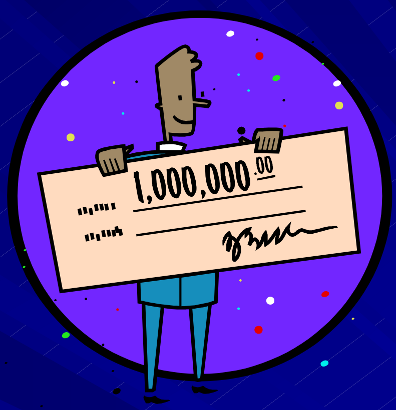
ASSET PROTECTION PLANNING

Anthony I. Kritt, CPA
Attorney at Law
1713 Tipton Drive
Crofton, Maryland 21114
Telephone: (410) 793-0044
Facsimilie: (410) 451-4067
E-mail: tkritt@comcast.net

What is Asset Protection?

- Arranging your assets in a way that will preserve as much value for you and your family.
- Segregating your assets from (Liability Causing) activities.

Why You Need Asset Protection?



- You are engaged in activities which create liabilities.
- Ability to retain net worth in face of attack.
- Maintain control and your sanity in the face of attack.

What you need protection from

- Torts- malpractice claims, auto accidents, sexual harassment claims
- Contracts- employment agreements, leases
- Divorce
- Government Confiscations- EPA, IRS
- Illness

The Cost of Asset Protection Planning

Because the strategies that would be employed to protect your assets generates both estate and income tax savings far in excess of the cost of the asset protection planning and implementation, asset protection planning is usually free of cost.

Methods of Protecting Assets

- Incorporate
- Form Limited Partnership
- Form Limited Liability Companies (partnerships)
- Borrow and Encumber
- Post Nuptial; Pre-Marital Agreements
- Foreign Deferred Compensation Program
- Invest in “Exempt Assets”
- Give others Interest
- Enter into private annuity with another entity or most popularly through an insurance policy.

Corporations

- Limited Liability
- Discounts
- C Corporation
  - Double Taxation
  - Deductible Fringe Benefits
- S Corporation
  - Income (Loss) Passes through to Shareholders
  - Can avoid Payroll Taxes by Distributing Profits

Limited Partnership

- Discounts
- Charging Order
- Limited Partners’ Liability Limited to Investment
- General Partner’s Liability is Unlimited
- Avoids Double Taxation – Income (Loss) Passes Through to Partners
- Ability to Spread Taxable Income Among Family Members (Lower Brackets) Without Losing Control

Limited Liability Company (Partnership)

- Discounts
- Charging Order
- Members' (Partners') Liability Limited to Investment
- Avoids Double Taxation – Income (Loss) Passes Through to Partners
- Ability to Spread Taxable Income Among Family Members (Lower Brackets) Without Losing Control

EXCHANGE OF APPRECIATED ASSETS FOR A DEFERRED LIFETIME PRIVATE ANNUITY

- TRANSFER OF APPRECIATED ASSETS TO SEPARATE ENTITY
- TRANSFER OF DEFERRED LIFETIME PRIVATE ANNUITY FROM SEPARATE
- ENTITY TO INDIVIDUAL
- U.S. TAX CONSEQUENCES
  - NONE TO THE INDIVIDUAL UNTIL HE/SHE RECEIVES ANNUITY PAYMENTS
  - SEPARATE ENTITY GETS STEP UP IN BASIS
  - SHIFT INCOME TO LOWER TAX BRACKETS
  - NO ESTATE TAX ON ANNUITY - TERMINATESUPON DEATH

Who Buys Your Assets and Issues the Annuity?

- Can be any independent entity, another individual, a corporation, a limited liability company, a limited partnership
- Recommendations
  - – Irrevocable Trust for the Benefit of your Children
    - Beneficiaries do not have to be named
    - Include Spendthrift Clause
    - Include "Limited Power of Appointment"
  - – Life Insurance Policy
    - Variable Universe

EXAMPLE

DR. JONES HAS ACCUMULATED A STOCK PORTFOLIO VALUE AT $2,000,000. HIS COST BASIS IN HIS STOCK PORTFOLIO IS $200,000. THE VALUE OF ALL HIS OTHER ASSETS IS EQUAL TO THE SUM OF HIS DEBTS. DR. JONES NO LONGER FEELS THAT HIS STOCKPORTFOLIO IS A GOOD INVESTMENT.

IF DR. JONES SOLD HIS STOCK; HE WOULD BE REQUIRED TO PAY CAPITAL GAINS TAX OF $440,000. LEAVING HIM WITH AN ESTATE OF $1,600,000. UPON HIS DEATH (ASSUMING DEATH IN 2003) HIS ESTATE WILL BE LIABLE FOR FEDERAL ESTATE TAX OF $258,000. WITHOUT PLANNING DR. JONES WOULD BE ABLE TO TRANSFER ONLY $1342,000 OF HIS $2,000,000 ESTATE TO HIS FAMILY.

Example

IF A TRUST WAS CREATED FOR THE BENEFIT OF DR. JONES'S FAMILY; AND DR.JONES SOLD HIS STOCK PORTFOLIO TO THAT TRUST FOR AN ANNUITY THERE WOULD BE NO INCOME TAX ON THE TRANSFER, NO INCOME TAX ON A SALE OFTHOSE INVESTMENTS BY THE TRUST; AND NO ESTATE TAX ON THE ANNUITY UPON HIS DEATH.

IF DR. JONES SOLD HIS STOCK PORTFOLIO TO A COMPANY WHOSE STOCK WAS OWNED BY AN INSURANCE POLICY (PAYABLE TO AN INSURANCE TRUST) DR.JONES WOULD ENJOY THE SAME BENEFITS AS IF HE SOLD THE STOCK PORTFOLIO TO THE IRREVOCABLE TRUST. THE COMPANY WOULD RECEIVE THE SAME BENEFITS AS THE IRREVOCABLE TRUST, PLUS, THE BENEFIT OF EARNING INCOME ON THE INVESTMENTS, INCOME TAX FREE.

DR. JONES COULD VERY POSSIBLY PASS HIS ENTIRE ESTATE TO HIS FAMILY.

Foreign Deferred Compensation Program

- Retirement savings funded by pretax dollars
- Structured as an Employee Leasing Program
- Better than qualified retirement plan
  - No Reporting
  - No Limits
  - No Nondiscrimination Rules
  - No Excess Accumulation or Distribution Penalties
  - No Early Withdrawal Penalties
  - No Restrictions on Investment

How Does the Foreign Deferred Compensation Program Work?

- You terminate your present employment relationships.
- You become an employee of an Irish Corporation.
- The Irish Corporation agrees to pay you a guaranteed monthly salary and to provide you a deferred compensation plan.
- The Irish Corporation Transfers its rights to your personnel services in the U.S. to a Nevada corporation.
- The Nevada corporation leases your services to your business.

Should you Consider Participation in a Foreign Deferred Compensation Program

- Do you pay a large amount of taxes on your earned income?
- Are you able to save (invest) some of your earnings?
- Are your earnings in excess of your living expenses?
- Have you maximized your participation in your retirement plan?
- Would you like a more accommodating retirement plan?

Other Considerations

- Insurance
- Contract Well
- Maintain the Entities
- Powers of Attorney
- Living Will
- Bankruptcy
  - Exempt Assets