

Red River Valley Estate Planning Council

Charitable Opportunities
Relating to the Sale of a Business

February 21, 2024

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TRANSFERS OF CLOSELY-HELD BUSINESS INTERESTS

CLOSELY-HELD BUSINESSES

- Small Number of Owners
- Ownership Is Not Publicly Traded
- Structures
 - C Corporation
 - S Corporation
 - LLC/Partnership

FORMS OF GIFTS

- Gift of Ownership Interest in the Business Prior to the Sale
- Gift of Proceeds From Sale of Ownership Interest

GIFT OF OWNERSHIP INTEREST

DONEE'S DUE DILIGENCE

- Purpose of Accepting Gift
 - Hold?
 - Re-Sell?
 - Appease Donor?
- Review Agreements and Financials
- Understand Taxation of Dividends and Gains

DONOR OBLIGATIONS

- Donor Must Obtain Qualified Appraisal
- Donor Must File IRS Form 8283

TAX CONSEQUENCES

- Charitable Deduction Allowed Up to 30% of AGI For FMV of Ownership Interest (20% if Donee is a Private Foundation)
- Donee Acquires Donor's Basis in Ownership Interest

DONEE OBLIGATIONS

- Must Sign IRS Form 8283 But Not Required to Agree to Stated Value of Gift
- Must File IRS Form 8282 if Ownership Interest is Sold Within 3 Years

C CORPORATION

- Dividends are Not Taxable to Donee If Donee is Merely a Passive Investor
- Proceeds From Sale of Stock are Not Taxable to Donee

S CORPORATION

- Share of Profits are Taxable to Donee (Even If Not Distributed)
- Proceeds From Sale of Stock are Taxable to Donee

LLC / PARTNERSHIP

- Share of Profits are Taxable to Donee Unless Activities of the Business Further Donee's Tax-Exempt Purpose
- Proceeds From Sale of Ownership Interest are Not Taxable to Donee

GIFT FROM PROCEEDS OF SALE OF OWNERSHIP INTEREST

TAX CONSEQUENCES

- Donor Subject to Federal Capital Gain Tax Up to 20% on Net Sale Proceeds
- Donor Subject to Minnesota Capital Gain Tax Up to 9.85% on Net Sale Proceeds
- Charitable Deduction Allowed Up to 60% of AGI

EXAMPLE

SALE OF \$20M INTEREST (NO GIFTS)

- Gross Sale Price: \$20m
- Donor's Basis: \$5m
- Taxable Gain: \$15m
- Capital Gains Tax: \$4.47m
- Net Proceeds to Donor: \$15.53m

GIFT OF \$4M INTEREST

- Charitable Deduction: \$4m

SALE OF \$16M INTEREST (SAME YEAR AS GIFT OF \$4M INTEREST)

- Donor's Gain: \$12m
- Charitable Deduction: \$4m
- Donor's Taxable Income: \$8m
- Donor's Capital Gains Tax: \$2.38m
- Donor Net Proceeds: \$13.62m

SALE OF \$20M INTEREST (FOLLOWED BY CASH GIFT OF 4M)

- Donor's Gain: \$15m
- Charitable Deduction: \$4m
- Donor's Taxable Income: \$11m
- Donor's Capital Gains Tax: \$3.28m
- Donor Net Proceeds: \$12.72m

NET PROCEEDS TO DONOR

- No Gift: \$15.53m
- Sale in Same Year as Gift of Ownership Interest: \$13.62m
- Sale of Ownership Interest in Same Year as Cash Gift: \$12.72m

GIFT OF OWNERSHIP V. CASH

- Disclosure of a Pending Sale By Donee is Required on Qualified Appraisal
- Gift of Ownership Interest Could Be Voided by IRS as a Tax Sham
- Aiding and Abetting Penalties Could Be Assessed Against Donee

SALE OF \$4M INTEREST

- Donee's Ownership Interest: \$4m
- Basis of Ownership Interest: \$1m
- Donee's Gain: \$3m
- Donee's Taxable Income
 - Exempt if Not UBIT
 - Taxable if UBIT

IRS RESOURCES

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- Pub.526: Charitable Contributions
- Pub.561: Determining the Value of Donated Property
- Pub.1771: Substantiation Requirements

QUESTIONS?