

FEBRUARY 2012 NEWSLETTER

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PRIVATE FOUNDATIONS FOR A CHARITABLY-MINDED CLIENT

Before addressing this topic, Pozzuolo Rodden, P.C. is pleased to announce the following:

A) PHILADELPHIA MAGAZINE 2011 FIVE STAR WEALTH MANAGER, BUSINESS PLANNING

Pozzuolo Rodden, PC is pleased to announce that Joseph R. Pozzuolo, Esquire was designated as a 2011 PHILADELPHIA FIVE STAR WEALTH MANAGER, BUSINESS PLANNING by Philadelphia Magazine. The award is featured in the November, 2011 edition of the magazine. Mr. Pozzuolo was selected after an independent survey was conducted by Philadelphia Magazine of 120,500 registered financial services professionals, high-net-worth households and subscribers of Philadelphia Magazine all of whom have an income of greater than \$190,000.

B) UPCOMING SEMINARS:

Joseph R. Pozzuolo, J.D., B.B.A. and Jeffrey S. Pozzuolo, J.D., M.B.A., B.S., B.A.
"How Middle Income Families Should Prepare for Retirement"
Wednesday May 23rd 1pm-5pm

Judith P. Rodden, Esquire and Lesley M. Ibanez, Esquire

“Commercial and Residential Real Estate Practice Today: From Agreement of Sale to Closing, with Ethics”
Wednesday June 13th 8am-12pm

Above seminars are being held at:

Penn State University, Cooperation Extension (Doylestown)

<http://www.abington.psu.edu/psasite/ce/continuingproed/acctsem.html>

1282 Almshouse Road

Neshaminy Manor Center

Doylestown, PA 18901-2896

To Register or More Information: Theresa Bloom (215) 881-7402

Private Foundations for a Charitably-Minded Client

Clients who want to control and direct their gift giving to family and friends may establish trusts to do so. In a similar manner, clients who want to direct their charitable gift giving should consider establishing a Private Foundation. Private Foundations have been gaining popularity as a device for charitable gift giving and can be established during a client’s lifetime, or they can be testamentary and incorporated into or as part of a client’s estate planning documents.

A private foundation is a nonprofit organization established either as a corporation or a trust, with a principal fund that is managed by a board of directors or trustees, respectively. Private Foundations are recognized as charitable organizations by the IRS. Certain procedures and formalities must be met to qualify as a charitable organization and receive the beneficial income, gift and estate tax treatment that flows from being a qualifying charitable organization.

A Private Foundation offers clients many benefits, including the following:

A) Control

Through a Private Foundation, a client may achieve the following:

- targeted giving supporting particular charitable works
- timing in which the funds are used
- control of the manner in which the funds are used
- control over how assets are invested
- perpetuating your name or the memory of a parent or child in connection with charitable works.
- control over who sits on the Board of Directors or who is Trustee
- teach your children philanthropy and money management if they are part of the foundation’s board.

By creating a Private Foundation, the client essentially creates his own personal charity.

B) Tax Advantages

Donors may make tax deductible contributions to their own Private Foundations and then, as trustees, direct where the money goes. In the case of endowing a Private Foundation through a testamentary charitable bequest, the Donor will essentially remove the fair market value of the bequest from his taxable estate via the allowable charitable deduction by an unlimited estate tax charitable deduction.

In addition, a Private Foundation's investment income, subject to exception, is exempt from taxation. Further, no capital gains are realized when appreciated property is donated to a foundation and donors may take a charitable deduction based on the full market value of appreciated assets including appreciated stock held in publicly traded companies or appreciated real estate and not the donor's income tax basis.

For example, an individual may own appreciated stock currently worth \$3,500,000 in a publicly traded company where he worked before retiring. He decided to establish a Private Foundation and donate \$1,000,000 worth of company stock with little cost basis. This contribution of the stock to the Private Foundation will generate a charitable tax deduction of \$1,000,000 which is limited to being written off at 20% of the husband's adjusted gross income (AGI) for the current tax year. Further, he is also permitted to carry forward any of the unused deduction for an additional 5 tax years.

C) Retirement Plan Tax Advantages

IRAs have been good resources for funding charitable endeavors. Often, a client's most valuable asset is his pension or retirement fund. However, pension or retirement funds are subject to double taxation, estate and income taxes, which substantially diminish an inheritance of up to 85%. In other words, the estate pays death taxes and the beneficiary pays income taxes upon his/her withdrawal of the funds. Consulting with an Estate Planning expert can totally or substantially these taxes by funding a Foundation with pre-tax retirement plan dollars. Retirement plan additions at death qualify for the unlimited estate tax charitable deduction. Further, the Foundation does not recognize any income tax when it receives the proceeds. Note that life time contributions are subject to the private foundation percentage limitations on the income tax charitable deduction as briefly discussed above.

D) Flexibility

Private foundations can be used to pursue any number of "charitable" purposes, including religious, artistic, scientific, literary, educational, and athletic endeavors. What qualifies as a "charitable" purpose is defined by the IRS and is very broadly defined. Accordingly, a client can fashion many purposes to qualify as charitable and obtain the above desired tax benefits. Furthermore, as times change and attitudes change, a Private Foundation can evolve its charitable endeavors to meet the grantor's desires.

E) Family Involvement

A client can appoint family members as staff, directors, or trustees to the Private Foundation. This way, the client involves the family as a whole, promoting charity among the family. In the case where the client has set up a testamentary Private Foundation, appointing family members helps to ensure that the client's wishes and sentimentalities will be followed as closely as possible even after death of the creator/grantor.

By integrating the family, a client can help younger generations gain experience in working in an organization and developing social and community contacts which may bring them social prominence. The family can benefit from public recognition of its charitable endeavors. Usually, a Private Foundation bears the family name, the name of its grantors or is in memory of a family member.

F) Types of Private Foundations

Private Foundations fall into 2 general categories:

1. **Operating Foundations.** An Operating Foundation actively conducts its own charitable, educational, or other exempt programs and activities. Examples of operating foundations include museums, zoos, research facilities, libraries, etc.
2. **Nonoperating Foundations.** A Nonoperating Foundation provides grants to other entities or to individuals for charitable or other exempt purposes. Nonoperating foundations are often referred to as grant-making foundations because they are simply providing funding to other entities who perform the charitable activities or to individuals directly. Examples include the Bill & Melinda Gates Foundation and the Rockefeller Foundation.

Once the Private Foundation is endowed, or fully funded, income and principal are used to fund the charitable activities.

G) Continuity & Consistency

Private foundations have the benefit of continuity and consistency. A Private Foundation generally must donate or grant 5% of its assets and income annually. Thus, at a minimum, the Private Foundation will be consistently and annually funding its charitable endeavors. Foundations can be established to remain in perpetuity – as long as there are assets to make minimum distributions, the Private Foundation can exist forever and grow over time. Furthermore, there are no limits on succession of trustees. A family could establish a framework whereby each successive generation takes over the administration and control of the Private Foundation.

Private Foundations offer the tangible benefits of control over how assets are spent and distributed, as well as preferential and substantial tax benefits, and the intangible benefits of promoting family involvement. They are excellent devices for clients to who wish to become involved in charitable giving, whether during their lifetime or at death.

Please visit our web site: www.pozzuolo.com

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Publications

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: <http://pozzuolo.com/PubsArticles.shtml>

Corporate/Tax

Design Buy-Sell Agreements For Maximum Utility

Deferred Compensation Rewards And Retains Key Employees

How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool

Protecting A Client's Business From Unfair Competition Using Restrictive Covenants

Money Purchase Pension Plan Falls Out Of Favor

Why An Employment Contract Is Mandatory

What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs

Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend

Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business

How To Look, Act And Sound Like A Professional Corporation

How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

How to Structure a Suitable Buy-Sell Agreement

Estate Planning

Estate Planning For Pet Owners

The Limited Liability Company -A Sophisticated Tool For Estate Planning

Diversify Strategies For An Effective Estate Plan

Use Wills To Maximize Family Protection And Minimize Tax

Six Proven Estate Planning Techniques

Divorce Raises The Need For Performing An Estate Planning Review

Divorce and Estate Planning

Remarriage Situations Can Raise Special Estate Planning Considerations

College Funding Tool Offers Estate Planning Advantage

Drafting The Durable Power Of Attorney For Wealth Protection Purposes

Why Living Wills Advance Directives Are An Essential Part Of Estate Planning

Special Needs Trust - An Estate Planning Tool For The Disabled

Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

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