Price & Farrington's

Estate Planning Tools and Tips

Timely Information for Advisors About Advanced Estate Planning and Family Wealth Strategies

The Family Private Annuity

"If more clients and their advisers fully appreciated the impressive estate planning potential of sales for private annuities...these important tools would be more widely used.".

from ESTATE PLANNING LAW AND TAXATION, by David Westfall, Professor of Law, Harvard University

An annuity is an agreement in which one party (the "annuitant") transfers property to another party (the transferee") in return for a promise by the transferee to make periodic payments to the annuitant in fixed amounts. Typically these payments are spread over the life of the annuitant, although there are also annuities established for a set number of years.

Most annuities are commercial in nature and are sold by insurance companies. However, the IRS also recognizes "private annuities" as valid instruments. Private annuities are usually created between family members. For instance, an elderly parent might create an annuity agreement with a child. The parent would then transfer property to the child in return for the child making regular payments to the parent for life.

The main difference between commercial and private annuities is that the private annuity may be funded with any type of property, including land or publicly traded securities. Private annuities are also not subject to the same investment restrictions as commercial annuities.

Private Annuities are suited to the large estate because they avoid estate and gift taxes without the need to purchase life insurance. They are also suited to the large estate where the grantor wants any present insurance proceeds to go to his heirs instead of to the IRS.

Presented by

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The “Family Private Annuity” is a method used by our law firm to maximize the numerous benefits of the private annuity. It can be summarized in the following steps:

1. Create a Private Annuity, a Family Limited Liability Company, (LLC) and an Inten tionally Defective Grantor Trust (IDGT).
2. The Parents transfer their asset into the LLC.
3. The Parents are grantors of the IDGT Trust and sell shares of the LLC to the trust in exchange for the right to receive private annuity payments.

The *Intentionally Defective Grantor Trust* is used to avoid the usual double income tax issue in private annuities. Normally, the children would be taxed on the income withdrawn from the asset and then the parents would be taxed again when receiving the annuity payments from the children. The IDGT eliminates this problem. Advantages:

ESTATE TAX SAVINGS: The annuitant removes the asset from the estate, along with any future appreciation.

NO GIFT TAX: A private annuity is a transfer for consideration, and therefore is not considered a gift.

ASSET STAYS IN THE FAMILY: The annuity property stays within the control and ownership of the family unit. This is especially important if the asset is a family business.

ASSET PROTECTION: The Family Private Annuity uses a Family LLC, which creates a layer of asset protection from the potential creditors of the parents and children.

RETAIN CONTROL: By first transferring the assets to a Family LLC, the parents retain significant control as operating managers of the LLC.

MAY REDUCE INCOME TAX: By utilizing immediate annuities and an Intentionally Defective Grantor Trust, the client may reduce his/her income tax liability.

SUMMARY

The private annuity is an important estate-planning tool which is often overlooked by financial advisors. Used correctly it can achieve many of your goals. *Special care should be taken in the drafting and design of the above legal documents in order to survive the scrutiny of the IRS and to fully benefit you.*

The information in this Article is not intended as legal advice. You should seek personalized assistance from a qualified estate planning attorney. Attorneys at Price & Farrington, PLLC would be pleased to meet with you to discuss this important estate planning technique further.