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PROPOSED TREASURY REGS. TO ELIMINATE VALUATION DISCOUNTS

On August 2, 2016, the IRS and U.S. Treasury Dept. issued proposed regulations under Section 2074 of the Internal Revenue Code that would have the effect of eliminating or scaling back many valuation discounts for family-controlled entities for estate, gift, and generation-skipping transfer tax purposes.

The new rules would scale back the use of discounts in wealth transfers by targeting lapses of voting or liquidation rights and restrictions that prevent liquidation. Both of these techniques are currently used by estate planners to achieve a 20% or even a 35% discount on the gift or sale of family businesses and partnerships.

A public hearing is scheduled for December 1, 2016. Some families should consider whether they should use the existing rules to make transfers before the end of the year and possible rule change.

ESTATE PLANNING FOR SMALL BUSINESS OWNERS

If you are a small business owner, putting a plan in place in the event of your incapacity or death can ensure that your business survives, your family can continue to be supported, and your assets will pass to your family efficiently. Without a plan, your business could be interrupted, have fewer tax saving options, and be subject to probate. By taking the time to establish a plan now, small business owners can be assured their goals and desires are put into action. There are a few things business owners should think about as part of this process.



“Whether you are a sole proprietor just starting out or an established business with multiple partners, all Minnesota business owners should take the time to put a plan in place to ensure that the enterprise they've put together passes according to their wishes when they are gone.”

Look at the buy-sell agreement.

A *buy-sell agreement* is a legal document that is put in place by two or more business partners that covers all the situations by which a partner may leave the business. This would include whether a partner leaves because of death, disability, wanting to sell, or other reasons set forth in the agreement that might compel an owner to leave the business such as bankruptcy or divorce. Some buy-sell agreements will require or give the option to the surviving owners to purchase the interest of a deceased

owner. The purchase price could be funded through life insurance that the partners purchase on each other. Another method would be to allow the remaining partners to purchase the business interest on an installment basis over a number of years, perhaps with a balloon payment.

Knowing how your buy-sell agreement impacts your business interest on your death is often the first place to look when beginning effective planning.

Where will your assets go, how will they get there?

Once we know whether your business interest will be affected by a buy-sell agreement, the next step is to determine how your interest should pass to your family. Generally, your estate can pass either through a will or a revocable trust. **Both wills and trusts are documents that set forth your wishes as to where your assets should go when you are gone.** However, unlike a will, a revocable trust is not subject to probate court so it can be more private and efficient to administer than a will. Recent changes in Minnesota law will make it so that court records can be accessed via the internet from a remote location, which many people find discomfoting. For many small business owners, a revocable trust makes sense instead of a will as it will avoid the public exposure involved with probate and allow assets to pass more efficiently.

Consider whether you need to plan for Minnesota estate taxes.

Finally, all Minnesota business owners should consider whether they are impacted by the Minnesota estate tax. The estate tax is a tax assessed upon the death of an individual when the total value of all the assets less liabilities exceeds the estate tax exemption in the year of death. **In Minnesota, the estate tax exemption is \$1.6 million for decedents dying in 2016, which is set to rise to \$2 million in 2018 and beyond.** The federal estate tax exemption is a higher \$5.45 million per individual, set to increase with inflation. By including a plan for potential estate taxes in an estate plan, business owners can minimize the impact.

Minnesota business owners may also be able to take advantage of the **qualified small business property deduction** to reduce estate taxes in their estates. This deduction allows the value of a small business to be deducted from the Minnesota gross estate as long as the business meets certain requirements. The amount that may be deducted is the difference between \$5 million and the exemption amount in the year of death. For instance, a business owner dying in 2016 may be able to deduct up to \$3.4 million of the value of a small business. This deduction is generally only available to family businesses in which the business owner was active at the time of death and for which an heir will materially participate in after the owner's death. For those that qualify, the deduction can be a huge tax savings for business owners and their families.

Did you know?

- **10,000** Baby Boomers turn 65 every day in the United States.
- At least **60,000** Minnesotans will turn 65 every year now through 2030.
- The average age of a farmer in Minnesota is **55**.
- About **60,000** Baby Boomers are Minnesota farmers.

“A jack of all trades, but master of none”

At Ward & Oehler, we handle many different legal matters, from simple wills to complex business transactions. Our clients sometimes come to us with a legal problem in areas where we do not regularly practice. In an age of specialization, though, we have found it best to refer our clients to skilled, experienced legal counsel in these situations. Our clients appreciate having us, their trusted advisers, as part of the process when dealing with serious injury, wrongful death, divorce or criminal matters. Of course, if we can help you, we will do the work ourselves. But, if your needs extend beyond our expertise, we will send you to the right lawyer for you. ***We are committed to providing you excellent and experienced legal counsel first and foremost.***

Community Spotlight

 Southern Minnesota
INITIATIVE FOUNDATION

Celebrating 30 years of community investments

Southern Minnesota Initiative Foundation Preserving our Heritage, Farmland Retention

It is estimated that \$7 billion in wealth will transfer hands in the next 15 years in our south central and southeastern Minnesota alone. Farmland will account for a large portion of that wealth. Yet it remains unclear who this wealth will be transferred to.

For a farmer who is living off of land homesteaded by an ancestor several generations before, it can be worrisome to imagine that land going to a distant investor with no real connection to the community. Southern Minnesota Initiative Foundation (SMIF) offers retiring farmers a solution: their Preserving our Heritage Farmland Retention program offers retiring farmers the peace of mind that their land will continue to be farmed while also benefiting their local community and the region.



SOUTHERN MINNESOTA
INITIATIVE FOUNDATION

Collaborating for Regional Vitality

Through this program, retiring farmers can bequeath some or all of their land directly to SMIF or to one of the 26 community funds we manage, allowing them to build the wealth of their individual communities.

Bill Oehler and Jason Wagner recently met with Jennifer Nelson, VP of Development at SMIF, to learn more about the farmland retention program. SMIF is a donor-supported foundation that has been serving southern Minnesota for 30 years. Contact Jennifer Nelson at jennifern@smifoundation.org to learn more, or visit smifoundation.org.

**Wishing a safe and bountiful harvest to all farmers and
a heartfelt thanksgiving to you and your family.**



... from all of us at Ward & Oehler

THE IMPORTANCE OF BENEFICIARY DESIGNATIONS



If you have life insurance, a 401(k), or a bank account, you have almost certainly already completed beneficiary designations. Chances are you did not give it much thought at the time. You might not even remember who you named as a beneficiary, but if something happens to you those designations will control how the account or other asset is distributed upon your death even if you have an estate plan in place. ***For this reason, coordinating your beneficiary designations with your estate plan is just as important as signing your will.***

Often, couples want to leave everything to their spouse. In this scenario it can make sense to name the spouse as a primary beneficiary of the account, though there may be estate tax planning reasons to modify this. You should also think through who will inherit the asset when both you and your spouse are deceased. This is the secondary or contingent beneficiary. You might name your children as contingent beneficiary of your account, but you must be comfortable with your children receiving the asset outright upon your death. An alternative would be to name a trust as the contingent beneficiary so that the asset will pass according to your estate plan. ***An experienced estate planner will not only prepare your estate planning documents but also spend time reviewing your assets and making beneficiary designation recommendations to ensure your estate passes according to your wishes.***

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