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American Exceptionalism

Recently, America landed the fourth and most sophisticated Rover we have ever sent to Mars in a flawless mission. The first two Rovers, Spirit and Opportunity were looking for water. The third, Curiosity, investigated whether Mars could be habitable for humans. It observed clouds on Mars. The current Rover, Perseverance, will look for bio signatures of past microbial life and signs of the other, presumably, extinct life forms.

One of the most important things which will be done with Perseverance will be to collect samples of Mars' core. Its robotic arm will drill the surface and collect samples the size of a piece of chalk. These will be stored and eventually brought back to Earth. The technologies that would be used to study them are not even invented because the samples will come back in the early 2030s.

So Perseverance is the first leg of a round trip to Mars. In 2026, America and the European Space Agency plan to launch a "fetch Rover" which will retrieve the samples and convey them to a launch vehicle which will take off from Mars and deliver the samples to an orbiter put into space by the Europeans. The orbiter will then relay the material to Earth in the Utah desert.

What is truly American and exceptional in this is the ambition of NASA, the American National Aeronautical and Space Agency, and the collective ingenuity of the Jet Propulsion Laboratory. What is America's strength, the ability to absorb the best from everywhere in the world. *The Wall Street Journal* 2/27-28/21 p. A13.

IRS Targets Hobby Losses

The Internal Revenue Service, under the Biden Administration, is now on the hunt for taxpayers who, year after year, report large losses from hobby-sounding activities on Schedule C to help offset other income, such as wages, or business or investment earnings.

Revenue you collect from a hobby is taxable but you cannot deduct the related expenses. Under President Trump, the 2017 tax law which lowered tax rates temporarily nixed through 2025 miscellaneous itemized deductions previously subject to the 2% of AGI threshold, including hobby expenses.

To deduct a Schedule C hobby loss, you must show the activity is a business. It needs to be conducted with continuity and regularity in a BUSINESSLIKE MANNER, and you must have a reasonable, good-faith objective of making a PROFIT from it.

If your activity generates a profit in 3 out of 5 consecutive years, the law presumes you are in business to make a profit unless IRS establishes OTHERWISE.

The hobby-business analysis is trickier if you cannot meet the safe harbor. That is because the determination of whether an activity is properly categorized as a hobby or a business, is then based on each taxpayer's facts and circumstances.

The IRS and the courts take 9 factors into account:

- 1) Expertise of the taxpayer and advisers
- 2) Manner in which the taxpayer carries on the activity
- 3) Time and effort put into the venture
- 4) Expectation that assets used in the activity may appreciate
- 5) Success in carrying on other activities
- 6) History of income and loss (the more years of large consecutive losses, the harder it is to demonstrate a profit motive (unless the activity is still in its start-up stage)
- 7) Amount of occasional profits
- 8) Elements of personal pleasure or recreation that one gets from the activity
- 9) Whether the taxpayer has substantial income from other sources

No one factor is determinative, but some are routinely given more weight. For example, managing and operating your activity in a businesslike manner can be very helpful in demonstrating an honest intent to make a profit from a venture, even though the activity has so far been generating only losses. Some tax professionals point to this as the most important factor. And this factor is under your own control. You should open a separate bank account for the activity, maintain good records, keep receipts of all your expenses, advertise, have a business plan and revise as needed, and change operating methods or adopt new techniques to turn your venture around. Other helpful factors to establish profit motive that are within your control; ensure you have the knowledge, training or expertise to conduct the activity, or rely on the advice of industry experts. Also, devote lots of time and effort to the endeavor.

The hobby loss rules are often litigated in Tax Court and the IRS usually wins, partly because it tends to settle cases in which it does not believe it can prevail. *The Kiplinger Tax Letter Vol 96 No. 8 4/16/21.*

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