

GOLDEN BULLETS

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THOUGHT YOU'D LIKE TO SEE THIS:

INSTALLMENT SALES - IMPORTANT PLANNING TOOLS!

Installment sales are popular vehicles for “freezing” the overall value of a senior family member's estate and shifting appreciation in a particular asset such as real estate or an interest in a family-owned business to a younger generation family member and as income tax savings devices.

Benefits of installment sales include:

Simplicity: It is relatively easy to compute the payments under an installment sale (essentially the same computation as a mortgage). The transaction is so commonplace that the law in this area is relatively settled and easily understood. The mechanics of the arrangement (executing the installment sale agreement and having the buyer sign a legally binding note requiring fixed payments over a fixed period) can be quickly implemented.

Ability to prorate capital gains: You can sell a valuable asset with a low tax basis and spread any gain over many tax years, rather than recognizing the gain in a single year.

Create cash flow: If you own non-income producing assets (e.g., vacant land), by selling it to a family member the asset can be kept within the family unit yet your income can be increased significantly. Children who currently (or anticipate) supporting aging parents may want to consider this “graceful and dignified” approach to provide income for their parents who might otherwise be financially handicapped.

Assure succession: If you wish to leave a specific asset (such as stock in a closely-held corporation or land) to one child rather than another, or do not want a spouse or creditor to be able to obtain that asset, an installment sale should be considered. Since it is (and should) be structured as a bona fide arm's length sale, you can be assured that only the chosen party will

receive the property. This contractual arrangement can prevent loss of the property in a will contest, election against the will, divorce, or lawsuit.

Create a market for a business interest: A business owner could sell all or a portion of his or her interest to key employees or third parties who want to buy into the business, but could not afford a lump-sum payment. In fact, many businesses are sold in return for long-term installment payments.

Increase flexibility: An installment sale can be structured to begin and end according to the objectives, or financial needs or abilities of the parties. Technically, even a transaction which entails payments for 20 years of interest only with a lump sum (balloon) at the end can qualify as an installment sale. This creates a flexibility that allows many transactions to be made that otherwise could not.

Interest possibly deductible: Interest paid on the remaining balance is not deductible if it is considered “personal.” But the interest deduction will be allowed if the buyer can prove that the debt was properly allocable to investment as opposed to personal purposes (the deduction will be allowed only to the extent the taxpayer has investment income in the tax year), or the conduct of a trade or business (interest is deductible without limit), or a “qualified residence.”

CONCLUSION:

There are, of course, downsides and costs to the installment sale. But in spite of these, the installment sale is one of the most important of all methods for transferring property. It should be considered as an alternative to outright sales, private annuities, and self-canceling installment sales (SCINS).

PLEASE FEEL FREE TO CALL TO DISCUSS THE PROS AND CONS OF INSTALLMENT SALES AND OTHER PLANNING TOOLS AND TECHNIQUES.

Myth: If I simply have a living trust, my assets will pass outside of probate.

Truth: If you died with a living trust in place, you may still have to probate if you left assets titled in your individual name. This is why it is very important to fund your living trust by transferring assets into the name of the trust.

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“Golden Bullets” is provided as a source of general information about current developments in the practice of estate planning and related topics. If you have questions regarding this issue or estate planning in general, please contact me prior to taking action.

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