HOLTZ RUBENSTEIN REMINICK

adviser

Worldwide Representation by DFK INTERNATIONAL

• January/February 2006 •

Superior Thinking. Unmatched Integrity.

Annual Exclusion for Gifts

Good news – you can now gift more money to your loved ones. The Federal gift tax annual exclusion has been increased to $12,000 (up from $11,000 in 2005) for gifts made in 2006.

An unlimited gift tax exclusion is allowed for amounts paid on behalf of a donee directly to an educational institution for tuition. Also, amounts paid directly to health care providers for medical services on behalf of a donee qualify for an unlimited exclusion.

For more information, contact Tax Partner Arnie Haskell at (631) 752-7400 or Tax Partner Susan Teicher at (212) 697-6900.

Welcome Andrew Schneider!

Holtz Rubenstein Reminick is pleased to welcome into its partner group **Andrew M. Schneider**.

Andrew Schneider joins the firm as an accounting and audit partner in our New York City office, bringing over 15 years of experience and a specialty in publicly held companies. He has extensive knowledge of SEC accounting issues, including IPOs, mergers and acquisitions, and the provisions of the Sarbanes-Oxley Act of 2002.

Contact him at (212) 697-6900, *ASchneider@hrrllp.com*.

This Issue

Notable and Quotable

Tax Partner **Alan Weiner** authored an article on the implementation of Circular 230 (regarding new IRS rules for tax opinions) in a law practice that appeared in *The Suffolk Lawyer* and *The Nassau Lawyer*.

The firm welcomes the following new staff:

To our Long Island office:

- **Albert J. Frazia** as Chief Human Resources Officer, with over 20 years' experience in human resources.
- **Joanne Nigro**, the friendly face who greets you, as our newest receptionist.

To our New York office:

- **George You**, a senior auditor.
- **Sanndy Flamberg**, an administrator in our tax department.

Index of 2005 HRR *Adviser* Articles

It has been our pleasure to provide you with additional financial information in our newsletter this year.

For your reference, we offer an index of articles we published in 2005. To access it, visit our website at *www.hrrllp.com* and click on the HRR *Adviser* link under "Firm News."

Do you think the IRS still owes you a tax refund check?

To find out more, turn to page 5!

Benefits of Valuations For Estate & Gift Tax Purposes

Obtaining the value of an ownership interest in a publicly traded company is as simple as checking the stock price in the morning paper. The methods are not as straightforward for determining the value of an ownership interest in a private entity.

Valuations of closely held businesses (businesses owned by relatively few stockholders and not publicly traded) are performed by CPAs and appraisers who obtain specific valuation designations from certifying organizations including the American Society of Appraisers and the American Institute of Certified Public Accountants.

Business valuations are performed for a variety of purposes including estate and gift tax preparation and estate planning.

We often are asked to value an interest in a closely held company in connection with the filing of an estate or gift tax return. Because the maximum estate and gift tax rate was 47% in 2005, there is a high probability that such a return will be subject to an IRS audit. In fact, the IRS normally audits slightly less than 50% of the returns of those estates valued at $5 million or more.

CyberNotes

Coolest Websites of 2005

With so many websites available to you, which are most worthy of your time? Time.com is out with its list of the coolest websites of 2005.

The list is broken out into 5 sections: Arts & Entertainment; Blogs; Lifestyle, Health & Hobbies; News & Information; and Shopping.

For some great watercooler conversation, you can find the list at www.time.com/time/2005/websites.

Answers.com

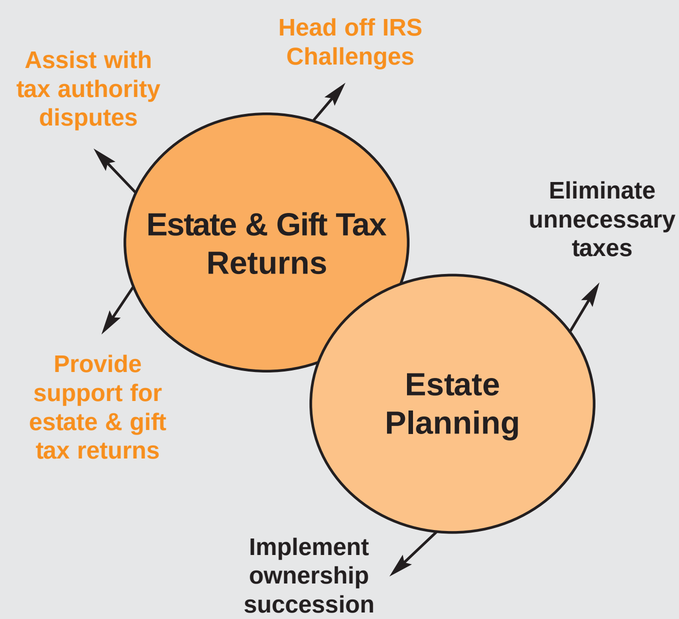
One of *Time's* coolest websites of the year. Here's why:

"When you want basic information about someone or something, try plugging your query into Answers.com's general search field, or browse the ever-expanding Directory of reference material.

The information you pull up will include dictionary definitions and encyclopedia articles culled from resources licensed from a variety of publishers. Answers.com also provides free plug-ins you can download to your desktop for even quicker access to these fast facts."

Although not strictly required, formal business valuations performed at the time of filing an estate or gift tax return can head off IRS challenges if the returns are audited. Both IRS personnel and especially courts tend to look more favorably on formal valuations performed prior to the filing of returns than on valuations performed after returns are filed. A valuation performed at the time a taxable event occurs reduces the likelihood of later disputes and helps to support the values shown on the return in the cases where disputes do arise.

Benefits of Obtaining a Valuation



With respect to estate planning, valuators can provide valuable insight into the vast alternatives available to private business owners. Valuators can advise clients in conjunction with other professionals with respect to the following regarding estate planning alternatives:

- Placements of portions of the business interest(s) in the names of various family members and/or trusts;
- Gifting;
- Creation of trusts;
- Buy–sell agreements;
- Employee Stock Ownership Plans (ESOPs); and
- Family Limited Partnerships (FLPs)

If you have any questions regarding valuation services, please contact Manager Christina Yaccarino at (631) 752-7400 x-222 or *CYaccarino@hrrllp.com*.

Charitable Contributions of Automobiles

As we told you about a year ago, the American Jobs Creation Act of 2004 limits the charitable contribution deduction for used motor vehicles, including cars, boats and aircraft, (with a claimed value of over $500), to the gross sales price received by the charity for the subsequent sale of the donated vehicle, rather than the fair market value. Just recently, the Internal Revenue Service issued a notice to provide interim guidance regarding these rules.

It should be noted that gross proceeds are not to be used as valuation of the vehicle for the contribution if the vehicle has either been materially improved or the charity has made significant intervening use of it. Nor does the gross proceeds limitation rule apply if a donated vehicle is sold by the charity to a needy individual at a price substantially less than fair market value or the charity makes a donation to a needy individual in furtherance of the charitable purpose of the organization. In such instances, the fair market value may be used to determine the deduction.

For usage to meet the test of "significant intervening use," the organization must use the vehicle to further its regularly conducted activities. For example, use of the vehicle to provide transportation would be qualified usage.

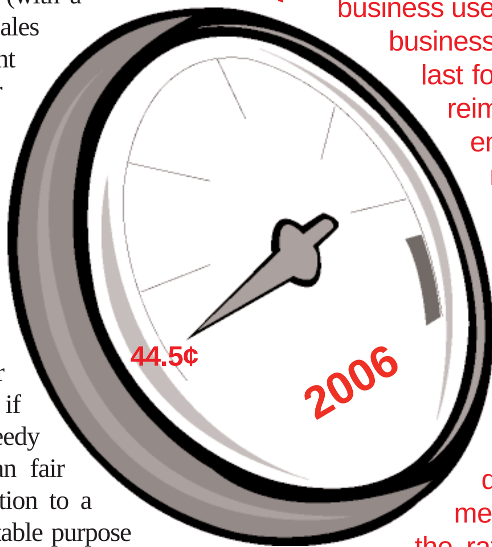
A vehicle has undergone a "material improvement" when its condition is improved in a manner that significantly increases its value. However, cleaning, minor repairs and routine maintenance are not considered material improvements.

Additionally, the donee organization must provide the donor with a written acknowledgement of the gross sales price, within 30 days of the sale of the vehicle. The rules, which apply to donations made after December 31, 2004, are intended to limit a taxpayer's charitable contribution deduction to the cash received by the charity if the donated vehicle is subsequently sold.

Keep in mind that if the fair market value of the vehicle is used and the contribution is in excess of $5,000, the donor must receive a qualified appraisal.

For questions regarding the deductibility and substantiation requirements relating to the charitable contribution of autos, please contact Senior Tax Manager Sid Leibowitz at 631-752-7400 x-265, or at *SLeibowitz@hrrllp.com*.

Decrease in Standard Mileage Rate



Attention drivers: The standard mileage rate for business use of autos during 2006 will be 44.5¢ per business mile, down from 48.5¢ a mile for the last four months of 2005. If an employee is reimbursed at 44.5¢ per business mile, the employee will not have to report the reimbursement as taxable income. However, the employee must substantiate to the employer the time and business purpose of the auto's use.

For autos operated in connection with charitable activities, the rate used for calculating your deduction remains at 14¢ a mile. For medical and moving expense deductions, the rate decreases to 18¢ per mile, down from 22¢ per mile for the last four months of 2005.

Sec. 199 - U.S. Production Activities Deduction

Both the American Jobs Creation Act of 2004 and the Gulf Opportunity Zone Act of 2005 created new opportunities for qualifying business taxpayers to receive a deduction for a portion of their income attributable to *domestic production activities*. This deduction is available for tax years beginning after December 31, 2004. Recently issued regulations have provided additional guidance regarding the new deduction.

Domestic production activities eligible for the deduction include the manufacturing of tangible personal property, construction, engineering and architectural services, film production, farming and breeding of racehorses, as long as the activity is performed in the United States.

The deduction is equal to 3% of the lesser of taxable income or *qualified production activities income* (production gross receipts less allocated production expenses) for tax years beginning in 2005 and 2006. The deduction increases to 6% of your income for tax years beginning in 2007, 2008, and 2009 and 9% for tax years beginning after 2009.

<u>The deduction is further limited to 50% of wages paid during the calendar year ending within the tax year</u>. If a taxpayer doesn't pay any actual W-2 wages, then the deduction is limited to zero.

To properly calculate the deduction, taxpayers will be required to navigate through a series of calculations to arrive at what is referred to as "qualified production activities income," which is the basis for the deduction. In addition, there are certain safe harbors that can be used as simplified methods to make the necessary calculations for determining both domestic production gross receipts and for allocating direct and indirect costs. These safe harbors apply only to taxpayers who meet certain dollar thresholds for annual gross receipts and total assets.

(continued on page 6)

ADVISER CORNER

THE

Property Owners – Is Your Property Being Depreciated Properly?

By Joel E. Ackerman, CPA

As the real estate market maintains its growth in today's economy, the costs for the purchase and construction of commercial real estate continues to rise. Therefore, any opportunities available to real estate owners to increase cash flow should be considered. Cost Segregation is one of the most valuable tax-deferral strategies to increase cash flow and has taken the mainstream commercial real estate community by storm.

Joel Ackerman

Cost Segregation is a strategic tax planning tool that allows property owners to increase cash flow and accelerate federal and state income tax depreciation deductions on real estate purchased, constructed, inherited, expanded, or remodeled, including landlord or tenant improvements.

Has your company recently constructed or acquired a commercial building? If so, you might be able to reduce what you owe on your federal and state income taxes by more closely examining the building's acquisition price or total construction costs — particularly for nonstructural elements like carpeting, accent lighting and signage or exterior site items such as paving, sidewalks and landscaping.

A Cost Segregation Study identifies, segregates, and re-classifies all building costs that qualify for shorter depreciable lives. The study can identify many costs that were originally classified in residential or commercial real property categories (with a depreciable life of 27 1/2 or 39 years) that can be re-classified into personal property or land improvement categories with shorter depreciable lives (of 5, 7, or 15 years).

Plumbing, electrical, heating, ventilation and air conditioning systems usually offer the greatest potential for savings. For example, if the air conditioning unit is specifically used to keep the room where the manufacturing process takes place at a particular temperature, the air conditioner and related electrical connections can be reclassified from real to personal property.

A restaurant can claim as personal property a kitchen sink, kitchen hood and exhaust fan, plus lighting that merely creates mood or illuminates artwork. Also available for personal property are the plumbing and wiring systems that operate the kitchen equipment, special refrigeration, and freezer equipment.

The benefits of cost segregation are easy to demonstrate. For each dollar that is reclassified into a 7-year class life (such as personal property items including telephone and data wiring), the taxpayer realizes from $0.15 to more than $0.20 in the cumulative present value of taxes deferred. Similarly, for each dollar that is reclassified into a 15-year class life (such as land improvements), the taxpayer realizes from $0.08 to $0.10 in the cumulative present value of taxes deferred.

For example, a cost segregation study performed on a $10,000,000 office building allocating 1% to be reclassified into a 5-Year class life, 8% into 7-Year, and 8% into 15-Year property, provides cumulative present value of taxes deferred over $249,000 (based upon a 35% tax rate and an 8% discount rate). *(See Figure 1.)*

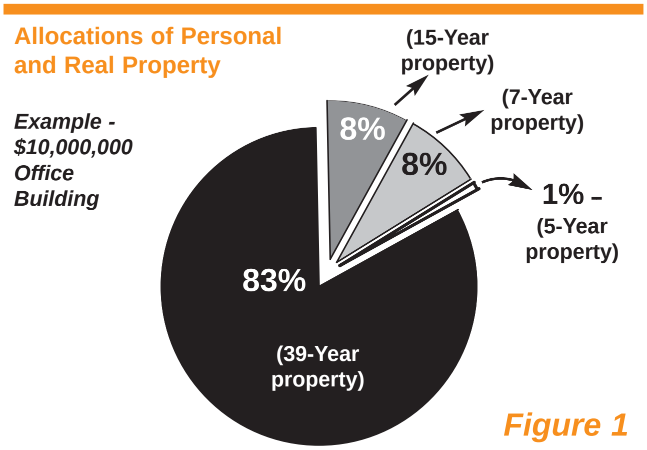


Figure 1

Do Not Fax

Back in 2003, the Federal Communications Commission ("FCC") established the Telephone Consumer Protection Act ("TCPA"), which required permission **in writing** before companies could fax to customers and prospects. Just days before the TCPA was supposed to have taken effect, President Bush signed a bill to override it.

Under the new law, companies can send junk faxes to anyone with whom it has an "established business relationship." Basically that means any company that you've dealt with at any time in your life – whether it's a bank, a broker, or McDonald's – can send you unsolicited faxes.

Businesses had argued that getting written permission to send faxes would be too cumbersome a process. Consumers say junk faxes cost them money – by using up their own fax paper. Also, those with home fax machines often hear the phone ringing ("spam fax alert") while they are (or…were) sleeping.

The new law does give you a chance to opt out from receiving junk faxes, though it's not clear how this will be enforced. Those who send junk faxes must give you a toll-free number to opt out of their system. Unfortunately, the fax spammers have multiple fax numbers, so it may not be easy to opt out. You do have the option to complain to the FCC, though they don't have the manpower to enforce the law except in the most egregious cases.

The ideal time to perform a Cost Segregation Study is before any construction begins. However, the study can be performed any time thereafter. The IRS allows us to go as far back as 1987 and perform a "Look-Back" study without amending prior years' tax returns. The depreciation you did not use in prior years all can be claimed in one tax year.

Holtz Rubenstein Reminick has performed cost segregation studies for over $185 million dollars in commercial and residential apartment buildings. To determine the potential tax benefits that a cost segregation study can provide for your real estate property, contact Tax Manager Joel Ackerman at (631) 752-7400 ext. 262 or *JAckerman@hrrllp.com*.

Verify Tax-Exempt Status with the IRS

Taxpayers who are considering charitable contributions want assurances that the donee organizations are, in fact, recognized as tax-exempt by the Internal Revenue Service. IRS recognition not only provides a tax benefit to the donor, but also provides some degree of assurance that the organization is operating in furtherance of a stated charitable purpose.

Publication 78, an IRS publication updated periodically, lists all recognized charities and is available on-line at http://apps.irs.gov/app/pub78. It allows you to search by a variety of parameters (e.g., name, location).

You also can verify an organization's tax-exempt status by calling the IRS toll-free at 1-877-829-5500. The IRS will verify the organization's status and, upon request, fax the requesting taxpayer a letter verifying the date that the IRS made its initial determination as to the organization's tax-exempt status and the organization's current status, including its classification (e.g., public charity, private foundation, etc.) The classification is important because rules regarding limitations on the deductions allowed for charitable contributions depend in part upon the classification of the donee organization.

Notwithstanding verification of the tax-exempt status of an organization by any of the methods discussed above, taxpayers must comply with all applicable rules in order to be entitled to claim a charitable contribution deduction. These rules include a requirement that for any gift of $250 or more, all taxpayers (including individuals, partnerships and limited liability companies) must receive a written acknowledgement from the charity by the due date (including extensions) of the return claiming the deduction.

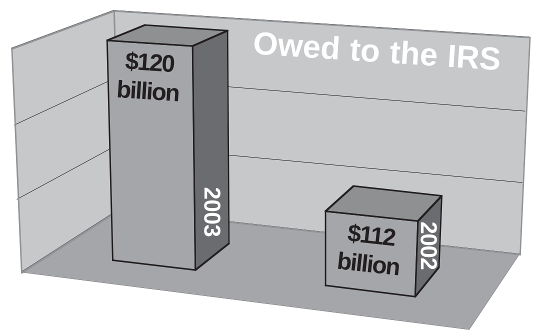
For more information, contact Senior Tax Manager Barry Nagler at 631-752-7400 x-354 or *BNagler@hrrllp.com.*

The IRS Jumps on the Outsourcing Bandwagon

In an effort to collect billions of dollars of back taxes, the Internal Revenue Service has plans to hire private debt-collection firms to help with the task. The IRS originally planned to start using private firms in April of 2005 but because of a court challenge, the process will be delayed until the summer of 2006. Firms are now submitting bids for the work, which, according to the IRS, will be paid on a commission-based system.

Congress passed the law to give the IRS the authority to hire private debt collection firms, presumably since the IRS will not have the necessary budget to hire additional workers to collect the outstanding debts.

It is estimated that in back taxes, penalties, and interest, the IRS was owed approximately $120 billion as of 2003. This is up from the $112 billion reported in 2002.



One major concern for opponents of the IRS's outsourcing plan is that by using private firms, the IRS could be placing taxpayer privacy issues in jeopardy.

The IRS has said that it will do everything in its power to safeguard taxpayer privacy. The law states that, contractors are prohibited from committing any act for which IRS employees are already prohibited and that taxpayer rights will be protected. Taxpayer access to the IRS's Taxpayer Advocate Service will remain unchanged.

Does the IRS Still Have YOUR Refund Check?

The IRS recently announced that nearly 90,000 taxpayers have not received their refund checks totaling $73 million because the IRS does not have their current addresses. Most of the checks were returned to the IRS by the U.S. Postal Service as undeliverable because the taxpayer moved and left no forwarding address.

If you did not receive a refund in 2005, and think you should have, visit www.irs.gov and click on "Where's My Refund?"

You will be prompted for your social security number, filing status and the refund amount on your 2004 tax return. You also can call (800) 829-1040 and speak to a customer service representative. Victims of Hurricane Katrina who have not received refunds should contact the IRS at (866) 562-5227.

For more information, contact Senior Tax Accountant Jason Cohen at 631-752-7400 x-252 or *JCohen@hrrllp.com.*

No Sales Tax! 1/30/06 – 2/5/06

Get your credit cards ready! Beginning January 30, 2006, and running through February 5, 2006, there is no New York State sales tax on clothing and footwear purchases costing less than $110. Localities (for example, Nassau County) have the right to continue to charge the local tax.

Since New York City has permanently eliminated its sales tax on clothing and footwear purchases under $110, New York City shoppers will not be paying any sales tax during the holiday period.

HRR Holiday Good Works

Continuing the firm's long-standing tradition of altruism, the staff of Holtz Rubenstein Reminick gave their time and their financial support to a wide range of local and national causes throughout the holidays.

Senior Audit Manager **Paul Becht** and Audit Manager **Harold Deiters** collected toys from various businesses for the Marine Corps' Annual Toys for Tots program in connection with their involvement in the New York State Society of CPAs ("NYSSCPA"). Over 4,000 toys were collected and distributed to less fortunate children.

Mary Daniele, Assistant to the Controller, donated a Thanksgiving carton of food to a local family, delivered gifts for Angel Tree for children whose parents are in prison, and donated toys and food to local food pantries for distribution to local families.

Marketing Communications Director **Flo Federman** participated in "Operation Santa Claus," answering Dear Santa letters from less fortunate children. She also volunteered at holiday fundraising drives for the Make-A-Wish Foundation.

Tax Accountant **Ruth Iorio** is a leader with the Girl Scouts, where she decorated trees for the Greenlawn Civic Association and went Christmas caroling at St. Joseph's Home for the Aged in Huntington.

Senior Audit Manager **Ellen Labita** and her family collected toys and money for Hi-Hello Day Care in Freeport.

Senior Auditor **Paul Sanchez** and his family donated toys to Toys for Tots, clothing to the Salvation Army, and a gift to the St. Luke's Christmas Giving Tree.

The Long Island support staff of the firm adopted a family - donating a HUGE goody basket of food, toys, and money to a less fortunate local family.

(continued from page 3)

Sec. 199 - U.S. Production Activities Deduction

For a construction activity to be eligible for the deduction, the taxpayer must be engaged in a construction trade or business on a regular and ongoing basis, construct or substantially construct real property and derive gross receipts from the construction. Real property includes residential and commercial buildings, structural components of buildings, inherently permanent structures, inherently permanent land improvements, and infrastructure such as roads, power lines and wiring. The sale of land is not includible as domestic production gross receipts.

For pass-through entities including partnerships, S Corporations, estates, and trusts, the deduction is generally applied at the partner, shareholder or beneficiary level.

To check your eligibility for claiming this deduction and the methodology you can use to calculate the deduction, please contact Senior Tax Manager Richard Margaroli at 631-752-7400 x-263 or *RMargaroli@hrrllp.com*.

Asia Pacific DFK Conference

Our thanks to Khoo Pek Ling, Ooi Chee Kun, and the staff at Folks DFK, the firm in Kuala Lumpur, Malaysia that hosted the recent Asia Pacific DFK regional conference.

Partners Lily Hui and Joel Podgor made the 18-hour flight to attend the conference, which was well balanced in both the business and social areas. The conference site, the Boulevard Hotel, was attached to a mall, which gave the visiting members an opportunity to access the local shopping easily. (Lily did her best to support the local economy.)

As the largest city in the country (with a population of over 1.5 million), Kuala Lumpur has a beautiful skyline. From the city's "twin towers," known as the Petronas Towers, is a great view of the entire city.

Though the flight was a long one, the experience was worthwhile and gave us a better understanding of our Asian firm members. We look forward to seeing and working with them again soon.

Our Firm works with DFK members in Hong Kong, Shanghai, Singapore, and Tokyo on behalf of our clients operating abroad and their clients having US matters.

For more information about operating in any foreign country, contact Partner, and DFK International Vice President of the Americas, Alan E. Weiner at 631-752-7400 x-330 or *AEWeiner@hrrllp.com*.

DFK Firm Spotlight: DFK Laurence Varnay

DFK International is the worldwide association of independent accounting and business advisory firms in which Holtz Rubenstein Reminick is actively involved. Through our affiliation, we are able to provide enhanced services to you and to other clients throughout the United States and the world.

This issue we spotlight a member firm in Sydney, Australia. We invite you to visit them at ***www.dfksydney.com.***

To change contact information for the HRR *Adviser*, please contact us at *info@hrrllp.com*.