TAX AND WEALTH ADVISOR ALERT: THE TIME TO SELL MIGHT BE NOW

Individuals who own Qualified Small Business Stock (QSBS), depending on when the corporation was formed, may have the ability to sell the stock without paying tax.

A company is a "Qualified Small Business" if it is a C corporation, and its assets do not exceed $50,000,000. Stock is "Qualified Small Business Stock" if it is held by the creators of the business. For qualified small business stock acquired from September 28, 2010 through the end of 2014, the IRS permits a 100% exclusion of the gain up to a maximum of the greater of $10 million or 10 times the taxpayer's basis in the stock, provided that the taxpayer has held the stock for at least five years. Stated another way, starting on September 28, 2015, taxpayers who have held Qualified Small Business Stock for five years will be able to cash out tax-free.

If you own qualified small business stock, you have a golden opportunity to cash out without paying any taxes. The following chart shows the percentage of tax that will be excluded from the sale, based upon the date of the corporation's creation:

Federal Exclusion of Gain on Qualified Small Business Stock		
Acquisition Period	**Percent Exclusion (From Regular Tax)**	**AMT Add-Back Percentage**
Before February 18, 2009	50%	7%
February 18, 2009 – September 27, 2010	75%	7%
September 28, 2010 – December 31, 2014	100%	0%
January 1, 2015 and later	50%	7%

TAX AND WEALTH ADVISOR ALERT: VALUATION DISCOUNTS MAY BE UNDER ATTACK BY THE TREASURY

The IRS may very soon have another arrow in its quiver to attack valuation discounts on transfers of equity interests to family members. For those clients who have a plan that utilizes discounted giving, it is critical to have these plans examined by an estate planning expert and perhaps fully executed as soon as possible.

Based upon statements from various IRS and Treasury officials at recent conferences, it is

likely that the Treasury Department will be issuing regulations under Code section 2704 that either eliminate or severely limit the use of discounts in valuing equity interests transferred between family members. The regulations under Code section 2704 currently address restrictions on liquidation. However, section 2704 also provides: “The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor’s family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.”

What is interesting is that while this language seems broad enough to empower the Treasury to address (and eliminate) valuation discounts of any type with intra-family transfers, the legislative history to Code section 2704 would indicate otherwise. Specifically, the legislative history provides that “the bill does not affect minority discounts or other discounts available under present law.” Without getting into an in-depth dissertation on administrative authority, regulations that are in contravention of legislative history are subject to taxpayer attack.

The bottom line is that it is easier to avoid an IRS fight than to engage in one. Therefore, for clients that are relying on discounted giving, the time to act is now.

DIZARD IN BIZTIMES.COM: FORMER LAC LA BELLE COUNTRY CLUB SOLD OUT OF RECEIVERSHIP

An investors group that includes the owner of three area golf courses has purchased the former Lac La Bell Country Club near Oconomowoc for $1.3 million.

The golf course was sold to the group by receiver Seth Dizard on behalf of First Bank Financial Centre, which took it back from the previous owner in a foreclosure action.The 18-hole, 140-acre golf course is located at W389 N6996 Pennsylvania St. in the Village of Lac La Belle.

(Excerpted from *BizTimes.com*) Read full article here.

EMPLOYMENT LAWSCENE ALERT: DOL MEMO STATES THAT MOST WORKERS ARE EMPLOYEES UNDER THE FLSA

Today, July 15, 2015, the U.S. Department of Labor (DOL) issued a memo regarding the classification of workers as either employees or independent contractors, which stated that most workers qualify as employees under the Fair Labor Standards Act (FLSA). The DOL noted that the FLSA has an expansive definition of employment and that workers who are misclassified may miss out on many protections that they should be given, including minimum wage, overtime, unemployment compensation, and workers' compensation.

Under the FLSA, a worker is an independent contractor if he is genuinely in business for himself; if a worker is economically dependent on the employer, however, the worker is an employee. To determine if the worker is economically dependent on the employer, the DOL looks at the six-factor economic realities test, which must be applied consistently with the broad scope of the FLSA. These factors are 1) the extent to which the work performed is an integral part of the employer's business; 2) the worker's opportunity for profit or loss depending on his or her managerial skill; 3) the extent of the relative investments of the employer and the worker; 4) whether the work performed requires special skills and initiative; 5) the permanency of the relationship; and 6) the degree of control exercised or retained by the employer. None of the six-factors is determinative; instead, the DOL states that they are indicators of the broader concept of economic dependence, which is the ultimate determination. Importantly, neither an employee's job title or an agreement between the worker and the employer factor into the analysis of whether a worker is an employee or an independent contractor. It is the reality of the working relationship that is determinative of an individual's employee or independent contractor status.

The DOL's conclusion is that most workers are employees under the FLSA and are thus entitled to all of the protections afforded employees. Therefore, employers need to be proactive and regularly revisit and reassess their use and classification of independent contractors to avoid liability for misclassification. If an individual is being treated like an employee, he or she needs to be classified as an employee. Employers who do otherwise are likely to find themselves facing litigation.

EMPLOYMENT LAWSCENE ALERT: DOL ISSUES

PROPOSED RULE CHANGES TO OVERTIME REGULATIONS

On March 13, 2014, President Obama signed a memorandum that launched the U.S. Department of Labor's (DOL) efforts to update the Fair Labor Standards Act's (FLSA) overtime rules for executive, administrative, professional, outside sales, and computer employees, commonly referred to as the "white collar" exemptions. To be exempt from the overtime regulations, employees must meet both a salary basis test and a job duties test. On Tuesday, June 30, 2015, the U.S. Department of Labor (DOL) released the long-awaited proposed rule regarding the expansion of overtime regulations under the Fair Labor Standards Act (FLSA). It is anticipated that, if these rules are imposed, nearly 5 million additional workers would be eligible for overtime under the FLSA's regulations.

The most drastic difference in the proposed regulations is the raise of the minimum salary requirement to qualify for the white collar exemption. Currently, the minimum salary requirement is $455 per week ($23,660 per year), a number that was set in 2004. The proposed rule would increase the minimum salary requirement to $970 per week ($50,440 per year). This figure is equal to the 40th percentile of weekly earnings for full-time, salaried employees. The proposed rule also includes an automatic adjustment to the salary threshold so that the minimum salary requirement does not become outdated. The DOL is also seeking comment on whether nondiscretionary bonuses can be included to satisfy the salary requirement.

Although the proposed rule does not specifically change any of the job duties requirements, the DOL did invite comment on whether or not these tests are working as intended or should be changed. One suggestion is that the federal job duties test would mirror the job duties test from California in which employees have to spend at least 50 percent of their time on exempt duties to qualify as exempt. The current federal test simply looks at a worker's "primary duty" and whether the employee's primary duty meets the requirements of the particular exemption classification. A change in the duties test could also significantly decrease the number of employees who qualify for the overtime exemption.

Once the proposed rule is published, likely in the next few days, there will be a sixty-day public comment period. Only after that will the DOL be able to issue a final rule. Although employers do not have to do anything at this time and cannot know exactly how these proposed rule changes will impact them until they become final, they should be staying aware of these changes. Once a final rule is published, employers will likely need to reevaluate their exempt and non-exempt classifications for their employees to make sure that they are in compliance with the final DOL rules.

WILL MY ADULT CHILD WITH AUTISM LIVE INDEPENDENTLY? ESTATE PLANNING FOR FAMILIES OF ADULTS WITH AUTISM SPECTRUM DISORDERS

According to the Centers for Disease Control, the prevalence of autism has increased by 6% to 15% annually since 2002, making autism the fastest-growing developmental disability in the United States.

While this trend may be alarming to young couples having children today, there are also families in our country right now dealing with the confusing prospect of providing for adult children with autism spectrum disorders. More than 3.5 million Americans currently live with autism and 35% of young adults (ages 19–23) with autism have not held a job or received any postgraduate education.

Doug, co-author of this article, is the father of an adult son (19 years old) with autism. Together, he and Megan wrote this article to help families understand that there are ways to provide for their autistic adult children without disqualifying those children from available government programs.

That is the heart of the issue: How can you help your child achieve a level of independence appropriate for him or her while also assuring that you keep all government assistance options available?

Your Help vs. Government Benefits

If you are a parent of an adult child with autism, you are likely looking for ways to help him or her today, and you also want to provide for your child after your death. However, there is a dilemma. If not carefully planned, gifts or inheritances from family members or friends can disqualify your child from eligibility for certain potential government benefits. Those benefits, though often modest in amount, may make the difference between your child living independently in adulthood, or remaining at home or possibly being institutionalized after your death.

For example, an adult child with autism often may meet the legal definition of “disabled” such that he or she could be entitled to Supplemental Security Income (SSI) benefits. The purpose of SSI is to provide income for food and shelter. It was designed to provide recipients with approximately 75% of the threshold amount for the federal poverty cut-off. As of January

1, 2015, the maximum federal SSI monthly payment for an individual is $733. Many states provide a supplemental SSI benefit, which ranges from about $20 to $100 per month, depending on the state. In Wisconsin, the maximum supplemental SSI benefit is currently $84 per month, which makes the total maximum SSI benefit $817 per month for Wisconsin residents.

Some SSI recipients may be eligible for an additional SSI benefit if they have exceptional needs. These benefits are called SSI-E benefits. Exceptional needs generally means 40 hours per week of attendant care, including custodial care. In Wisconsin, for those who qualify, the maximum SSI-E monthly payment is currently $95.99.

While not exorbitant, these payments can help your adult child have some level of financial independence. But, here's the important part for parents to remember: There are strict limits on how much your child can earn and own and still be eligible for SSI. For example, the amount of your child's SSI benefit is reduced dollar-for-dollar by "countable income." This includes gifts or financial contributions (other than SSI) used by your child to pay for food or shelter. There is also a strict limit of how much your child can own and remain eligible for SSI. The asset limit is generally $2,000, with certain important (but limited) exceptions for necessary items such as a car, home, and certain other assets.

Unfortunately, this means that a well-intended gift or inheritance from a family member (such as you, or a grandparent) could result in your child being disqualified from receiving future SSI benefits. However, this dilemma can be avoided with proper estate planning, through which you can develop a comprehensive plan for your child's financial future. Many times, this estate planning involves creating a special needs trust, through which certain financial assistance can be provided without impacting your child's SSI eligibility.

Special Needs Trusts May Help You Achieve Your Goals

Special needs trusts (also called "supplemental needs trusts") (SNTs) have specific provisions pertaining to the needs of disabled beneficiaries. The purpose of an SNT is to preserve the beneficiary's eligibility to receive public benefits while supplementing his or her lifestyle with private funds in order to enrich his or her life. Usually, parents will set up an SNT during their lifetimes to benefit their disabled child after the parents pass away in order to ensure there are adequate funds available for the child's benefit, without worrying that such funds will disqualify the child from receiving public benefits.

Why Use an SNT?

An SNT may be used to retain and expend funds to supplement (not supplant) government benefits without rendering the beneficiary ineligible to receive them. Here are a few examples of expenses that a properly created SNT generally may cover for the benefit of

your disabled child:

- Purchase of a residence.
- More sophisticated or advanced medical, dental, psychiatric, or psychological treatment, cosmetic surgery, rehabilitation, and educational or vocational services.
- Paying the differential cost for shelter between a shared or private room in a group home or nursing home.
- Providing entertainment, such as admission to museums and movie theaters, tuition for art courses, restaurant meals while away from his or her residence, cable television service, a computer with games and other software installed, a stereo or CD or DVD player, and tapes or disks.
- Paying for travel for recreation purposes.
- Paying for any services needed by the beneficiary to permit him or her to reside in his or her own home.
- Providing household furniture and furnishings.
- Paying for preparation of income tax returns and paying any income tax liabilities.
- Paying the expenses of a hobby.
- Paying for legal services to obtain, maintain, or regain eligibility for governmental or private agency benefits, to pay for any legal advice and consultation needed by the trustee to administer the SNT properly and to maintain public benefits eligibility.
- Paying for hair grooming and nail care services.
- Paying for writing supplies and postage.
- Purchasing and paying the costs of maintaining pets.
- Purchasing an automobile, including any modifications or special accommodations needed due to his or her disabilities, whether the motor vehicle is operated by the beneficiary or someone else for his or her benefit.
- Paying the costs of making the beneficiary's living environment more amenable in light of his or her disabilities, whether or not the home in which he or she resides is owned by him or her or by someone else, or is a residence purchased by the SNT, or is a nursing home, or health care center, or community based residential facility.
- Prepaying for funeral and burial pre-arrangements for the beneficiary.

SNTs provide a very powerful financial vehicle to help you provide for your child. But, SNTs are just one estate planning tool you might consider.

If you have a child with autism or other disabilities, you must think strategically about how you might help provide for your child in a way that ensures he or she will be adequately cared for, especially after your death, without taking any actions that might disqualify him or her from receiving government assistance.

If you would like additional information, you may contact either Doug Dehler or Megan Harried at (414) 276-5000.

LYONS RECOGNIZED BY THE NADC AS ONE OF THE FINEST LAWYERS IN THE COUNTRY

Gregory Lyons, of O'Neil, Cannon, Hollman, DeJong and Laing S.C., has been selected to the 2015 list as a member of the Nation's Top One Percent by the National Association of Distinguished Counsel. NADC is an organization dedicated to promoting the highest standards of legal excellence. Its mission is to objectively recognize the attorneys who elevate the standards of the Bar and provide a benchmark for other lawyers to emulate.

Members are thoroughly vetted by a research team, selected by a blue ribbon panel of attorneys with podium status from independently neutral organizations, and approved by a judicial review board as exhibiting virtue in the practice of law. Due to the incredible selectivity of the appointment process, only the top 1% of attorneys in the United States are awarded membership in NADC. This elite class of advocates consists of the finest leaders of the legal profession from across the nation.

ELEVEN ATTORNEYS FROM O'NEIL, CANNON, HOLLMAN, DEJONG AND LAING NAMED LEADING LAWYERS

Eleven attorneys from O'Neil Cannon have been named "Leading Lawyers" in Milwaukee by *M Magazine* (July 2015), Milwaukee's Lifestyle Magazine. Those attorneys are the following:

- Melissa Blair (Banking)
- Jim DeJong (Business)
- Pete Faust (Securities Offerings)
- Grant Killoran (Litigation)
- Dean Laing (Litigation)
- Greg Lyons (Litigation)
- Greg Mager (Family)
- Patrick McBride (Litigation)
- Randy Nash (Litigation)
- Steve Slawinski (Construction/Development)

The "Leading Lawyers" were selected by Avvo, a Seattle-based company that rates attorneys. Avvo's proprietary algorithm rates all attorneys on a 10-point scale, factoring in peer endorsements as well as experience, education, training, speaking, publishing, and

awards. In order to make the list of “Leading Lawyers” as published by *M Magazine*, an attorney must be ranked in the top 5–10% of his or her area of specialty.

TAX AND WEALTH ADVISOR ALERT: ESTATE PLANNINGTHE FIRST SIN — "LETTING A STRANGER DECIDE"

People describe an estate plan in a number of ways. Some people use very technical jargon, focusing on the specific tools: wills, trusts, powers. Others describe what the plan does—who gets what property and when. But in my opinion, planners need to help clients understand the “why”; that is, why they should invest in an estate plan. The answer to “why?” is that an estate plan is a strategy to take care of the people we care about when we, for whatever reason, cannot.

In that context, perhaps the most important issue that an estate plan must address is who should raise minor children if something happens to the parents. It’s an interesting, but little-known fact outside of the legal world, that the decision of who will raise the children falls solely in the hands of a probate court judge. Unfortunately, that judge has no idea who the right person is; that is, the person who shares the parents’ values, beliefs, and convictions. The judge will look to the parents for guidance on who that person is, and the place the judge will look is in the parents’ wills. But if the parents are like 70% of Americans and do not have wills, the judge will be lost without guidance from the people most qualified to provide it.

Stated simply, there is no planning issue more important for parents of minor children to address than the nomination of a guardian. Parents who abdicate that responsibility are truly committing a sin.

KILLORAN SPEAKS AT TEXAS BILL OF RIGHTS CONFERENCE

Grant Killoran, the Chair of O’Neil, Cannon, Hollman, DeJong and Laing’s Litigation Practice Group, recently presented an article and speech entitled “Ebola Panic—When Public Health Concerns Confront the Constitution” at the 9th Annual State Bar of Texas “Bill of Rights

Course: Cutting-Edge Controversies in Constitutional Law” in Austin, Texas.

Attorney Killoran authored the article with Attorney Christa Wittenberg of O’Neil, Cannon, Hollman, DeJong and Laing and presented at the seminar an analysis of state and federal constitutional law governing public health emergencies, focusing on the recent Ebola virus outbreak in the U.S., along with presentations by law professors and attorneys from around the country on other constitutional issues.