

April 30, 2020

### **Expenses Incurred Before Starting A Business**

are not deductible. The Tax Court confirmed this in a case in which a taxpayer purchased land with maple trees and fields and planned to produce syrup and grow blueberries. But, in the years under audit, he did not get past the preparatory stage. He thinned the maple trees and cleared areas for the blueberry plantings but did not collect the sap from the trees or plant the blueberry bushes. *Primus TC Summary Opinion 2020-2*.

Note that once the business begins, firms can make an election to deduct \$10,000 of the preopening costs and amortize the remaining expenses over 180 months.

### **Distributing Bequests To Beneficiaries Cost Executor**

Clients regularly ask us when they are executors of an estate, why they cannot distribute assets to beneficiaries who clamor for their share of the estate.

The executor of a large estate knew additional estate taxes would be due after the IRS audited the Estate Tax Return. The executor signed an agreement with the IRS consenting to have the agency access and collect a \$200,000 estate tax deficiency. A few months later, he had the estate distribute property to himself and another heir for no consideration which left the estate without any assets to pay its tax debt. The District Court ruled the executor was PERSONALLY LIABLE for depleting the estate and had to pay the tax liability (*Kohls D.C., Ohio*).

This case shows why we are cautious in advising clients.

### **TSA and DEA Take Cash From Innocent Flyers**

For many travelers, dealing with the hassles of airport security is the worst part of flying; taking off your shoes, belt, forfeiting bottles of water and x-raying your body before prying eyes.

For those traveling with cash, that hassle can turn into a nightmare when they are treated as criminals and even find their money seized from them through a process called civil forfeiture.

Imagine a retired railroad engineer who is the son of parents who survived the Great Depression and distrusted banks and kept his money in the basement of his old house. So, the time came when his daughter convinced him to move to an apartment near her and they agreed the money would go into a joint bank account between father and daughter. She was going to fly home to Boston after confirming it is legal to fly domestically with any amount of cash. She packed the money into her carryon and at the Pittsburgh airport TSA found the money in her bag through security screening. She had to wait while Pennsylvania State Troopers arrived with a DEA (Drug Enforcement Administration) agent who questioned her and called her father. The DEA was not satisfied with the answers and seized the cash under civil forfeiture (where there is a presumption the cash is the proceeds of a crime) even though the DEA is not legally or constitutionally allowed to do so.

Now, they will have to sue the US government to get back the father's life savings.

Luckily, there is an organization called the Institute for Justice which will file a class action on behalf of all individuals like these two to end the practice of seizing cash from travelers based upon MERE SUSPICION and to continue to curtail forfeiture abuse.

The moral of the story is the two of them should have set up a joint account locally and then transferred the funds to the Boston area. *Liberty & Law Volume 29 Issue February 2020 pp. 4-5.*

### **Mandated To Working From Home?**

In these unique times when employees are being told not to report to work and to work from home, it should be a propitious time to review the office in home rules. Under current tax law, the office-in-home expenses are not deductible on your Federal tax return. They may be deductible for state purposes.

**First** - Home office expenses are deductible if the home office is taxpayer's principal place of business. If your employer has mandated that you work from home then it is your principal place of business. Get written proof that you are mandated to work from home and no facilities are provided for you to work in the company's location.

**Second** - The home office must be used exclusively and regularly for business purposes. The IRS has interpreted that home office to consist of 4 walls and a door even though nowhere is this stated in the law.

**Third** - Once you have established the home office, an allocation may be made of all expenses used for the office such as rent, mortgage interest, depreciation, electric, heating, cleaning, etc. The allocation is based upon the square footage of the space relative to the entire usable space of the residence. Now we get to the fun part. If you are mandated to use the space for a certain amount of days because after several weeks or months the company tells you that you can return to the company's office then, a further adjustment is made based upon business days used versus business days available for the year (total annual days less Saturday and Sundays and holidays and vacation days).

**Fourth** - Exclusively means your children or other family members cannot use the room, the law does not discuss animals. We suggest you take pictures of the room to prove it is for business and not personal use.

As always, if you have any questions about these or any other matters, do not hesitate to call us.