Young & Company, LLC

Accounting, Tax & Financial Services

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IS AVOIDING PROBATE A GOOD IDEA?

***Knowledge* – One of the Keys to Tax Planning Opportunities**

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February 16, 2017

Re: *IS AVOIDING PROBATE A GOOD IDEA?*

To Whom It Concerns:

Regardless of the size of your business or how it is structured, all business owners share one common partner: Uncle Sam. Virtually every business transaction has some tax consequence. A business transaction should never be looked upon solely on a pre-tax basis. It is only on an after tax basis that a transaction should be viewed as good or bad.

The best way to deal with Uncle Sam is to arm yourself with knowledge. Simply stated, if you understand basic tax issues, you can avoid some basic tax problems. We want you to acquire the knowledge you need to effectively address certain tax issues.

We want to emphasize that the best way to look at Uncle Sam is as a partner who presents you with opportunities – in particular, opportunities for tax savings that can help boost your profits. The reason I say this is that I've seen too many small businesses let their concern about tax issues and fear of dealing with the IRS result in an ineffective or defensive tax strategy. By examining the tax law in light of both your responsibilities and the opportunities for tax savings, I hope to help you develop an offensive tax strategy that benefits both you and your business.

The focus is on tax planning. We emphasize planning. Planning is what ultimately leads to action. If you have any questions about this or any other matter, please do not hesitate to call.

Sincerely,

Young & Company, LLC

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Is AVOIDING PROBATE a GOOD IDEA?

We see the following scenario all too often. Mom is ill and about to die. She transfers her home to her daughter. They both know this avoids probate (*proving the will or dealing with it if there is no will*) thus making it easier on the daughter when Mom dies.

- Mom’s home cost with improvements is $40k.
- Home is worth $200k.
- Mom transfers home to daughter.

Sounds like a good idea BUT the tax implications are significant.

In the first scenario the beneficiary pays a lot of tax (*but avoided probate*) and Mom also has an issue with gift tax since she gave away more than $15k of stuff (*2018 gift tax rule*).

Easy enough to remedy if Mom files a gift tax return that basically says.. when I die I am able to pass $5.6 million per individual (*2018 tax rule*) estate tax free. I want to lower that by $15k (*in order to avoid paying gift tax on $200k!*).

Simple enough… inheriting saves dollars and avoids gift tax but I’d still like to avoid probate.

Okay, there may be a way depending on the state rules!

AVOIDING PROBATE and GIFT TAX WHILE RETAINING CONTROL and PASSING PROERTY AT DATE OF DEATH VALUE

Is there a way to **AVOID probate** AND retain stepped up **date of death value**, in other words the best of both scenarios? YES, again, **depends on the state rules**. In Florida we have what is called….

A "**Lady Bird deed**" (*more formally called an enhanced life estate deed*) is a way to transfer property and **avoid probate.** At the same time Mom retains a life estate in the property (*that means she can live there*). The Lady Bird deed gives Mom the power to retain control of the property during her life, including the right to sell or use the property for profit.

Tax wise what is really cool is Mom's home avoids probate and the daughter beneficiary receives the property at the Date of Death Value… and there are no gift tax issues!

The asset protection attorneys tell us the Lady Bird deeds can be very beneficial for someone needing to apply for Medicaid. A Medicaid applicant cannot have transferred property within five years of the application. Because a Lady Bird deed allows you to retain control of the property, depending on the state it may not count as a transfer of assets for Medicaid eligibility purposes. After a Medicaid recipient dies, the state can make a claim for repayment of benefits from the recipient's estate. Because **property under a Lady Bird deed passes outside of probate**, it won't be subject to a claim for reimbursement.

Other useful handouts on our webpage www.USATaxHelp. com

LLC, Limited Liability Company, The GOOD, the BAD & the UGLY!

Using Comparable Wages in an "S" Corporation to Lower Overall Taxes

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Thank you,

Lonnie E. Young

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