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Winter 2008



"We Make Business and Estate Planning Simple."

ICS LAW BRIEF

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Note: The information contained in this newsletter is for general technical guidance and is not intended for specific application. This newsletter is not intended to be legal advice and should not be used as a substitute for legal consultation. If legal advice is needed, independent legal counsel should be sought.



1. Open your bank statements before anyone else. Make sure the checks and deposits make sense to you.
2. Let employees know you are looking for fraud and that you WILL prosecute!
3. Keep accurate books. Ask questions and really look at the general ledger.
4. Separate duties among employees—don't let one person have control over cash, checks, receivables, accounts payable or payroll.
5. Don't expect the bank to find fraud. Missing dual signatures, checks over a certain amount, forged signatures, etc. are not things a bank will catch. You only have 30-60 days after you receive your bank statement to notify your bank of an improper check.

Meet with your CPA or certified fraud examiner to help establish controls for your business. A little money spent today can save thousands down the road.

Lisa L Patterson is a CPA at APH CPAS. She can be reached at 615-724-0925 or by emailing lisa@ap-cpas.com.

Beneficiary Designation Errors Can Lead to Disaster

By Linas Sudzius

We work with clients with regard to simple and sophisticated estate planning issues. For many, the focus is on getting the words in their wills exactly right. Sometimes, though, basic issues related to beneficiary designations for life insurance, pensions or IRAs are overlooked.

The Designation is Wrong

Here's a typical example of a flat-out wrong beneficiary designation.

Say that Bob and Ted are the two shareholders of a corporation. Bob and Ted agree that in the event of a death they want the business to buy the shares of the business from the deceased owner's spouse.

Their insurance agent decides that getting a lawyer to do a buy-sell agreement will frustrate the process. So, after discussion with the owners, they decide that the business will be the owner of the policies, and that the insured owner's spouse will be the beneficiary of each policy. The parties believe that this method will get the money into the hands of the deceased owner's spouse at the right time.

Unfortunately, that shortcut is the wrong way to handle the situation.

While in the event of Bob's death, Bob's widow would get the insurance proceeds, Bob's shares of the company would also stay with Bob's widow—because there's no document creating a

legal obligation for her to sell to the company. Further, the company would have no extra money to buy from her, because she was named beneficiary of the insurance policy—not the company.

The correct method would have been to have the company be the beneficiary of the policy, and to have an agreement in place where it would buy shares from Bob's widow at an agreed price.

The Designation is Not Coordinated with the Estate Plan

For clients who are married with children, they routinely name spouse as the first beneficiary, and children as the contingent beneficiaries.

What's wrong with that? That approach may be inconsistent with the married clients' overall planning. For example:

- If the clients are in a second marriage situation, the first beneficiary might need to be some type of marital trust created under one client's will;
- If one or more of the children are too young to handle money responsibly, the beneficiary might need to be a testamentary trust for their benefit, instead of naming the child as a direct beneficiary;
- If a named beneficiary has qualified—or might in the future qualify—for needs-based government benefits, naming that person as a beneficiary might endanger those benefits.

Our firm aids those who are considering starting a business and assists existing business owners with their continuing legal needs, such as contract review, contract drafting, franchising agreements, and consultation. In addition, our firm specializes in estate planning and management. For additional information or to set up an appointment, please call our office at (615) 224-1290.

Beneficiary Designation Errors Can Lead to Disaster

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The best way to avoid this is to have an open discussion with the clients and their financial planner to ensure a coordinated plan.

The Designation Creates Tax Trouble

Naming the wrong beneficiary for an IRA or 401 (K) plan can lead to unintended income tax consequences.

We sometimes see situations where someone with a sizable IRA balance names spouse and children as equal beneficiaries of the account. The tax rules say that a spouse can inherit an IRA balance from a deceased spouse. Under many conditions, the surviving spouse can decide to treat the inherited money as the surviving spouse's own IRA—deferring income taxes.

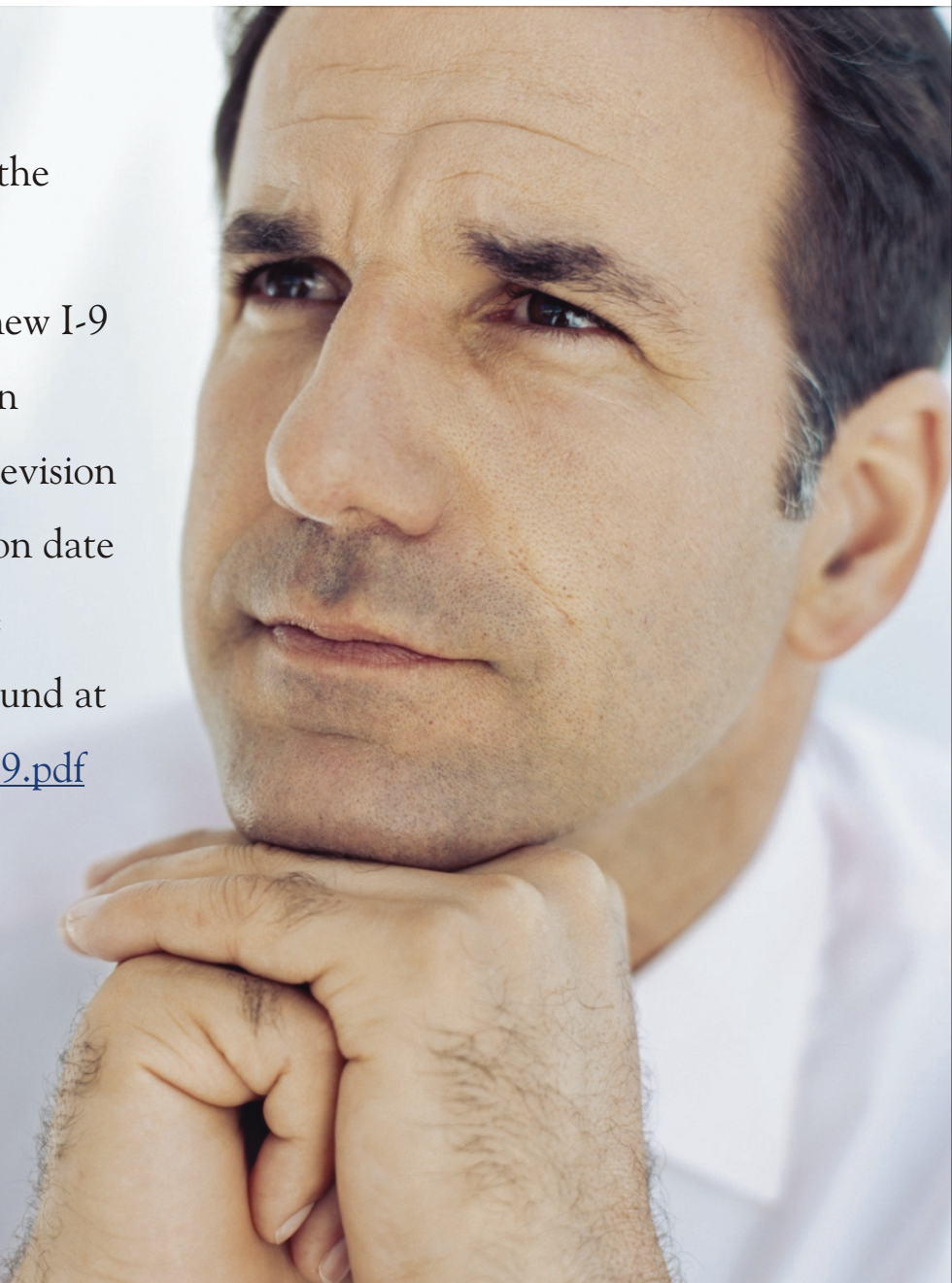
However, children must begin taking distributions from an inherited IRA shortly after the decedent's death. As they receive distributions, the children usually must pay income taxes on the entire amount received.

For many clients, a more efficient tax approach is to make the surviving spouse the beneficiary of the entire IRA or 401 (K) balance, and to leave other assets to the children.

Pay attention to beneficiary designations and help make sure that money from all sources goes to the right people at the right time in the right way.

New I-9 Form

Employers should be aware that the United States Citizenship and Immigration Service has issued new I-9 Forms. If your business is using an I-9 form which does not have a revision date of 06/05/07 and an expiration date of 06/30/08, please update to the current I-9 form which can be found at <http://www.uscis.gov/files/form/i-9.pdf>



So You're Buying a Business! Now What?

By Gaylord Gardner

While buying an existing business with a proven track record and an established revenue stream can be a good way to avoid the risks associated with a start up company, buying an existing business may have its own unforeseen risks. There are a number of things that the buyer can do to minimize these risks:

1. Hire an Attorney.

A buyer should hire an attorney that has experience in handling the purchase of an existing business. The role of the attorney should be to advise the buyer, to help the buyer structure the deal, to draft and revise the purchase documents, and to help the buyer negotiate when needed. The attorney's role is not to decide what deal is best for the buyer. While the attorney can help guide the decision, the buyer will be the one who will have to live with the terms of the agreement. Only the buyer can decide if the deal makes sense.

2. Structure the Deal Correctly.

When purchasing a business, a buyer usually wants to purchase the assets, the equipment, the inventory, the client contracts, and the name of the business, not the liabilities and taxes of the business. During the investigation process, it's almost impossible to establish all the potential liabilities or outstanding taxes of the business, so whenever possible, the deal should be structured as an asset purchase agreement. This will allow the buyer to purchase those assets and to assume only those liabilities that the buyer wants and to leave the seller with all the others.

3. Only Pay What the Business is Worth.

While this may seem obvious, many sellers have an over inflated idea of what their business is worth. A buyer should not assume that the business is worth the asking price. The business is really only worth what a buyer is willing to pay. Before agreeing on a price, the buyer should obtain as much financial data as possible from the seller so that the buyer's advisors, such as a CPA and lender, can help the buyer determine a proper valuation for the business.

4. Perform Due Diligence.

There is a reason that the seller wants to sell the business, and most likely, the seller is not going to disclose to the buyer the real reason for selling. Furthermore, there is usually some hidden concern that the seller is not going to reveal during the negotiation process. For that reason, a buyer needs to investigate all the information presented by the seller. It pays to be a skeptical buyer. Buyers should always pay attention to their gut feelings. If something does not feel right, it is probably not right.

5. Review the Liabilities Being Assumed.

Even if the purchase is structured as an asset purchase agreement, there will often be certain liabilities that a buyer will need to assume as part of the purchase of the business. These liabilities may be a commercial lease, phone or fax number, or a yellow page ad. If the buyer is assuming a commercial lease, the buyer should meet with the landlord and have the assumption approved. It is also a good idea for the buyer to get a copy of the lease and review the lease with an attorney before assuming it. For any contracts that the buyer is assuming, the buyer should get a copy of those contracts and also review them with an

attorney. Reviewing these contracts can allow the buyer to avoid assuming a contract entered into by the seller that was not a good deal for the business.

6. Request Seller Cooperation.

No amount of investigation on the part of the buyer is going to completely prepare the buyer to operate the purchased business. Furthermore, the seller has developed unique skills, talents, knowledge, and contacts which have made the seller's business successful. For that reason, as part of the purchase agreement, the buyer should have the seller agree to assist the buyer in operating the business for a set period of time after the purchase. It is important that the parties agree on the specific level of assistance that the seller is going to provide and to make sure that the terms of the seller's assistance are made part of the purchase agreement. No one wants a situation to arise where the seller thinks that assistance means being available by phone for a few hours a week, while the buyer thinks that assistance means that the seller will be working with the buyer forty hours a week for the two months following the purchase.

7. Evaluate the Business's Employees.

Even if the seller is the most important person in the business, whether the purchased business will continue to be successful may depend on whether certain key employees remain with the business. Before a buyer agrees to buy a business, the buyer should evaluate all the employees of that business and identify whether the business has any key employees. If so, the buyer should take steps to ensure that such key employees will remain with the business after the purchase.

8. Require a Non-compete and Non-solicitation Agreement

It is important that the seller agree not to compete with the business after the purchase and agree not to solicit any of the customers or employees after the purchase. While the seller may want out of the business at the time of the purchase, no one knows what may happen in the future. The seller could have a change of heart six months later and open up a competing business next door. Therefore, the buyer should require the seller to agree on specific non-compete and non-solicitation terms and those terms should be included in the purchase agreement.

While there is no way to eliminate every risk when buying an existing business, taking the above steps can help minimize many of the risks associated with buying that business. One of the most essential steps is hiring the right attorney. The right attorney will be able to guide a buyer through all the above steps in addition to advising the buyer of additional steps to take to further minimize risk.

