GROWERTALKS

Features

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Change as a Constant

Mark E. Battersby

With your operation's 2021 taxes finished or postponed until later, it's time for every greenhouse grower and retailer to begin thinking about the new ballgame that is the 2022 tax bill. Oh, sure, the controversial Build Back Better Act bill may or may not emerge, in whole or in part, to foil any planned tax savings. But far more certain are the many changes and new taxes to be faced in 2022.

Looking back, but acting in 2022

Many of the potential tax savings—and currently misunderstood or neglected law provisions—were already on the books. The Coronavirus Aid, Relief and Economic Security (CARES) Act, for example, allowed employers to defer deposits and payments of their share of Social Security taxes from March 27 through December 31, 2020. While 50% of those deferred amounts was required to be deposited by December 31, 2021, any remaining amount must be deposited by January 3, 2023.

Paying deferred payroll taxes isn't the only potential problem—or opportunity—many nursery and landscape businesses will face in the months ahead. Consider:

• *Independent contractors:* The controversy over who is and isn't an independent contractor continues in 2022. Making it easier for the IRS to track those using or claiming independent contractor status, a new form—Form 1099-NEC, Nonemployee Compensation—will, presumably, allow the IRS to better track independent contractors.

Now is the time to ensure that the independent contractors used by your operation and those calling themselves independent contractors really are. Fortunately, the IRS has a form, Form SS-8, that either workers or an employer can fill out to obtain an IRS determination on worker status.

• *Sign-on bonuses to attract needed workers:* So-called "signing bonuses," just like those we're familiar with in professional sports, are becoming more and more common in industry. A signing bonus is money an employer gives an employee who has accepted their job offer. From a payroll tax angle, when your business pays a signing bonus—or any bonus—it's considered "supplemental" income and requires a higher withholding rate. Bonuses aren't considered deductible expenses for sole proprietorships, partnerships or limited liability companies (LLCs) because the owners/
partners/members are considered to be self-employed.

• *Work-opportunity tax credit:* The Work Opportunity Tax Credit (WOTC) is a tax credit (not a deduction, but rather a direct reduction of the operation's tax bill) available to employers hiring individuals from targeted groups who've faced significant barriers in employment. The credit amount for the WOTC can be up to $9,600 for each qualified new hire, depending on the targeted group the new hire is drawn from. The WOTC has been extended through 2025.

New limits on standard deductions

Although not always in line with inflation, the numbers keep changing. Consider:

• *Deducting business meals:* Tax deductions for travel and entertainment expenses have long been on the books and seemingly change every year. Aimed at helping beleaguered restaurants that continue to suffer, a business can take clients and customers, potential or existing, to lunch or dinner at the expense of Uncle Sam. That's right—100% of the cost of business meals for 2021 and 2022, instead of the usual 50%, are tax-deductible. This deduction applies to employees traveling on business, although it must be for food or drinks provided by a restaurant.

• *Going the extra mile:* The standard mileage rate used by so many in the green industry has been increased for the 2022 tax year. Reflecting the higher price at the pumps, for 2022 the rate for vehicles—including passenger automobiles, vans, pickups and panel trucks—is 58.5 cents per mile when used for business purposes. Plus, of course, any related tolls and parking fees to these amounts. Keep in mind that if there are more than five vehicles used for business purposes, the standard mileage deduction won't work.

The way we do business

Many growers recently discovered—or will discover should they face an IRS audit—that even seemingly common business deductions can have a dark side. Among the restrictions that should be considered in the months ahead are such things as:

• *Related-party transactions:* All too often, unsuspecting business owners find themselves facing penalties, fines and substantial tax bills because the ever-vigilant IRS has ignored a past transaction it views as having been conducted by "related persons." Below-market rate loans, sales of property, installment sales, like-kind exchanges, intercompany transactions, etc. all may suffer from special tax treatment. And the IRS defines "related" parties not only as family members, but owners or shareholders related to the business that can be friends, officers, suppliers, etc.

• *Depreciation:* Don't forget that 2022 might be the best year, tax-wise, to acquire needed equipment and business property or make large capital improvements. Bonus depreciation enables a business to deduct a large percentage of the cost of purchased business assets, such as equipment in the first year of their use. Bonus depreciation will remain at 100% through the end of 2022. It will then decrease by 20% each year.

In addition to bonus depreciation, there's also the Section 179 first-year expensing write-off that allows businesses to deduct all or part of the assets placed in service. The deduction limit for 2022 is $1,080,000 with an equipment spending cap of $2,700,000—but unlike bonus depreciation, still cannot exceed the operation's taxable income.

The new tattle-tale society

Whether innocently or otherwise, many growers and retailers have overlooked some of their operation's reportable income. Today, as a reminder or check, the IRS has new reporting requirements including:

• *Digital asset reporting:* It's not only "brokers" impacted by 2021's Infrastruc-ture Investment and Jobs Act (IIJA). The 2021 IIJA included reporting requirements for virtual currency and other digital assets that every grower who might receive more than $10,000 in virtual currency or digital assets in the years ahead should be planning for.

• *Third-party payment providers:* Any business receiving payment through PayPal, Venmo, Zelle, CashApp or any third-party settlement provider (TPSP) will soon discover that it's being reported to the IRS. Third-party settlement providers have always had to file information returns with the IRS. Today, thanks to the American Rescue Plan of 2021, millions of small businesses receiving more than $600 during the 2022 tax year—regardless of how many customers or clients are paying—will discover their payment service has reported that amount to the IRS.

Not all income is equal

Much has been written and said about the special treatment of income from "pass-through entities" such as partnerships, S corporations, etc. While future changes in the tax rates for individuals, incorporated businesses and those pass-through entities may be coming, there's no doubt discrepancies will continue in the months ahead. This makes understanding how the operation's business entity is labeled important.

• *Qualified business income:* The Qualified Business Income (QBI) deduction allows the owner of a business who makes less than $64,900 during the 2022 tax year to claim up to a 20% deduction from their taxable business income. In general, total taxable income this year must be under $170,000 for single filers and $340,000 for joint filers. Over that limit complicates the rules to determine whether the business income qualifies for a full or partial deduction.

• *Another way of doing business:* Every owner of a small business who's outgrown their current business structure has several options for structuring the business. They can operate as a sole proprietor, partnership, limited liability company (LLC) or S corporation and, hopefully, benefit from the 20% deduction for Qualified Business Income (QBI). Or they can incorporate as a regular "C" corporation.

The structure of the business will obviously impact how taxes will be filed. Changing the business structure used to be rare, as the top corporate tax rate was 35%. However, the Tax Cuts and Jobs Act (TCJA) of 2017 dropped the top corporate rate to only 21%. While Congress has proposed an increase in the corporate tax rate to 26.5%, the tax bills of many businesses and their owners might benefit from an entity change, especially those with pass-through businesses.

Changing business entities will help reduce risk exposure, help the operation attract investors or lower the operation's tax bill. Naturally, the IRS will require adjusts in income and deductions to ensure they won't lose revenue as a result of the switch. In general, entity switches must occur within the first few months of a tax year, although there are numerous exceptions.

Our tax laws may change and the IRS impose new rules on the income of growers and/or limit write-offs. However, the one thing that seemingly never changes is the importance of tax planning. Substantial tax savings are possible with planning, especially planning not at year's end, but now, during the course of the year, as your business operates. **GT**

Mark E. Battersby is a freelance writer who specializes in business finance. He can be reached at mebatt12@earthlink.net.