Trust Connection

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MCF Private Trust

A Monthly Report on Trust News and Information

Our trust services enable us to seamlessly serve you and your family in a manner that is both cost-effective and efficient. We are able to serve as an investment advisor to your trust without sacrificing protection for trust beneficiaries. MCF Private Trust is a Trust Representative Office of National Advisors Trust Company, a national independent advisor-owned trust company.

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The Importance of Post-Mortem Planning

What is it?

Post-mortem planning is a concept derived from the inability of estate planners to predict the future. Given how quickly tax laws and circumstances can change, it is unlikely that a planner will be able to anticipate every variable that an executor or trustee will face after your death. Post-mortem planning is the idea that if an estate plan is flexible enough, executors and trustees will be able to utilize tax elections and techniques in a way that will ensure your goals are met, despite changes in law and circumstance. Post-mortem planning allows the estate planner to create a comprehensive estate plan that encompasses the future, without being able to predict it.

Why is it necessary? A practical example.

Picture this: You want to create an estate plan. You express to your estate planner that one of your main goals is to limit your estate's exposure to tax liability. Right now, your estate falls well below the current estate tax exemption amount of $11,400,000. However, you are single and focused on continued building of wealth. You are advised that the estate tax exemption has fluctuated drastically in the last 20 years and the current tax act will expire in 2025. Your estate planner is faced with the challenge of how to best meet your goal of minimizing taxes in an unstable environment that has very few constants.

By using post-mortem planning techniques, offered in tandem with traditional estate planning practices, your estate planner will be able to create a comprehensive estate plan that allows for maximum flexibility and broad discretion to ensure that they can provide you with predictable solutions for an unpredictable future.

Some common types of post-mortem planning include the following:

The strategic use of disclaimers
A beneficiary, usually a spouse, can choose to disclaim (or reject) certain assets that they stand to inherit. This election should be considered when there is property that would pass to a beneficiary that may be better suited to pass through your estate or to a named disclaimer trust.

QTIP trusts and the effect of a Clayton Election
Historically, QTIP amounts were determined by calculations specified in an estate plan. A Clayton Election gives the trustee or executor the discretion to choose a QTIP's funding amount. This allows for estate plans to be drafted in a way that provides for the most flexibility in anticipation of future tax law changes and fluctuating personal circumstances.

Electing to use portability
Electing to use portability is the ability of a surviving spouse to elect to save their deceased spouse's unused federal transfer tax exclusions amount to increase their own. Recent revenue procedures have indicated that portability can be used in conjunction with a QTIP trust.

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Use of alternative valuation
Executors can choose whether to base estate tax values on date of death market value or their value as of an alternative valuation date. The alternative date for the estate's valuation is six months from the date of death or the date of any disposition of an asset, whichever occurs first. Alternative value elections should be considered where they would be advantageous to the estate's tax liability.

Section 303 stock redemptions
Favorable tax treatment is given if a stock is redeemed for certain estate administration purposes, such as to pay funeral bills or estate taxes.

Use of a fiscal year-end and the Section 645 election to minimize the beneficiaries' tax burden
Individual income tax reporting is done using a 12-month tax reporting period that follows the calendar year. However, IRC Section 441 allows for estates to elect to file income tax reporting using a fiscal year rather than a calendar year. If done correctly, electing to file the estate return using a fiscal year can allow estate distributions to occur during one taxable year while deferring the income tax owed on those distributions to the following year, when the estate reports the distribution to the IRS. Unfortunately, trusts are not usually allowed to use a fiscal year end and therefore the income tax owed on any trust distributions would still be reported that same year. The one exception to this rule is for qualified revocable trusts. The executor and trustees of qualified revocable trusts can choose to make a Section 645 election that will combine the trust and estates income tax return (IRS Form 1041). This will effectively put the trust on a fiscal year end and will allow for any income tax due on a qualified revocable trust distribution to be deferred until the following year.

Non-judicial modifications
In many states, so long as the trust document allows it, changes can be made to a trust even after the trust has become irrevocable, so long as all qualified interested parties agree in the form of a non-judicial settlement

agreement. These agreements are based in contract law and do not need to be approved by the court. Non-judicial modifications allow a trustee the flexibility to alter trust terms so long as the modification does not materially alter the grantor's intent. Some examples of common alterations are making a trust's provisions more tax favorable, changing trustees, or changing trust situs.

Trust decanting
In many states, so long as the trust document does not forbid it, a trustee may decant assets from one trust into a different trust with different underlying provisions. This technique should be considered in cases where administrative provisions are inadequate or failing, trust situs needs to change to a more tax advantageous state, or the beneficiary provisions need further clarification.

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