Professional Portfolio

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Five Common Business and Estate Planning Mistakes

Financial business and estate planning can be a difficult task even in the best of financial times. The recent downturn in the financial markets has many individuals scrambling for answers and good advice. The five issues that I have outlined below have been common problems and have often been overlooked by individuals both in good financial times and bad times. Being aware of potential pitfalls and by paying close attention to financial and estate planning, potentially expensive mistakes can be avoided.

1. **Married couple not taking full advantage of both of their estate tax exemptions due to incorrect asset ownership and/or ineffective rules.**

When assets pass at death from one person to another, significant taxes can be incurred based upon current law. A typical mistake that occurs in planning for estates in excess of $2 million dollars (the current federal estate tax exemption amount in 2008) is the failure to take advantage of each spouse's $2 million dollar federal estate tax exemption amount. Failure to fully (or even partially) utilize the federal estate tax exemption in the estate of the first to die, can often result in an increase in federal estate tax upon the death of the surviving spouse. A typical way to maximize the use of each spouse's federal estate tax exemption amount is through the use of a credit shelter trust. Utilizing this type of trust exposes the property that passes to this trust to taxation, while at the same ensuring that no tax is paid on the assets that pass into this trust at the first spouse's death. Upon the death of the surviving spouse, the property contained in this trust would then pass to the children.

In order to take advantage of this type of planning, it is important that the assets owned by both spouses are properly titled. Often, property titled jointly between the husband and wife cannot be utilized to fund the credit shelter trust thus resulting in a wasting of some of the federal estate tax exclusion amount in the estate of the first spouse to die.

Drafting wills that incorporate this type of trust and ensuring proper ownership of marital assets can be complicated and requires precise planning. In addition to the asset ownership issues and the proper drafting of the Wills, the beneficiary designations of life insurance, IRA's and 401(k)'s also need to be consistent with the terms of the Wills to ensure that the entire estate plan is coordinated properly.

2. **Incomplete/inadequate beneficiary designations for 401(k)'s, IRA's and life insurance that do not coordinate with the rest of the estate plan**.

As part of the estate planning process, all beneficiary designations for life insurance policies, IRA's, 401(k)'s and annuities must be reviewed and modified if applicable. You will want to coordinate the beneficiary designations of all of these types of plans so that they dovetail with the terms of your Will. Failure to modify a beneficiary designation might result in young children receiving distributions from a life insurance policy or IRA when the intent was for those assets to be held in trust for those children. Just because you create a trust under your Will for your children, does not necessarily mean that all of your assets will be distributed to those trusts unless you designate that trust as a beneficiary of those types of assets.

3. **For business partners, failing to have a binding buy-sell agreement in place for death or dissolution.**

Typically whenever partners enter into a business the last thing on their mind is the possibility of the death of one partner or the business having to be dissolved. Having said that, a binding buy-sell agreement is probably one of the most important documents owners of a corporation or partnership can have. A stock purchase or buy sell agreement is nothing more than an agreement between multiple owners of a particular business to buy and sell their respective interest in the business at a price determined in a written agreement. These agreements typically pertain to situations such as death, disability, termination of employment, an individual's bankruptcy or divorce. By having a buy-sell agreement in place, a business owner protects the business from internal dissension and also restricts the future ownership of the business interests.

4. **Fail to plan for business succession.**

In family business situations, oftentimes the owner of the business fails to plan for what will happen to his ownership in the business should he die or wish to transfer his interest to succeeding generations. When considering this type of planning, the business owner will want to consider who in his family is interested in continuing in the business. In many circumstances, not all the children of the business owner are interested in continuing in the business. In cases like that, other dispositions of property need to be considered for those children not entering into the business. Transferring the business interest during the owner's lifetime needs to be done carefully so as to allow the owner to retain some control and receive income from the business, while at the same time removing considerable estate value by way of gifts, or sales of his interest to interested family members.

5. **Ignoring corporate formalities, neglecting to hold regular shareholder and board of director meetings. Failing to prepare written minutes of meetings.**

The primary reason a corporation is used for business purposes is to insulate the owners of that business from personal liability for the debts or other obligations of that business. Failing to hold regular shareholder meetings or prepare written minutes of those meetings can allow for creditors of the corporation to "pierce the corporate veil" and hold the business owners personally liable for the debts and other obligations of the business. That is why it is so important for owners of corporations to make sure that the formalities of the corporate form are respected and adhered to so as to avoid the possibility of personal liability.

While the above list is not meant to be a comprehensive list of all the issues concerning estate and business planning, they are certainly some of the most common mistakes that I see in my practice. Having said that, all of these problems can be easily avoided with proper professional advice and planning.

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