

Rosen Seymour Shapss Martin & Company LLP

Certified Public Accountants & Profitability Consultants

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LIFELINES BLAST

Greetings!

Welcome to the Fiduciary Services Group's Lifelines Blast! (a publication of Rosen Seymour Shapss Martin & Company). Here is where you will receive periodic updates on all your trust and estate needs.

RSSM's Fiduciary Services Group offers a wide range of fiduciary services. We assist and guide fiduciaries as they perform their duties and fulfill their obligations. In appropriate circumstances, we can also serve as trustee, and/or executor for you and your family. We will provide your family with protection and security by helping you plan for the future with incapacity protection, probate avoidance, planning for minor children, distribution planning and estate tax planning. Our team approach allows us to provide you with the most basic protection and our experience enables us to assist you with the most complex arrangements, including charitable giving and sophisticated estate tax strategies.

We welcome your questions or comments about topics discussed or related ones. Please feel free to contact us at 212-303-1011 or e-mail us at awillinger@rsmcpa.com and let us know how we can be of assistance.

Sincerely,

Alan M. Willinger, CPA, JD
Partner-in-Charge of Fiduciary Services

The Need for Estate Planning

Many of us spend a considerable amount of time with tax advisors to help minimize their taxes by planning, yet not enough time is devoted to estate planning.

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In today's times, it is more important than ever to have an estate plan in order to reduce the federal estate tax which can be as high as 45% without taking into consideration the state estate tax.

Aside from estate taxes, it is important to have an estate plan to ensure that your assets both real and personal are distributed to your heirs the way you want and in the amounts you want.

Without an estate plan, your real and personal assets are distributed to people that you may not want to share in the estate.

Estate and gift planning objectives include the enjoyment of assets during your lifetime, controlling your family's future, reducing taxes and expenses as well as leveraging the use of tax exemptions by establishing marital trusts, life insurance trust during your lifetime and generation skipping transfer trusts.

Qualified Disclaimers

In a world where estate and gift tax laws seem to be forever in a state of flux, a qualified disclaimer is a tool that can be used proactively as a part of estate planning or defensively to fix an unintended or unanticipated post-mortem result.

What exactly is a qualified disclaimer?

A disclaimer is an irrevocable refusal to accept a gift, bequest, inheritance or other devise of property given to you.

A disclaimer causes the property to pass to other persons as if the person disclaiming person had predeceased the transferor. If the disclaimer is a qualified disclaimer there is no taxable gift by the person making the disclaimer.

In order for a disclaimer to be a qualified disclaimer, the disclaimer must meet the following four requirements laid out in IRC Section 2518.

1. It must be in writing and the writing must state in unambiguous terms the property being disclaimed. The writing must be signed by the person disclaiming the property.
2. The written disclaimer must be received by the transferor of the interest or his legal representative or the legal title holder to the property to which the interest relates no later than nine months after the creation of interest or if later, the day on which the person disclaiming the interest turns twenty-one years of age.
3. The disclaiming person must not have accepted the

interest or any benefits generated by the interest prior to making the disclaimer.

4. The disclaimed interest must pass without any input on the part of the person making the disclaimer. For example, if there is a will, the interest passes to the contingent beneficiary. If there is no will, it passes to the next relative, pursuant to state law.

Traps for the Unwary

Although an estate tax return due date may be extended from nine months after the death to fifteen months after death, there is no extension for a disclaimer.

If the estate is involved in litigation, the amount of property or the identity of the recipient may not be known within nine months it is advisable to err on the side of preparing, executing and delivering the disclaimer.

S Corporation - Estate Planning Ideas

S corporations are often used for family businesses and the senior generations of the family business should consider the gifting of stock as a means of reducing estate taxes. Gifts may result in different stock basis for regular tax and AMT purposes when basis is limited to lower of fair market value or basis.

Current regulations provide that a transferee assumes the transferor's basis in gifted property unless the basis exceeds the property's fair market value at the time of transfer. In an estate context, the beneficiary receiving the S corporation stock from the decedent will take a basis equal to the stock's fair market value at the date of death or the alternative valuation date.

Differences between regular tax and AMT basis can occur when the corporation has income in respect of a decedent at the time of death. Income in respect of a decedent includes any income to which the decedent would have been entitled to at the time of death but which have not reported under his or her method of accounting.

If the decedent under his or her will established a trust as the beneficiary of the S corporation, then only one person can be the income beneficiary of the trust. The Trust will terminate on the earlier of the death of the income beneficiary or termination of the trust.

The gifting of the S corporation's stock or the establishment of a trust is an effective means of estate tax planning which can reduce estate

taxes as well as plan for the family's future.

FIDUCIARY SERVICES GROUP

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