Estate Planning Guidelines for Collectibles

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For many individuals, collectibles are both a personally significant hobby and a potentially lucrative investment. They also give rise to some unique and challenging estate planning considerations not relevant to more conventional types of assets. Cash and marketable securities are easy to value and divide. Determining an accurate valuation of a collection, and deciding if and how that collection should be distributed, is often more complex – and in some cases, depending upon the collectible, the collection may not even be desirable to the collector's heirs.

Collectibles may include any type of property a person wishes to collect, but for estate planning purposes they will usually have particular value due to factors such as quality, age, historical importance, uniqueness and market demand. Common examples of collectibles include works of art, precious metals, antiques, furniture, wine, coins, stamps, books, sports memorabilia, automobiles and historic memorabilia.

Planning for the succession of collectibles can easily be overlooked, resulting in diminution in value, dismantling of the collection, significant income or estate tax consequences, and dissension among family members. The following are highlights of some of the challenges unique to estate and succession planning related to collectibles.

Storage, Maintenance and Preservation

It is important to consider where and how a collector's heirs will store and manage the collectibles, and whether there will be sufficient funds available to maintain and insure the collection. Solutions to these types of concerns can be incorporated into a well-conceived estate plan.

For example, collections of artwork or wines require proper conditions for storage (temperature and humidity control, limited exposure to light) in order to preserve their value. A collection of any items made of paper, such as stamps, baseball cards or books, should be stored in protective coverings in an area of low humidity in order to avoid mold or mildew. Consider also the proper storage requirements, as well as the costs and logistics associated with preventing damage and maintaining the beauty of a collection of classic cars.

Capital Gains Tax

The Federal government collects more income tax on the sale of collectibles than on the sale of other assets held for investment. While the capital gains tax rate is generally 20%, the capital gains tax rate on the sale of collectible assets is 28%. Collectibles purchased and held for less than one year, however, are taxed at the higher personal income tax rates.

Charitable gift planning options can help alleviate the higher tax rates applicable to collectibles. Retaining collectibles until date of death affords a step-up basis which can lessen or eliminate the capital gains tax when the collectibles are ultimately sold.

Estate and Gift Tax

The value of collectibles is subject to estate and gift taxes in the same manner as any other asset owned by a decedent. Valuing collectibles can be challenging since a readily available and ascertainable market for many collections is typically limited. Valuation methods include expert opinion, professional appraisals, purchase price, and comparable sales, among others. However, the likelihood of a taxing authority challenging the appraisals of hard-to-value assets remains high.

It is noteworthy that the Internal Revenue Service has an Art Advisory Panel whose purpose is to monitor and value art collections. A collector or his advisors can request a review of art valuations from this panel in advance of filing a return. Once approved, the value may be used to complete the tax return.

Lack of Liquidity

Lack of liquidity can be a serious concern in conjunction with the assessment of estate and gift taxes related to collectibles. For example, assume a significant proportion of the value of an estate is in the form of collectibles. The combined Federal and State estate tax attributable to the collection can be significant (25 – 45% of the gross estate). If the estate's liquid assets are insufficient to pay the estate tax, either a portion or the entire collection may have to be sold in order to pay the estate tax.

Lifetime gifting (charitable or otherwise), life insurance planning, and other estate planning strategies can often address the risk of illiquidity.

Determining the Future of a Collection

Collectibles may not be easy to divide fairly, and in some instances, dividing the collection may reduce its overall value. A plan for the preservation, distribution or disposition of collectibles can facilitate their management, prevent conflict among the collector's heirs, and help maintain the collection's value.

Preservation can be accomplished by the use of a trust, private foundation or other entity to perpetuate the collection.

If the collection is to be divided and distributed to a number of heirs, it is strongly advisable to incorporate into a will or other controlling document a fair and equitable process for carrying out the specific division and distribution of the collectibles.

In cases where the post-death disposition of collectibles is the goal, maximizing value becomes the greatest challenge. In this regard, consideration should be given to the appointment of a "special" executor with knowledge of the particular collectible market, who can also coordinate the retention of a specialist.

In Conclusion

The owners of collectibles are often significantly invested in that collection, both financially and emotionally. The prudent course of action, in order to protect that investment, is to establish an appropriate succession plan, in order to preserve your collectibles as both a personal legacy and a valuable resource for your heirs.

If you have any questions or would like additional information, please contact the author of this Alert, **Laurence E. Fundler**, a member of the firm's **Tax, Trusts & Estates Department**.