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PETER WALSH WRITES AND SPEAKS ON SPECIALIZED ESTATE PLANNING TECHNIQUE

Attorney Peter Walsh of O'Neil Cannon, has recently published an article and is a frequent speaker on the topic of formula adjustment clauses in estate planning to mitigate the valuation risk inherent in the gift of hard to value assets. Such hard to value assets include closely held business interests and real estate. The risk sought to be reduced by this technique is that of substantial additional gift tax plus interest resulting from an increase to the value of a gifted assets through an IRS audit. For example, a gift of hard to value stock in the family business in 2008 could result in additional gift tax plus interest in 2010, if the IRS successfully challenges the value of the gifted stock. Estate planners have employed various means to mitigate this valuation risk.

In two recent taxpayer victories, the Tax Court gave its blessing to the evolving use of formula adjustment clauses to eliminate the valuation risk. For instance, the Tax Court, in Estate of Petter, allowed a taxpayer to avoid substantial gift tax through a "charitable cap adjustment clause" which allocated any increase in value to public charities. When the taxpayer in Petter conceded to an IRS demand for a substantial increase in the value of property given as a gift, the taxpayer was able to avoid additional gift tax through the adjustment clause that allocated the entire increase to donor advised funds offered by public charities. In this manner, the taxpayer traded a taxable gift for a charitable deduction.

Peter's article on this subject titled "Formula Clause Changes Taxable Gift into Charitable Donation," appeared in the April issue of the national tax magazine Practical Tax Strategies. Peter presented a seminar on this subject to the Milwaukee Estate Planning Forum, LTD, on May 5, 2010, and will present at the Milwaukee Bar Association, on May 20, 2010. Click here to view a copy of Peter's presentation materials or to register click here.

Peter is a member of the Tax, Estate and Succession Planning practice of the downtown Milwaukee law firm and assists clients with all areas of tax and estate planning. He is licensed in Wisconsin, Illinois, and Florida and has a master's degree in taxation.