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ESTATE PLANNING LIBRARY

Number Five

Private Foundations

AN OVERVIEW

1. Who might need this technique?

Generally, clients with estates in excess of \$2,000,000 may want to consider using a private foundation.

2. How does a private foundation work?

A private foundation is a specially designed trust or corporation that is exempt from income taxes and for which there is an estate or gift tax deduction for property transferred to it. As an example, if a decedent dies and leaves all of his or her property to that person's private foundation, that person's estate receives a deduction for the bequest and no estate taxes are payable. From a technical standpoint, documents are completed and filed with the IRS and state authorities to obtain their approval that the entity is tax exempt and qualifies as a private foundation.

3. How does a client benefit?

In addition to the ability to control the charitable use of their funds, some clients simply do not want to pay estate taxes for any reason. Planning for this type of client generally involves attempting to move as much property from their estate as can be reasonably accomplished during their lifetimes. When that is done, anything that would cause an estate tax at their death passes to their private foundation and their children use the money for charitable benefits according to the terms of the foundation documents. A frequent plan is for the charitable beneficiary of a charitable remainder trust to be the Trustmaker's private foundation. That way, the client has the benefits of the charitable remainder trust but the client's family retains control, for charitable purposes, of the family wealth. Clients and others are also allowed charitable income tax deductions for contributions to the private foundation.

4. What are the client's responsibilities?

As this is a legally technical area, the client's primary responsibilities in creating a private foundation are to carefully detail their charitable goals to the attorney so that the documentation will reflect the client's wishes. In addition, accounting and other administration tasks must be planned for. Typically, the client's accountant will handle those tasks.

5. What are the attorney's responsibilities?

The attorney needs to first consult with client to determine how a private foundation will help the client achieve one or more of their personal goals. An evaluation of how this planning tool interacts with the others the client has in place is also necessary. The attorney must then prepare the documentation in accordance with the clients' charitable wishes and then file with the various federal and state agencies to obtain exempt status for the foundation.