Spring & Co.
CERTIFIED PUBLIC ACCOUNTANTS

Tax & Business Alert

MARCH 2018

DYNASTY TRUSTS ARE MORE VALUABLE THAN EVER

The Tax Cuts and Jobs Act (TCJA), signed into law this past December, affects more than just income taxes. It's brought great changes to estate planning and, in doing so, bolstered the potential value of dynasty trusts.

EXEMPTION CHANGES

Let's start with the TCJA. It doesn't repeal the estate tax, as had been discussed before its passage. The tax was retained in the final version of the law. For the estates of persons dying, and gifts made, after December 31, 2017, and before January 1, 2026, the gift and estate tax exemption and the generation-skipping transfer tax exemption amounts have been increased to an inflation-adjusted $10 million, or $20 million for married couples (expected to be $11.2 million and $22.4 million, respectively, for 2018).

Absent further congressional action, the exemptions will revert to their 2017 levels (adjusted for inflation) beginning January 1, 2026. The marginal tax rate for all three taxes remains at 40%.

GST AVOIDANCE

Now let's turn to dynasty trusts. These irrevocable arrangements allow substantial amounts of wealth to grow free of federal gift, estate and generation-skipping transfer (GST) taxes, largely because of their lengthy terms. The specific longevity of a dynasty trust depends on the law of the state in which it's established. Some states allow trusts to last for hundreds of years or even in perpetuity.

Where the TCJA and dynasty trusts come together is in the potential to avoid the GST tax. It levies an additional 40% tax on transfers to grandchildren or others that skip a generation, potentially consuming substantial amounts of wealth. The key to avoiding the tax is to leverage your GST tax exemption, which, under the TCJA, will be higher than ever starting in 2018.

Assuming you haven't yet used any of your gift and estate tax exemption, you can transfer $10 million to a properly structured dynasty trust. There's no gift tax on the transaction because it's within your unused exemption amount. And the funds, plus future appreciation, are removed from your taxable estate.

NONTAX REASONS TO SET UP A DYNASTY TRUST

Regardless of the tax implications, there are valid nontax reasons to set up a dynasty trust. First, you can designate the beneficiaries of the trust assets spanning multiple generations. Typically, you might provide for the assets to follow a line of descendants, such as children, grandchildren, great-grandchildren, etc. You can also impose certain restrictions, such as limiting access to funds until a beneficiary earns a college degree.

Second, by placing assets in a properly structured trust, those assets can be protected from the reach of a beneficiary's creditors, including claims based on divorce, a failed business or traffic accidents.

Most important, by allocating your GST tax exemption to your trust contributions, you ensure that any future distributions or other transfers of trust assets to your grandchildren or subsequent generations will avoid GST taxes. This is true even if the value of the assets grows well beyond the exemption amount or the exemption is reduced in the future.

BEST INTERESTS

Naturally, setting up a dynasty trust is neither simple nor quick. You'll need to choose a structure, allocate assets (such as securities, real estate, life insurance policies and business interests), and name a trustee. Our firm can work with your attorney to maximize the tax benefits and help ensure the trust is in the best interests of your estate. ■

HEED THE WARNING SIGNS OF W-2 PHISHING SCAMS

A growing number of businesses have been victimized by W-2 phishing scams. In a traditional phishing scam, a criminal tricks someone into providing confidential information and then uses it to steal money and/or the victim's identity. The W-2 phishing scam is a variation on this.

Whether you're a business owner, work in management or are simply an employee, it's important to be able to recognize this dangerous ploy. The better educated a company's employees are, the less likely that it will suffer at the hands of these criminals.

HOW IT WORKS

In a W-2 phishing scam, cybercriminals send emails to company employees — typically in payroll, benefits or HR departments — that claim to be from management. The emails request a list of employees along with their W-2 forms, Social Security numbers or other confidential data.

Here are some examples straight from the IRS:

- "Kindly send me the individual 2015 W-2 (PDF) and earnings summary of all W-2 of our company staff for a quick review."
- "Can you send me the updated list of employees with full details (Name, Social Security Number, Date of Birth, Home Address, Salary)?"

If the employee responds with data, criminals can use the information to file fraudulent tax returns in the employees' names, seeking refunds.

The scam is particularly nefarious because the employees it targets probably believe that, in complying with the emailed instructions, they're doing exactly what they're supposed to. Moreover, at first glance, the emails typically appear legitimate. Many contain the company's logo and the name of an actual executive, typically gleaned from publicly available information.

The increasing number of such scams prompted the IRS to issue an alert in 2016: "IRS Alerts Payroll and HR Professionals to Phishing Scheme Involving W-2s." More recently, in November 2017, the agency issued another stern warning on its website, entitled "Employers, Payroll Officals: Avoid the W-2 Email Scam."

EDUCATION IS KEY

While these scams have become more prevalent, businesses (and other employers) can take steps to reduce their risks. Because the scams target humans, rather than the technology itself, education is key. Inform all employees, and particularly those in areas that handle sensitive data, of the scams. Remind them not to click on links or download attachments from emails that were unsolicited or sent by those they don't know.

Employees often are nervous about questioning a request that appears to come from upper management, so encourage them to double-check any request for sensitive information, no matter who appears to be making it. They should do this not by responding to the email in question, but by talking with a trusted supervisor or colleague.

PRECAUTIONS NECESSARY

With sensible precautions, your company can reduce the risk of falling victim to a W-2 phishing scam. Contact us for the latest information about any tax-related fraud issues. ■

BUSINESS OWNERS: BRUSH UP ON BONUS DEPRECIATION

Every company needs to upgrade its assets once in a while, whether desks and chairs or a huge piece of complex machinery. But before you go shopping this year, be sure to brush up on the enhanced bonus depreciation tax breaks created under the Tax Cuts and Jobs Act (TCJA) passed late last year.

OLD LAW

Qualified new — not used — assets that your business placed in service before September 28, 2017, fall under pre-TCJA law. For these items, you can claim a 50% first-year bonus depreciation deduction. This tax break is available for the cost of new computer systems, purchased software, vehicles, machinery, equipment, office furniture and so forth.

In addition, 50% bonus depreciation can be claimed for qualified improvement property, which means any qualified improvement to the interior portion of a nonresidential building if the improvement is placed in service after the date the building is placed in service. But qualified improvement costs don't include expenditures for the enlargement of a building, an elevator or escalator, or the internal structural framework of a building.

NEW LAW

Bonus depreciation improves significantly under the TCJA. For qualified property placed in service from September 28, 2017, through December 31, 2022 (or by December 31, 2023, for certain property with longer production periods), the first-year bonus depreciation percentage is increased to 100%. In addition, the 100% deduction is allowed for both new *and used* qualifying property.

The new law also allows 100% bonus depreciation for qualified film, television and live theatrical productions placed in service on or after September 28, 2017. Productions are considered placed in service at the time of the initial release, broadcast or live commercial performance.

In later years, bonus depreciation is scheduled to be reduced to 80% for property placed in service in 2023, 60% for property placed in service in 2024, 40% for property placed in service in 2025 and 20% for property placed in service in 2026.

Important: For certain property with longer production periods, the preceding reductions are delayed by one year. For example, 80% bonus depreciation will apply to long-production-period property placed in service in 2024.

MORE DETAILS

If and when bonus depreciation isn't available to your company, a similar tax break — the Section 179 deduction — may be able to provide comparable benefits. Please contact our firm for more details on how either might help your business. ■

THE CHANGING FACE OF PERSONAL EXEMPTIONS AND THE STANDARD DEDUCTION

Personal tax exemptions and the standard deduction have looked largely the same for quite some time. But, in light of the Tax Cuts and Jobs Act (TCJA) passed late last year, many individual taxpayers may find themselves confused by the changing face of these tax-planning elements. Here are some clarifications.

For 2017, taxpayers can claim a personal exemption of $4,050 each for themselves, their spouses and any dependents. If they choose not to itemize, they can take a standard deduction based on their filing status: $6,350 for singles and separate filers, $9,350 for head of household filers, and $12,700 for married couples filing jointly.

For 2018 through 2025, the TCJA suspends personal exemptions but roughly doubles the standard deduction amounts to $12,000 for singles and separate filers, $18,000 for heads of households, and $24,000 for joint filers. The standard deduction amounts will be adjusted for inflation beginning in 2019.

For some taxpayers, the increased standard deduction could compensate for the elimination of the exemptions, and perhaps even provide some additional tax savings. But for those with many dependents or who itemize deductions, these changes might result in a higher tax bill — depending in part on the extent to which they can benefit from family tax credits. ■