Estate Planning for Corporate Executives

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Although the estate-planning objectives for a corporate executive are the same as for any other client, the issues involved may be more complex and require more in-depth analysis. These additional considerations include greater fiduciary challenges, asset protection planning, non-diversification and liquidity needs.

Due to the unique nature of the assets which may comprise an executive's estate, careful attention must be given to the powers and duties granted to a fiduciary to ensure that the fiduciary will have adequate flexibility to deal with anticipated – and unanticipated – problems.

Stock Options

If the estate of an executive includes options to purchase additional employer stock, the estate fiduciary must be given flexibility to deal with a wide range of situations, including the power to exercise or not exercise the options, to do so despite the lack of diversity of investments held by the estate or trust, and to address the potential need to borrow money in order to exercise options.

Stock Liquidity

Unrestricted stock in a publicly traded corporation can be readily converted into cash if necessary. However, if the employer stock is either closely held or restricted as to its disposition, the estate may face a liquidity problem. In many instances, the estate may have to sell a significant percentage of its assets to meet estate tax obligations and other administration expenses. If the stock is either restricted or closely held, a sale at a fair price may be practically impossible.

Additionally, the lack of liquid assets may mean that several of the normal estate-planning techniques, such as a lifetime gift program, may not be feasible. The problem will be compounded for the fiduciary if significant assets (such as life insurance, joint property interests or previously established lifetime trusts) pass outside the will or trust and are not immediately available for the payment of estate taxes.

A useful means of reducing liquidity problems, especially in closely held corporations, is the establishment of a buy-sell agreement. Under these agreements, either the corporation (by stock redemption) or the other stockholders (by cross-purchase) agree to purchase the executive's stock from the estate upon his or her death. This is of significant benefit in situations where there is little or no market for the stock. The agreement can determine the methodology for valuing the stock and provide needed cash. For the remaining stockholders, the agreement can serve as a means of retaining control of the corporation after the executive's death.

Deferred Compensation

An executive is likely to have a deferred compensation plan, the value of which is subject to estate tax, in addition to passing taxable income to the named beneficiaries. Coordination of the beneficiary designation with the executive's overall estate-planning objectives may lower these tax burdens.

Protection of Assets

Agreements entered into between the company and the executive should be reviewed to determine whether indemnification or other protective arrangements have been put in place. The executive’s liability insurance coverage also should be reviewed. Titling of assets, beneficiary designations and entity formation should also be considered as additional means of protecting the executive's assets.

The issues involved with the estate of a corporate executive can be unique and challenging. But with proper planning and input from a reliable estate planner, the executive and his/her fiduciary can face these issues with confidence.