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In this issue:

IRS Proposed Regulations to Eliminate Discounts for Giifts 1

New Connecticut Law Places Limitations on Physician Restrictive Covenants 1

Cash Balance Plans: The Smart Way to Increase Your Tax-Deductible Plan Contributions 2

Department of Labor's New Investment Advice Fiduciary Rule—The New Normal for Retirement Plan Sponsors and Advisers 3

In our Firm 4

Attorney Advertising

FALL 2016

IRS Proposed Regulations to Eliminate Discounts for Gifts

Gifting has always been one of the most common techniques used to minimize estate tax and, since 1993, the IRS has permitted discounting gifts of interests in entities such as corporations and LLCs to family members. The argument has been that if a non-voting interest was transferred, and if that interest was in a private entity, then discounts for minority interest and lack of marketability could be applied.

In other words, gifting a $1,500,000 commercial office building to children or grandchildren (or to trusts for their benefit) would exhaust $1,500,000 of the lifetime $5,450,000 estate and gift tax exemption. However, a gift of $1,500,000 of real estate owned by an LLC or a corporation, assuming a reasonable 33% discount, would only be reported as a $1,000,000 gift, thus using $500,000 less lifetime gift tax exemption.

For years, the IRS has felt that these techniques have been abused and has frequently challenged their use in audits and in court. After much litigation, the IRS reacted on August 2, 2016 issuing proposed regulations

(Continued on page 4)

New Connecticut Law Places Limitations on Physician Restrictive Covenants

A new Connecticut statute places significant limitations on the use of restrictive covenants (sometimes called non-compete agreements) for physicians. As the enforceability of restrictive covenants is determined on a state-by-state basis, the new law applies only to physicians practicing in Connecticut.

For restrictive covenants entered into, amended or renewed on or after July 1, 2016, the law prohibits such provisions from lasting for longer than one year after termination of employment and from extending beyond fifteen miles from the "primary site" where the physician practiced, determined on a generation of revenue basis.

In addition, a restrictive covenant entered into, amended or renewed on or after July 1, 2016 is not enforceable if (i) the employment agreement was not made in anticipation of, or as part of, a partnership or ownership

(Continued on page 3)

Cash Balance Plans: The Smart Way to Increase Your Tax-Deductible Plan Contributions

A "Cash Balance Plan" is an integral component of retirement plan design which allows you to make substantially larger tax-deductible contributions than those permitted under profit-sharing and similar defined contribution plans (DC Plans). Cash Balance Plans use easily understandable individual account balances not available under a traditional defined benefit pension plan. Each plan participant has his or her own account balance that is credited annually with a contribution and a specified rate of return.

Ideal candidates for Cash Balance Plans are successful businesses with two or more owners. In a Cash Balance Plan, similar or varying contributions can be made on behalf of each owner, and each owner will know the exact amount of the contribution attributable to him. Naturally, Cash Balance Plans can be successfully implemented for a sole proprietorship that produces substantial profits.

When a Cash Balance Plan is combined with a DC Plan, the combination of the two plans gives the business both an increased tax deduction and substantial flexibility for each year's contributions.

The Table below illustrates how you can make an additional tax-deductible plan contribution to a Cash Balance Plan (see Row D) even after contributing the maximum $53,000 to a DC Plan (Row A plus Row B equals the maximum $53,000).

The Table shows one example of an allocation maximized for the owner; the assumption is that the staff contribution will be as low as IRS rules permit, and the owner's compensation is at least $265,000.

The most important factor is to ensure that the cost for covering the staff does not outweigh the benefit of the plan to the business owners. A thorough analysis of employee data, combined with creative planning concepts, often result in a successful outcome for the business owners. Obviously, it would be imprudent for a business owner to think of proceeding without the benefit of such an in-depth analysis.

If you want to make a plan contribution for yourself in excess of $53,000, a Cash Balance Plan is the answer.

To learn more about Cash Balance Plans, please contact Andrew E. Roth, Esq. at 914-948-1556 ext. 8033 or by email at aroth@dmlawyers.com

Type of Plan or Plan Feature		Contribution Amount for Owner
A.	Profit-Sharing Plan – Employer Discretionary Contribution	$ 35,000.
B.	401 (k) Salary Reduction Plan - Employee Discretionary Contribution	$ 18,000.
C.	Additional "Catch-Up": Owner Age 50 or older	$ 6,000.
D.	Cash Balance "Add-on" Plan [On top of Employer's DC Plan]	$ 47,150.*
E.	Total Contribution: Owner under Age 50 [A+B+D]	$ 100,150.
F.	Total Contribution: Owner Age 50 or older [A+B+C+D]	**$** 106,150.

*Note also that depending upon the level of staff compensation, and the age of the owner, the amount that can be contributed for the owner may be substantially larger.

DEPARTMENT OF LABOR'S NEW INVESTMENT ADVICE FIDUCIARY RULE – THE NEW NORMAL FOR RETIREMENT PLAN SPONSORS AND ADVISERS

On April 6, 2016, the Department of Labor (DOL) issued a controversial new rule that greatly expands the scope of who is a fiduciary by reason of providing investment advice to pension, 401 (k) and other employee benefit plans, plan participants, and IRA owners. The new rule begins to take effect in April 2017, but is not fully applicable until 2018.

Generally, under the new rule, a person will be an ERISA fiduciary if the person provides an investment-related recommendation to a plan investor where the recommendation is either based on the particular investment needs of the recipient or the recommendation is directed to a specific recipient or recipients. For the first time, fiduciary status may attach even if the advice is not provided on a regular basis and does not serve as the primary basis of plan-related investment decisions. Moreover, recommendations to a plan participant concerning rollovers and distributions from a plan will implicate fiduciary status. The new rule is highly technical and layered with exceptions, exemptions and special rules. As a practical matter, however, it will make nearly all retail brokers, pension consultants and insurance agents who deal with plans ERISA fiduciaries, absent an adjustment to their business practices. The consequences of being an ERISA fiduciary are fundamental and pervasive and in particular impact compensation arrangements for investment professionals.

The new rule dramatically changes the rules of the game for plan sponsors and investment professionals for the first time in more than 40 years. The new rule presents something of a cross roads for investment professionals to evaluate the direction their services and business models will take. On the other hand, plan sponsors, themselves ERISA fiduciaries in their own right, will need to act in the best interest of their plans and protect their businesses by understanding the legal, economic and other consequences of the new rule on their relationships with plan service providers.

A more detailed discussion of the DOL's new investment advice fiduciary rule is available on our website (*http://danzigermarkhoff.com/danziger%20site/Articles/2016ClientAlert-DepartmentofLaborsNewInvestmentAdviceFiduciary%20Rule-(01054792xA8687).pdf).*

If you have any questions or need support in adjusting to the "new normal" under the DOL's expanded investment advice fiduciary rule, please feel free to call Jay Fenster, Esq. or Mark Hamilton, Esq.

(Continued from page 1)

agreement and the agreement expires and is not renewed unless, prior to the expiration, the employer made a bona fide offer to renew the agreement on the same or similar terms and conditions or (ii) the employer terminated the employment agreement without cause.

Other proposed provisions limiting restrictive covenants between physicians and hospitals, health systems, medical schools or their related medical foundations only to future employment by similar entities were not included in the final version of the law.

For more information, please contact Joshua S. Levine, Esq.

(continued from Page 1)

to Section 2704 of the IRS Code which would eliminate these discounts for transfers of closely-held family owned entities. A hearing is scheduled for December 1, 2016 about the new regulations and, if adopted, the regulations would be effective 30 days later.

What does this mean for you? First, any discounted gifting made to this point is grandfathered and unaffected. Second, if these regulations do become final, then there is time before the end of 2016 to consider gifting to take advantage of the discounts currently available.

Please call or email Harris Markhoff or Michael Markhoff if you would like to discuss this further.

In Our Firm

We want to share with you that our firm has recently received the following honors. We thank our clients and colleagues for their continued loyalty and for helping us achieve these honors.

The Best Lawyers in America:

Harris Markhoff , Michael Markhoff and Joshua S. Levine have been selected for inclusion in *The Best Lawyers in America 2017*. Harris was selected in the areas of Corporate Law and Trusts & Estates , Michael was selected in the area of Trusts & Estates and Josh was selected in the area of Health Care Law.

New York Super Lawyers:

Michael Markhoff and Jay Fenster have been selected for inclusion in 2016 New York Metro *Super Lawyers*. Michael was selected in the area of Estate Planning and Probate and Jay was selected in the area of Employee Benefits/ERISA. Only 5% of the attorneys practicing in New York received this honor.

In other news:

Our firm was featured in the April issue of the Westchester and Fairfield County Business Journals in their "Over 50 & Fabulous" edition. Since 1960, we have steadily built our firm by resolving business and tax related issues for family-owned businesses, other privately-held companies and high net worth individuals.

Check out our new website :

We are proud to introduce our new website: www.danzigermarkhoff.com. We think you will find it easier to navigate and understand. We would like your feedback on what works for you on the site and what we might want to improve.