


TOUGH PROBLEMS IN ESTATE PLANNING: BUSINESSES WITHIN AN ESTATE

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The Bonnie & Clyde of It All

LIQUIDITY ISSUES

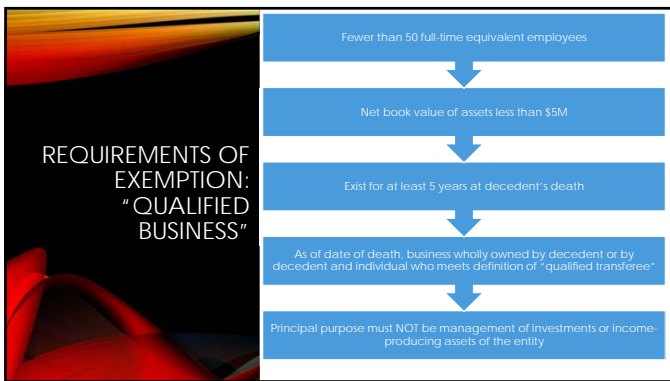
- 1. Tax Considerations
 - a. PA inheritance tax
 - a. Cash needs during administration
- 2. Balancing bequests Among Beneficiaries
- 2. Management of Business
- 2. Management of Businesses within Trusts

#1: TAX CONSIDERATIONS

PA INHERITANCE TAX



- Starting July 1, 2013, an exemption from PA inheritance tax is available for a transfer of "qualified family-owned business interest" to one or more "qualified transferees" or to a trust for the sole benefit of "members of the same family" of the decedent [Section 2111(f)]
- Purpose: protect certain family owned businesses from being subject to tax
- Family owned-businesses are illiquid assets of estate and tax may force sale of business to cover tax payment
- Sole proprietorship or an interest in entity or business that meets requirements



- Relates to value of entire business—NOT just decedent's interest
- NOT fair market value; Book value is: historical cost of assets owned by the business <accumulated depreciation on those assets> <liabilities> = Net book value
- Book value is much lower than FMV (tax assessed versus FMV)

NET BOOK VALUE

"FAMILY-OWNED" BUSINESS = TRANSFEREE MUST BE:

01 Wife or husband	02 lineal descendants (children and grandchildren)	03 Siblings & their lineal descendants (nieces or nephews)	04 Ancestors & their siblings (aunt/uncle)	05 Trusts for sole benefit of "members of the same family"
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NOT "QUALIFIED TRANSFEREE"

- Son-in-law
- Daughter-in-law
- Brother-in-law
- Sister-in-law
- Father-in-law
- Mother-in-law
- Cousin
- Valued employee

CERTIFICATION REQUIREMENT:

- Annual filing
- 7 years after decedent's DOD
- No filing = loss of exemption
- Transferees must notify DOR that causes interest to fail

CERTIFICATION




- Certification provided every January for 7 years after DOD
- Certification due February 15 each year
- If no longer "qualified transferee" then PA inheritance tax due: tax is tax that would have been paid had it not been exempt at time of death & interest on the unpaid tax
- Exemption does not apply to property transferred to business within 1 year of death unless for legitimate business purpose

CLAIMING EXEMPTION

- Reported on timely filed PA inheritance tax return
- Timely filed tax return = return filed within 1 year of the tax return due date, including an extended due date or 21 months from the date of death or if an extension was required, 27 months from the date of death.
- Inheritance tax and interest that would be due on the business interest becomes a lien in favor of the Commonwealth of Pennsylvania on the real and personal property of the "qualified transferee" at the time of the transaction or occurrence that resulted in the disqualification from the exemption
- Tax & interest is collectible as delinquent taxes are collected and the lien remains in effect until all tax and interest is paid in full

IMPORTANT!

- If decedent owns an interest in business that qualifies as a "qualified family-owned business interest" but the business is located in a state other than PA, it still qualifies for exemption as long as all other statutory requirements are met
- Decedent is not limited to only 1 "qualified business interest"

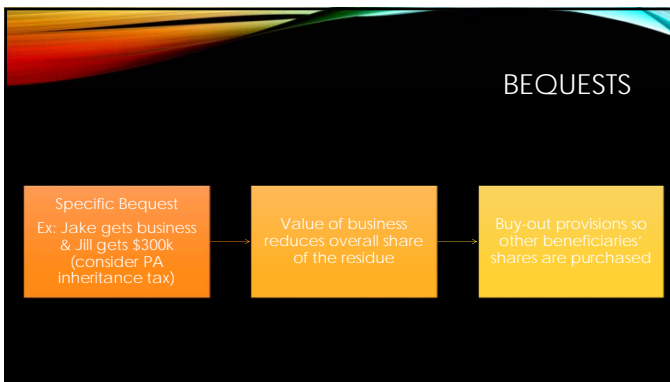


#2: CASH NEEDS DURING ADMIN

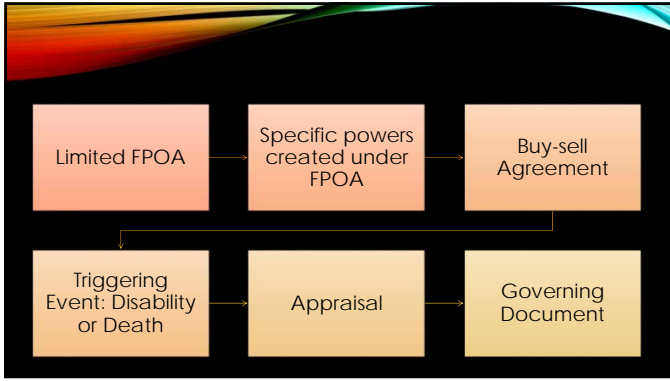
FUNDING DURING ADMIN.

Day-to-Day Expenses	Buy-sell Agreement	Insurance
Budget Annual Meetings	Cross-Purchase Entity Purchase Hybrid Purchase	Partner purchases policy Business expense to pay premiums Survivor compensation owner is receiving

#3: BALANCING BEQUESTS



#4: MANAGEMENT OF BUSINESS DURING ADMIN



#5: MANAGEMENT OF BUSINESS WITHIN TRUST

