LINDA C. SLIDER
ATTORNEY AT LAW

P.O. BOX 5756
WALNUT CREEK, CALIFORNIA 94596

TEL: (925) 932-8450
FAX: (925) 938-4844
LINDA@SLIDERLAW.COM

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Dear Clients and Friends:

With the year-end fast approaching, I wanted to review some recent tax law changes and remind you of some moves that may help lower your income tax bill for this year and next. This year's planning contains some new factors to consider, thanks to changes made by the Inflation Reduction Act of 2022 and the SECURE 2.0 Act.

I hope you find the following discussion of possible year-end tax moves useful.

YEAR-END TAX PLANNING FOR INDIVIDUAL TAXPAYERS: The standard year-end approach of deferring income and accelerating deductions to minimize taxes will continue to produce the best results for most taxpayers, as will the bunching of deductible expenses into this year or next to avoid restrictions and maximize deductions. However, there are some legislative proposals on the table which might increase income taxes in 2024, if enacted. If you are concerned that any of these proposals might be enacted, or if you expect your taxable income to increase in 2024 and push you into higher tax brackets, you may find that the opposite strategies produce better results. In this event, pulling income into 2023 to be taxed at currently lower rates, and deferring deductible expenses until 2024, when they can be taken to offset what would be higher-taxed income in 2024 might yield a better tax result for you. This will require careful evaluation of all relevant factors.

Here is a list of actions based on current tax rules that may help you save tax dollars if you act before year-end. Not all of these actions will apply to you, but you (or a family member) may benefit from many of them. Again, if you are a high-income taxpayer already subject to tax at the highest brackets, you should exercise caution before taking actions which would pull taxable income into 2023 or defer deductions until 2024. These potential tax-savings actions include:

- If you are looking to buy a new car before the end of 2023, remember that the Inflation Reduction Act of 2022 has introduced various credits for buying both new and used electric vehicles. To claim a tax credit, the taxpayer's modified adjusted gross income cannot exceed a threshold amount ($300,000 for married couples filing jointly, $225,000 for heads of households, and $150,000 for single taxpayers). The rules for qualifying for a tax credit are complex, but the EPA has created the following website where you can check to see if the make and model you are interested in will qualify for a tax credit: https://fueleconomy.gov/feg/tax2023.shtml . Please keep in mind that your car dealer must provide certain tax information to you regarding the qualifying credit for your vehicle and must register the sale with the IRS in order for you to claim the credit.

Internal Revenue Service Treasury Regulations require that I inform you that, to the extent that this communication or its attachments concern federal tax issues, any advice contained in this communication or any attachment thereto is not intended or written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code.

- In addition, the Inflation Reduction Act of 2022 (the "Act") provides for substantial tax credits for certain energy-saving equipment installed in your home before the end of 2023:

    - You may take a tax credit for specified nonbusiness energy property expenditures placed in service before January 1, 2033. The tax credit is the amount equal to 30% of the sum of (i) the amount paid or incurred by you for qualified energy efficiency improvements installed during that year, and (ii) the amount of the residential energy property expenditures paid or incurred by you during that year. The credit is further increased for amounts spent for a home energy audit. The amount of the increase due to a home energy audit can't exceed $150. The Act also repeals the lifetime credit limitation, and instead limits the allowable credit to $1,200 per taxpayer per year. In addition, there are annual limits of $600 for credits with respect to residential energy property expenditures, windows, and skylights, and $250 for any exterior door ($500 total for all exterior doors). Notwithstanding these limitations, a $2,000 annual limit applies with respect to amounts paid or incurred for specified heat pumps, heat pump water heaters, and biomass stoves and boilers.

    - You are allowed a personal tax credit, known as the residential energy efficient property (REEP) credit, for solar electric, solar hot water, fuel cell, small wind energy, geothermal heat pump, and biomass fuel property installed in homes in years before 2035. The Act expanded the REEP credit to include expenditures for qualified battery storage technology expenditures.

    - A New Energy Efficient Home Credit ("NEEHC") is available to eligible contractors for qualified new energy efficient homes acquired by a homeowner before January 1, 2033. A home has to satisfy specified energy saving requirements to qualify for the NEEHC credit. The NEEHC credit can be $500, $1,000, $2,500, or $5,000, depending on which energy efficiency requirements the home satisfies and whether the construction of the home meets prevailing wage requirements.

- Higher-income individuals must be wary of the 3.8% surtax on certain unearned income. The net investment income tax ("NIIT") is 3.8% of the lesser of: (i) net investment income ("NII"), or (ii) the excess of modified adjusted gross income ("MAGI") over a threshold amount ($250,000 for joint filers or surviving spouses, $125,000 for a married individual filing a separate return, and $200,000 in any other case). As year-end nears, the approach taken to minimize or eliminate the 3.8% surtax will depend on the taxpayer's estimated MAGI and NII for the year. Some taxpayers should consider ways to minimize (e.g., through deferral) additional NII for the balance of the year, others should try to reduce MAGI other than NII, and some individuals will need to consider ways to minimize both NII and other types of MAGI. An important exception is that NII does not include distributions from IRAs or most other retirement plans.

- The 0.9% additional Medicare tax also may require higher-income earners to take year-end action. It applies to individuals whose employment wages and self-employment income total more than an amount equal to the NIIT thresholds (discussed above).

Employers must withhold the additional Medicare tax from wages in excess of $200,000 regardless of filing status or other income. Self-employed persons must take it into account in figuring estimated tax. There could be situations where an employee may need to have more withheld toward the end of the year to cover the tax. This would be the case, for example, if an employee earns less than $200,000 from multiple employers but more than that amount in total. Such an employee would owe the additional Medicare tax, but nothing would have been withheld by any employer.

- Long-term capital gain from sales of assets held for over one year is taxed at 0%, 15% or 20%, depending on the taxpayer's taxable income. If you hold long-term appreciated assets, consider selling enough of them to generate long-term capital gains that can be sheltered by the 0% rate. The 0% rate generally applies to net long-term capital gain to the extent that, when added to regular taxable income, it is not more than the maximum zero rate amount (e.g., $89,250 for a married couple in 2023, and $44,625 for a single taxpayer in 2023). Pay attention to the amount of capital gains to be taxed at the zero rate before deciding to "harvest" tax losses. For example, if the $5,000 of long-term capital gains you recognized earlier this year qualifies for the zero rate, then try not to sell assets yielding a capital loss before year-end (because the first $5,000 of those losses will offset $5,000 of capital gain that is already tax-free). Instead, consider delaying the "harvesting" of capital losses until 2024 for use to potentially offset capital gains which might be taxed at the 15% or 20% rate.

- Postpone income until 2024 and accelerate deductions into 2023 if doing so will enable you to claim larger deductions, credits, and other tax breaks for 2024 that are phased out over varying levels of adjusted gross income ("AGI"). These tax breaks subject to phase out may include deductible IRA contributions, child tax credits, higher education tax credits, and deductions for student loan interest. Postponing income also is desirable for taxpayers who anticipate being in a lower tax bracket next year due to changed financial circumstances. Note, however, that in some cases, it may actually pay to accelerate income into 2023. For example, that may be the case for a person who will have a more favorable filing status this year than next (e.g., head of household versus individual filing status), or who expects to be in a higher tax bracket next year.

- If you believe a Roth IRA is better for you than a traditional IRA, consider converting traditional-IRA money invested in any beaten-down stocks (or mutual funds) into a Roth IRA in 2023 (if eligible to do so). Keep in mind that the conversion will increase your income for 2023, possibly reducing tax breaks subject to phaseout at higher AGI levels.

- It may be advantageous to try to arrange with your employer to defer payment of any bonus that may be coming your way until 2024. This will defer your tax on the bonus and may also reduce your tax (if you expect to be in a lower tax bracket in 2024). Again, considerations may be different for the high-income individuals.

- Many taxpayers won't want (or need) to itemize because of the high basic standard deduction amounts that apply for 2023 ($27,700 for joint filers, $13,850 for singles and for marrieds filing separately, $20,800 for heads of household), and because many itemized deductions have been reduced or abolished. For example, the deduction for

state and local taxes (the "SALT Deduction") is limited to $10,000 per return (regardless of filing status), and miscellaneous itemized deductions and non-disaster related personal casualty losses are disallowed for 2023. You can still itemize medical expenses that exceed 7.5% of your AGI, state and local taxes up to $10,000, your charitable contributions, plus mortgage interest deductions on a restricted amount of debt, but these deductions won't save taxes unless they total more than your standard deduction.

- Some taxpayers may be able to work around these deduction restrictions for itemized deductions by applying a bunching strategy to pull or push discretionary medical expenses and charitable contributions into the year where they will do some tax good. For example, a taxpayer who will be able to itemize deductions this year but not next will benefit by making two years' worth of charitable contributions this year.

- Consider using a credit card to pay deductible expenses before the end of the year. Doing so will increase your 2023 deductions even if you don't pay your credit card bill until after the end of the year.

- If you expect to owe state and local income taxes when you file your return next year and you will be itemizing in 2023, consider asking your employer to increase withholding of state and local taxes (or make estimated tax payments of state and local taxes) before year-end to pull the deduction of those taxes into 2023. But this strategy is not effective to reduce taxes to the extent it causes your 2023 state and local tax payments to exceed the $10,000 limit on SALT Deductions.

- New rules apply for required minimum distributions (RMDs) from a "regular" IRA, 401(k) plan or other employer-sponsored retirement plan. If you were 73 or older in 2023 you must take an RMD from your "regular" IRA, 401(k) plan or other employer-sponsored retirement plan. Those who turn 73 in 2023 have until April 1, 2024 to take their first RMD but may want to take it by the end of 2023 to avoid having to double up on RMDs next year. This is a change from previous years when the RMD beginning date was age 72. No RMD is required to be made from a Roth IRA. Different (more complex) rules apply to inherited retirement accounts (discussed below).

- The original Secure Act, Secure Act 2.0 and IRS proposed regulations have complicated the issue of taking RMDs from inherited retirement accounts where the decedent died in 2020 or later (a "Secure Act Inherited Retirement Account"). Earlier this year the IRS issued guidance waiving penalties for taxpayers who fail to take their RMD from a Secure Act Inherited Retirement Account in 2023. However, this penalty waiver does not apply to situations where (i) a taxpayer fails to take their RMD from a retirement account which was inherited from a decedent who died <u>before</u> 2020, or (ii) the decedent dies in 2023 and the decedent's 2023 RMD is not timely distributed. The rules regarding RMDs for inherited retirement accounts are complex, and you should take extra care and consult with your tax advisor regarding your 2023 RMD requirements for your inherited retirement account.

- If you are age 70½ or older by the end of 2023, and especially if you are unable to itemize your deductions, consider making 2023 charitable donations via qualified

charitable distributions from your traditional IRAs. These distributions are made directly to charities from your IRAs, and the amount of the contribution is neither included in your gross income nor deductible on Schedule A, Form 1040. However, you are still entitled to claim the entire standard deduction. (The qualified charitable distribution amount is reduced by any deductible contributions to an IRA made for any year in which you were age 70½ or older, unless it reduced a previous qualified charitable distribution exclusion.)

- Take an eligible rollover distribution from a qualified retirement plan before the end of 2023 if you are facing a penalty for underpayment of estimated tax and increasing your wage withholding won't sufficiently address the problem. Income tax will be withheld from the distribution and will be applied toward the taxes owed for 2023. If you have not previously made a 60-day rollover of an IRA distribution in the past twelve months, and you timely roll over the gross amount of the distribution (i.e., the net amount you received plus the amount of withheld tax) to a traditional IRA within 60 days of the IRA distribution, no part of the distribution will be includible in income for 2023. However, the withheld tax will still be applied pro rata over the full 2023 tax year to reduce previous underpayments of estimated tax.

- Consider increasing the amount you set aside for next year in your employer's Flexible Spending Account if you set aside too little for this year and anticipate similar medical costs next year.

- If you become eligible in December of 2023 to make Health Savings Account contributions, you can make a full year's worth of deductible HSA contributions for 2023.

- Make gifts sheltered by the annual gift tax exclusion before the end of the year if doing so may save gift and estate taxes. The exclusion applies to gifts of up to $17,000 made in 2023 to each of an unlimited number of individuals. You can't carry over unused exclusions to another year. These transfers may save family income taxes where income-earning property is given to family members who are in lower income tax brackets (as long as they are not subject to the kiddie tax).

- If you were in federally declared disaster area, and you suffered uninsured or unreimbursed disaster-related losses, keep in mind you can choose to claim them either on the return for the year the loss occurred (in this instance, the 2023 return normally filed next year), or on the return for the prior year (2022), generating a quicker refund.

- If you were in a federally declared disaster area, you may want to settle an insurance or damage claim in 2023 to maximize your casualty loss deduction this year.

YEAR-END TAX PLANNING FOR BUSINESSES: Once again, whether or not proposed tax legislation is passed for next year, the standard year-end approach of deferring income and accelerating deductions to minimize taxes will continue to produce the best results for all but the highest-income businesses and their owners, as will the bunching of deductible expenses into this year or next to avoid restrictions and maximize deductions. If proposed tax increases do pass, however, high-income businesses and owners may find that the opposite strategies produce

better results (i.e., pulling income into 2023 to be taxed at currently lower rates, and deferring deductible expenses until 2024, when they can be taken to offset what would be higher-taxed income). High-income businesses and their owners should carefully evaluate all relevant factors as they consider year-end moves.

Here is a list of actions based on current tax rules that may help you save tax dollars if you act before year-end. Not all of these actions will apply to your business, but your business may benefit from many of them. Again, if your business is a high-income taxpayer already subject to tax at the highest brackets, you should exercise caution before taking actions which would pull taxable income into 2023 or defer deductions until 2024. These potential tax-savings actions include:

- Employers may claim a general business credit for paid family and medical leave they provide to their employees. This credit has been extended through 2025. Employers that paid family and medical leave to qualifying employees may take a credit equal to 12.5% of eligible wages if the rate of payment is 50% of such wages and may be eligible for a higher percentage credit under certain conditions. To qualify, the employer must have a written policy that meets specified criteria. Employers do not need to be subject to the Family and Medical Leave Act to claim the credit.

- A small employer pension plan startup credit is available to employers with 100 or fewer employees who adopt a new qualified retirement plan, provided that the plan covers at least one non-highly compensated employee. The credit is the greater of: (1) $500 or (2) the lesser of (a) $250 multiplied by the number of non-highly compensated employees of the eligible employer who are eligible to participate in the plan or (b) $5,000. The credit applies for up to three years beginning with the year the plan is first effective, or, at the election of the employer, with the year preceding the first plan year. For the 2023 tax year, the credit is 100% of qualified start-up costs for employers with up to 50 employees. For employers with more than 50 and up to 100 employees, the credit is 50% of qualified start-up costs.

- Small businesses may claim a general business credit of $500 for any tax year occurring in the credit period (generally three tax years beginning with the first tax year for which the employer includes an eligible automatic enrolment in its qualified employer plan (e.g., 401(k) or SIMPLE IRA). The credit is also available to employers that convert an existing plan to an automatic enrollment design. The credit is in addition to the small employer pension plan start-up credit.

- The Small Business Health Care Tax Credit allows small employers with fewer than 25 full-time employees to claim a credit for nonelective contributions to purchase health insurance for their employees. The maximum credit amount is 35% to 50% for premiums paid by eligible small employers and 25% to 35% of premiums paid for tax-exempt small employers.

- Certain food and beverage establishments may take a business tax credit of an amount equal to the employer's FICA tax (7.65%) paid on tip income less the FICA tax due on

the excess of the federal minimum wage over the employee's actual hourly rate of pay. The credit is part of the general business credit.

- Businesses that hired certain employees in specified target groups in 2023 may qualify for the Work Opportunity Tax Credit which has been authorized through the 2025 tax year. Generally, this is a one-time credit for each new hire in a target group. Certification that the worker is an eligible member of the target group is required. The credit may be applied against business income tax liability or for tax-exempt employers, the credit may be applied against payroll taxes.

- Year-end bonuses can be timed for maximum tax effect by both cash- and accrual-basis employers. Cash-basis employers deduct bonuses in the year paid, so they can time the payment for maximum tax effect. Accrual-basis employers deduct bonuses in the accrual year, when all events related to them are established with reasonable certainty. However, the bonus must be paid within 2½ months after the end of the employer's tax year for the deduction to be allowed in the earlier accrual year. Accrual employers looking to defer deductions to a higher-taxed future year should consider changing their bonus plans before year-end to set the payment date later than the 2.5-month window or change the bonus plan's terms to make the bonus amount not determinable at year end.

- The IRS has become aware that a significant number of employers have improperly claimed the Employee Retention Credit and obtained a tax refund, even though the employer were not eligible for the Employee Retention Credit. In many cases, the employers were not aware that they were ineligible for the Employee Retention Credit, but instead fell victim to unscrupulous "tax mills" which falsely represented that they could submit a claim and qualify the ineligible employers for significant tax benefits. The IRS is taking steps to recover tax refunds attributable to improper Employee Retention Credit and to assess substantial penalties and interest on these improper claims. The IRS has recently announced a process for an employer to revoke a filed claim for an Employee Retention Credit if the claim has not yet been processed (and thereby avoid penalties and interest if the claim is later determined to be improper). For employers who claimed the Employee Retention Credit, a review of eligibility is strongly recommended to determine if the claim is legitimate and, if not, to determine whether the employer can revoke the filed claim.

- Taxpayers other than corporations may be entitled to a deduction of up to 20% of their qualified business income. For 2023, if taxable income exceeds $364,200 for a married couple filing jointly (about half that for taxpayers with another filing status), the deduction may be limited based on whether the taxpayer is engaged in a service-type trade or business (such as law, accounting, health, or consulting), the amount of W-2 wages paid by the business, and/or the unadjusted basis of qualified property (such as machinery and equipment) held by the business. The limitations are phased in. The phase-in applies to joint filers with taxable income up to $100,000 above the threshold, and to other filers with taxable income up to $50,000 above their threshold. Taxpayers may be able to salvage some or all of this deduction, by deferring income or accelerating deductions to keep income under the dollar thresholds (or be subject to a smaller

deduction phaseout) for 2023. Depending on their business model, taxpayers also may be able increase the deduction by increasing W-2 wages before year-end. The rules are quite complex, so don't make a move in this area without consulting your accountant.

- Businesses should consider making expenditures that qualify for the liberalized business property expensing option. For tax years beginning in 2023, the expensing limit is $1,080,000, and the investment ceiling limit is $2,700,000. Expensing is generally available for most depreciable property (other than buildings) and off-the-shelf computer software. It is also available for interior improvements to a building (but not for its enlargement, elevators or escalators, or the internal structural framework), for roofs, and for HVAC, fire protection, alarm, and security systems. The generous dollar ceilings mean that many small and medium sized businesses that make timely purchases will be able to currently deduct most if not all their outlays for machinery and equipment. What's more, the expensing deduction is not prorated for the time that the asset is in service during the year. Expensing eligible items acquired and placed in service in the last days of 2023 can result in a full deduction for 2023.

- Businesses also can claim a 100% bonus first year depreciation deduction for machinery and equipment bought used (with some exceptions) or new if purchased and placed in service this year, and for qualified improvement property. The 100% write-off is permitted without any proration based on the length of time that an asset is in service during the tax year. As a result, the 100% bonus first-year write-off is available even if qualifying assets are in service for only a few days in 2023.

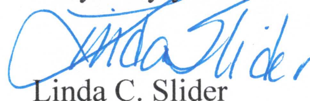
- A corporation (other than a large corporation) that anticipates a small net operating loss ("NOL") for 2023 (and substantial net income in 2024) may find it worthwhile to accelerate just enough of its 2024 income (or to defer just enough of its 2023 deductions) to create a small amount of net income for 2023. This allows the corporation to base its 2024 estimated tax installments on the relatively small amount of income shown on its 2023 return, rather than having to pay estimated taxes based on 100% of its much larger 2024 taxable income.

- To reduce 2023 taxable income, consider deferring a debt-cancellation event until 2024.

- Sometimes the disposition of a passive activity can be timed to make best use of its freed-up suspended losses. Where reduction of 2023 income is desired, consider disposing of a passive activity before year-end to take the suspended losses against 2023 income. If possible 2024 top rate increases are a concern, holding off on disposing of the activity until 2024 might save more in future taxes.

If you or your accountant would like more details about any item discussed in this letter, please do not hesitate to call.

Very truly yours,



Linda C. Slider