focus

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Are you uncertain about Uncertain Tax Positions?

Bad news: IRA rollovers now limited to one per year

Is your company prepared for a disaster?

How an ABLE account can help those with disabilities

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Are you uncertain about Uncertain Tax Positions?

Even if you've never had to worry about reporting Uncertain Tax Positions (UTPs) on your company's tax return, that may change. Starting with the 2014 tax year, corporations that have assets of at least $10 million and meet other filing requirements — such as filing audited financial statements or including UTPs in others' audited statements — must file Schedule UTP (Form 1120), "Uncertain Tax Position Statement." That's a shift, as the UTP reporting rules were limited to companies with assets of at least $50 million for the 2012 and 2013 tax years.

The expanding scope of UTP reporting is significant. According to some tax experts, filing this schedule may increase the chance that your company will be audited.

A little background

Although it may seem counterintuitive, some companies take positions on their tax returns that they're not sure will be upheld. Perhaps the guidance available is ambiguous or it's unclear if the tax regulations apply to the business's specific situation. For example, a company may claim a research tax credit, yet not be completely confident that their rationale for taking the credit will hold up. Indeed, research credits have accounted for the largest percentage of UTPs reported, according to IRS statistics.

Asking corporations to identify their UTPs is intended to cut the time that the IRS requires to review returns. That can help both the agency and taxpayers.

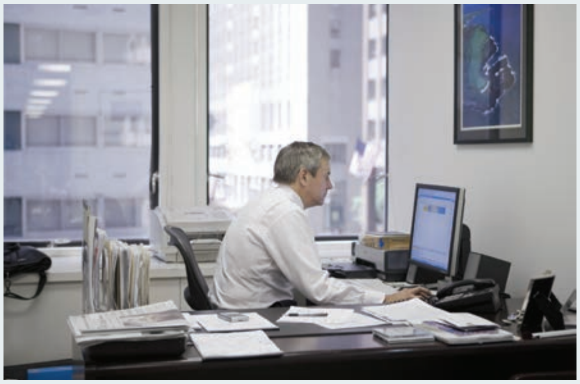
Some definitions can also help in understanding uncertain tax positions. The IRS defines a UTP as a position taken on a tax return for which the corporation or a related party has recorded a reserve in its audited financial statements. A UTP also refers to instances in which a company *hasn't* recorded a reserve for the position because it expects to litigate it. And a "tax position" is a position taken on a return that, if not sustained, would lead to an adjustment either in a line item on the return, or a schedule or form attached to it.

While the IRS began requiring organizations to report UTPs in 2010, the framework was laid

When you don't need a Schedule UTP

No Schedule UTP is needed if the company didn't establish reserves on its financial statements either because the amount would be immaterial, or its tax positions were "sufficiently certain," so no reserves were required. Similarly, companies typically aren't required to report tax positions from prior years if they reported them on previous Schedules UTP. This doesn't apply, however, if a transaction results in the company taking tax positions on multiple returns.

Companies that prefer to avoid the entire issue of uncertain tax positions should consider several options that could help them gain certainty regarding any tax questions. One is a private letter ruling. This is a statement issued by the IRS for a fee in response to a taxpayer's request for clarification. Essentially, the letter interprets and applies tax laws to the taxpayer's situation. It can be used when a taxpayer wants confirmation with the IRS that a prospective transaction won't result in a tax violation.



The Pre-filing Agreements Program offers taxpayers a way to ask the IRS to consider an issue before they file their tax returns. The intent is to resolve potential disputes earlier, rather than later.

in 2006. That's when the Financial Accounting Standards Board issued Financial Interpretation No. 48, *Accounting for Uncertainty in Income Taxes*. Prior to this, businesses had different ways of accounting for uncertain tax positions in their financial reports. That could result in inconsistencies between statements.

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How to address reporting

As of their 2014 returns, corporations must file Form UTP if they meet several criteria — for example, if the corporation files Form 1120 or one of its offshoots; has assets of at least $10 million; issues audited financial statements or is included in others' audited statements; and has one or more tax positions that must be reported. The reporting requirements apply whether the audited statements are prepared based on GAAP, IFRS, other country-specific accounting standards or a modified version of one of these. Form UTP is attached to the company's income tax return.

Businesses must include a "concise description" of their UTPs on Schedule UTP. The IRS has issued guidance as to what it will — and won't — consider a concise description. A statement such as "this is a research credit issue" typically won't cut it. The IRS has provided an example of an acceptable description: "The taxpayer incurred support department costs that were allocated to various research projects based on a methodology the taxpayer considers reasonable. The issue is whether the taxpayer's method of allocating costs is acceptable by the IRS."

Businesses don't need to report the amount of the tax adjustments that could apply if the IRS prevails in any dispute about their positions. However, they *do* need to rank the positions, based on the size of the reserve recorded for it. Companies must identify as "major tax positions" those that account for at least 10% of all the tax positions in their financial statements.

Confused? Work with a pro

The regulations around UTPs are complicated. So, work with your tax advisor. They can provide additional information and guidance.

Bad news: IRA rollovers now limited to one per year

Through the end of 2014, individuals with more than one individual retirement account (IRA) could take a distribution from an account and, so long as the funds were either rolled back into the same account or moved to another IRA within 60 days, they could be fairly confident that the transaction wouldn't be taxed. What's more, they typically could do a distribution-and-rollover from each of their IRAs, with none being taxed.

That's no longer the case. With a few exceptions, the IRS has limited IRA rollovers to one in each 12-month period, across all of an individual's SEP, SIMPLE, traditional and Roth IRA accounts. This new rule went into effect on Jan. 1, 2015.

The tax court weighs in

This shift is a result of a 2014 U.S. Tax Court case, *Bobrow v. Commissioner*. At issue was the petitioners' claim that their IRA distributions were nontaxable because they were repaid within 60 days. The IRS disputed the repayment schedule, as well as the assertion that the once-per-year limit on rollovers should apply to each IRA. In its opinion, which generally sided with the IRS, the court stated, "By its terms, the one-year limitation laid out in Section 408(d)(3)(B) [of the IRS Code] is not specific to any single IRA maintained by an individual but instead applies to all IRAs maintained by a taxpayer."

That's a change in the interpretation of the regulations governing IRA distributions. Until this case, it was commonly held by the IRS that the limit on nontaxable rollovers applied on an IRA-by-IRA basis, and not across an individual's portfolio of IRAs.

The possibility of abuses

The 60-day time frame for rollovers was intended to allow IRA owners time to move funds from one account or financial institution to another without worrying about taxes. However, the law limited the number of times that rollovers could occur in order to curb potential abuses. Absent any restrictions, an individual with numerous IRAs could create an ongoing chain of distributions and rollovers, essentially giving him- or herself tax-free loans.

Some exceptions remain

A few exceptions to the new rule remain. Trustee-to-trustee transfers, in which funds move from custodian to custodian and never are in the possession of the actual IRA owner, aren't limited. Conversions from traditional IRAs to Roth IRAs also remain unlimited. But, rollovers between Roth IRAs *are* limited. Also, typically exempt from the new rule are rollovers between qualified plans, such as 401(k) plans, and IRAs.

In addition, to allow time to adjust to the new rule, the IRS said it would ignore some 2014 distributions. IRA distributions rolled to another or the same IRA in 2014 within 60 days won't prevent 2015 distributions, so long as the 2015 distributions are from IRAs not involved in the 2014 transactions. This rule applies only to 2014 distributions.

However, as of Jan. 1, 2015, any distributions that don't fit into the exceptions allowed, and that follow an IRA-to-IRA rollover made within the preceding 12 months, must be included in the account owners' gross income. Not only that, but the amounts could be subject to a 10% early withdrawal penalty. And if the funds are rolled into another IRA, they could be treated as an "excess contribution" and taxed at 6% annually for as long as they remain in the IRA.

The bottom line

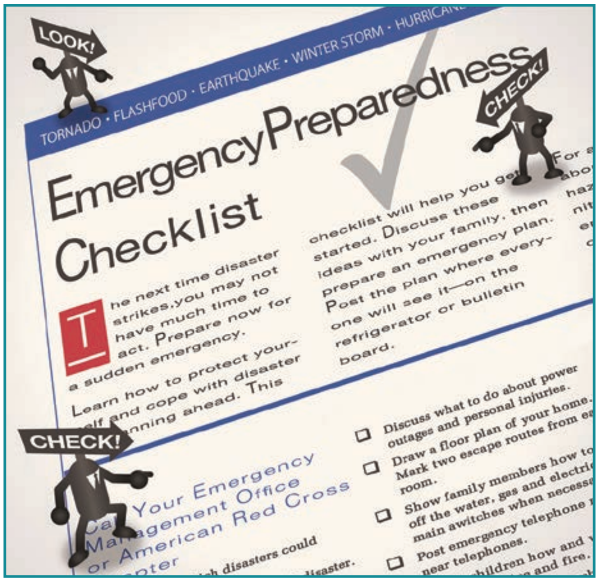
To avoid inadvertently violating the new rollover limits, it makes sense to do trustee-to-trustee transfers, if possible, when moving funds from one IRA account to another. Also, make sure you work with your tax professional. He or she can provide vital information on this new rule. ◈

Is your company prepared for a disaster?

Think of it — in the last year the United States has experienced multiple natural disasters, such as severe droughts in the West, flooding in the Midwest and, of course, those unbelievable snowstorms along the Atlantic coastline, which caused great anguish for business owners due to revenue shortfalls. The question is: Is your business truly prepared for future catastrophes?

Insurance is critical

If you question even in the slightest whether your business needs a disaster plan, ask yourself, "Why do we have insurance?" You buy policies to protect your employees and property from financial losses stemming from occurrences such as fire and job-related injuries. But that allows you to mitigate only part of the risk. Your coverage will presumably help you recover what is physically lost, but it can't bring back the revenue shortfalls caused by a disaster. Fortunately, there is business interruption coverage which reimburses a company for lost profits in the event of a covered loss, such as a fire or flood.



Many tangible assets, such as computers, are replaceable. Yet the cash flow stymied by, and profits lost to, ruined intellectual property, nonexistent sales or undelivered products may be permanent. That's why your disaster plan needs to account for your most precious assets — your employees. They are key to maintaining both your company's goodwill and its productivity during and after a crisis.

So, formulate a plan that, initially, protects them physically and, eventually, ensures their continued compensation. After all, they must care for their families and remain available to work.

Ask yourself ...

Get started by brainstorming as many scenarios as possible that could devastate your business. What could stop your company from operating for a day, a month or a year? What happens if your key supplier shuts down temporarily or permanently, a hacker or technical problem crashes your website or you suddenly lose power? Seek out alternative suppliers as well as your key suppliers. That way, you won't have to "put all your eggs in one basket." Moreover, you should have on retainer a strong IT consulting firm with disaster recovery capabilities.

Don't expect to create a disaster plan and then toss it on a shelf. Keep it fresh by revisiting the plan at least annually, looking for shortcomings.

Another critical factor during and after a crisis is communication. You and your managers will need to concentrate on restoring operations, so appoint and train an employee to speak on your company's behalf.

This person's job will be to keep stakeholders abreast of your recovery progress. These parties include staff members and their families, customers, suppliers, banks, and even community opinion leaders. Train your spokesperson to conduct a multimedia campaign, spreading the word through channels such as your company's voice mail, e-mail, website, newspapers and TV. And, of course, harness the power of a public relations firm and social media to get the word out.

Remember, though, you can't always rely on technology to stay in touch. Yet this sobering fact shouldn't stop you from anticipating crisis scenarios and rehearsing communication efforts.

Keeping it fresh

Whatever you do, don't expect to create a disaster plan and then toss it on a shelf. Keep it fresh by revisiting the plan at least annually, looking for shortcomings. For instance, if you intend to move the company to a backup facility, set up and regularly test that location's capacity to handle the sudden influx of people, supplies and equipment. And don't forget to consider any new threats.

You'll also want to keep your plan fresh in the minds of your employees. Be sure that everyone — including new hires — knows exactly what to do by holding regular meetings on the subject or even conducting an occasional surprise drill. And be prepared to coordinate with fire, police and government officials who might be able to offer assistance during a catastrophe.

Staying safe is the bottom line

As a business owner, you already have a ton of weight on your shoulders. But that shouldn't keep you from ensuring the safety of all your employees, as well as your physical plant. Hopefully, you'll never need to use your disaster plan. However, in case a disaster strikes, having such a plan will help you keep your head clear and become the leader you are.

How an ABLE account can help those with disabilities

Good news! Individuals with disabilities can take advantage of an important new savings tool. The Achieving a Better Life Experience (ABLE) Act of 2014 permits the establishment of what are known as ABLE accounts. These accounts provide a tax-advantaged way to save for qualified expenses and, subject to certain limits, typically won't endanger eligibility for many means-tested federal programs, such as Medicaid. Here is a summary of the provisions from the legislation.

Understanding how the account works

Each state can establish and administer its own ABLE program, or contract with another state to do so. The programs share a number of similarities with the 529 plans already in place in many states. Contributions to ABLE accounts typically must be made in cash. And annual contributions are limited to the gift tax exclusion amount, which is $14,000 in 2015.

Funds in ABLE accounts can grow tax-free, and as long as withdrawals are used for "qualified disability expenses," by eligible beneficiaries, they won't be taxable. Among the qualified expenses identified in the law are education, transportation, assistive technology and personal support services. Withdrawals that aren't used for qualified expenses typically will be taxed and subject to a 10% penalty.

In general, ABLE account balances can reach $100,000 before they'll impact their beneficiaries' eligibility for federal programs. That's a significant jump from current regulations, which limit individuals with disabilities to no more than $2,000 in savings before they risk their eligibility for many federal benefits. (The total allowed in ABLE accounts is the maximum allowed by the state in its 529 accounts, which may be higher than $100,000.)

Keep in mind certain limitations

This tool will be welcome news to many individuals with disabilities and their loved ones. However, it comes with a few limitations. Perhaps the most significant is that ABLE accounts are limited to individuals who incurred blindness or significant mental or physical disabilities. Individuals with disabilities can open accounts after age 26. However, the disability itself must have happened before that age.

Plus, each beneficiary is limited to just one ABLE account. When he or she passes away, any money in the account may be used to repay Medicaid services received from the state.

Before any ABLE accounts can be opened, the states will need to develop their ABLE programs or contract with other states to do so.

A great help for the disabled

Even with these limitations, ABLE accounts promise to be a valuable and critically needed savings tool for individuals with disabilities and their families. Your tax professional can provide more information. ◈