STONE & ASSOCIATES LLP
Attorneys At Law

Special points of interest:

- Estate Planning for Non-residents and Non-Citizens
- IRS Relief?
- Receiverships
- Selling a Business

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STONE & ASSOCIATES, LLP

Business, Estate, and Tax Planning

Estate Planning for Non-Resident and Non-Citizens

Complex estate and gift tax rules apply to those who are not U.S. citizens and who own assets in the United States. This article shall briefly discuss the estate and gift tax rules applicable to non-residents and non-citizens and how you can assist your clients in spotting planning issues that too often go unaddressed.

To start, understand that federal estate tax law classifies a taxpayer as one of the following: (1) a U.S. Citizen; (2) a resident alien; or, (3) a non-resident, non-citizen. The U.S. Estate and Gift Tax applies differently dependent upon the taxpayer's status. A resident alien is a non-U.S. citizen who has his permanent domicile in the U.S. Thus, the rule is much like the rule for determining state residency. A non-resident, non-citizen is a person that is neither a U.S. resident alien nor a U.S. citizen.

Federal Estate Tax Exemption Amount

Based on 2009 numbers, all U.S. citizens and resident aliens have a U.S. federal estate tax exemption of three million five hundred thousand dollars ($3,500,000.00). See §2010. The estate tax does not apply in 2010, but we anticipate its return in 2011. Non-resident non-citizens have a federal estate tax exemption amount equal to a mere $60,000.00. See §2102(b)(1). Thus, if a non-resident, non-citizen owns a $250,000.00 home in The Woodlands, he or she will pay $85,500.00 in estate taxes upon his or her death.

Marital Deduction

If the surviving spouse is a U.S. citizen, an unlimited marital deduction applies. The classification of the decedent does not matter. See §2056. If the recipient is a resident alien, or a non-resident non-citizen, the recipient does not receive a marital deduction without the use of a Qualified Domestic Trust ("QDOT"). When determining whether a marital deduction is applicable, we always look at the recipient (donee for gift tax purposes or beneficiary for estate tax purposes).

Gifting

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Receivers

A receiver is a person placed in custodial responsibility over the property of others, including tangible and intangible assets and rights. In Texas, an appointed receiver takes control of the assets, business, and/or real property. The receiver is not a representative or agent for the party owning such assets; rather, a receiver has broad powers as an officer of the court to benefit all parties involved, including the debtor, creditor, property owner, and claimant.

To appoint a receiver, Texas law provides that a person whose right to or interest in property is in doubt may apply to the court for a receiver. The interested property must prove that: 1) the property is in danger of being lost, removed, or materially injured; 2) circumstances exist that necessitate the appointment of a receiver to conserve the property and prevent damage to interested parties; and,

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Estate Planning for Non-Resident and Non-Citizens (Cont’d from page 1)

If the recipient of a gift is a U.S. citizen, then any spouse, no matter the status, may gift an unlimited amount to his/her spouse. See §2523. If the recipient of a gift is a non-resident, non-citizen spouse or a resident alien spouse, then the unlimited spousal transfer rule does not apply. The spouse may only transfer $100,000.00 per year to such spouse. See §2523(i). Let’s look at some real world application of the above. All examples assume that the Husband (H) dies first, leaving all to Wife (W).

> **“Residing in a border state in an increasingly global economy demands that we be aware of these issues...”**

Scenarios

H is U.S. Citizen, W is Canadian non-resident Citizen. At the Husband’s death, he could pass up to $3,500,000 of his estate to his Wife without any estate tax. If he passes more than $3,500,000, tax is due on the excess because the surviving spouse does not have a marital deduction. We use a QDOT in this instance to avoid the tax.

If Wife dies first, leaving all to Spouse, she only can transfer $60,000.00 to her Spouse tax-free. Fortunately, since the Husband is a U.S. Citizen, he can receive an unlimited marital transfer, so there is no estate tax on the transfer if she dies first. The Family Trust would receive $60,000, and the Marital Trust the remainder.

Neither H nor W are U.S. Citizens or Resident Aliens.

At the first Spouse’s death, only $60,000 of the estate is exempt from the estate tax. The IRS levies the estate tax against transferred assets that exceed $60,000. We use a QDOT in this instance to avoid the tax at the first death.

H and W are Resident Aliens.

At the Husband’s death, he can pass up to $3,500,000 of his estate to his Wife without any estate tax. If he passes more than $3,500,000, tax is due on the excess because the surviving spouse does not have a marital deduction. We use a QDOT in this instance to avoid the tax.

Residing in a border state in an increasingly global economy demands that we be aware of these issues. Stone and Associates, L.L.P. has experience with all of the above and we are happy to assist you in helping your client with planning to minimize their estate tax exposure.

IRS Relief?

“We can erase your IRS debt!” “I had a $100,000.00 IRS liability, and now I owe nothing!” As tax attorneys, phrases like these from “tax relief specialists” make us cringe. Such statements are misleading to say the least (deceptive in some cases) and the fees charged by most companies offering those services are far too high. In fact, the Attorney General of Texas recently filed a lawsuit against TaxMasters (a Houston based tax relief company) that calls for a permanent injunction to stop some of the company's business practices and claims the company has repeatedly violated the Texas Debt Collection Act and the Texas Deceptive Trade Practices Act. The suit also asks for financial penalties and restitution of funds to certain complaining clients. It is unfair to judge an entire industry based on one company, but the TaxMaster’s lawsuit highlights how careful one must be in seeking professional guidance with the IRS. It is much safer and almost inevitably much cheaper for your clients to hire a quality CPA or a good tax attorney to assist him or her with an IRS tax problem.

Receiverships … (Cont’d from Page 1)

3) all other available legal and equitable remedies are inadequate.

Small business owners and some individuals may use a receiver to collect on their debts, force the sale of property, or wind up the affairs of a closely held business. In the alternative, small business owners with too much debt may be in danger of having a receiver appointed over some or all of their business assets, and should take action to protect against the threat of a receiver.

In Texas, a receiver may be appointed by a government body or regulator pursuant to a statute, someone can petition the court to appoint a receiver, or parties can agree to appoint a receiver over their property.

We use receivers for our clients (both businesses and divorced spouses) as a last resort for them to protect their property or their interests in property held by another. Thus, regardless of what side of a receivership your client is on, he or she must know their options to adequately protect their rights.

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Selling a Business

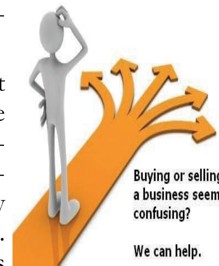
Exciting, confusing, daunting, and painful. These are all words our clients use to describe the process of selling his or her business. This Article sheds light on how painless the process can be.

Initial discussions and meetings; purchaser's and seller's initial general review.

Initially, buyer and seller must essentially interview one another to determine if seller's business is a good addition to the purchaser's existing business. In general terms, one should discuss revenue, earnings, assets, and, most importantly, if applicable, client lists. One should not yet disclose specifics concerning those items. General lists providing a breakdown of the source of one's revenue are appropriate. Only general concepts and ranges should be provided **until** a written letter of intent with confidentiality/non-solicitation provisions is in effect (discussed below).

Letter of Intent with Confidentiality and Non-Solicitation Provisions.

The Letter of Intent ("LOI") is a document that the potential purchaser drafts. Normally, one only asks a potential purchaser to provide a LOI if such purchaser and seller have had considerable discussions regarding a sale, and seller believes the purchaser has significant interest and ability to acquire seller's business.



The LOI maps out a game plan for the continued negotiations and due diligence review by the purchaser. Due diligence is the process whereby the potential purchaser reviews seller's business and determines if it wants to acquire seller's business. Simply, the purchaser wants some assurance that it is not acquiring a lemon. The LOI spells out the intent between the parties, which is not legally enforceable, but also contains legally enforceable provisions, such as confidentiality of information, an exclusive period the purchaser can review, and non-solicitation of employees and non-circumvention of business opportunities. An LOI will usually provide the expected purchase price for the business, or, at least, a formula to determine such price. However, the LOI does not require the potential purchaser to acquire the business or require the potential purchaser to acquire the business at a certain price.

The LOI maps out a game plan for the continued negotiations and due diligence review by the purchaser. Due diligence is the process whereby the potential purchaser gains assurance that he's not buying a lemon.

Binding Agreement and Closing

While the parties are undertaking due diligence, the purchaser will offer a draft of an asset purchase agreement for the acquisition of the business, which is the final, binding statement of the business sale. The final agreement will detail the purchase price, terms of purchase, and what happens in the event one or both parties fail to perform. The only remaining step is to sign on the dotted line and ensure both parties perform according to the contract.

Selling a business *can* be daunting and scary unless one has a detailed plan of action and proper legal counsel as a guide.

Who Is Stone and Associates, L.L.P.?

Tom Stone started Stone and Associates, L.L.P. ten years ago with the goal of providing quality, reasonably priced legal services for The Woodlands and surrounding communities. Having been in The Woodlands over 25 years, Tom's client list and reputation grew quickly and what started with just him and one legal assistant has grown into a law firm with four attorneys and four staff ready and willing to assist clients in any business, estate, and tax transaction with which he, she, or it requires assistance.

ATTORNEYS

Tom Stone is the founding member and still handles much of the administrative side of the law firm.

Jay Knighton became the managing partner two years ago and has grown the firm in size (both in staff and revenue) since assuming the role of managing partner.

Brent Stanfield has been with Stone and Associates nearly four years and handles all business litigation for the law firm.

Nick Dupre joined the firm in October of 2008 and concentrates on probate, estate and gift tax planning, business planning and taxation, asset protection, estate administration, elder law, and charitable organizations.

STAFF

Penni Clos is our office manager and keeps the rest of the staff and attorneys in line, organized, and focused on the ultimate goal of client satisfaction.

Meagan Katzer is the estate and business planning legal assistant and has been with the firm for three years.

Lorna Welborn is the newest member of the firm and assists in all litigation and probate matters.

Vanessa Carballo assists with document preparation and other administrative duties that allows the firm to run more efficiently and cost-effectively.

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Business, Estate, and Tax Planning for Generations

Stone & Associates, LLP's practice focuses on estate planning, probate and estate administration, business law, business transactions, tax planning and controversies, and business litigation. Additional credentials such as Board Certification in Estate Planning and Probate by the Texas Board of Legal Specialization, CPA and Masters of Laws in Taxation (LLM), combined with years of practical experience, make our attorneys uniquely qualified to address the business and tax issues inherent in these areas of law.

Our clients desire to minimize taxes and protect their assets, with the ultimate goal of maintaining and preserving wealth for themselves and future generations. We lead our clients through the complex maze of Federal and State laws to this ultimate goal.

The four attorneys of Stone & Associates, LLP, frequently present continuing education seminars to certified public accountants, certified financial planners, realtors, and licensed insurance agents. We explain complicated business, estate, and tax laws in an understandable manner that our clients and other professionals appreciate. Not surprisingly, Stone & Associates, LLP, has quickly become the firm that professionals turn to for their clients' estate planning, taxation, and business law needs.

This issue contains four articles that you may find relevant to your clients throughout the year. As is customary in our past issues, we prepared a tax, estate planning, business structure, and general business article based on current issues our clients faced over the last few months. As always, we are here to serve as a resource to you and your clients, so please call or e-mail if we can help.

Stone and Associates, LLP

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