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NEWSLETTER

RE: ESTATE PLANNING ISSUES

This letter is intended to touch on some of the issues my clients are currently addressing in today's economic and legal environment. Many of these issues are historically common, and some of these issues are driven by the low valuations of their businesses and real estate, as well as today's low interest rates for estate planning projects. Another matter that seems to be impacting estate planning more frequently is the concern for asset protection given the current litigious legal environment.

Some of these issues may also affect you or your clients:

- Clients are restructuring their assets so that instead of financial assets, real estate, or a business being owned by the client, the client owns a limited liability company which owns such assets. The client can then give away, or sell, outright or in trust, the non-controlling ownership interest of the new limited liability company. Currently, the value for transfer tax purposes of the asset gifted or sold is lower than it was perhaps a year ago. In addition, a lack of control and lack of marketability discount are also applied to reduce the value of the sale or gift. This is an excellent technique for locking in today's low values on a discounted basis for assets that you hope will grow substantially for the remainder of your lifetime. The client still retains control of these assets by controlling the new limited liability company.
- My philanthropic clients are creating their own private foundations. These private foundations can be used to organize their gifts during their lifetime and take advantage of more valuable income tax deductions in the coming high income tax rate years. Also, the private foundation can be used as a recipient of their retirement accounts, which avoids both income and estate taxes, or even a recipient of their Will or trust, which avoids estate taxes.

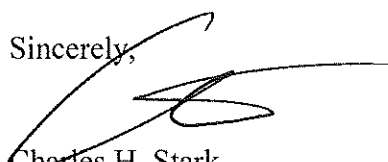
- Some clients are leaving the amount that will pass estate tax free for the benefit of their lineal descendants either outright or in a Dynasty Trust that can benefit multiple generations. The advantage of this type of trust is that it can also be structured in a way to avoid creditors' claims of future generations and shelter the inherited assets from traditional tort creditors and in the event of divorce.
- Some clients are leaving the taxable portion of their estate pursuant to charitable lead trust provisions which would make payments to a charity or their own private foundation in an amount the present value of which is equal to its entire value. However, if the client achieves an investment rate of return in excess of approximately 3.4% per year, that excess return would escape estate taxation entirely for the benefit of future generations. This is a very attractive technique for the client who has charitable desires because of the current low interest rates used by the IRS for such a technique.
- Clients who are more aware of asset protection concerns than in the past are using holding company limited liability companies which own separate limited liability companies with separate assets/projects. This technique allows asset protection in a number of different ways. First, creditors of one activity cannot reach the assets of the other activities. Secondly, it can be structured in such a way so that the creditors of the client himself (such as a malpractice claim against a doctor client, or a claim in the event of a car or home accident) cannot reach the assets of the individual limited liability companies. Another benefit to this structure is that income tax reporting can usually be simplified with this structure when compared to the client's existing approach.
- Because the IRS interest rates are so low, the use of a Grantor Retained Annuity Trust ("GRAT") or a portfolio of different GRATs with different terms and payouts, is also very attractive in today's environment. GRATs are a user friendly technique. It involves the client transferring assets to a trust that the client can be the trustee of. The trust is then required to pay a set amount back to the client for a set term of years. Upon the end of the term of years, the assets would typically pass to the children. The use of a GRAT is a way to minimize the effect of the value of a taxable gift. For example, a client who wanted to give a \$1 Million asset to his children would use his entire \$1 Million taxable gift exemption with such an approach. If instead, the client transferred the asset to a GRAT and it would pay back 6% of the value of the asset each year for ten (10) years and at the same the asset grew 6% per year for ten (10) years, then that asset after 10 years would still be worth \$1 Million, and at that time would be transferred to the children using only \$498,000 of the client's gift tax exemption. The GRAT technique doesn't accomplish anything if the client dies during the term selected for the GRAT, but it is more effective if the client has a longer GRAT term. Therefore, some clients will use multiple GRATs with different terms to hedge their bets. Some of those GRATs would have longer terms and some shorter.

These are just a few techniques being used by my clients. In addition, clients are still wanting estate planning documents to avoid guardianship, probate and to use both of their estate tax exemptions. One issue that is really affecting estate tax reduction planning is the uncertainty of what exactly the estate tax exemption will be in the future. Hopefully, that exemption amount will clarify

itself soon. Otherwise, I think you will see clients doing short term estate planning that in my opinion should involve a lot of term life insurance rather than irrevocable estate planning techniques. Longer horizon estate planning will be very busy once the estate tax exemption is selected, regardless of the exemption amount selected. Currently, as you all probably know, the estate tax exemption is \$3,500,000. Next year there are no estate taxes for decedents dying in that year, and thereafter there is only a \$1 Million estate tax exemption. Since the exemption ultimately enacted involves economics, politics and many other issues, predictions are, in my opinion, not very reliable. We will all have to just wait and see what the legislation ultimately is or isn't for the continuing estate tax exemption.

If any of these techniques are of any interest to you or your clients, please feel free to contact me.

Sincerely,



Charles H. Stark

CHS/db