Special Session IV-B

All Present and Accounted For: Proactively Preparing Fiduciary Accountings to Facilitate Pre- and Post-Mortem Planning and Mitigate Risk

Planning with Trusts Series

Joshua S. Rubenstein
Katten Muchin Rosenman LLP
New York, New York

Scott T. Ditman
Berdon LLP
New York, New York

TABLE OF CONTENTS

Presentation - Session IV-B

All Present and Accounted for:

Proactively Preparing Fiduciary Accountings to Facilitate Pre- and Post-Mortem Planning and Mitigate Risk

Joshua S. Rubenstein – National Chair of Trusts and Estates

Katten Muchin Rosenman LLP

Scott T. Ditman, CPA/PFS – Partner and Chair, Personal Wealth Services

BERDON LLP | Accountants and Advisors

January 25, 2018

BERDON ACCOUNTANTS AND ADVISORS | Katten KattenMuchinRosenman LLP

CASE STUDY | 1

WINNING COMBO: FIDUCIARY PROTECTION AND TAX SAVINGS

FACT PATTERN

- $300 million QTIP Marital Trust for the benefit of the surviving spouse
- Remaindermen are the decedent's grandchildren
- Trust exempt from GST tax
- Surviving spouse not dependent on income from the Trust to maintain her lifestyle
- Majority of assets are rental real estate LLCs and partnerships

MITIGATING RISK OF LITIGATION

- Several interim sign-offs by all interested parties since the death of the patriarch
- In addition, informal accountings prepared and forwarded to the beneficiaries of the Trust on an annual basis
- Sign-offs received while the matriarch/income beneficiary of the Trust still alive

PLANNING OPPORTUNITIES FULFILLED

- By charging more administration expenses to income, more principal was preserved for grandchildren
- By setting up a Depreciation Reserve, fiduciary accounting income was reduced each year and more assets accumulated for the grandchildren
- End result, an additional $60 million ultimately transferred to grandchildren

WHEN YOUR CLIENT DOESN'T ALWAYS KNOW BEST

FACT PATTERN

- Multiple trusts dating back to the 1960s, worth hundreds of millions of dollars today
- Beneficiaries are the same for all trusts
- Financial statements were circulated to the beneficiaries annually in lieu of the trust accountings
- Sign-offs were never obtained

CONSEQUENCES

- Trustees failed to get sign-offs from beneficiaries over the years, leaving them open for litigation
- Trustees died during litigation which became an action against their estates
- Enormous expense to recreate both missing trust records and financial statement information into fiduciary accounting format

CASE STUDY | 3

WHY DO REGULAR SIGN-OFFS?

FACT PATTERN

- Trust created several decades ago by beneficiary/patriarch's father
- Trust allows discretionary distributions of income and principal to the current beneficiary
- Beneficiary's children and grandchildren are the remaindermen
- Trust heavily invested in one concentrated stock position
- Significant amounts borrowed from banks to fund beneficiary's lifestyle
- Numerous trustee changes over the years
- Fiduciary accountings prepared and sign-offs obtained regularly

MITIGATING RISK OF LITIGATION

- After beneficiary/patriarch's death, reduced risk of lawsuits by children/grandchildren against independent trustees

OTHER BENEFITS

- The trust accountings give us the information necessary to provide cash flow and liquidity analysis
- Cost to update fiduciary accountings is offset since they are used as the books and records of the trust, including the preparation of the trust's annual income tax returns

CASE STUDY | 4
FAVORITISM AMONG BENEFICIARIES

FACT PATTERN

- Surviving spouse/matriarch is the income beneficiary of a testamentary marital trust
- Remaindermen are three children
- Numerous transactions indirectly benefitted one of the three children
- Independent trustee long-time family friend and attorney

MITIGATING RISK OF LITIGATION

- Full disclosure of all financial activity in fiduciary accounting format to all interested parties
- Informal sign-offs while the matriarch still alive protects the Independent Trustee

OTHER BENEFITS

- Proper calculation of annual fiduciary accounting income and trustee commissions
- Cost to update fiduciary accountings is offset since they are used as the books and records of the trust, including the preparation of the trust's annual income tax returns

CASE STUDY | 5

DO YOU HAVE A BLENDED FAMILY?

FACT PATTERN

- Patriarch died prematurely and had done substantial pre-death estate planning
- Decedent's assets included active family business
- Minors at different ages with unique needs from different spouses
- Upon death of patriarch, 14 trusts were created
- Will gave discretionary powers to two independent trustees
- One of the trustees is a family member who is actively involved in the family business

MITIGATING RISK OF LITIGATION

- Full disclosure of all financial activity in fiduciary accounting format to all interested parties
- Informal sign-offs protect trustees from litigation by custodians and beneficiaries
- Informal sign-offs protect family member trustee from potential conflict of interest

OTHER BENEFITS

- Proper calculation of annual fiduciary accounting income and trustee commissions
- The trust accountings give us the information necessary to provide cash flow and liquidity analysis, as well as calculate amounts available to distribute to the beneficiaries from the various trusts
- Cost to update fiduciary accountings is offset since they are used as the books and records of the trust, including the preparation of the trusts' annual income tax returns