



THE FINE ART OF ESTATE PLANNING WITH COLLECTIBLES & PRECIOUS METALS

Art, precious metals, antiques and collectibles raise a host of unique issues and considerations affecting income tax, insurance and estate planning. It is estimated that collectibles represent ten to fifteen percent of the \$41 trillion in wealth that is expected to change hands over the next 50 years as baby boomers leave their estates to their beneficiaries. For some families, collections and heirlooms represent a significant portion of their net worth. When it comes to estate and charitable planning, collectibles present unique challenges, and without proper planning heirs may find themselves with unnecessarily high taxes, liquidity issues, family disputes over ownership, and a host of other problems.

Capital Gains Tax

Art, gold, silver, coins, gems, stamps, wine, books, memorabilia, silverware, rugs, furs, antiques, baseball cards or virtually anything else that can be labeled a collectible is subject to a **28% Long-Term Capital Gains Tax**. Contrary to popular belief, not all long-term gains are taxed at 15%. Someone who purchased \$50,000 worth of GE stock years ago and sold it for \$500,000 would owe \$67,500 in federal capital gains tax (\$450,000 x 15%). However, a Picasso print purchased for that same \$50,000 investment at the same time and sold for \$500,000 today would result in a \$126,000 capital gains tax (\$450,000 x 28%). Collectibles purchased and held less than one year are taxed at personal income tax rates.

Estate & Gift Returns

Far too often families engage in "U-Haul" planning for collectibles. Shortly before or after the death of a loved one, children or other heirs show up with a moving van and remove the contents without reporting the transfers as gifts or inheritances. If the estate includes articles having artistic or intrinsic value of a total value in excess of \$3,000, or if a collection of similar articles valued at more than \$10,000, an appraisal is required to be submitted along with the estate tax return. There is no statute of limitations for estate tax fraud, or on a taxable gift for which no return was ever filed, so the risk of audit and potential penalties never ends. Further, the estate tax return and payment is generally due 9 months from date of death. If the funds are not available to pay the tax, one may have to sell the collectible. Once you factor in the appraisal fees, auction fees, and potential taxes, a significant portion of wealth may be eroded from the estate.

Gold Investments

In recent years the price of gold has increased considerably and you probably have seen the television commercials urging you to "sell your gold". Investing in gold has also become quite popular because of the reported returns and volatility in the stock market. It is important to remember that, in general, precious metals like gold, silver, palladium and platinum are taxed as "collectibles", not as "investments".



This includes coins, bars, bullion, certificates and exchange-traded funds (ETFs). An exception to the collectible rule is mining stocks. Gold futures must be "marked to market" with the unrealized gain/loss recognized each tax year, subject to a special tax treatment.

Although a higher tax rate may not deter people from buying gold and other precious metals, it is important to consider the high tax treatment when they or their heirs decide to cash in their earnings. Coins present an additional valuation issue when they have a numismatic worth exceeding their face denomination. The issue of valuation is exacerbated when the coins have enhanced value because of rarity, condition, or as a set.

Gifts to Charity

Many people who have collectibles and have not done planning are not aware of the estate and charitable planning options open to them. One way that you and your heirs can benefit from the value in your collectibles is to donate them to a charity. Donating appreciated property is not limited to the wealthy. You can claim an income tax deduction for the fair market value of donated collectibles if you itemize. You document a donation of collectibles in the same manner as donating any other item – if it is worth more than \$250, get a receipt; over \$500 keep some records to support the fair market value; and if over \$5,000 get a qualified appraisal. The donation can help minimize the impact of the 28% capital gains tax on collectibles. You may also qualify for an estate or gift tax deduction for properly planned charitable bequests or gifts, and create a lasting legacy. In down economic times, this is also an easy way to support a charity without depleting your reduced or limited liquid assets.

Leveraging Charitable Donations

For people with substantial wealth in collectibles, the uses for charitable planning offer donors many creative solutions. Which opportunities are most appropriate will depend on your goals, values and stage of life. Working with a qualified estate planning attorney at the Pierro Law Group, the charity, and other trusted advisors will help craft a solution. Options could include a strategic sale, loan, outright gift during lifetime, deferred gift by bequest, creating a charitable trust or family foundation, and could even be leveraged to provide an income stream to the donor, heirs or multiple charities.

One must recognize the need for balance between inheritance for the heirs and gifts for philanthropic causes. A complement to a charitable plan as an exit strategy for highly appreciated assets is replacing the assets given to charity with life insurance. If structured properly, insurance proceeds can go to future generations free of all estate and inheritance taxes, thereby possibly putting them in a better position than if they inherited the collectibles directly from the estate. Further, collectibles are often difficult to divide or share among children and other heirs, especially if they do not share your passion for the item. Through proactive planning you can control where and how the collectibles should best be disposed to help ensure a lasting legacy and minimize taxes.

Gifts to Family & Friends

There are also non-charitable techniques for collectibles that allow you to remove items from your estate on a tax-advantaged basis. You can pass ownership, directly or indirectly, to your heirs to help accomplish estate planning goals. An example would be to use the annual gift tax exclusion to transfer assets of up to \$13,000 per year, per beneficiary, free of federal gift tax. Any future appreciation on the items would belong to the recipient. Other advantages of proactive estate planning including helping to alleviate the family squabbles over items, and can avoid probate and will contests.

In addition to the annual exclusion, much larger gifts may be made to individuals or in trust by utilizing the donor's lifetime exemption from gift tax. For 2012, there is an unprecedented opportunity to move

substantial wealth out of an individual's estate due to the \$5.12 million federal gift tax exemption, which is set to expire in 2013 if Congress does not act prior. The use of Family Trusts, Limited Liability Companies and other techniques to facilitate gifting can provide structure and leverage to the gift.

When planning to minimize taxes, one must also consider the impact of New York taxes. Currently New York does not impose a gift tax, but New York does impose an estate tax on estates greater than \$1 million with a maximum tax rate of 16%. Because of the way NY computes its estate tax, substantial tax savings can be realized by making lifetime gifts.

Other Considerations

While the tax consequences are significant for collectibles, this is just one of the many issues to consider. Before collectibles can be transferred, issues of ownership and authenticity need to be resolved. The number of forged, reproduced and stolen paintings, sports memorabilia, and important documents are staggering. The IRS has determined that stolen or otherwise illegally acquired objects must be included in the decedent's gross estate. In a famous example, the family of a U.S. World War II Army Lieutenant was forced to pay estate tax on objects valued at over \$100 million that were stolen in Germany during the war.

One of the most troublesome aspects of the disposition of collectibles is how the items are to be valued. The general rule for federal estate tax, gift and income taxes is that items are valued at their fair market value. However the valuation of collectibles is a very subjective undertaking and subject to challenge. In 2007 the Art Advisory Panel of the IRS challenged the appraisals submitted in valuations in approximately two-thirds of its audit cases. Of these cases, the aggregate estate tax valuations were raised 58%. Just like the stock market, collectible values can rise and fall. Disposing of collectibles at the wrong time can lead to a loss of 60-80% of its actual value.

When it comes time to sell collectible items, money that is paid to buy, appraise and maintain or restore the items must be added to determine the "basis". The basis is subtracted from the sale price to determine the profit or gain that is taxed. Determining gain made on a collectible will vary depending on whether the item was purchased, a gift or inherited. As discussed above, many issues can be alleviated by donating collectibles to charity. It is, however, important to involve the museum or non-profit in the planning process as they may not have the ability to take, want, have the proper use for, or the ability to pay for the storage, insurance and maintenance of the items. In addition, any other details such as display, naming rights or other donor recognition should be agreed upon in advance.

Conclusion

When it comes to the art of Estate Planning with collectibles and precious metals, it is vital to consult with a law firm experienced in estate and philanthropic planning. At the Pierro Law Group we work with clients, their families, advisors and charities to ensure a cohesive and comprehensive estate plan. It gives peace of mind to have the ability to control your family's future, allowing for the orderly and systematic transfer of one's wealth and belongings to the heirs and beneficiaries of your choosing, while minimizing taxes. Everyone's situation is unique and it is impossible to discuss all of the planning options available in an article. Please contact us at [REDACTED] or email [REDACTED] for an individual consultation in order to discuss your needs and goals.

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