Darrin Mish is a tax attourney and graduate of Golden Gate University. He is admitted to practice before the US Supreme Court and a member of numerous tax associations. Darrin is a Best Selling Author and prolific writer on tax and business issues. Visit GetIRSHelp.com to review free informations on tax solutions.

Nick: Hey everybody, Nick Nanton here for our latest one-on-one call. I've got a really cool guest this month, Mr. Darrin Mish. I absolutely hate leading with the fact that Darrin Mish is a tax attorney. He's really sort of an IRS problem-fixing attorney. So Darrin, welcome man.

Darrin: Hey thanks Nick. …and yeah! We call it IRS problem resolution for lack of a better term. I don't consider myself a tax attorney. I specialize in dealing with disasters – with tax disasters and small business tax disasters in particular.

I was like a lot of lawyers and lots of small business people. I thought that if I had a client who paid me $3,000 in cash, all $3,000 in cash should go immediately into my pocket. Of course, that's not really the deal, but I created a tax problem for myself. It seemed insurmountable. I finally confessed to my brand-new wife that I had made a disaster out of our finances, my finances in particular. And she very patiently sat down with me and we worked through this.

I read the IRS rules and then went out to become a zealot advocate for my clients. The real interesting thing about my IRS practice is that I read the rule book, and the IRS employees haven't, therefore I have the upper hand.

Nick: Awesome. Yeah, and you've got a great domain too, right? GetIRSHelp.com – so good stuff.

Darrin: Before I even start to talk about that, you need to understand one cardinal rule on taxes owed, okay? And that is, if you have an ongoing tax problem, one where you're not only dealing with your current liabilities but you also have an old outstanding liability. The first thing that you need to do is to try to get current, and then stay current. For example, if you're not currently paying your payroll taxes for your employees and you're trying to figure out "should I pay the old payroll tax liability or should I start paying the current payroll tax liability?" The answer is resoundingly that you should start paying the current payroll tax liability now.

Now, let's talk about estimated tax payments for a minute. By failing to make estimated tax payments, that's a big problem – and the most common error that we see. If you can't do that because you know money's there and you feel like there's going to be emergencies come up where you're going to quote 'borrow that money' from yourself to pay for some other expenditure, what I suggest is you send in those estimated tax coupons more regularly. It's kind of a secret, but people can send in estimated tax payments everyday or every week or every month. If you get that money out of your account and get it to the government, you don't have it anymore, and so you can't spend it all.

Nick: Okay cool. So that can help you avoid issues at the end of the year. Alright, now let's talk about what a lot of people will want to know on the subject of filing corporate taxes, "Hey, should I file as an LLC or should I file as an S-Corp.?" And there's obviously some very significant differences, but for most practical purposes – should they file an LLC taxed as an S-Corp? But there are some definite benefits to being taxed as an S-Corp. whether there's an LLC or an S-Corp. So why don't you cover that since that's your specialty?

Darrin: OK, let's talk about the four types of entities real quick. We have the sole proprietorship and that's what you get by default when you just open up a business, you're taxed as a sole proprietorship. And you have to pay self-employment tax and you have to file a Schedule C, which is personal proprietorship, and a Schedule SE, which is self-employment tax.

Nick: Annually right?

Darrin: Annually. It goes with your form 1040. Here's a big distinction – if you're an employee you only pay 7.65% and your employer matches that 7.65%. But when you're self-employed, you are both the employer and the employee, therefore you have to pay the 15.3%.

Now the next entity I want to talk about is the limited liability corporation, the LLC.

If you form a limited liability company in your state and make no special tax election, you'll be taxed as a sole proprietorship. In my opinion, that's bad. Why? Because you're going to pay that full 15.3% in self-employment tax. But it's a little known fact that you can actually make a tax election as an LLC. So, by raising your hand and sending in a form to the IRS, you can say, "I wished to be taxed as a corporation and furthermore I wished to be taxed as a 'Sub S' Corporation."

So what's a 'Sub S' Corporation? A 'Sub S' Corporation stands for small business corporation. It's closely held and I think you can have up to five shareholders. It's a pass-through entity. What does that mean? It means that the corporation pays none of its own tax. All of the tax is passed through to the shareholders of the corporation. Follow me so far Nick?

Nick: Absolutely.

Darrin: Okay. So most small businesses in America are actually formed as 'Sub S' Corporations. A 'C' Corp. is a traditional corporation like you think of General Motors, Ford, or Delta Airlines. 'C' Corporations have different tax advantages, but they don't benefit the small business man as much as the 'Sub S'. What makes the 'Sub S' so great? Well, in a 'Sub S' most companies I deal with have one shareholder, like I do, ...and the law says I have to take a reasonable salary. So the next logical question is, "Well what the heck does 'reasonable' mean in this context?" Well, it means something comparable to anybody else in the private or public sector that's doing the same kind of work.

So anyway, you led me down this rabbit hole explaining this really complicated stuff without any visual aids; but basically, you have the limited liability company, you have the 'Sub S' Corporation, you have a 'C' Corporation, or you can be a sole proprietorship. So the question that I'm often asked is, "Which one is best, Darrin?" And I would say it's a tie between an LLC taxed as an 'S' Corp. or just a straight up 'S' Corp.

The LLC will actually provide you more liability protection in most states than the 'S' Corp., but you have to take that extra step to elect to be taxed in that fashion, and many CPAs and lawyers don't understand that an LLC can be taxed as an 'S' Corp., so they'll tell you it can't be done.

Nick: Cool, so tell us more.

Darrin: OK! For those who have a problem with the IRS, there's basically six tax collection alternatives.

(1). The first is an *installment agreement* and it's what you'd think of as a payment plan to pay off your taxes.

(2). The second is called an *offer and compromise* and an offer and compromise is where you make a deal with the IRS to settle for less.

(3). The third alternative is there's actually a *statute of limitations for the collection of tax*. Now this is a really big secret. A lot of people don't know this, but the IRS only has 10 years from the date of the assessment of a tax to collect that tax.

(4). The fourth is actually a *tax bankruptcy*. This is probably even lesser understood than the statute of limitations, but many taxes can be discharged in a personal bankruptcy and there's time and limitations there as well.

(5). The fifth is *called innocent spouse relief*. Innocent spouse is extremely complicated. If you have a former spouse that ran up a big tax bill that you don't feel you should be held responsible for, you may be eligible to be relieved of some or all of that tax bill through the use of 'innocent spouse'.

(6). The sixth is a status called *currently not collectible*. And 'currently not collectible' just means that presently you have no ability to pay anything out of your monthly income or your assets, to satisfy your tax debt.

Now, we weren't able to cover all collection alternatives, but you can visit my website at GetIRSHelp.com and there's literally tons of video.

Nick: Cool, that's at GetIRSHelp.com. Any number they can call if they need something?

Darrin: Sure, they can reach me toll free at 888-GET-MISH, which is 888-438-6474. And thanks Nick, appreciate you having me here.

Nick: Awesome man, thanks. It's always great talking to you. ★

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