Forum on the Entertainment and Sports Industries

From Hollywood to South Beach: The First Annual International Legal Symposium on the World of Music, Film and Television

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Dealing with the Money: Advising Your Celebrity Client on How to Offset Against All Federal Increases in Income, Gift and Estate Taxes, and Utilizing Asset Protection Planning Techniques in Conjunction with Pre- and Post Marital Agreements and Divorce Settlements

THURSDAY, APRIL 22, 2010

2:40 pm – 4:10 pm

Flicker Room 1 & 2

BEST INCOME, GIFT AND ESTATE TAX PLANNING IDEAS FOR PROFESSIONAL ATHLETES AND ENTERTAINERS

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I. INCOME TAX PLANNNING

A. Tax Planning For Compensation

1. Deferred Compensation

a. Constructive receipt

(1) compensation is "constructively received" by a taxpayer when it is credited to his account, set apart for him, or otherwise made available so that he may draw on it at any time, or so that he could have drawn on it during the tax year if notice of intention to withdraw had been given.
(2) a taxpayer does not constructively receive compensation where the employee agrees, before an amount becomes payable, to have the compensation paid later, merely because the employee could have arranged to receive earlier the payment of compensation.
(3) the tax laws require that the taxpayer must comply with some specific rules and make certain elections in order to qualify for the deferred recognition of income.

b. Unfunded deferred compensation plans

(1) compensation, whether forfeitable or nonforfeitable, that is deferred under a contractual obligation merely to make payments when due (and not to fund the arrangement) is not taxable income to a taxpayer until actually received
(2) the deferral must be agreed to before the compensation is earned

(3) the deferred amount cannot be unconditionally placed in trust or in escrow for the benefit of the taxpayer

(4) the contractual obligation to pay the deferred compensation cannot be evidenced by a promissory note or secured in any way

c. Rabbi trust

(1) unfunded and unsecured nonqualified deferred compensation arrangements under which an employer places assets in a trust to be used to provide deferred compensation benefits to its employees

(2) the assets and income of the fund or trust are subject to claims of the employer's creditors if the employer becomes insolvent

(3) the employees receive no beneficial ownership or preferred claims on the assets

(4) the trustee does not have discretionary authority to invest fund assets or to make payments to employees and their beneficiaries

(5) the employer is treated as the owner of the assets held by the fund or trust and must include all of the income, deductions and credits of the fund or trust in computing its own income tax

(6) the applicability of FICA (social security and Medicare insurance) and FUTA (unemployment insurance) taxes to unfunded nonqualified plans can differ from that of federal income tax withholding

2. Endorsement Income

a. Create a separate entity to receive the income

(1) athlete/entertainer is sole or major owner

(2) athlete/entertainer is obliged to perform specialized services with the entity which would then contract with the manufacturer or merchandising company

b. Deduction of expenses and fringe benefits

(1) travel, entertainment & promotion and professional fees

(2) fund a qualified retirement plan

B. Alleviating State Tax Problems

1. Resident versus Nonresident

a. Generally, physical presence in state for 183 days

b. Location of business of employer

c. Location of individual's other business interests

d. Ownership of family home

e. Physical location of family

f. Voting registration

g. Driver's license and automobile registration

h. Statements in documents, such as will, application of membership in local clubs, and marriage certificate

2. Allocation of Income Method

a. Signing bonus
   (1) taxable in state of residence for baseball
   (2) may be subject to apportionment to states where services performed for football

b. Allocation of wages by team on Form W-2

c. Duty days method
   (1) includes all days from the beginning of the team's official pre-season training through the last game in which the team competes
   (2) includes all days in which the individual is required to perform services but which fall outside the above period, such as instructional leagues, "All-Star" and "Pro Bowl" games, or promotional events
   (3) does not include any days which the individual is not compensated and is not rendering services in any manner
   (4) includes days during the off-season when a team member undertakes training activities as part of a team-imposed program, but only if conducted at the facilities of the team

(5) includes travel days if the day includes a game, required practice, meeting or other service

d. Games played method

3. Withholding and Estimated Tax Payments

4. Credit for Taxes Paid to Other States

5. Reciprocal Agreements

6. Timely Filing of Tax Return

II. GIFT TAX PLANNING

A. Irrevocable Life Insurance Trust

1. Purposes for Forming

a. To pass the life insurance proceeds to the named beneficiaries in the policy free of estate taxes for the insured

b. To avoid gift tax on payments of premiums by the insured to fund the insurance

c. To retain income tax-free receipt of the policy proceeds

d. To provide liquidity at the insured's death to pay debts, expenses and/or taxes due, to support any business assets, to fund cash bequests, and to support the intended beneficiaries of the decedent's estate

e. To control the timing of receipt of the proceeds by individual beneficiaries

2. Funding the Payment of the Insurance Policy Premiums

a. Donor contributes funds to the trust and then the trust pays the premium

b. Beneficiaries must have the right to withdraw the contributed funds if the donor's want gift to qualify the annual amount that is not subject to gift tax (currently, $13,000 per donee)

B. Charitable Gifts

1. Charitable Remainder Trust

a. A charitable remainder trust is formed to pay income to one or more noncharitable income beneficiaries and to pay the entire remainder to charity or use it for a charitable purpose

b. A current charitable income tax deduction is allowed for the value of the remainder interest that will pass to the charitable.

c. Although the value of the assets in the charitable trust will be included in the gross estate of the donor upon death, an estate tax deduction will be allowed equal to that amount; thus the value of the remaining assets in the charitable remainder trust upon the death of the donor will not be subject to estate tax

2. Other Methods of Charitable Giving

a. Community foundation

b. Donor-advised fund

c. Private foundation

III. ESTATE TAX PLANNING

A. Estate Tax Planning Objectives

1. Two Overriding Concepts

a. The optimal disposition and management of assets that will pass at death

b. The minimization of confusion and emotional strain on the beneficiaries of the assets

2. Non-Tax Considerations

a. Review plan with legal and financial advisors periodically due to changes in the family's personal and economic situation

b. Periodically attempt to foresee that the disposition of assets contemplated will be effectively accomplished under all circumstances, including changes in tax laws

B. Asset Protection

1. Adequate insurance coverage

2. Ownership of assets

a. Domestic/ foreign asset protection trust

b. Limited liability partnership/ company

c. Investment in annuity products

d. Residence entitled to state homestead protection

e. Tenancy by the entireties with spouse

3. Prenuptial agreement

4. Avoid personal guaranty of debts for a business or investment entity