WISEMAN · BRAY PLLC

ATTORNEYS AT LAW

ESTATE PLANNING NEWSLETTER

Volume 4, Issue 1

Summer 2008

INSIDE THIS ISSUE:

Larry R. Bray
Attorney & Counselor at Law

WISEMAN BRAY PLLC
1665 Bonnie Lane
Suite 106
Memphis, Tennessee 38016
901.372.5003 voice
901.383.6599 fax

Please visit our website at www.WisemanBray.com for more information about estate planning strategies as well as additional information about other services provided by our firm.

THE POLITICS OF DYING

Death and taxes are two subjects that probably do not make anyone's list of favorite things to talk about. The intersection of the two is nearly unspeakable. And by that I mean, estate taxes. The status and future of the federal estate tax is a much-debated topic in the estate planning community. Under current law, the federal estate tax exemption is $2.0 million for 2008. On January 1, 2009, the exemption amount will go up to $3.5 million; in 2010, there is not an estate tax. From January 1, 2011, and on, the exemption amount will drop down to $1.0 million, assuming there has not been a repeal or an overhaul of the current law before then. The federal tax rate is currently 45%. Combined with a Tennessee Death Tax exemption of $1.0 million and rates ranging from 5.5%-9.5%, this means that for estates that exceed the exemption amount, over half of the estate will be paid in estate taxes before beneficiaries receive anything.

The best answer to the question our clients always ask about planning to save the most in estate taxes in this environment: "Die in 2010." As cynical as it may sound, according to Tom Herman of the Wall Street Journal, "Thousands of high net worth Americans who care about the financial well-being of their heirs have a powerful tax incentive to survive until at least January 1, 2009." A couple can pass $7.0 million tax free to their beneficiaries with proper planning in 2009 and an unlimited amount in 2010.

A better solution than counseling clients on the most tax-advantageous time to die is to plan with enough flexibility to allow for changes in the tax scheme. Additionally, I thought it might be beneficial to give you some background on what may realistically happen to the estate tax system in the next couple of years amidst a changing political climate. You probably will not be surprised to learn that the two presidential candidates have outlined very different proposals regarding the estate tax.

Under Senator Obama's proposed plan, the exemption amount for federal estate taxes would be $3.5 million per person beginning in 2009 with rates capping out at 45%. Under Senator McCain's proposal, the exemption amount would be $5.0 million per person , but the rate would drop to 15%.

Under either of these plans, it seems clear that a diminishing number of estates will have to pay federal estate tax. However, for those estates that exceed the exemption amount, Senator Obama's plan will be much more costly for large estates than Senator McCain's plan because of the difference in tax rates proposed.

So how do we plan admist uncertainty? Again, planning with enough flexibility is the key. Also, we have to keep in mind that we have no indication as to changes in the Tennessee Inheritance Tax, which affects a much greater percentage of people than the federal estate tax, and plan accordingly. Finally, there are a variety of other solutions and techniques to reduce the value of your estate for estate tax purposes, including lifetime gifting, grantor-retained annuity trusts, and life insurance trusts. For more information on estate taxes as well as any of these techniques, please contact our office.

SMALL AND FAMILY-OWNED BUSINESS SUCCESSION PLANNING

Perhaps one of the most overlooked aspects of small businesses and family-owned businesses is the lack of succession planning for owners and key people. Although people generally think of succession planning as required upon the death of a key person, the most overlooked aspect of business succession planning may be what will happen upon the disability or incapacity of an owner or key person.

Whether it is an inability to consider the idea of vesting control in other people, a greater focus on the business than on the family, or just a failure to plan, it can create a huge problem both for the continuation of the business and for the support and stability of the family. So many times with small businesses a large percentage of the value of the company is tied to the owner and a few key people. With no plan in place, the business faces a significant decline in value on the death or disability of a key person. In addition, control of the company may pass to unintended recipients and people who really are not capable of managing the business.

A recent study conducted by U.S. Trust, Bank of America Private Wealth Management, found that only 15% of family-owned companies lasted past the second generation. The study included many ultra high-net worth family businesses with interests valued at as much as $700 million. From this study, it is clear that this lack of planning is present not only in extremely high-value family-owned business but also in smaller businesses where the planning may be just as important, if not more important.

Is the problem that there are not people capable enough out there or within the family to replace these key people and assume control? In most circumstances, no. The usual scenario is that the planning required to provide for smooth transitions upon the death or disability of an owner is simply not present. Additionally, thorough succession planning involves two related but distinct components: planning for the support of family members and planning for the continuation of the business.

The good news is that there are a lot of different ways to make plans without giving up control of the business and to provide for family members who you may wish to support financially but not have them be involved in the business. We have assisted a substantial number and a wide variety of clients in planning for their businesses and are available if you have any questions or are interested in learning more about planning for your business.

Lang Wiseman
Attorney & Counselor at Law
Business Litigation
Construction Disputes
Products Liability
Wrongful Death
Probate

Chris Patterson
Attorney & Counselor at Law
Litigation
Probate
Products Liability
Wrongful Death

Lindsay Jones
Attorney & Counselor at Law
Estate Planning
Probate
Trust Administration