

Provenance Wealth Advisor



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Attention: would-be directors and officers

Protect yourself with D&O insurance

Installment sales

Sell assets now, pay taxes later

Balancing act

Choosing your portfolio's
core and noncore investments

**How will relocating
affect your taxes?**

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Attention: Would-be directors and officers

Protect yourself with D&O insurance

Help wanted: *Director or officer to serve on the board of a dynamic organization. Seeking bold, thoughtful leader with exceptional interpersonal skills and long-term vision. Must be comfortable assuming enormous responsibility as well as nearly unlimited personal financial risk for lawsuits over executive mismanagement, dissatisfied shareholders, lenders or disgruntled employees.*

This ad may be made-up, but the situation it underscores surely isn't. These days, bad executive decisions, poor stock performance or weak employee relations — to name only a few possibilities — can lead to costly legal action. And it's not just companies that are vulnerable to financial loss. Increasingly, the directors and officers of those companies are individually at risk as well.

Fortunately, directors and officers (D&O) insurance allows you to protect your personal assets

from business-related lawsuits. This coverage has long been provided by large public companies, and it has become more popular at private firms and nonprofit organizations.

Limit your liability

In essence, D&O insurance helps protect an organization's directors and officers from liability resulting from management decisions. There are myriad ways in which directors or officers can put themselves at risk — committing a crime, failing to disclose a conflict of interest or otherwise breaching their fiduciary responsibilities.

But even if directors or officers do nothing wrong, they still can be held financially responsible for others' missteps if they're sued and the company lacks sufficient assets to protect them. Indeed, directors and officers are vulnerable to numerous types of company lawsuits. Employment-related litigation — covering such claims as harassment, discrimination and wrongful termination — is particularly common, while legal action also may be brought by unhappy shareholders, lenders, customers, suppliers, competitors or government regulators.

D&O insurance is important because it can help protect your personal assets if you're sued in conjunction with your role as a director or officer.

Nonprofits and D&O insurance

Directors and officers of nonprofit organizations might feel less vulnerable to lawsuits knowing they have

D&O and E&O insurance: Are they the same?

D&O insurance differs from other widely used types of business insurance, including errors and omissions (E&O) coverage. It's common to view E&O insurance as an alternative to a D&O policy, but they cover different sets of risks.

E&O insurance covers the business itself against problems stemming from potential failures in the products and services a business offers its customers; D&O insurance protects individual officers and directors from financial risk stemming from management decisions — either yours or someone else's.

For example, an accounting firm's E&O insurance would kick in if it were sued for producing inaccurate financial statements. But if the company's chief executive had signed off on those statements to potentially enrich a favored client, other directors and officers might rely on their D&O coverage to protect their personal assets from lawsuits over this serious misjudgment.

no shareholders to appease or regulators to satisfy, but they too can benefit from D&O insurance.

Even though nonprofits lack shareholders, they do have stakeholders — financial contributors or other individuals with a personal interest in the organization’s mission. Nonprofit directors and officers can find themselves at risk if these stakeholders decide to sue its leaders for mismanagement of the organization.

What to look for

If you’re considering a directorship or an officer position, or if you’re a private equity investor planning to assume a board seat for an acquired firm, make sure D&O insurance is made available to you. If it isn’t, consider whether taking the position is worth subjecting your assets to extensive financial risk.

When offered a D&O insurance policy, determine exactly what it covers. For example, some insurers won’t cover fraud-related claims, while others specifically exclude employment-related litigation.

Private equity investors should note that some D&O policies may not provide coverage specialized enough for your needs. It’s a good idea to run a prospective policy by a knowledgeable advisor to make sure you’ll be adequately protected.

D&O insurance helps protect an organization’s directors and officers from liability resulting from management decisions.

Next, weigh what’s covered against the specific risks you’re most likely to face. For example, if you’re thinking about joining the board of a company with a history of rocky employee relations, determine whether you’ll be protected from employee-related lawsuits. If you uncover potential gaps in the D&O policy, or if it includes provisions that could lead to your coverage being rescinded in certain situations, you may need to obtain additional protection through supplemental liability insurance.



Too risky to forgo

Companies are increasingly providing D&O insurance as a matter of course, but the coverage is not universal. Because of the large financial stakes involved, the coverage can be expensive (a further indication of its importance). Fortunately, as the popularity of D&O insurance grows, so does competition among the providers, resulting in lower premiums.

Whatever the cost, D&O insurance is no longer a luxury; it’s a necessity for would-be directors and officers who want to protect their own assets in an increasingly litigious society.

In today’s post-Enron, post-Sarbanes-Oxley world, never have the responsibilities of directors and officers been greater, nor have investors ever expected more accountability from these people. So, no matter how valuable you believe you can be to an organization, think twice before taking on big responsibilities without the proper insurance coverage. ■

Installment sales

Sell assets now, pay taxes later

Not having to pay taxes on the sale of assets such as real estate or closely held stock is unlikely. But deferring the tax is possible using the installment method.

An installment sale can provide other seller benefits too, such as a higher sale price because you're providing the buyer with a lender. But you should assess the potential drawbacks, too, to determine when — and if — the installment method is right for you.

The breakdown

In an installment sale, you sell an asset and receive at least one payment after the year of the sale. The buyer typically provides a down payment and makes installment payments on the balance (financed by you, the seller) according to the terms of the sales agreement.

You recognize income only as you collect it, which allows you to defer tax on the gains. You also collect interest on each installment.

Assets on which gains must be treated as ordinary income — such as the sale of inventory, accounts receivable or property held less than a year — aren't eligible for an installment sale. Neither is publicly traded stock. Appreciated property and intangibles, such as goodwill established during the course of business, typically are eligible for an installment sale.

To determine the amount you must report as taxable gain for the year, each time you receive a payment, the principal is multiplied by the gross profit percentage. The gross profit percentage equals the selling price less the tax basis of the property, selling expenses and any depreciation recapture divided by the selling price of the asset.

Assessing gain

Using the installment method affects the timing of the recognition of gain from the sale, but it



doesn't affect the characterization of the gain as long-term capital gain vs. ordinary income. The character in each of the taxable years will depend on the nature of the asset sold, the amount of accumulated depreciation taken in prior tax years and your holding period for the asset.

As the seller, you have the option to elect not to use the installment method but instead report the entire gain in the year of the sale. If you choose this method, it's irreversible unless you obtain permission from the IRS.

Opting out of an installment sale might be beneficial if you have expiring capital losses in the year of the sale that could offset the capital gain from the sale or if you expect a future tax rate hike. Gain you report in future years will be subject to the applicable tax rates for those years, not the tax rates that were applicable when you sold the asset. When structuring the terms of an installment sale, take into account the effects of the scheduled increase in long-term capital gains rates (generally from a 15% to a 20% rate) after 2010.

Potential drawbacks

Although there are many benefits to using an installment sale, you must weigh them against the potential drawbacks. For example, as the seller, you assume full risk should the buyer not fulfill the payment agreement or the property value decrease.

Additional challenges arise when sellers are forced, because of a buyer default, to receive back a business or property, particularly if it has depreciated significantly because of poor

management or market conditions. Other points to consider include:

Depreciable property. Such property is subject to an acceleration of a portion of the gain. Tax on depreciation recapture isn't taxed only at a higher rate but must be paid in the year of sale regardless of the number of payments received.

Sale to a related party. Your gain will be accelerated if you make an installment sale to a related party and that party then sells the asset within two years. You'll have to pay tax on the total remaining gain in the year the related party sells.

Restriction on tax deferral. If your outstanding installment receivables are more than \$5 million

in a tax year, they are subject to a restriction on tax deferral. You will be required to pay an interest charge on the amount of tax deferred.

Interest. If you don't provide for an adequate interest rate (defined by the IRS), a portion of your sales proceeds will be deemed to be interest and taxed at your higher ordinary income tax rate.

Judging if it's right for you

Depending on your financial circumstances, an installment sale could be a viable option for selling your assets. Research the pros and cons carefully and speak with a financial advisor to help inform your decision. ■

Balancing act

Choosing your portfolio's core and noncore investments

As any sports fan knows, it doesn't take a team of all-stars to achieve a winning record. Successful teams surround a few star performers with other players who understand and execute their assigned roles — thus making the sum of the parts greater than the whole.

This is a good analogy for investing, too. Even though you might be tempted to fill your portfolio exclusively with a collection of top-performing stocks or mutual funds, a more effective alternative may be to divide your holdings into two basic groups — core and noncore investments. Together they may provide you with better return potential and less risk.

Core investments

Core holdings get their name from the central role they're expected to play in a portfolio. They aren't designed to be your best- or worst-performing investments in any given year. Rather, their primary purpose is to provide steady, long-term results



to get you closer to your financial goals. If you choose wisely, good core holdings should fit comfortably in your portfolio for many years.

Which core investments are appropriate for you? The answer depends on your specific goals and time horizon; thus, it can differ greatly from investor to investor.

For example, younger investors looking to build wealth for their retirements in several decades generally should focus on stocks — perhaps owning a diversified collection of individual securities or an equity mutual fund consisting of large, high-quality U.S. and international companies — because of their relatively higher return potential (at greater risk, of course). Older investors who are focused on preserving their assets likely will favor a more conservative mix of investments — such as including a diversified high-quality bond fund — at the core of their portfolios.

This isn't to say that relatively aggressive investors shouldn't own bonds or that stocks aren't appropriate for more conservative investors. But your core holdings are important precisely because they represent your primary building blocks as you strive to save enough for college expenses, retirement or other long-term needs.

Noncore investments

In contrast, noncore holdings tend to be smaller allocations that still have important roles in your portfolio: 1) to enhance your return potential and 2) to reduce your overall risk.

Core holdings get their name from the central role they're expected to play in a portfolio.

Not one-size-fits-all

Everyone can benefit from the basic idea behind core investing — owning the bulk of your assets in steadier performers that give you the best chance of reaching your long-term financial goals, while also maintaining a collection of smaller, noncore positions to increase your return potential and diversification.

Exactly which investments and how much of them you should own will depend on your individual circumstances. Your financial advisor can help you choose not only which investments you should own, but also the proper balance between your core and noncore investments. ■

How will relocating affect your taxes?

You've been thinking about relocating to another state — or perhaps purchasing a second home there — and have carefully considered the impact on your family, career and lifestyle. But have you researched the impact on your taxes? And will changing your domicile or "permanent home" be necessary — or

desirable? Before you pack your bags, do your homework to ensure that your planned move is a good move.

Establishing your true tax home

The first issue to consider is domicile — the state in which you intend to make your true, fixed and permanent home. If you have only

one home — even in a new state — this usually will be determined easily. But if you have residences in more than one state with relatively similar amounts of time spent in each, you must decide where you want to establish your legal domicile.

Your established domicile determines which state’s jurisdiction you’re subject to in terms of state income and estate taxes. Unless you clearly establish one, you could end up in a battle between two or more jurisdictions fighting for your tax dollars.

Even though you may be a resident of two or more states at once, you can have only one domicile. In most states you’re not subject to state income tax as a resident unless you spend more than half the year in that state. But if a state is considered your domicile, it may be able to tax all of your income regardless of how much time you spend there.

To avoid unpleasant tax surprises, actively try to establish your domicile. There are several ways, from filing a declaration of domicile in the new state to obtaining a driver’s license or automobile license plates, or registering to vote there. Your business and social activities in each state, where your family lives, address used on accounts and documents, and where you keep your valuable possessions also are good indicators of your established domicile.

Assessing the tax climate

The weather may be mild year-round, but what’s the tax climate in the state where you’re contemplating a move? Consider whether the state has an income, property, sales and estate tax. For example:

- Many states tax income similarly to the federal income tax system. Some states have no income tax, while others don’t tax wages, but do tax interest and dividends, which will affect your investment income. And many states offer tax breaks for pension payments, retirement plan distributions and Social Security payments. Other states have “intangible” taxes based on the value of certain investments or other assets.



- State (and local) income taxes are deductible on your federal income tax return. But you can elect to deduct sales taxes instead, which can be an attractive alternative in a low- or no-income tax state. However, note that though these taxes — as well as property taxes — can reduce your federal income tax bill, they also can cause you to be subject to the federal alternative minimum tax (AMT). State and local taxes aren’t deductible for AMT purposes, and this may limit the actual benefit you receive from these deductions.
- State estate tax usually is imposed by your state of domicile, and this can have a much larger effect than the income tax. But even if you change your domicile to a state without a death tax, you’ll generally be subject to estate taxes by a state where you own real estate. One way to avoid those taxes is to sell property and reinvest the proceeds in the new state.

Keep in mind too that the property and sales taxes in larger cities and suburbs are typically higher than those in rural areas.

Making the right move

Carefully considering the financial implications of relocating is critical. Talk with your financial advisor about the tax advantages — and disadvantages — of moving to a particular state and the best ways to maximize your tax savings. ■

Choose the Right Advisor to Make the Right Moves



“We believe in a comprehensive financial perspective. We provide our clients with an integrated approach to income, estate, business and investment planning. Upon completion of a comprehensive plan, we proactively implement the plan to achieve the desired outcome.”

OUR SERVICES INCLUDE:

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 - Employee Benefit Planning



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