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PHYSICIAN INSIGHTS

SPRING 2008

TAX PLANNING IDEAS

There are the lucky dogs, and then there are those who are subject to the Alternative Minimum Tax. A secondary calculation that was passed in the 1960s was designed to make sure the rich pay their fair share. The AMT catches high income physicians who wouldn't necessarily be considered affluent — and their numbers are growing. More than 80 percent of households with incomes between \$100,000 and \$200,000 will pay the AMT by 2010 according to the Tax Policy Center, a joint venture of the Urban Institute and Brookings Institution. Not only will the AMT affect more people, 71 percent of those subject to it in 2008 (and 89 percent in 2010) will be faced with higher marginal tax rates. The only good news—as more taxpayers are included, the average AMT liability—\$6,782 last year—is projected to

drop. The AMT wipes out deductions for property taxes and those for dependents, so it has a bigger impact on families with kids than on childless couples. If you've sold appreciated stocks, mutual funds, or an investment property and have substantial capital gains, the proceeds could kick you into AMT territory. That's because the higher the income you report, the more your AMT exemption shrinks. In addition, tax-free municipal bond interest could also be subject to the AMT. There may be ways to avoid falling into the dreaded AMT trap, though. Do—or have your accountant do—a tax projection to see whether you'll be subject to the AMT and if there's a way to re-jigger some deductions to help avoid it. Many CPA's offer this service for free or a small one time fee. Either the CPA or you needs to calculate your taxes

twice: the way you normally do, then again using a specific formula. If you do it yourself, utilize IRS form, #6251 and get assistance from the AMT Assistant on the IRS website. It will give you a quick indication of whether you might be subject to the AMT.

A second tax idea is funding the maximum for any potential retirement plan. You can contribute up to \$15,500 in a 401(k) or 403(b) plan, or \$20,500 if you're 50 or over. Any contributions above and beyond the maximum deferral amount can be made to a profit-sharing plan, where the ceiling for 2007 is \$45,000 (or \$50,000 if you're 50 or over). With a profit sharing plan, you'd have to contribute the same percentage on behalf of each employee who works at least 1,000 hours. Of course, since your salary is much higher than that of your employees, your piece of the pie will be the largest. Therefore, a profit sharing plan might be a solid choice. Another intriguing option is a defined benefit plan, especially if you are over 50 years of age. You may contribute more than \$100,000 into a defined benefit plan for 2007. These plans make sense for physicians or groups with limited employees. If you don't have a retirement plan, you may be able to contribute up to \$4,000 to a traditional IRA (or \$5,000 if you're 50 or older) for tax year 2007. You have until April 16th of 2008 to make contributions and reduce your taxable income for the year.

A third idea is if you made energy-efficient improvements to your primary home, you can take a credit of up to \$500.

AN UPDATE ON FLORIDA & TEXAS MALPRACTICE LAW

How much was Sheldon Sussman's life worth? To a jury in Boca Raton, \$2.8 million. But according to the State of Florida, though, Sussman's wife of 20 years should collect no more than \$1.5 million. The question of how much Rhoda Sussman will get her husband's death after routine knee surgery now lies with Circuit Judge Jeffrey Winikoff. After his judgment, the case could climb through the appellate courts and potentially determine the constitutionality of medical malpractice caps passed in 2003. Such cases can take up to five years to litigate, which is why the caps just now are being tested. In 2003, with then-Gov. Jeb Bush's backing, the Legislature passed caps of \$150,000 for 'pain and suffering' damages for emergency patients and \$500,000 for all other patients. When a patient dies, though, plaintiffs can collect a maximum of either \$1 million or \$1.5 million, depending on the case. Most experts expect these caps will be declared constitutional. But a few other Florida cases are floating through the appeals process already, though at least one was settled (Jacksonville Navy Hospital). In the Sussman case, a jury in February awarded \$2.8 million for pain and suffering and about \$430,000 for medical and funeral expenses. But whether or not Sussman sees the \$2.8 million award won't be decided anytime soon. The new law has had its intended effect. Since the law passed

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CMS POSTPONES EFFECTIVES DATE OF NEW MEDICARE ANTI-MARKUP RULE

by Healthcare Attorney Kathleen Quiroz

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To address its longstanding concern about anatomic pathology diagnostic testing arrangements commonly referred to as “pod labs,” the Centers for Medicare and Medicaid Services (CMS) published a new Medicare purchased diagnostic test and reassignment rule on January 1, 2007. This new “Anti-Markup Rule,” which was published by CMS as part of its 2008 Physician Fee Schedule Final Rule, was scheduled to take effect on January 1, 2008. Two days after the scheduled effective date, CMS issued a notice delaying, until January 1, 2009, the implementation of most of this controversial new rule. The Anti-Markup Rule creates a new anti-markup prohibition applicable to both the technical and professional components of diagnostic tests. Under this new rule, Medicare payments for tests that are billed by the ordering physician but performed by an outside supplier or performed in a location outside of the “office of the billing physician or other supplier” are limited to the lowest of (i) the performing supplier’s net charge to the billing physician or other supplier; (ii) the billing physician’s or other supplier’s actual charge; or (iii) the fee schedule amount for the test that would have been allowed if the performing supplier billed directly.

After receiving a significant number of comments from physicians and their healthcare attorneys, CMS representatives announced in December of last year that it intended to release a series of “Frequently Asked Questions” before year end to provide additional guidance regarding the Anti-Markup Rule prior to its scheduled effective date. Instead, citing concerns about the clarity of the rule and potential unintended consequences, CMS opted to delay until January 1, 2009, implementation of all but two provisions of the Anti-Markup Rule. Given its longstanding concern about “pod labs,” CMS did not delay the implementation of the Anti-Markup Rule to anatomic pathology diagnostic testing services furnished in a space that (i) is utilized by a physician group practice as a “centralized building” under the Stark II exception for in-office ancillary services but (ii) is not within the “same building” of a group practice office that qualifies for protection under the in-office ancillary services exception to Stark II. If your practice provides any type of anatomic pathology diagnostic testing services, you should consult your healthcare attorney for advice regarding the potential applicability of the Anti-Markup Rule to your practice.

CMS also did not delay the implementation of the Anti-Markup Rule to the technical component of a “purchased diagnostic test.” As emphasized by CMS in its January 3 notice, the anti-markup prohibition with respect to the technical component of purchased diagnostic tests is longstanding and will continue to apply to the technical component of a purchased diagnostic test in the same manner it had been prior to the issuance of the Anti-Markup Rule. CMS has promised that it will, sometime in 2008, issue clarifying guidance regarding the Anti-Markup Rule and/or issue a new anti-markup rule. If your practice bills for the technical and/or professional component of any type of diagnostic test, you should ask your healthcare attorney to apprise you of developments in this area, especially if either the technical or professional component of such tests is performed by an outside supplier or is performed in a location that is not an office in which you or your practice performs the full range of medical services offered by your practice.

MALPRACTICE

(continued from page one)

in Florida, a third fewer cases have been filed, several insurance companies have returned to Florida and premiums have slightly dropped. First Professional Insurance Co. of Jacksonville cut its rates in 2006 by 9%. The state’s largest malpractice insurer backed doctors’ efforts for caps in 2003. Unfortunately, for many Florida physicians, insurance rates have not dropped as much as expected. Insurance company President Robert White Jr. said he isn’t so sure the law change produced the desired effect. “There’s been no tangible benefit for physicians as a result of a cap’ other than a small drop in premiums.” A gauge of doctors’ continuing unhappiness with rates is the number choosing to drop medical-malpractice insurance altogether -- “going bare.” Since 2003, the number of Florida doctors going bare has increased more than a third to 2,039. Florida is one of the few states that allow doctors to go bare, on the condition that they post a bond, establish an escrow account or obtain an irrevocable letter of credit to covers malpractice verdicts up to \$250,000. In Texas, changes in medical malpractice law are being credited with helping to attract an influx of out-of-state doctors from Maine to Hawaii who appreciate the increased protection from high jury awards and steep drops in insurance rates. But consumer groups also sharply criticize the state’s \$250,000 cap on pain-and-suffering awards as severely limiting legitimate claims, and say the increase in doctors has yet to benefit rural areas. The sharp curb on jury awards has succeeded at its goal of attracting physicians - at least by the numbers. The Texas Medical Board received around 2,400 license applications a year before 2003, when voters passed Proposition 12, the ballot initiative limiting malpractice awards. In fiscal years 2006 and 2007, the board received slightly more than 4,000 applications each year. One affect of the legislation is lawyers primarily taking cases involving a victim who earns a high salary. This is because Texas law does not limit economic damages, and juries can still grant multimillion-dollar awards for lost income.

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Tax credits are available for many types of home improvements including adding insulation, replacement windows, and certain high efficiency heating and cooling equipment. The maximum amount of homeowner credit for all improvements combined is \$500 during the two year period of the tax credit. This tax credit applies to improvements made to your primary residence from January 1, 2006 through December 31, 2007. There are also rewards for buying energy-efficient hybrid vehicles (\$3,400 maximum for the most lean-burning automobiles and light trucks; \$4,000 for alternative-fuel passenger vehicles). Lastly, tax credits are available for qualified solar water heating and photovoltaic systems.

Another tax idea for your business is utilizing home equity loans for medical equipment. The law does distinguish between loans to buy or improve your home and those used for other purposes, but the interest is deductible nonetheless. Normally, if the balances on home equity loans add up to more than \$100,000, interest on the excess isn't deductible. However, you can write off the interest payments on a home equity loan above \$100,000 as a business expense on Schedule C, instead of combining them with his other mortgage interest as an itemized personal deduction on Schedule A.



FLORIDA BOARD OF MEDICINE CLARIFIES SURGICAL PAUSE RULE

*by Healthcare Attorney Erin Smith Aebel
Shumaker, Loop & Kendrick, LLP, Tampa, FL*

The Florida Board of Medicine issues administrative rules setting standards of practice for physicians in certain areas. One such area covers surgery and seeks to prevent wrong site, wrong side and wrong patient surgeries. Rule 64B8-9.007 broadly defines "surgery/procedure" as "the incision or curettage of tissue on an organ, insertion of natural or artificial implants, electro-convulsive therapy, endoscopic procedures or other procedures requiring the administration of anesthesia or an anesthetic agent. The rule specifically exempts minor surgeries/procedures such as excision of skin lesions, moles, warts, cysts, lipomas, and repair and lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia not involving drug-induced alteration of consciousness other than minimal pre operative tranquilization. The surgical pause rule provides that except in life-threatening emergencies requiring immediate resuscitative measures, once the patient has been prepared for the elective surgery/procedure and the team has been gathered and immediately prior to the initiation of any procedure, the team will pause and the physician performing the procedure will verbally confirm the patient's identification, the intended procedure and the correct surgical/procedure site. The operating physician is not permitted to make an incision or perform any surgery prior to performing this required confirmation. The physician's procedure notes must reflect that this pause and confirmation occurred.

Physicians who fail to comply with this rule could be subject to professional discipline for practicing below the accepted standard of care. This can be especially relevant if a wrong-site surgery occurred. Conversely, following the surgical pause rule may save a physician from professional discipline even if a malpractice claim was made or an "adverse incident" was reported by the hospital. The rule was modified effective April 25, 2006, to clarify that it also applies to anesthesia providers prior to administering anesthesia, anesthetic agents or performing regional blocks at any time, both within and outside a surgery setting. Anesthesiologists should be made aware of their potential liability in this area since they have the initial opportunity to perform a surgery/procedure on a patient and now the rule has been amended to clarify that it applies to anesthesiologists.

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Kathleen Quiroz is based in San Antonio, TX. Her practice is focused on the business aspects of health care law for physicians, physician groups and hospitals, including the formation of group practices; formation of integrated delivery systems; purchase and sale of private medical practices; and negotiation and review of managed care contracts, employment contracts, and physician recruitment. Ms. Quiroz can be reached at 210-224-2000.



Erin Smith Aebel is based in downtown Tampa, FL. She is a partner in Shumaker, Loop & Kendrick, LLP and is a board certified health law specialist. She performs a full range of services for physicians, including entity formation, contract signing and negotiation, Stark regulatory review, HIPAA Compliance, licensure issues, estate planning, and asset protection. Her clients include physician practices, medispas, ambulatory surgery centers, health care clinics, and a variety of specialty practices. You may contact Ms. Aebel at 813-227-2357.

**WHAT SOME OF OUR PHYSICIAN CLIENTS ARE SAYING:**

I highly recommend Tim McIntosh and his stellar team at Strategic Investment Partners. They provide excellent financial advice and look at the whole picture when it comes to planning for the future. Tim's personal interest and care places him above all other planners that I've been associated with in the past.

*Dr. Michael Schulman
Gastroenterologist*

Tim has a structured investment approach that has offered me gains better than the market indices with a strong attention to limiting investment losses.

*Dr. Patrick Cimino
Medical Director*

"Tim has provided superior personalized service to me over the past eight years. His attention to careful and evidence-based investing has provided me with worry-free growth in wealth. I would highly recommend him to my closest friends and family."

*Dr. Colin Chan
Family Practice*

STOCK OF THE QUARTER: ABBOTT LABS (ABS)

Abbott Labs is one of Strategic Investment Partners' top investment ideas for 2008 and is a top holding in our large cap growth stock portfolio. Abbott Laboratories manufactures and markets pharmaceuticals, medical devices, and nutritional health-care products. Products include prescription drugs, coronary and carotid stents, and nutritional liquids for infants and adults. After accounting for the diagnostics business' sale, Abbott generates more than 60% of revenue from pharmaceuticals, about 20% from nutritional products, 6% from diagnostics, and the rest from the vascular business. Sales growth for Abbott continued to accelerate in 2008, reaching 16% in the January financial report, driven by broad-based strength throughout most of the company's businesses. On the pharmaceutical side, Humira for rheumatoid arthritis continued its exceptional growth, increasing sales 43% during the past year. At over 9% of total Abbott sales and growing 2-3x the market for the last 24 quarters, Humira has become Abbott's flagship product and a major contributor to growth---with no signs of slowing down. Last year, Humira received U.S. approval in Crohn's, an estimated \$500M peak sales opportunity. In January, Humira received approval in the \$2.5B psoriasis market. Abbott management indicated that it is "not unreasonable" to assume Humira could be a \$6-\$7B drug in a few years. Abbott also expanded its drug pipeline by acquiring Kos Pharmaceuticals in late 2006. Abbott's drug-eluting stent, Xience V, is on track for FDA approval in April. In Europe, Xience continues to gain approximately 4 share points per quarter. In over 10 countries, Xience has exceeded 20% market share and 25% share in 7 countries. We think this stent product holds a lot of promise, and the firm plans to launch it in the U.S. in the first half of 2008. Abbott is currently priced at \$55 a share. Our target for Abbott is \$100 a share, or 20 times earnings, by the end of 2009.

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