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ADVANCED ESTATE PLANNING

Advanced estate planning involves assessing the anticipated estate and income tax liability of an individual or married couple and determining which combination of recognized - or creative - strategies will reduce or eliminate these taxes. Where appropriate, arrangements can be made to provide heirs with funds intended to replace the assets paid over in taxes. The following are some of the more common estate planning vehicles:

ESTATE TAX EXEMPTION TRUSTS AND MARITAL TRUSTS

These trusts are incorporated into a married client's estate planning documents to take effect on the first death, and assets are titled in the name of the individual client or their revocable "living" trust to be sure that they are funded properly. As of January 1, 2006, an individual will be able to shelter up to \$2 million (the estate tax exemption amount) from estate taxation, while allowing the surviving spouse to have access to the assets in the trust (often called a "family trust" or "bypass trust") until his or her death. The balance of the estate, if any, is often held in a marital trust, the terms of which can tend to protect those assets for the children of the first spouse to die (in case of remarriage or spendthrift tendencies of the survivor). These trusts are the foundation of any good estate plan where the client's assets exceed the available estate tax exemption amount for an individual.

IRREVOCABLE LIFE INSURANCE TRUSTS

Depending upon the size of the estate, it may be most appropriate to make gifts to a trust to pay premiums on a life insurance policy on the life of the taxpayer/client for the benefit of the family. These policies can be purchased on an individual or on the couple (called survivorship, or second to die, policies). The proceeds are not included in the taxable estate of the insured(s), and they can be held in the trust for later generations, as well. They are often used in the estate plans of those who have family businesses or real estate, assets which are not likely to be sold quickly to pay the estate taxes. These trusts also provide the liquidity needed to keep special assets in the family.

CHARITABLE REMAINDER/LEAD TRUSTS

For clients who have appreciated assets they wish to convert and who would benefit from a charitable contributions income tax deduction, the charitable remainder trust and charitable lead trust provide an opportunity for significant estate and income tax savings. Typically, the appreciated assets are transferred into an irrevocable trust and sold without immediate capital gains tax liability, and the reinvested assets are used to pay an income stream of a fixed amount or percentage of the trust assets. If the income is paid to the

donor or his designated recipient(s), with the remainder passing to charity on death (or the expiration of a period of up to 20 years), the trust is called a charitable remainder trust. In the charitable lead trust, the charity receives the stream of income, and the family of the donor receives the remaining principal back. Both trusts have significant income, gift and estate tax benefits, and they can be paired with the irrevocable life insurance trust to replace the value of the asset going to charity for the children, each without taxation.

Personal Residence Trusts

These vehicles are designed to reduce the tax value of the principal residence or vacation home of the taxpayer in order to transfer the property to the children at a significant gift tax discount and to remove the future increases in the value of the residence from the donor's estate. The client(s) still occupy the home for the term of the trust (a period of up to 20 years), as they determine, after which time the title passes to the children, taking the untaxed appreciation from the date of the trust with it as well. The capital gains tax is an issue to be considered, but in most cases, the gift and estate tax advantages far outweigh the income tax implications.

Family Limited Partnerships

The concept of a limited partnership is to give partial interests in an entity to children and grandchildren into which property has been transferred. Because the gift is usually one of a minority interest and has a restricted market for resale, the value of the partnership interest transferred is discounted for gift tax purposes. The transfer is normally structured to take advantage of the available exclusions from the gift tax so that no tax is actually paid during life. Best of all, the parents can retain control of the partnership but not be concerned that the entire value of the assets in the partnership will be taxed as a part of their estates (only the interest not given away will be subject to tax). The process of planning, establishing, valuing and transferring a limited partnership requires commitment, discipline and good advice, but the tax benefits can be significant. In addition, the partnership gives families an excellent vehicle for the orderly transfer of assets, including family business interests, as well as certain creditor protections.

GRATs and GRUTs

Stocks, bonds, mutual funds and other liquid investment assets can be given to family by way of an irrevocable trust using the same general concepts as apply in the case of the personal residence trust. The variations are found in the way the income stream is valued and paid from these trusts, and the rules governing the creation and administration of GRATs and GRUTs are very complex and unforgiving. Thus, experienced tax advice is critical to the success of these vehicles in one's estate plan.

Miscellaneous Planning Tools

Beyond these groups of estate planning entities, there are other strategies and options available for consideration when evaluating an estate for achieving the goals of the clients. There are also non-tax considerations, such as planning for the blended family, protecting assets from litigation, and sheltering funds for the

education and support of minors. Non-citizen spouses require special trust arrangements, as do children in tenuous marriages. Business succession agreements can make all the difference between a successful transition to the next generation and litigation among the heirs.

Summary

Experienced counsel can apprise clients of the available options and take the lead in planning and implementing the chosen advanced estate planning strategies. It is also the attorney's goal to bring together the team of advisors for clients to bring the tax, legal, business and financial perspectives to the table for consideration, resulting in a thorough and efficient planning process, to bring the client valuable peace of mind from knowing that one's desires and goals for the family can be achieved.

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