

Issue #275 - Thursday, October 16, 2019

Edited by: Christopher Denicolo

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With Hollywood producing countless origin stories for some of our favorite characters, we thought that it would be appropriate for our Thursday Report to give a similar origin story for our favorite day of the week.

Thursday (or Thor's Day as it was originally known) was named for Thor, the Norse god of thunder.

Thor's is equivalent to the Roman god, Jupiter, who similarly was a god of thunder. Accordingly, the word for Thursday in most Romance languages is derived from the Latin word for Jupiter, Jovis (in its possessive form).

Thursday is either the fourth or fifth day of the week, depending on whether the local convention defines the beginning of the week as a Sunday or a Monday. As such, some languages' word for Thursday is derived from this. For example, the word for Thursday in Russian and other Slavic languages relates to it being the fourth day, while the word for Thursday in Icelandic, Vietnamese and (interestingly) Portuguese stems from references to "fifth day" or something similar.

In any event, and whatever it's called, Thursday is certainly our favorite day of the week. We hope it's

yours as well, and that you enjoy this week's (or Fortnight's) Thursday Report program.



The story of Cleopatra and Thor is legendary.

Cleopatra was one of the last pharaohs of Egypt, and is now the first lady of asset protection trust planning.

On June 26, 2019, the South Dakota Supreme Court ruled that the Red Sea parted when Cleopatra moved her third party settled trust from California to South Dakota for the apparent purpose of avoiding having the trust be responsible for the payment of child support.

The South Dakota Supreme Court decided to “let her assets go” and ruled that the Full Faith and Credit Clause of the U.S. Constitution did not permit a California court to determine what remedy would apply in South Dakota.

This decision is completely unrelated to the fact that down in the hill mines of South Dakota there lived a young boy named Rocky Raccoon, and one day his woman ran off with another guy at a local saloon.

What does Thor have to do with this? Thor was going to be the theme of today's Thursday Report until Cleopatra and Rocky Raccoon came on the scene.

The Cleopatra trust decision, and many less interesting things are discussed below in this Thursday Report No. 275.

Rocky Raccoon, checked into his room,

Only to find Cleopatra was not liable.

Rocky had no doubt, that she would begin to pout,

And Thor would not be a formative rival.



Quotes

On this Day in History

In the Matter of the Cleopatra Cameron Gift Trust

South Dakota Supreme Court Denies "Full Faith And Credit" To California Child Support Order Against Asset Protection Trust

By: Alan Gassman and Adriana Choi

5 (UNFORTUNATELY) COMMON S CORPORATION MISTAKES

Business and entity structure which can provide great benefits, but which can require discipline to certain rules and requirements; this article provides several mistakes that could be traps for the unwary and could cause loss of your "S"

By: Christopher Denicolo

Powerful Strategies For Charitable Giving After Tax Reform

The non-tax benefits of charitable giving should be, and often are, important to motivating and planning donations. Most donors, other than wealthy taxpayers making significant donations, will receive little, if any, tax benefit from donations after the Tax Cuts and Jobs Act of 2017. So, the non-tax motives for giving are the sole motivation for more donors than ever before. But charitable giving can take many forms, [Continue reading on Forbes.](#)

By: Martin Shenkman

A New Inexpensive Way To Form Your Family Charitable Foundation

Expanding on Mr. Shenkman's prior article above, Here is another perspective.

By: Alan Gassman

For Finkel's Followers

3 Steps to Keep Your Customers Happy and Stop Turnover

By: David Finkel

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Quotes

"Oh no, this is Earth, isn't it?" - Thor

“Life is about grow and change.” - Thor

“Celerity is never more admired than by the negligent” - Cleopatra

“Risk is good. Not properly managing your risk is a dangerous leap.” - Evel Knievel

“The logical process will often be the safe one. I tend, when I'm given that choice, to go the way that's not safe.” - Sting

On this Day in History

1931: Al Capone is sentenced to 11 years in prison for tax evasion.

1933: Albert Einstein arrives in America as a refugee from Nazi Germany to work at the Institute for Advanced Study at Princeton in New Jersey.

1938: American motorcycle daredevil, Evel Knievel, was born.

1963 The Beatles record "I Want to Hold Your Hand" at EMI Studios in London.

1964: The New York Yankees fire Manager Yogi Berra.

1978: President Jimmy Carter signs bill to restore citizenship to the former (and only ever) Confederate States of America President, Jefferson Davis.

1979: Mother Teresa is awarded a Nobel Peace Prize for her humanitarian work with the poor.

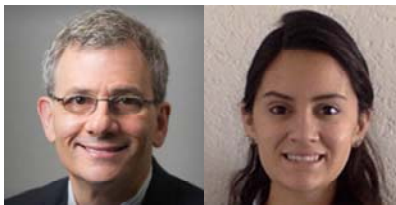
1980: Department of Education was created.

1995: Sting's advisor, Keith Moore, is sentenced to 6 years or robbing Sting of \$9,000,000.

2006: United States population eclipses 300 million.

In the Matter of the Cleopatra Cameron Gift Trust

By: Alan Gassman and Adriana Choi



“Proponents of the use of Domestic Asset Protection Trusts by individuals residing in non-Asset Protection Trust states scored a large victory on the playing field in South Dakota, when a California-based trust established by a decedent for his daughter, Cleopatra, was moved to South Dakota after having been ordered to pay child support by a California court that subsequently ordered the trust to continue making payments after the South Dakota Trustee refused to do so. Pigs get fat, but Cleopatra did not get slaughtered, and in this case, she received a better remedy than BC powder. This may be the first of a number of cases that deliberate over whether the ‘Full Faith and Credit’ clause of the U.S. Constitution requires a state court judge to ignore judgment enforcement rules in his or her state where an Asset Protection Trust has been properly formed and funded.”

EXECUTIVE SUMMARY:

Proponents of the use of Domestic Asset Protection Trusts by individuals residing in non-Asset Protection Trust states scored a large victory on the playing field in South Dakota, when a California-based trust established by a decedent for his daughter, Cleopatra, was moved to South Dakota after having been ordered to pay child support by a California court that subsequently ordered the trust to continue making payments after the South Dakota Trustee refused to do so. Pigs get fat, but Cleopatra did not get slaughtered, and in this case, she received a better remedy than BC powder.ⁱ This may be the first of a number of cases that deliberate over whether the “Full Faith and Credit” clause of the U.S. Constitution requires a state court judge to ignore judgment enforcement rules in his or her state where an Asset Protection Trust has been properly formed and funded.

FACTS:

The Domestic Asset Protection Trust (“DAPT”) industry has been closely watching recent cases which have held that the law where a debtor resides will apply to penetrate a trust formed in another state that has laws to prevent creditor access.

For example, Florida does not have a Domestic Asset Protection Trust statute that enables the Grantor of a trust to contribute to the trust and also be a discretionary beneficiary. Under Florida law, a creditor of the Grantor can reach the maximum amount that a trustee would have the discretion or power to distribute.

Presently, only 19 states (most recently Indiana and Connecticut) have passed DAPT laws that enable a Grantor to place assets into a spendthrift trust that may benefit the Grantor, while having the trust be immune from future creditors that did not have a claim or an expected successful cause of action at the time that the trust is established.

However, not all spendthrift trusts are fully immune from “exception creditors”. Under the laws of most states, an exception creditor would be able to penetrate a trust established and funded by someone or an estate other than the debtor. For example, in the subject case, Arthur A. Cameron Jr. established an irrevocable trust and also a revocable trust that split into one separate trust for his daughter, Cleopatra, to provide her with lifetime benefits for health, education and maintenance.

The trust agreement in [*In the Matter of the Cleopatra Cameron Gift Trust*](#), provided that Cleopatra’s creditors could not reach into the trust, and that distributions would be made for Cleopatra as deemed appropriate by the trustee. Since Cleopatra did not form the trust or fund it with her own assets, in most states it would normally not be accessible to Cleopatra’s creditors.

Unfortunately for Cleopatra, this trust, which was formed and funded in California, and had a California trustee, was found to be accessible to Cleopatra’s ex-husband in order to pay him court ordered child support and also attorney’s fees in the California family court. This is because California law will allow a court to order a trustee to pay support obligations, where a court finds that the trustee exercised its discretion in bad faith.

In most states, the Uniform Trust Code has been adopted and will permit an “exception creditor” to penetrate a trust. Normally, an exception creditor will include a creditor who is making a legitimate child support claim or who is pursuing attorney’s fees for having litigated for the beneficiary or a third party in order to penetrate the trust in situations where the beneficiary has no other means of satisfying these “exception creditor” obligations.

California apparently goes farther, and allows such invasion of a third party settled and funded trust without regard as to whether the beneficiary has other resources or the ability to pay individually.

These trusts for Cleopatra were in existence after the death of her father in 2001, and continued to exist in 2009 when they were ordered to pay and did pay child support, and were ordered to pay over \$250,000 in legal fees.

In 2009, Cleopatra and the initial trustee (Wells Fargo) petitioned the California court that had jurisdiction over the operations of the trust in order to remove Cleopatra and Wells Fargo as co-trustees and to appoint BNY Mellon as sole successor trustee.

In 2012, Cleopatra invoked her authority under the Trust provisions and petitioned to have the trust moved to South Dakota, where Citicorp Trust of South Dakota became the Trustee, and was replaced that same year by Bankers Trust Company of South Dakota.

Bankers Trust Company obeyed the California order and continued the payment of child support until November 2016 when Trident Trust Company became the trustee, and Empire Trust was appointed Trust Protector.

Empire Trust, as Trust Protector, determined that there were insufficient assets to pay the child support and to also support Cleopatra for her lifetime. In January 2017, Trident stopped paying child support.

Trident relied upon South Dakota trust law, which does not allow for exception creditors. It may be noteworthy to readers for future planning that Nevada and Utah also do not permit exception creditors.

As would be expected, Cleopatra's ex-husband filed suit in South Dakota, and claimed that the full faith and credit clause of the U.S. Constitution required the South Dakota court to follow the determination of the California family court to the effect that California law applied to enable the court to order child support to be paid by the trustee of the "now in" South Dakota trust.

The South Dakota circuit court found that the Full Faith and Credit Clause of the U.S. Constitution did not apply in this situation, because the question of remedies available to satisfy a judgment against a California resident, like the trust, should be based on South Dakota law, and not California law.

The decision of the circuit court was appealed to the South Dakota Supreme Court, which affirmed the decision of the South Dakota circuit court, and found that the trust's spendthrift provision prevented any creditors of Cleopatra, including exception creditors, to penetrate the trust.

The South Dakota Supreme Court's description of the issue of creditor rights is as follows:

Our Legislature has placed formidable barriers between creditor claims and trust funds protected by a spendthrift provision. See SDCL 55-1-41 ("If the trust contains a spendthrift provision, no creditor may reach present or future mandatory distributions from the trust at the trust level."); SDCL 55-1-35 ("No trustee is liable to any creditor for paying the expenses of a spendthrift trust."). More to the point, the Legislature has emphatically rejected even the specter of an argument that would allow a child support creditor to reach trust funds protected by a spendthrift provision. Indeed, this precise legal theory is identified in § 59 of the Restatement (Third) Trusts (2003) which states that "[t]he interest of a beneficiary in a valid spendthrift trust can be reached in satisfaction of an enforceable claim against the beneficiary for ... support of a child..." However, the Legislature anticipated such an argument in South Dakota courts and definitively foreclosed it with its 2007 enactment of SDCL 55-1-25 which provides in part:

In the area of creditor rights, the Restatement of Trusts (Third) and the Uniform Trust Code create

many new positions of law as well as adopts many minority positions of law. The provisions of §§ 55-1-24 to 55-1-43, inclusive, affirmatively reject many of these positions. Therefore, the Legislature does not intend the courts to consult the Restatement (Third) of the Law of Trusts ... § 59 ... with respect to subject matters addressed by the provisions of §§ 55-1-24 to 55-1-43, inclusive.

The South Dakota Supreme Court, in making their decision, quoted the case of *Baker by Thomas v. General Motors Corp.* This US Supreme Court case focused on the issue of whether a Michigan county court's permanent injunction barring a former employee from testifying as a witness in any litigation involving General Motors ("GM") would also prevent the employee from testifying in proceedings against GM in Missouri. In *Baker*, Justice Ginsburg, delivering the opinion of the Court, ruled that an order commanding an inaction may be denied in a sister stateⁱⁱ when the order interferes with a separate legal issue. Justice Ginsburg further explained in the opinion that "[f]ull faith and credit, however, does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments. Enforcement measures do not travel with the sister state judgment as preclusive effects do; such measures remain in subject to the even-handed control of forum law." The court held that the Michigan court's injunction could not prevent the plaintiff from subpoenaing the former employee, Elwell, to testify in a Missouri issue that the State of Michigan has no jurisdiction over.

The South Dakota Supreme Court also cited the 2009 Indiana Supreme Court case of *Hamilton v. Hamilton*, where a Florida child support and contempt judgment was sought to be enforced in Indiana, where the payee husband had moved. The Indiana Supreme Court found that the Florida judgment as to the specific amounts owed and payable would be enforceable without alteration by the Indiana court, but that the decision as to how much the ex-husband/father would have to pay to avoid being incarcerated for 170 days on contempt would be the decision of the Indiana court, based on the analysis Justice Ginsburg provided in *Baker*, and quoted above, stating that "enforcement measures do not travel with the sister state judgment as preclusive effects do."

The Court held that the Indiana trial court's contempt order did not modify the Florida support judgment in violation of the Full Faith and Credit for Child Support Orders Act or the Uniform Interstate Family Support Act, and was, therefore, consistent with the Full Faith and Credit Clause.

The three cases are summarized in the chart that can be found at this link: [Gassman/Choi](#)

It is clear from the decisions in *Baker*, *Hamilton* and *Cleopatra* that situations where a judgment from one state is to be enforced in another state with incongruent remedy laws cause jurisprudential analysis that is somewhat like putting a square peg into a round hole. Section 4467 titled *Res Judicata Between State Courts* of the book *Federal Practice and Procedure* further elaborates on this and provides that "it has long been accepted that although judgments in one state are not immediately enforceable by execution in another state, all other states are obliged to provide for registration or an independent action on the judgment and to enforce it by means of execution as are available for local judgments."ⁱⁱⁱ Essentially, if one state lacks jurisdiction over the matter in the sister state then the means of enforcement may be denied, which is what the courts did in the cited cases.

It is unknown to the authors whether the lawyers for *Cleopatra's* ex-husband will be appealing this decision, but it stands as a significant obstacle to creditors who might otherwise conclude that they can simply receive a judgment in the state where the debtor resides, and then domesticate it to the jurisdiction where a legitimate irrevocable trust with spendthrift provisions will otherwise protect the assets from the subject creditor.

The cases that run contrary to this decision, as to both foreign and domestic asset protection trusts have determined that the law of the residence of the debtor will be controlling, but without discussion of the Full Faith and Credit Clause of the U.S. Constitution. Time will tell whether all states with DAPTs will apply the law of the residence of the debtor or will follow South Dakota's lead.

Conclusion

The South Dakota Supreme Court did a good job in construing existing case law and confirming that the enforcement of a judgment from another state can only proceed in accordance with the law of the state where the judgment is being enforced. It is likely that there will be further litigation in other states, and that eventually guidance may be forthcoming from the U.S. Supreme Court. In the meantime, advisors who recommend or help to maintain Domestic Asset Protection Trusts should keep their clients posted on the risk that the law of the state where a debtor is domiciled may be found to be controlling.

It is therefore best to always have belts and suspenders in place, which can include partial ownership of LLCs to help assure charging order protection, flee clauses to permit the transportation of trusts to an offshore jurisdiction, and not having the debtor as a beneficiary of a particular trust, unless or until circumstances beyond the reasonable control of the debtor exist, so that the trust may be protected from creditors in the state where the debtor resides.

In the words of Moses, Cleopatra: "Let my assets go, so that they may serve me!"

Cleopatra: "Holy Moses, we did it."

And Moses added the 11th Commandment "Thou shall not invade properly funded Asset Protection Trusts or cross Justice Ginsburg."

CITE AS:

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CITATIONS:

i - BC powder was created in 1906 in Durham, North Carolina. The powder is meant to relieve headaches faster than any other over the counter pain reliever. This powder is known for its slogan "Take a BC powder and you come back Strong!"

ii - The authors note that calling states sisters instead of brothers is a form of discrimination. The movies The Blues Brothers and Marx Brothers are further examples of this, as is Twisted Sister.

iii - Federal Practice and Procedure (Wright & Miller), 18B Fed. Prac. & Proc. Juris. Section 4667 (2d ed.) (August 2019).

5 (UNFORTUNATELY) COMMON S CORPORATION MISTAKES

By: Alan Gassman and Christopher Denicolo



A great many taxpayers operate their trade or business through an S corporation.

An S corporation is a professional or regular corporation, or a limited liability company that has elected to be taxed under Subchapter S of the Internal Revenue Code.

In this age of “Legal Zoom” and “I formed it myself” documents, a great many mistakes are made, and perhaps most of them are made with respect to S corporations.

Here are the top 5 mistakes that we commonly see.

1. My Accountant Set It Up for Me/I Did It Myself.

Accountants are trained and licensed to practice accounting, but not law.

Lawyers are trained and licensed to prepare legal documents, including operating agreements, which are required in many states to facilitate operating a limited liability company, or at least in order to open a bank account under the company.

A good many accountants will form a limited liability company by filing articles of organization with the secretary of state of the jurisdiction where the company is established. However, we often find that they do not furnish an operating agreement, or in some situations draft an operating agreement or refer their client to an inexpensive source for the operating agreement, which resulted in properly drafted operating agreements.

We see this over and over again when well-meaning accountants do not understand the importance of proper legal documentation. This rarely happens with good certified public accountants who realize that their accounting license could be at risk when they engage in the felony of the “unauthorized practice of law.”

An improperly drafted operating agreement could cause loss of the company’s S corporation election, which could result in the company being a C corporation for federal income tax purposes and the income of the company will be taxed twice - once at the corporate level, and then at the individual shareholder level as a “dividend”.

2. Failure to Meet the “Second Class of Stock” Rules.

One of the fundamental requirements for an S corporation is that there not be a second class of stock in the corporation. This means that all shares in the corporation must have equivalent liquidation distribution preferences with respect to the company, although it does not mean that different classes of stock can have disparate voting rights.

For example, if John puts \$100,000 into a company for 50% ownership, and Steve agrees to work

for the company for free until the company has earned the first \$200,000 of corporate income, then this is considered to be two separate classes of stock for the purposes of the S corporation rules. Accordingly, the company's S corporation election will terminate, which would cause the company to be treated as a C corporation thereby exposing it to the double taxation described above.

Another example of a second class of stock will be if the operating agreement or any other agreement between the members provides that one member or the company may be able to buy-out another member or be redeemed for a price that is less than book value, as determined under Generally Accepted Accounting Principles.

The second class of stock rules can also be violated if a shareholder will perform services for the company at more or less than the fair market value of those services.

Due to the potential catastrophic result of the termination of a company's S corporation election, it is imperative to ensure that all operating agreements and other corporate documents do not cause the company to have a second class of stock.

3. Failure to Pay Reasonable Compensation.

Unlike an entity taxed as a partnership, or an LLC owned by one person or a married couple that is "disregarded" for income tax purposes, the law is very clear that an S corporation must pay W-2 wages or other compensation to a shareholder who performs services for the company.

This causes the company and the shareholder to be responsible for employment taxes, and thus usually worker's compensation, unemployment taxes, and other state tax reporting and payment obligations.

In addition, employment compensation does not qualify for the 20% income tax deduction under Section 199A, while partnership profits and sole proprietorship profits may qualify, [which is further explained in a prior article that the author has written.](#)

As the result of the above, most taxpayers who have a closely held trade or business under an S corporation and individual taxable income of less than \$160,700 if single, or \$321,400 if married filing jointly, may want to consider moving or converting the business to be taxed as a partnership for federal income tax purposes. However, careful consideration should be given as to whether such transaction would trigger income taxes (because the conversion of an S corporation to a partnership could trigger income taxes), and whether increased employment taxes that can occur when income comes out of a partnership or proprietorship justifies the transition.

4. Triggering Gain on Distribution of Appreciated Assets from the Company.

Taxable gain on the distribution of assets is triggered when an asset with a fair market value exceeding its taxable basis (Generally, original cost, plus capital contributions to the property, less depreciation taken) is transferred to or for the benefit of its shareholders.

Unlike partnerships, S corporations are treated as having sold appreciated assets to shareholders when appreciated assets are distributed to its shareholders. This is one of the most significant differences between an S corporation and a partnership, and is a potential trap for the unwary.

For example, if George and Ringo each own 50% of an S corporation, and the S corporation distributes a 50% interest in real estate worth \$200,000 would pass through with an adjusted basis of \$100,000 to each of them, then the S corporation would be considered as having sold a 50% interest in such real estate to each of them for \$100,000 and as having incurred gain of \$100,000 total as if it sold the property to them for \$200,000. Such gain would pass through to George and Ringo, and they would therefore have to pay income tax associated with the distribution.

Conversely, generally distributions of appreciated assets from a partnership to its partners will not trigger income tax in most situations (except where a distribution is part of a disguised sale or a “mixing bowl” transaction, or in certain circumstances on liquidation of the partnership, which issues are beyond the scope of this article).

5. Having an Ineligible Shareholder of the Company.

Another fundamental rule for S corporations is that they can be owned only by certain types of shareholders. Specifically, only United States citizens or resident individuals, 501(c)(3) organizations, qualified subchapter S trusts (QSSTs), electing small business trusts (ESBTs), or a disregarded grantor trust or disregarded entity considered as owned by one of the aforementioned permissible shareholders. Non-resident aliens, partnerships, charitable remainder trusts (CRATs or CRUTs), IRAs or pension accounts, or C corporations cannot be owners of S corporation stock. Accordingly, it is important to ensure that the S corporation is owned by eligible shareholders because the S corporation election will not be valid, and a previously existing S corporation election will terminate, in the event that an ineligible shareholder owns any portion of the stock in the corporation.

Further, S corporations can only be owned by a maximum of 100 shareholders, although certain attribution rules apply in order to cause multiple shareholders of a family or beneficiaries of a trust to be an eligible S corporation shareholder, to be treated as one shareholder for purposes of counting the number of shareholders.

[On Wednesday, November 20, 2019 we will be giving a webinar titled: "Estate and Trust Planning with S Corporations After TRA 2017 - And Recent Developments" on the Leimberg Webinar platform. More information is available here.](#)

A New Inexpensive Way To Form Your Family Charitable Foundation

By: Alan Gassman



Many taxpayers consider establishing charitable trusts and foundations to make a visible commitment to charitable purposes.

One advantage of having a family controlled charity is an immediate income tax deduction for contributions that may be held by the entity and used over time for charitable purposes.

Other advantages include recognition of the family's commitment, the ability to operate as a charitable organization, involvement of family members in charitable endeavors, and the sense of satisfaction that comes from making a commitment and following through on an individualized basis.

In many situations, the tax deduction from the contribution is not important, because the family may not be in a high income tax bracket, the family may already be using whatever tax deductions are available for donations, or the family may have losses or large deductions that make the charitable income tax deduction of little use, or better recognized in a future year where the donors may be in a higher income tax bracket.

A major "turnoff" for families establishing charitable foundations and trusts includes the need to pay an \$800 application fee to the IRS, and to file a Form 1023 Application to obtain 501(c)(3) status, which is generally more time consuming and expensive than forming the organization. Additionally, there is the need to file annual Form 990's, and other formalities that have to be followed by a 501(c)(3) organization, along with the knowledge that the Form 990 will be available to the general public on 990finder.foundationcenter.org.

Another downside of operating a charitable foundation is the requirement that it distribute at least 5% of the foundation's assets each year to other charities, or to spend 4.25% of the foundation's assets each year on the active conduct of a charitable activity. Although the foundation's assets may grow faster than 5% per year, there is a chance that the investments may not reach this level of return, or the charitable donor may not want to distribute funds every year.

The foundation is also greatly restricted when it comes to dealing with related persons, even if such dealings are at arm's-length or benefit the foundation more than the related person.

As the result of the above, some charitable taxpayers will choose to establish a deferred deduction charitable trust, which can be recognized and exist as a charitable organization under state law, and for practical purposes, while being considered to be "disregarded" and continued as owned by the taxpayer for federal income tax purposes.

Other than the above, the only difference between a typical 501(c)(3) charitable trust and a trust that can be disregarded for federal income tax purposes can be that the disregarded trust benefits not only Section 501(c)(3) charities, but also tax exempt organizations that can include police and firemen benevolent associations (under Section 501(c)(8)) and cemetery associations (under Section 501(c)(13)). This entity will not need to meet annual distribution requirements and the Grantor can exchange trust assets for assets of equal value and/or add charitable organizations as beneficiaries of the trust.

Let's take, for example, John and Molly DoGood, who are retired schoolteachers who have always wanted to use \$250,000 from a large inheritance that John received to set up a scholarship and mentorship program for disadvantaged high school students who would not go to college without having extra financial and moral support.

John and Molly are in the 24% tax bracket, and have \$120,000 of adjusted gross income, so they can donate up to \$72,000 to a private operating foundation, or \$36,000 to a private foundation, each year without their income tax deduction being limited based upon applicable adjusted gross income limitations. They would like to create a private foundation and donate \$36,000 each year to fund scholarships, saving up to \$8,640 in taxes each year.

John is in poor health, and wants to make sure that the funds are used for these purposes, “no matter what happens,” and they have been working with a local community college which can accept donations and award the scholarships, while giving recognition to John and Molly’s charitable trust and efforts.

John and Molly form the John and Molly DoGood Charitable Foundation, and John places the \$250,000 into a trust account, and they receive recognition from the community college, and can operate as a “family foundation” from a publicity and community support standpoint.

John and Molly run the trust and receive an income tax deduction for the monies that pass from the trust to the community college, and do not have to file a Form 1023, Form 990's or any other documents.

Their activities remain private, to the extent permitted under state law, and in compliance with the terms of the trust.

At a later time, they may choose to convert the trust to qualify as a 501(c)(3) charity by excluding the non-501(c)(3) organizations from having possible benefits, filing a Form 1023 and then filing annual Form 990's, and otherwise complying with the rules that apply for such organizations.

My thanks to John Beck, J.D., LL.M. for helping me to “invent” this structure.

For Finkel's Followers

3 Steps to Keep Your Customers Happy and Stop Turnover

By: David Finkel

You worked so hard to land that new client...don't stop there.

Over the last twenty-five years I have helped thousands of business owners develop and fine-tune their sales funnels. Whether it be pricing challenges, closing tactics or choosing the right salesperson for the job, there are many ways to increase sales within your company. But the one thing that many business owners fail to look at, is their customer attrition rate.

You most likely have an idea on what it costs to acquire a new client. Depending on your industry and price point this can range from a few dollars to several hundred dollars. You can calculate your customer acquisition cost by dividing all the costs spent on acquiring more customers (ie. marketing expenses) by the number of customers acquired during that same period. So if you spent Ten Thousand Dollars last year on marketing and then brought on five hundred new customers, the acquisition cost would be Twenty Dollars a client.

But what if you were able to keep that client for a second year or a third? The cost of keeping that client happy is much lower in the long run than going out and finding someone new.

Here are my tips on how to keep your customer attrition low and profits high:

Look For Patterns

When it comes to losing clients, there is almost always a pattern surrounding their decision. And if you are able to analyze the data you can find the key “drop points” in your funnel and work towards patching

them up. For instance, do you tend to lose clients at the start of your relationship? Perhaps you need a better onboarding process to educate your customers on what to expect. If you lose them after ninety days, you may need to work on customer communication and engagement. If it happens after a year, you might need to come up with add-on products or service to grow with your customer base. Wherever you see the pattern, you can then work on tightening up the funnel.

We have had some clients have great luck with setting up “timed gifts” at known drop points.

Invest In the Relationship

Brand loyalty goes a long way in today’s market. So if you want to keep a customer for the long term, take the time to deepen the relationship and get to know your customers. Share information and get to know what makes them tick. Make an authentic connection. The more intertwined you are in their lives- both in business and personally the more indispensable you will become.

Increase Your Value

This doesn’t always mean an increase in prices. As your relationship grows and develops, your customers needs will change as well. So, one way to decrease your drop rate is to negotiate a longer contract term with added features or services. If you are focusing on developing a deeper understanding of your customer base, you should have a good idea of what they are looking for in future products and services, so use that to your advantage here.

A little more time and attention will go a long way to keeping our customer attrition rate low and our profits high.

Humor

The 7520 rate is 2.0%

| The AFRs are as follows | Annual | Semi-annual | Quarterly | Monthly |
|-------------------------|--------|-------------|-----------|---------|
| Short-term | 1.68% | 1.67% | 1.67% | 1.66% |
| Mid-term | 1.59% | 1.58% | 1.58% | 1.57% |
| Long-term | 1.94% | 1.93% | 1.93% | 1.92% |



Upcoming Events

Recent Updates

[Register for the full complimentary Learning at Lunch webinar series](#)

| Date | Event | Details | Information |
|------------|--|--|-------------------------------|
| 10/22/2019 | Florida Bar Tax Section CLE at University of Miami Law School in Miami, FL or Online | Alan Gassman and Leslie Share present: <i>Wealth Protection for the Advanced Practitioner</i> from 1:30 PM to 5:30 PM ET | REGISTER HERE |
| 10/24/2019 | FICPA USF Accounting Conference at The Barrymore Hotel | Alan Gassman presenting: <i>Asset Protection for Professionals</i> from 8 AM | REGISTER HERE |

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| | Tampa Riverwalk in Tampa, FL | to 8:50 AM ET | |
| 10/24/2019 | Learning at Lunch Webinar Series | Christopher Denicolo presents: <i>Florida Revocable Trust Debate-- Separate, TBE or JEST-- What is BEST?</i> from 12:30 PM to 1 PM ET | REGISTER HERE |
| 10/24/2019 | FICPA Florida Gulf Coast University Accounting & Tax Conference at Embassy Suites Fort Myers in Esterro, FL | Alan Gassman presenting: <i>Creative Planning with Section 199A</i> from 2:05 PM to 2:55 PM ET | REGISTER HERE |
| 10/31/2019 | Leimberg Webinar Services (LISI) | Alan Gassman and William Prescott present: <i>Why Dentists are Different</i> from 1 PM to 2:30 PM ET | REGISTER HERE |
| 11/1/2019 | Leimberg Webinar Services (LISI) | Alan Gassman and John Beck present: <i>Dynamic Charitable Planning for Estate and Tax Professionals after TRA 2017 - With Recent Developments</i> from 3 PM to 4:30 PM ET | REGISTER HERE |
| 11/7/2019 | Learning at Lunch Webinar Series | Michael Lehmann presents: <i>Noncash Charitable Giving - Part 1</i> from 12:30 PM to 1 PM ET (Moderated by Ken Crotty) | REGISTER HERE |
| 11/7/2019 | FICPA University of Florida Accounting Conference at Hilton U of F in Gainesville, FL | Alan Gassman presents: <i>Creative Planning and Traps for the Unwary Under Section 199A</i> from 3:40 PM to 4:30 PM ET | REGISTER HERE |
| 11/8/2019 | Leimberg Webinar Services (LISI) | Alan Gassman and Brandon Ketron present: <i>Creative Trust Planning to Save Taxes Under Section 199A And Otherwise</i> from 3 PM to 4:30 PM ET | REGISTER HERE |
| | Maui Mastermind | Alan Gassman presents: <i>Important Qualities of</i> | |

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| 11/10/2019 through 11/15/2019 | Wealth Summit at The Fairmont Orchid in The Big Island, HI | <i>Clients who Hit Multiple Grand Slams AND How to Avoid Legal Entanglements that can Ruin the Best of Plans and Intentions</i> | REGISTER HERE |
| 11/13/2019 | Leimberg Webinar Services (LISI) | Alan Gassman, John Beck and Leslie Share present: <i>Non-Charitable Private Foundations: A Hybrid Entity That Can Provide Effective Asset Protection, Flexibility and Cost Savings -Whether to Use These With or Instead of APTs, LLCs</i> from 3 PM to 4:30 PM ET | REGISTER HERE |
| 11/14/2019 | Learning at Lunch Webinar Series | Michael Lehmann presents: <i>Noncash Charitable Giving - Part 2</i> from 12:30 PM to 1 PM ET (Moderated by Ken Crotty) | REGISTER HERE |
| 11/14/2019 | Maui Mastermind Wealth Summit at The Fairmont Orchid in The Big Island, HI | Alan Gassman presents: <i>Estate Planning and Legal Considerations for Life Post Exit: What do you need to set up today for life post exit?</i> | REGISTER HERE |
| 11/20/2019 | Leimberg Webinar Services (LISI) | Alan Gassman and Christopher Denicolo present: <i>Estate and Trust Planning with S Corporations After TRA 2017 - And Recent Developments</i> from 3 PM to 4:30 PM ET | REGISTER HERE |
| 11/21/2019 | Leimberg Webinar Services (LISI) | Alan Gassman, Ken Crotty and Cristopher Denicolo present: <i>Dynamic Planning with Irrevocable Trusts After TRA 2017</i> from 3 PM to 4:30 PM ET | REGISTER HERE |
| 11/21/2019 | Learning at Lunch Webinar Series | Alan Gassman presents: <i>Planning for Florida Dental Practices and Their Owners</i> from 12:30 PM to 1 PM ET | REGISTER HERE |

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| 11/22/2019 | Leimberg Webinar Services (LISI) | Alan Gassman presents: <i>Planning With APT's After Resnin and Cleopatra, and Other Planning Opportunities and Developments--Let My Assets Go!</i> from 3 PM to 4:30 PM ET | REGISTER HERE |
| 12/5/2019 | Learning at Lunch Webinar Series | Barry Flagg presents: <i>What To Ask For To be Able to Actually "Read" A Life Insurance Illustration?</i> from 12:30 PM to 1 PM ET (Moderated by Alan Gassman) | REGISTER HERE |
| 12/7/2019 | Mote Vascular Foundation Symposium | Alan Gassman presents: <i>Estate, Medical Practice, Retirement, Tax, Insurance, and Buy/Sell Planning – The Earlier You Start the Sooner You Will Be Secure</i> from 10:20 AM to 11:50 AM ET | Registration available soon |
| 12/12/2019 | Learning at Lunch Webinar Series | Barry Flagg presents: <i>Indexed Universal Life – Who Says Hedge Funds Are Only For the Rich?</i> from 12:30 PM to 1 PM ET (Moderated by Alan Gassman) | REGISTER HERE |
| 12/19/2019 | Learning at Lunch Webinar Series | Alan Gassman presents: <i>Success Tips for First Year Lawyers (and all other professionals) - Part 1</i> from 12:30 PM to 1 PM ET | REGISTER HERE |
| 12/26/2019 | Learning at Lunch Webinar Series | Alan Gassman presents: <i>Success Tips for First Year Lawyers (and all other professionals) - Part 2</i> from 12:30 PM to 1 PM ET | REGISTER HERE |
| 1/9/2020 | Learning at Lunch Webinar Series | David Finkel presents: <i>The Ten Must-Follow Rules to Leverage Your Personal Assistant to Make Your Life More Fun, Profitable, and Enjoyable</i> from 12:30 | REGISTER HERE |

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| | | PM to 1 PM ET (Moderated by Alan Gassman) | |
| 1/16/2020 | Learning at Lunch Webinar Series | David Howell and Larry Rybka present: <i>How to Retire in the Magical Retirement Income Castle in the Clouds</i> from 12:30 PM to 1 PM ET (Moderated by Alan Gassman) | REGISTER HERE |
| 1/21/2020 | Community Foundation of Sarasota County - Distinguished Speaker Series | Alan Gassman presents: <i>Creditor and Trust Planning Strategies You May Not Know About</i> | REGISTER HERE |
| 1/23/2020 | Learning at Lunch Webinar Series | Christopher Denicolo presents: <i>Explaining the Installment Sale to a Defective Trust</i> from 12:30 PM to 1 PM ET (Moderated by Alan Gassman) | REGISTER HERE |
| 1/30/2020 | Learning at Lunch Webinar Series | Alan Gassman presents: <i>The Biggest Mistakes Physicians Make As Owners and Non-Owners in Medical Practices</i> from 12:30 PM to 1 PM ET | REGISTER HERE |
| 2/6/2020 | John Hopkins All Children's 22nd Annual Estate, Tax, Legal & Financial Planning Seminar at multiple viewing locations across Florida | Please consider attending to support this great event | REGISTER HERE |
| 2/6/2019 | Learning at Lunch Webinar Series | John Beck presents: <i>Don't Be Passive: Passive Rental Losses</i> from 12:30 PM to 1 PM ET (Moderated by Alan Gassman) | REGISTER HERE |
| 2/12/2020 through 2/14/2020 | The Florida Tax Institute at Marriott Waterside Tampa in Tampa, FL | Please visit our display table in the Exhibit Hall for a free book | REGISTER HERE |
| | USF Resident | Alan Gassman presents: | |

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| 5/1/2020 | Intern meeting at Tampa General Hospital in Tampa, FL | <i>Contract Negotiations</i> from 4 PM to 5 PM ET | MORE INFORMATION |
| 5/15/2020 | USF Resident Intern meeting at Tampa General Hospital in Tampa, FL | Alan Gassman presents: <i>Contract Negotiations</i> from 4 PM to 5 PM ET | MORE INFORMATION |
| 5/29/2020 | USF Resident Intern meeting at Tampa General Hospital in Tampa, FL | Alan Gassman presents: <i>Contract Negotiations</i> from 4 PM to 5 PM ET | MORE INFORMATION |
| 6/5/2020 | USF Resident Intern meeting at Tampa General Hospital in Tampa, FL | Alan Gassman presents: <i>Contract Negotiations</i> from 4 PM to 5 PM ET | MORE INFORMATION |
| 8/28/2020 through 8/30/2020 | 46th Annual Notre Dame Tax & Estate Planning Institute | Please consider attending to support this great event | Registration available soon |

We welcome contributions for future Thursday Report topics. If you are interested in making a contribution as a guest writer, please email Alan at agassman@gassmanpa.com

This report and other Thursday Reports can be found on our website at www.gassmanlaw.com

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