



The Trust: Not Just for Wealthy People, Anymore!

Introduction

Traditionally, trusts have been associated with high net-worth individuals and owners of large businesses. Times have changed, and this assumption is simply no longer the case. Today, many people can benefit from and need a trust to protect their children's inheritance from step parents, siblings, the IRS and even the children themselves. Trusts are beneficial because they direct assets to where they need to go, and when, even after the death of the individual establishing the trust.

A trust is a legal device in which property is held by a manager (trustee) for the benefit of another person (beneficiary). A simple example this type of trust would be one in which a person establishes a bank account while naming his or her children as are

“pay upon death” beneficiaries. Trusts are used when a will, prenuptial agreement, or other legal document simply will not suffice for disposing of an asset or assets.

Parents

Words cannot emphasize enough how important the uses of trusts are whether a parent has minor or majority-age children. It is common to get a call from a descendent whose last surviving parent has died. After sadly explaining the situation, he or she then adds that their last parent had remarried along the way either due to a divorce or to being widowed. In many cases, any hope of the descendent receiving an inheritance is lost as a result of a step-parent being in the picture. Though their last-surviving parent would not have wanted that to happen, this is routinely what occurs. (Continued on pg. 2)



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A CASE STUDY

In a Revenue Ruling, the IRS reversed decades of old guidance and issued a new set of rules for sign on bonuses. Now sign on bonuses, early termination settlements, and non-compete amounts (no matter how they are worded) are subject to FICA taxes.

The facts were based upon baseball players in pro baseball. Sign on bonuses are defined as an

amount paid to an employee to sign an initial contract or an agreement to be employed. A bonus is paid when the employee performs for services provided. When an employer pays an employee for terminating employment, this is now known as a “termination payment” and is subject to all payroll taxes.

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Many parents think that having a will or prenuptial agreement will alleviate this problem. While wills and prenuptials help, they are not a silver bullet. People who write wills or prenuptials will generally store them in a house or filing cabinet along with their other papers. Upon the last-surviving parent's death, the expectation is that their spouse / stepparent will produce a copy of the material and present it to the court for probate, thus benefiting their child. What routinely happens in these instances is that after the last-surviving parent dies and the spouse/step parent will shred the prenuptial agreement and by that action, deprive said children of their legal inheritance. A trust, on the other hand, prevents this because when the trust is funded, the property is retitled and other evidence comes into existence from the trust being created.

Furthermore, it should be noted that, prenuptial agreements are mere contracts. One small breach on a multiple point document can send the entire estate into intestate succession resulting in adverse results. Wills can also be voided by spouses under many state probate laws. Spouses can demand a fairly significant share of the estate including short term support even though that may not have been the intent of the deceased spouse. A trust removes property from the will or other legal document and assures how it will be passed on to successors.

Business Owners

Business owners of any size need trusts as part of their estate plan / succession plan as well. Businesses that have done succession planning stand a substantially better chance of surviving to the next generation of owners as opposed to businesses in which the owners engaged in no succession planning. In the case of a business owner, a will is simply insufficient. With a will, upon death of the owner, the business becomes property of the decedent's estate. Not only is the business a target of creditors while it is in an estate, the business also goes through a period of uncertainty known as probate. During this time, key employees may be compelled to find other



opportunities, open their own businesses, or declare themselves the leader when this is or should not be the case. A trust on the other hand, eliminates much uncertainty. In addition, voting stock trusts are excellent devices for succession planning of a closely-held business in that they further aid in business succession planning.

Conclusion

Trusts are absolutely not meant only for high net-worth individuals anymore. A change in marriage status and the complexity of our laws has led to trusts being more useful today than at any point in the past. The Center for Financial, Legal, and Tax Planning, Inc. routinely sets up and analyzes trusts for use in many circumstances.

Post Note

Last month, The Center published an advisory regarding looking at what was new for 2007. The Center has since learned that a telephone excise tax, which was originally enacted in the 1800's to fund the Spanish American War is now a refundable credit on 2006's tax return. The credit is taken on line 71 of this year's 1040. The refund is based on telephone service between February 28, 2003 and August 1, 2006. Be sure to get your tax credit when you file your tax return for 2006.

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Editor's Comment: FICA and FUTA taxes are paid on any amounts roughly known as wages. Wages are defined as remuneration for employment unless a specific exemption applies. Employment includes establishing, advancing, changing, or canceling the employee-employer relationship. Unless the employer provides a payment clearly outside of this relationship, the payments are wages and subject to FICA and FUTA taxes.

Points of Interest

- **Today, many people can benefit from and need a trust to protect their children's inheritance from step parents, siblings, the IRS and even the children themselves.**
- **Trusts are absolutely not meant only for high net-worth individuals anymore.**
- **Businesses that have done succession planning stand a substantially better chance of surviving to the next generation of owners as opposed to businesses in which the owners engaged in no succession planning.**
- **In the case of a business owner, a will is simply insufficient.**

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10 Most Common M&A Transaction Mistakes

This month's column features the 10 Most Common M&A Transaction Mistakes, as published by the Alliance of Merger & Acquisition Advisors.

We'll address these in future issues, but for now here's AMAA Top Ten.

1. The owners do not understand the value of the business.
2. The owners have an unrealistic price in mind.
3. The owners do not understand the investor's motive.
4. The owners do not have proper counsel.
5. The owners try to sell to the wrong people.
6. The owners assume the best investor is local.
7. The company is not positioned for sale.
8. There is improper documentation.
9. The owners do not plan for the sale.
10. Don't be the first to mention price.

To this list I'd add one more cardinal error: The owners underestimate the importance of CONFIDENTIALITY.

If you know of a business owner who's thinking of selling or buying a business and who might benefit from a free consultation with us, have them contact me, or any of the M&A professionals at www.bradwaygroup.com

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Frequently Asked Questions...

Q. What kind of property can be depreciated?

A. Depreciation can be claimed on property owned or used by a taxpayer in a trade, business or for the production of income. The property must be such that it will wear out over time of use. Normally this includes nearly every kind of property such as tools, equipment, buildings, vehicles, and the like. Generally, land itself is not depreciable. Intangible property also tends to be depreciable or amortized over time as intellectual property wears out as well.

Q. I have incurred substantial costs repairing the dwelling my business is housed in. How can I use these costs to aid my tax situation?

A. Generally costs of this nature fall into one of two categories. Repairs such as replacing broken windows, repainting, fixing gutters and floors are examples of repairs which are expensed immediately from the current year's income. Bigger jobs such as replacing gutters, floors, whole building paint schemes, etcetera are examples of costs that are known to "extend the life and value" of a dwelling. They also tend to last over time and are expensed against taxes over a period of years.

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