

Table of Contents

CHAPTER 1 **SCOPE OF BOOK**

I. Scope of Book [§ 1.1]

CHAPTER 2 **SELECTING FORM OF CLOSELY HELD BUSINESS**

I. Basic Forms of Ownership [§ 2.1]

- A. In General [§ 2.2]
- B. Advantages and Disadvantages [§ 2.3]

II. Liability [§ 2.4]

III. Tax Consequences During Operations [§ 2.5]

- A. Capital Accumulation [§ 2.6]
- B. Distribution of Profits [§ 2.7]
- C. Deduction of Losses [§ 2.8]
- D. Qualified Retirement Plans [§ 2.9]
- E. Other Fringe Benefits for Owner-Employees [§ 2.10]
- F. Compensation and Accumulated Earnings [§ 2.11]

IV. Tax Consequences of Sale After Death [§ 2.12]

- A. Sole Proprietorships [§ 2.13]
- B. Partnerships [§ 2.14]
- C. LLCs [§ 2.15]
- D. C Corporations [§ 2.16]
- E. S Corporations [§ 2.17]

V. Tax Consequences of Distributing Funds After Death [§ 2.18]

- A. C Corporations [§ 2.19]
- B. S Corporations [§ 2.20]
- C. Sole Proprietorships, Partnerships, and LLCs [§ 2.21]

VI. Tax Law Restrictions on Ownership [§ 2.22]

- A. In General [§ 2.23]
- B. S Corporations [§ 2.24]
 - 1. In General [§ 2.25]
 - 2. Trusts Permitted as S Corporation Shareholders [§ 2.26]
 - a. In General [§ 2.27]
 - b. Qualified Subchapter S Trust [§ 2.28]
 - c. Electing Small Business Trust [§ 2.29]
 - d. Voting Trust [§ 2.30]
 - e. Grantor Trust [§ 2.31]

CHAPTER 3

TRANSFERRING FAMILY BUSINESS TO NEXT GENERATION

I. Common Family Situation [§ 3.1]

II. Business Owner's Objectives [§ 3.2]

- A. Survival of Business [§ 3.3]
- B. Preserving Family Harmony [§ 3.4]
- C. Treating Children Fairly [§ 3.5]

III. Ownership Limited to Operating Children [§ 3.6]

- A. Reasons to Limit Ownership to Operating Children [§ 3.7]
- B. Alternative Bequests to Nonoperating Children [§ 3.8]
- C. Life Insurance [§ 3.9]
- D. Long-Term Leases of Business-Related Assets [§ 3.10]
 - 1. In General [§ 3.11]
 - 2. Sample Cost-of-Living Adjustment Clause (EST-0076) [§ 3.12]
 - 3. Sample Option-to-Purchase Clause (EST-0077) [§ 3.13]
- E. Mandatory Buyout of Nonoperating Children [§ 3.14]
- F. Options to Purchase or Sell [§ 3.15]
- G. Lifetime Sale to Operating Children [§ 3.16]
- H. Estate Freezes [§ 3.17]
- I. Valuation Discounts [§ 3.18]

IV. Ownership Shared by Operating and Nonoperating Children [§ 3.19]

- A. Reasons to Make Both Operating and Nonoperating Children Owners [§ 3.20]
- B. Control of Business [§ 3.21]
- C. Allocation of Future Growth [§ 3.22]
- D. Distributions of Business Income [§ 3.23]
- E. Valuation Discounts [§ 3.24]

CHAPTER 4 DESIGNING BUY-SELL AGREEMENTS

I. Nature of Buy-Sell Agreements [§ 4.1]

- A. Overview [§ 4.2]
- B. Types of Buy-Sell Agreements [§ 4.3]
- C. Mandatory or Optional Buyout [§ 4.4]
- D. Methods of Determining Purchase Price [§ 4.5]
 - 1. Checklist [§ 4.6]
 - 2. Net Book Value [§ 4.7]
 - 3. Net Book Value with Adjustments [§ 4.8]
 - a. In General [§ 4.9]
 - b. Sample Clause (EST-0078) [§ 4.10]
 - 4. Multiple of Earnings [§ 4.11]
 - 5. Net Book Value/Multiple of Earnings [§ 4.12]
 - a. In General [§ 4.13]
 - b. Sample Clause (EST-0079) [§ 4.14]
 - 6. Specifically Stated Value, Revised Annually [§ 4.15]
 - 7. Outside Appraiser [§ 4.16]
 - 8. “Solomon’s Choice” [§ 4.17]
 - a. In General [§ 4.18]
 - b. Sample Clause (EST-0080) [§ 4.19]
 - 9. Option to Liquidate [§ 4.20]
 - a. In General [§ 4.21]
 - b. Sample Clause (EST-0081) [§ 4.22]
- E. Common Payment Terms [§ 4.23]
- F. Conflict of Interest [§ 4.24]

II. Benefits of Buy-Sell Agreements [§ 4.25]

- A. Creation of Ready Market [§ 4.26]
- B. Continuity of Management [§ 4.27]

- C. Providing for Tag-Along and Drag-Along Rights for Majority and Minority Owners [§ 4.28]
 - 1. In General [§ 4.29]
 - 2. Sample Clauses [§ 4.30]
- D. Fixing Business Value for Estate Tax Purposes [§ 4.31]
 - 1. Benefits of Fixed Value [§ 4.32]
 - 2. Requirements for Fixed Value [§ 4.33]
 - a. In General [§ 4.34]
 - b. Ascertainable Value [§ 4.35]
 - c. Obligation to Sell at Business Owner's Death [§ 4.36]
 - d. Restrictions on Lifetime Transfers [§ 4.37]
 - e. Bona Fide Business Arrangement [§ 4.38]
 - f. Comparable to Similar Arm's-Length Arrangements [§ 4.39]

III. Effect of Marital Property Law [§ 4.40]

- A. Classification of Business Interest [§ 4.41]
 - 1. In General [§ 4.42]
 - 2. Marital Property Mixed with Business Interest [§ 4.43]
 - 3. Effect of Buy-Sell Agreement on Marital Property Business Interest [§ 4.44]
 - 4. Inadvertent Transfer at Death by Nonholding Spouse [§ 4.45]
 - 5. Strategies to Prevent Inadvertent Transfer by Nonholding Spouse [§ 4.46]
 - a. Additional Triggering Event [§ 4.47]
 - b. Marital Property Agreements [§ 4.48]
 - c. Option to Purchase Under Buy-Sell Agreement [§ 4.49]
 - d. Statutory Option to Purchase [§ 4.50]
 - 6. Nonholding Spouse as Party to Buy-Sell Agreement [§ 4.51]
- B. Classification of Life Insurance Used to Fund Buy-Sell Agreements [§ 4.52]
 - 1. In General [§ 4.53]
 - 2. Special Problems with Funded Cross Purchase Agreements [§ 4.54]
 - a. In General [§ 4.55]
 - b. Inadvertent Transfer at Death by Nonholding Spouse [§ 4.56]

- c. Marital Property Interest of Policyholder's Spouse upon Insured's Death [§ 4.57]

IV. Factors to Consider in Choosing Type of Buy-Sell Agreement [§ 4.58]

- A. In General [§ 4.59]
- B. Marital Property Considerations [§ 4.60]
- C. Tax Basis of Remaining Business Owners [§ 4.61]
- D. Tax Treatment of Payments Received by Seller [§ 4.62]
 - 1. In General [§ 4.63]
 - 2. Redemption Distributions: Exceptions to Dividend Treatment [§ 4.64]
 - a. In General [§ 4.65]
 - b. Effect of Attribution Rules on Complete Termination of Interest [§ 4.66]
- E. Insurance Considerations [§ 4.67]
 - 1. Policy Ownership Structure [§ 4.68]
 - 2. Corporate Alternative Minimum Tax [§ 4.69]
 - 3. After-Tax Cost of Premiums [§ 4.70]

V. Relative Advantages of Entity Purchase and Cross Purchase Agreements [§ 4.71]

VI. Form: Stock Redemption Agreement (EST-0082) [§ 4.72]

VII. Form: Cross Purchase Agreement (EST-0083) [§ 4.73]

CHAPTER 5

RESTRICTING TRANSFERS OF INTERESTS IN CLOSELY HELD BUSINESSES

I. Reasons for Transfer Restrictions [§ 5.1]

II. Types and Validity of Transfer Restrictions [§ 5.2]

- A. In General [§ 5.3]
- B. Absolute Restrictions on Transfer [§ 5.4]
- C. Unanimous Consent of Other Business Owners [§ 5.5]
- D. Right of First Refusal [§ 5.6]
- E. Option to Purchase [§ 5.7]

III. Methods of Imposing Transfer Restrictions [§ 5.8]

- A. Articles of Incorporation [§ 5.9]
- B. Corporate Bylaws [§ 5.10]
- C. Shareholders' Agreement [§ 5.11]
- D. Partnership Agreement [§ 5.12]
- E. LLC Operating Agreement [§ 5.13]

CHAPTER 6

POSTMORTEM TAX PLANNING

I. Deferred Payment of Federal Estate Taxes: I.R.C. § 6166

[§ 6.1]

- A. In General [§ 6.2]
- B. Qualification Requirements [§ 6.3]
- C. Closely Held Business Defined [§ 6.4]
- D. 35% Test [§ 6.5]
 - 1. In General [§ 6.6]
 - 2. Strategies for Meeting Test [§ 6.7]
- E. Election by Personal Representative [§ 6.8]
- F. Personal Liability of Personal Representative [§ 6.9]
 - 1. In General [§ 6.10]
 - 2. Discharge of Personal Liability: I.R.C. § 2204 [§ 6.11]
 - 3. Sample I.R.C. § 2204 Application (EST-0084) [§ 6.12]
- G. Acceleration of Deferred Estate Taxes [§ 6.13]
- H. Installment Payment of Wisconsin Estate Taxes [§ 6.14]

II. Redemption of Stock to Pay Death Taxes: I.R.C. § 303

[§6.15]

- A. In General [§ 6.16]
- B. Qualification Requirements [§ 6.17]
- C. 35% Test [§ 6.18]
- D. Limit on Redemption Amount [§ 6.19]
- E. Limit on Whose Stock Is Redeemed [§ 6.20]
- F. Time Limits [§ 6.21]
- G. Use of Promissory Note [§ 6.22]
- H. I.R.C. § 303 Redemption Agreement [§ 6.23]
 - 1. Introduction [§ 6.24]
 - 2. Form (EST-0085) [§ 6.25]

III. Adjustment to Basis of Partnership and LLC Property:

I.R.C. § 754 [§ 6.26]

- A. In General [§ 6.27]
- B. Election [§ 6.28]

IV. Special Use Valuation of Certain Real Property: I.R.C. § 2032A [§ 6.29]

- A. In General [§ 6.30]
- B. Qualification Requirements [§ 6.31]

INDEX

