pieces of legislation to pass Congress this year...It reforms key laws governing non-profit organizations to make sure that money that's deducted for charitable purpose goes to charitable purpose and isn't used as a gimmick to avoid the payment of taxes.*

– Senator Charles Grassley, talking about the signing of the Pension Protection Act of 2006 (obviously, he also mentioned a number of other important provisions of the Act.)