

## **CLIENT NEWSLETTER**

February 2005

### **CALIFORNIA TAX AMNESTY (February 1 – March 31, 2005)**

Beginning February 1, 2005, California will forgive penalties for unpaid income, franchise, sales, or use taxes from before 2003. But to qualify for forgiveness, you must apply for amnesty between February 1 and March 31, 2005. California's amnesty does not apply to payroll or employment taxes, property taxes, or other miscellaneous taxes. But, if you owe any amnesty covered taxes, I can help you through the process of reducing current penalties, protecting your rights, and keeping future penalties to a minimum.

The amnesty will cut your tax bill if you are honest about tax returns you did not file, taxes you did not pay, or income you did not report. If you have a tax liability and you do not apply for amnesty by April 1, 2005 the state will impose large additional penalties – even if you were not aware of the error on your old tax return.

Many people do not realize they owe money to California on old returns or returns they may have forgotten to file. The state has records going back many years; we have heard of a case in which the state went back to 1977. If you want to check with the Franchise Tax Board about unpaid or unfilled income and franchise taxes, for individual returns call (916) 845-0523 and for unpaid or unfiled business returns call (916) 845-7057. If you want to check with the Board of Equalization about unpaid or unfiled sales and use tax returns call (800) 400-7115. If the state shows that you owe money, you should consider amnesty. File an amnesty application before April 1, 2005 and file prior-year or amended returns on or before May 31, 2005.

If you are undergoing a federal or state audit, there are extremely important decisions that must be made right now. Contact me if you have any unresolved federal or state tax problems.

While the amnesty application is reasonably simple, there are complicated aspects that could have consequences if done incorrectly. Please let me know if you want or need to participate in amnesty and we will discuss the pros and cons of amnesty and help you through the process.

### **SECTION 529 QUALIFIED TUITION PLANS**

Setting up an education savings plan for your children or grandchildren can be confusing. There are many options to provide for the future of your loved ones. Tax issues, control and qualifying expenses are just a few things to consider when choosing how you will invest for future education.

I think one of the best plans is the Qualified Tuition Plan, sometimes called a "Section 529 Plan". In addition to providing for a loved one's education, Section 529 Plans can also be

used as an effective estate planning tool and can help reduce current income taxes by giving income producing assets to the Plan.

In brief, a Section 529 Plan is an investment account you set up for a child, a grandchild, or other “designated beneficiary”. You can place up to \$11,000 in the account in any one calendar year, and earnings in the account accumulate tax-free. If you want, you can advance fund future years with a total gift of no more than \$55,000 initially, which covers the current year and four subsequent years. If you advance fund the plan, then you will need to file a Federal Gift Tax Return for the year of the initial contribution. If the funds are eventually used by the beneficiary for qualified education expenses, then the earnings are never taxed.

You retain control and you can change beneficiaries at any time and for any reason (or for no reason at all). You can even make yourself the beneficiary, and so long as you use the funds for qualifying education expenses, the earnings remain tax-free. However, if the funds are not used for an educational purpose, then the income is taxed when withdrawn and there are penalties.

Please call me if you are interested in considering a Section 529 Plan for you and your loved ones.

#### SUMMARY OF ADVANTAGES OF SECTION 529 QUALIFIED TUITION PLANS

- Income and growth are tax-free as long as withdrawals are used for qualified higher education expenses.
- You retain control to distribute the money.
- You can change the beneficiary.
- You can take the money back (and pay taxes and penalties).
- If money remains after the beneficiary graduates, it can be used for graduate school or transferred to another family member.
- Estate planning can include transfers to Section 529 plans.
- Students may attend any accredited school in the nation. School does not have to be named when the account is opened.
- Money can be used for most college expenses including tuition, fees, books, supplies, and room and board.

#### **RE-FINANCING REAL PROPERTY IN YOUR LIVING TRUST**

Lenders frequently require people who have living trusts to remove their property from the Trust before they will complete a new loan secured by that property. Many title companies will prepare Grant Deeds to put the property back into the living trust and record those deeds after the new Deed of Trust to the lender. However, if the property is not placed back into the living trust and the property owner dies, then one of the purposes of the Trust has been defeated, and a probate may be required for that real property.

Therefore, if you have a living trust, it is important that every time you go through this re-financing process, that you place your property back into your living trust. I recommend that you periodically check on how all your real and personal property title is held. One easy way to check for real property is to look at your real property tax bills, and see if you are identified as “Trustee” or “Tr” on the tax bill. If so, then the Assessor’s Office shows the property in a Trust. If you have any questions about this, or need assistance transferring your property back into your trust, please contact my office.

[From the Law Office of David M. Hellman](#)

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