September 27, 2018

Brokers v. Advisors – New SEC Proposal

You may remember that the Department of Labor proposed fiduciary rules for Registered Representatives (stockbrokers) which attempted to impose those fiduciary rules that Investment Advisors are subject to upon brokers. Those proposed rules were not finalized and imposed. They were removed by the Trump Administration due to their having been determined to be unconstitutional because the Department of Labor did not have the proper jurisdiction over securities transactions.

The Securities and Exchange Commission, which does have the proper jurisdiction, has offered a new reform package and in the current comment stage there has been discussion as to who can use the title "financial advisor" or "advisor." The SEC proposal states that registered representatives who are only registered representatives may not use the terms advisor or financial advisor, but a registered representative who is a hybrid or a dually hatted financial professional (those who are also registered investment advisors, like Melissa and Howard are) are not prohibited from using advisor or financial advisor in their names or titles even in circumstances where the firm or financial professional provides brokerage service to a particular investor (as Howard or Melissa may do when under the umbrella of Hudson River Investment Group and the brokerage firm of Leigh Baldwin & Co. LLC).

The SEC estimates that 61% of registered representatives work at dually registered firms.

A major impetus for advice-standards reform was to help investors distinguish an advisor from a broker and know what to expect when dealing with either one.

David Bellaire, executive vice president and general counsel at the Financial Service Institute, thinks the SEC proposal gets it right in allowing dually registered advisors to continue to call themselves financial advisors regardless of the type of account they are working on with a client. He cites the example of a client with a 529 college savings plan on which an advisor charges commissions and an individual retirement account on which are charged fees only. The advisor is likely to talk with the client about those accounts as well as several others during a typical meeting. "It would be extremely confusing to the investor to have a dually registered advisor clarify their title with respect to each account."

Under the SEC proposal, brokers and advisors will continue to be regulated separately with brokers being subject to the so-called Regulation Best Interest which requires them to act in the best interests of their clients, and advisors adhering to their current fiduciary standard. For dually registered advisors, that means they will have to act as a fiduciary in advisory accounts and will be held to a less-stringent though heightened standard in brokerage accounts. *Investment News 9/17 – 21/18 p. 8.*

Tax Turtles

An itinerant truck driver cannot deduct his travel expenses while on the road. He was away for weeks or months at a time driving a tractor-trailer on long trips. And between jobs, he stayed in the guest room of a home owned by a close friend. His tax home was on the road where he spent the majority of his time. So the Tax Court denied his write-off for meals. In fact, the judge in this case called people like this truck driver, "tax turtles," because they have no fixed residence and carry their homes wherever they go. *Jacobs, TC Summary Opinion 2015-3, Kiplinger Tax Letter 1/30/15.*

Connecticut Enacts Tax on Pass-Through Entities

For tax years beginning on or after January 1, 2018, partnerships and S corporations (and all entities taxed as partnerships or S corporations for federal income tax purposes i.e. LLCs) are subject to a 6.99% entity level tax on all income subject to the pass through entities. The tax includes a regular tax and an alternative tax.

Partners of partnerships, members of LLCs treated as partnerships for federal income tax purposes and S corporation shareholders will receive a credit against their individual income tax or corporate income tax based on their direct and indirect pro rata share of the pass through entity tax paid equal to 93.01% of the pass through entity tax paid by the pass through entity and allocated to them. The credit is fully refundable and, for corporate members, may be carried forward until fully utilized.

The tax requires four quarterly estimated tax payments.

If you believe you are subject to this tax, please contact our office for tax planning for the estimated tax payments that are due. Failure to pay estimated taxes timely are subject to penalties. *The CPA Journal September 2018 p. 67.*

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

Remember, We're Here For You!