XPX SUMMIT 2012

Preparing Owners for Exit

Income & Estate Tax Planning

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TARLOW BREED HART & RODGERS, P.C.
Counsellors at Law

- Avoiding State Income Taxes
- Avoiding Estate taxes
  - Transfers to GRATs
  - Sales to IDGTS

Nowhere Trusts

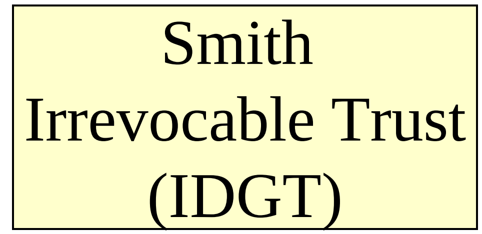
- To be taxed in MA as a Resident Intervivos Trust, at least one Trustee must be a MA resident and one of the following conditions must exist:
  1. At creation, the grantor was a MA resident.
  2. Grantor resided in MA during any part of the tax year in question.
  3. Grantor died a MA resident.

Nowhere Trusts

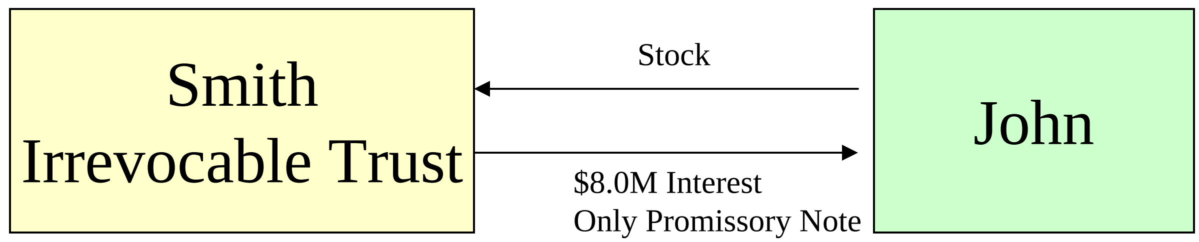
- A Non-Resident Intervivos Trust is only subject to Massachusetts income tax to the extent of its Massachusetts source income.
- Sale of corporate stock by a Non-Resident Trust should avoid MA income tax.

Sale to Intentionally Defective Grantor Trust

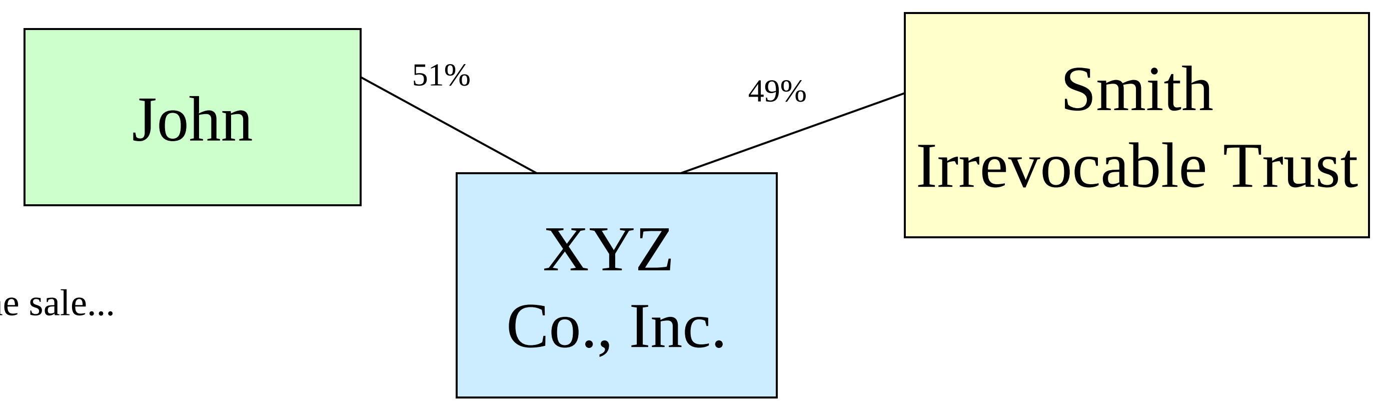
1. Trust was initially funded with $800,000 “seed” gift



2. The Trust then purchased, for a discount, 49% of the company from John. The sale is tax-free.



3. Ownership after the sale...



GRATs / Sales to IDGT

- Facts:
  - The value of John’s company is expected to dramatically increase in the next 2-3 years.
  - He wants to avoid estate tax on the increase in value.
  - John does not want to use his available lifetime federal gift tax exemption.
- Results:
  - No estate tax on most appreciation of stock value
  - Inheritances of children are protected from creditors or divorce

Short-Term GRAT

$1.0 Million Company Stock → **Grantor Retained Annuity Trust**

Annuity to Client

1st Year - $371,347
2nd Year - $371,347
3rd Year - $371, 347

$1,114,041

Roll-Over GRAT

Trust for Spouse and Children

Remainder after 3 Years

If 20% Annual Appreciation: $376,299

<u>Assumptions:</u>

- Client – Age 50
- 3 Year Term
- §7520 Rate
- Property Appreciates 20% Annually

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- **JEFFREY HART** is an attorney with the law firm of Tarlow Breed Hart & Rodgers, P.C. in Boston, which he co-founded in 1991. Jeff's practice involves structuring and negotiating complex business transactions, tax & estate planning for business owners and families, and business succession planning. His recent cases include pre-exit income and estate tax planning for the founder of a health care company, negotiating the equity and cash distribution waterfall for a four party acquisition and roll up venture in the mortgage industry, estate planning with asset protection strategies (in place of prenuptial agreements for children) for the CEO of an information technology company, implementing a comprehensive estate plan and intra-family sale of a second generation construction business, and obtaining an IRS private letter ruling for the tax-free split-off of a fifth-generation international manufacturing business between two family groups. Formerly a certified public accountant with Arthur Andersen & Co., Jeff was voted one of the top 100 lawyers in Massachusetts in a survey of Massachusetts attorneys published in *Boston Magazine.* *617.218.200, jhart@tbhr-law.com,*www.tbhr-law.com

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