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Dear Clients, Colleagues, and Friends:

Maintain Due Diligence with Extensions, Payments, and Tax Returns.

Our last newsletter reported on the IRS's administrative assault to the Mail Box Rule (MBR).[1] The Service's position is particularly exasperating because it is misplacing or failing to process an unusually high number of documents, and then claiming non-compliance, or asserting additional taxes and penalties are due. A recent tax case, *Skeba,* illustrates how a taxpayer can successfully fight back.

Agnes Skeba's estate was assessed a late filing penalty. The return however was not late and the taxpayer had almost a million-dollar overpayment! What happened? The original due date was March 10, 2014. A few days prior to that the estate paid $725,000 with a six-month extension request.[2] IRS granted the extension. Eight days later the estate mailed in another $2,745,000.

Prior to the extended due date, the estate timely filed its tax return reflecting it overpaid by $941,162. But, the IRS deducted $450,959 from that overpayment. It claimed a 25% late filing fee applies because the second estate tax payment was made after the original 9-month due date. In short, the IRS asserted a "late filing" penalty of $450,959 because $1,803,838 was paid eight days late!

Of course, the valid extension casted doubt on the IRS's late filing argument, and even if correct, *Skeba* argued it was in litigation and that should constitute reasonable cause to remove the penalty. The IRS flippantly responded with a one-liner stating "pending litigation is not reasonable cause." The court did not take kindly to the IRS's curt response, and removed the penalty.

Skeba's victory is partially attributable to it performing proper due diligence, including it: (1) had proof of a valid extension; (2) paid what it could with the extension, (3) informed IRS in advance why it could not pay in full by the original due date, (4) quickly paid in more when it had the liquidity, and (5) had proof of filing prior to the extended due date. Accordingly, *Skeba* demonstrates the value of doing things right to thwart the IRS. We also work our clients' tax filings to yield a better result.

The next two sections include: (a) Rental Real Estate qualifying for the 20% business income deduction (BID), and (b) Leasehold Improvements – a technical correction that never made it.

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[1] MBR states when a taxpayer can prove from facts and circumstances that he or she timely placed a tax document in the U.S. Mails, with sufficient 1st class postage, and mailed to correct IRS address, that it is timely filed.

[2] The estate's lawyer, with the extension, informed the IRS the estate is working on litigation, and is in the process of securing a mortgage to pay the remaining estate tax due.

What Rental Operations Qualify for the 20% BID?

In a new IRS revenue procedure, the Service put forth guidelines for the 250-hour "safe harbor" allowance permitting rental real estate operations to be considered a 'trade or business" for purpose of the 20% BID. If an enterprise is a 'trade or business,' it qualifies for the BID. Rental real estate companies can rely[3] on the revenue procedure if:

(1) It performs and maintains records reflecting at least 250 hours of "rental services." Time spent procuring property, arranging financing, reviewing financial statements for operating reports, improving property, and travel time does not count toward the 250 hours. What counts are the hours spent operating the business of taking care of the day to day, month to month, and annual duties the properties require in order to generate rental income. The 250 hours test is: (a) annual in the first three years of a real estate enterprise and then, (b) becomes a three-out-of-five-year test; and

(2) Separate books and records for 'each property' must be maintained even if properties are combined into a single enterprise. If properties are aggregated, residential and commercial properties must be aggregated separately while mixed-use property may be bifurcated or treated singly.

Tax Depreciation for Leasehold Improvements – Not Good.

The IRS recently announced it will not administratively change tax laws to meet congressional intent. For a brief time prior to 2018, favorable tax laws existed allowing many businesses to depreciate their commercial leasehold improvements costs over 15 years (instead of 39.5 yrs.), or even more quickly with bonus depreciation. The 2017 sweeping tax laws were supposed to extend the favorable write-off period. Congress missed it, and a technical correction subsequently never passed. The result is those commercial leasehold improvement costs are now back to a long write-off period. Particularly harsh because most leases or the improvements thereon do not last that long.

Top 5 Reasons to Hire an Attorney-CPA for your Tax, Legal, Accounting & Estate Planning

1. **Unparalleled Perspective:** Dually-licensed Attorney-CPAs have training in accounting and law allowing them to view your matter from more angles than many professionals.

2. **Uniquely Qualified:** Few professionals achieve dual licensing, setting Attorney-CPA's apart from their peers in both professions due to the continuing education demands of a dual license.

3. **First-Class Education:** An Attorney-CPA especially values education, as such Attorney-CPAs tend to be up to speed on the latest developments in their practices.

4. **Best of Both Worlds:** Two professions in one professional who bridges the gap between your legal and financial requirements.

5. **A Practical Solution:** Save time and money by hiring a single dually-licensed Attorney-CPA who is qualified to handle diverse business responsibilities including taxation, accounting, legal, and estate planning.

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[3] Revenue Procedure 2019-38 is not the sole method a rental real estate enterprise can qualify for the 20% BID, but rather a real estate firm automatically qualifies if it complies with the terms and conditions of the revenue procedure.