



STATEMENTS

Third Quarter 2011



Gift of Partnership Interest

by Jeffery Kohn, Staff Accountant

A once common technique of gifting partnership or LLC interests is now under scrutiny and the IRS is being much more aggressive in challenging this estate planning strategy. The IRS is limiting a taxpayer's ability to make such gifts and it has become necessary to be more careful about the way that the transfer is structured.

In prior years, it used to be that a taxpayer could easily transfer a minimal percentage of a partnership or LLC each year as a gift without affecting the taxpayer's lifetime gift tax exemption. The lifetime gift tax exemption (\$5 million for 2011) is the total amount that a taxpayer can transfer to others free of gift tax. This amount does not include the annual exclusion (\$13,000 for 2011). For example, a father owns a building, and wants to give part of it to his children. So he puts the property into a partnership or LLC. The property is valued, and he transfers a value of \$13,000 per year to each child. This allows him to give a tax-free gift to his children, without the need to file a gift tax return or use any of his \$5 million lifetime

exemption. Now, the IRS is holding that the recipient has to be able to either have use of the interest, or receive consistent income from the interest, or it's not considered a gift. Often times a percentage of a partnership

"There are many benefits to gifting partnership or LLC interests, and can be a worthwhile and effective strategy."

or LLC interest is transferred, but the recipient has no real use of it because the donor still maintains full control and has retained rights to potential income. The IRS is more heavily scrutinizing these types of transactions, and this may negatively impact the tax benefits of gifting partnership or LLC interest.

There is also a timing issue at hand. For 2011 and 2012, current law states that the lifetime exemption is \$5 million. But on January 1, 2013 the lifetime exemption amount is scheduled to be reduced to \$1 million. Therefore, due consideration should be given to ensure that the enhanced exemption is fully utilized and future estate tax liabilities are fully mitigated. If structured in an appropriate way, there are many benefits to gifting partnership or LLC interests, and can be a worthwhile and effective strategy. Here is why:

- Generally, there is no tax upon contribution of assets to the partnership or LLC, even if the asset has increased in value.
- The general partner can make a gift transfer up to \$13,000 per recipient, per year. This does not affect the \$5 million lifetime exemption. And, there is no need to file a gift tax return as long as the gift has a value of \$13,000 per year or less.

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Client Profile

Cebro Frozen Foods, Inc.

by Pamela Raumer, Business Development Director

Eighty-five miles southeast of the Bay Area, close to the heart of California's central valley, lays the City of Newman, an agriculturally rich and productive farming region. Cebro Frozen Foods was founded here in 1992, but the story of their family owned business started with the Cerutti Brothers, Bill, Tony and Frank in the 1950's.

Originally ran as a dairy, Bill's son, Skip, took over, convinced his Father to get out of the dairy business and began what is now one of the area's largest farming operations, Cerutti Bros., Inc. In the early '90's, he made the business more manageable by decreasing their acreage from 12,000 to 6,500 acres. In 1992, being at the mercy of other processors, Skip built an IQF (Instant Quick Freeze) Plant that allowed him the ability to freeze everything they grew.

When Skip passed away, his son Patrick became the president of Cerutti Bros., Inc. and Cebro Frozen Foods. The family still grows alfalfa for dairy farms, but their main produce today is broccoli, cauliflower, tomatoes, jalapeno peppers and zucchini. Everything is run through the freezer plant and then Cerutti Bros. Trucking distributes the frozen vegetables throughout California.

Cebro Frozen Foods, Inc. adheres to a widely-recognized set of standards in food handling and processing and is a Superior AIB rated Processing Company. They are a bulk supplier of organic, kosher and conventional IQF vegetables and process twelve months a year. In 2010, Cebro installed a 1 megawatt solar system which has reduced their PG&E by 50 percent. By summer 2011, they expect to be generating enough excess energy to offset their own off-peak use.

The family business is exactly that. According to Robert Fantazia, who is CFO and has been with the Cerutti's since 1988, "The Company is like a family. Patrick took over the reins from his father and has done a phenomenal job with the way he runs the business and treats his employees. Everyone loves him and is quite proud of his accomplishments". A testament to Patrick is that most of his employees have very long tenure. For more information about Cebro Frozen Foods, visit their website at www.cebrofrozenfoods.com.



Cebro Frozen Foods, Inc. Plant in Newman, CA

"I have had the pleasure of working with Rajiv Behti for a number of years. Our relationship has evolved from CPA/Client, to good friends. We talk often and I use him not only for tax and audit, but for estate planning and planning the Companies future. He is very personable, knowledgeable and dedicated."

— Robert Fantazia

Gift of Partnership Interest

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- Valuation discounts can be applied to the interest, which may potentially allow for a greater transfer of value to the recipient.
- Any post transfer appreciation related to the gift escapes estate taxes on the donor's passing, and the eventual liability is further deferred.

The next several months are critical in ensuring that due attention and consideration is paid to estates of individuals with a substantial asset base. The increase in the lifetime exemption of \$5 million is scheduled through December 31st 2012, at which time it is planned to be reduced. Therefore, an opportunity to avoid estate and gift taxes in the future will be lost. The

gifting of partnership or LLC interests still remains, but requires planning to achieve the goal of wealth transfer to the next generation, at a minimal tax cost.

As always, please call your RINA representative for more information regarding estate planning ideas, opportunities and consequences.



Have You Considered Starting Your Own Insurance Company? Maybe it's Time You Did.

by Michael A. Borges

As a result of recent IRS rulings, privately held business owners are forming captive insurance companies. Captive insurance companies are special purpose corporations formed to insure risks of an affiliated entity. In particular, a closely held concern which generates taxable income in excess of \$1 million is able to cost effectively fund their commercial insurance needs. Owners have reaped the additional benefit of pre-tax wealth accumulation, asset protection and estate planning/wealth distribution.

Once reserved to only the Fortune 500's of the world, captives have been adopted by closely held concerns as well to manage business risk. An insurance company formed under Internal Revenue Section 831(b) may receive premiums up to \$1.2 million per year; tax free, while allowing the business owner to

take a current federal and state tax deduction. If there are no insured losses, profits up to \$1.2 million are not taxed until distributed to the owners as qualified dividends or capital gains, currently taxed at 15%. Additionally, the insurance company may be owned by the children or heirs of the business owner effectively transferring wealth without the imposition of estate tax.

Captives may be used to insure deductibles under traditional insurance coverage's such as workers' compensation, general/products liability and property. Captives also enable business owner's to manage other risks that they typically do not buy insurance for because it is too expensive in the commercial market. Such risks include earthquake, accounts receivable, pollution, product warranty, intellectual property and loss of a key supplier. These self-insured

risks can be financed effectively through the captive with pre-tax dollars.

Many states in the U.S. have enacted legislation allowing the formation of captive insurance companies. Capital requirements start at \$250,000 and the cost of formation is approximately \$75,000.

A good candidate for a captive insurance company is a privately or closely held business with taxable income of \$1 million or more and individual business owners with asset protection/diversification and estate planning needs.

Michael Borges, has over 25 years experience in the insurance industry. He began his career as a C.P.A. with a Big Four accounting firm. Michael served 20 years as a senior executive in retail brokerage, specializing in alternative risk finance including captive, finite and self-insurance programs.



Anticipated New Regulations Warrant Increased Scrutiny of Your Independent Contractors

by Alison Hightower, Littler Mendelson

Businesses who retain independent contractors should consider evaluating their options this spring because the Obama Administration will be issuing draft sweeping regulations this year as part of its "Plan, Prevent, Protect" agenda that promote the employee's "right to know" his or her rights. While the regulations will be subject to public review and comment, these anticipated new regulations are expected to require all companies to prepare and potentially provide all workers a written summary of their justifications for classifying those workers as "independent contractors."

"Independent contractors" in brief are workers whose means of performing their work is not controlled by the company, who stand to make a profit or loss depending upon how he or she achieves the client's goal and whose relationship is not one of employer-employee. Businesses that retain independent contractors avoid paying payroll taxes,

Social Security and Medicare taxes (FICA), workers compensation premiums, federal or state unemployment insurance taxes, and disability insurance taxes. As a result, the federal government alone estimates it lost over \$34 billion dollars in unpaid taxes in eight years.

There is no bright line test that makes it simple to distinguish between a properly-classified "independent contractor" and an "employee." As a result, class action lawyers seek interested contractors who are willing to sue on behalf of themselves and a class of "independent contractors" to challenge that status and seek back pay, interest, benefits, and attorneys' fees. These lawsuits have resulted in multi-million dollar settlements and verdicts for panoply of businesses.

According to the Department of Labor, the anticipated federal regulations intend to transform labor law from an environment of

"catch me if you can" to a culture that prevents misclassification of workers. Hence, the DOL is adding the anticipated requirement that businesses analyze their usage of independent contractors and share that information with their workers. Plaintiffs' lawyers will no doubt seize upon the new explanations businesses will be required to draft when they bring suit on behalf of independent contractors who are interested in suing for additional compensation or benefits from former clients. Meanwhile, regulators are sharing information and thus increasing the likelihood that audits will spread from agency to agency.

The time is therefore ripe for all businesses that use—or are considering using—independent contractors to take a fresh look at whether these workers are properly classified as such. RINA's Kelly Creed is teaming up with experienced employment counsel Alison Hightower from Littler Mendelson to help their clients understand the distinction between an "independent contractor" and an "employee."

Contact Alison Hightower at ahightower@littler.com for additional information about Independent Contractors.

RINA Second Quarter

AUGUST

August 1

- Second quarter 2011 payroll and sales tax returns due
- Qualified retirement plans (2010 Forms 5500) due

August 15

- 2009 Forms 990, 990-EZ, 990-PF due for calendar year end exempt organizations that filed an automatic three-month extension

SEPTEMBER

September 1

- County business property tax payment due

September 15

- Final due date for 2010 tax returns for calendar year end corporations that filed an automatic six-month extension
- Final due date for 2010 tax returns for calendar year end partnerships and trusts that filed an automatic five-month extension
- Third quarter 2011 estimated tax payments for individuals due
- Third installment of 2011 estimated tax for calendar year end corporations due



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RINA Gives Back

by Calley Englund, Administrative Assistant



Calley with Beauty and adoption papers

Calley Englund, Administrative Assistant in the RINA Walnut Creek office, works with a volunteer program called Community Concern for Cats (CC4C). It is a non-profit/no-kill cat rescue organization which was founded in October 1986 by citizens concerned with the growing numbers of abandoned and colonized cats. CC4C does not believe in euthanasia and each animal rescued is placed with a foster until they are adopted since there is no onsite facility for the organization. Their mission is to humanely address the problem of cat overpopulation through rescue, medical sterilization, and continued care of felines. CC4C is an all volunteer organization maintained on donations and fund-raising. They service the Contra Costa County area and average about

600 adoptions a year along with providing needed care for feral cat colonies.

Calley volunteers as a foster with CC4C, where she will take in usually two kittens at a time to live with her. She spends time socializing them so they can be placed for adoption. Calley has fostered a total of five kittens with CC4C and recently has adopted one of her current fosters - a black cat named Beauty. Calley, along with CC4C, prepared for Maddie's Fund® which was held on Saturday, June 4th and Sunday, June 5th. This was a special event that waived the adoption fees to qualified adopters at more than 40 shelters and rescue groups in Alameda and Contra Costa counties. The weekend "Adoptathon" was being held to honor the spirit of a Miniature Schnauzer named Maddie. Maddie's Fund®, The Pet Rescue Foundation is a family foundation established in 1994 to help fund the creation of a no-kill nation. Since its inception, Maddie's Fund® has awarded animal welfare organizations and universities \$71.6 million to save dog and cat lives.



Visit their website of current adoptable kitties to view photos:
www.communityconcernforcats.org

President Obama signs Bill Repealing Health Care Law's 1099 Provision



On April 14th, President Obama signed into law the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, which retroactively repeals the expanded 1099 tax-reporting requirements from the 2010 health care law. For payments made after December 31, 2011, businesses will not be required to issue 1099 forms to corporations and payments for goods or other property in excess of \$600. The Act also repealed the 1099 reporting requirement for recipients of rental real estate income who are not otherwise considered to be engaged in the trade or business of renting property. The old 1099 rules, those that were in place before 2010, are still in effect. Please contact us if you have any questions.