SPLIT DOLLAR ARRANGEMENTS – SHIFTING TO COLLATERAL ASSIGNMENTS

By Jack Couzens, II







Types of Split Dollar Arrangements

- Endorsement Method
- Collateral Assignment Method







Corporate Split Dollar

Taxation. In a corporate setting, the premiums paid by the corporation are not deductible and the employee will either pay income tax on the economic benefit granted or if the plan isn't structured to grant the corporation back the greater of cash value or premiums, then under final regulations, the person receiving the benefit will be required to pay interest on premium payments which will be characterized as loans from the corporation to the recipient.



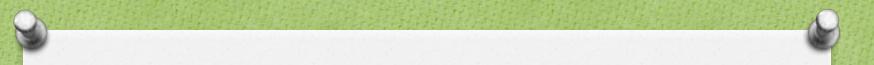




Private Split Dollar

- A private split dollar agreement is an arrangement whereby one party (donor) pays that portion of the premium attributable to the economic benefit on the life insurance policy on the insured.
- Gift taxes may be minimized due to low economic benefit rates used to measure the gift tax value of premium payments.





In a private split dollar arena, an LLC is often formed by the donor and owned primarily by the donor, with investments deposited into the LLC.



Funding Cross-Purchase Buy-Sell Agreements







Unwinding a Split Dollar

- Reasons for terminating a split dollar agreement.
 - O Upon the death of the first spouse to avoid a sharp rise in economic benefit rates and actual or imputed taxable gifts.



ESTATE PLANNING FOR SAME-SEX COUPLES

By: Alan C. Roeder and Monica Moons



I. History

- A. Federal Defense of Marriage Act
 - IRC §3 defined marriage as "the legal union between one man and one woman as husband and wife".
 - 2. United States v. Windsor
 - Rev. Rul. 2013-17





B. Michigan Constitution

1. By popular vote in 2004, Article 1, §25 was added



- 2. Same-sex marriages are not recognized in Michigan
 - a. U.S. District Court
 - b. 6th Circuit Court of Appeals
 - c. DeBoer v Snyder



C. U.S. Supreme Court – October 6, 2014





D. States that recognize same-sex marriages

 As of today, approximately _____ states recognize same-sex marriages





II. Estate Tax

- A. Federal
- B. Michigan



- 1. Maximum allowable federal credit
- 2. Ranges from .8% for adjusted taxable estates not over \$90,000 to \$1,082,800 plus 16% for adjusted taxable estates over \$10,040,000
- 3. Solution?



KEY ISSUES FOR FINANCIAL ADVISORS IN BUSINESS ACQUISITIONS

By Christopher M. Williams



SESSION OBJECTIVES

A. Objectives.

- 1. To provide a general overview of Michigan business acquisition transactions from both the Seller's perspective and the Buyer's perspective with a focus on asset and equity acquisitions.
- To identify areas where financial advisors add value to their clients in Michigan business sales transactions.



DEFINITIONS



B. Definitions.

- 1. Business Acquisition: The transfer of business assets or equity.
- 2. Financial Advisor: Anyone that provides financial advice to a client (e.g. accountant, financial planner, tax preparer, investment advisor, etc.).
- 3. Target company: A company being acquired, which may include a corporation, limited liability company, partnership, business trust, or other entity.



A. Who do you represent?

- 1. Identify your "client".
- 2. Define the relationship and determine whether other steps are necessary.





- B. Team of Advisors.
 - 1. Attorneys: Legal and tax advice and document preparation.
 - 2. Accountants: Tax and accounting advice.
 - 3. Insurance Agents: Insurance analysis and advice.
 - 4. Bankers: Financing options.
 - 5. Financial Planners: Short and long term planning considerations.



- C. Confidentiality Agreements.
 - 1. The Seller should have a confidentiality agreement in place before disclosing sensitive information to the Buyer including, but not limited to, corporate finances, customers, business prospects, and trade secrets.



- 2. From the Seller's perspective, the confidentiality agreement should be comprehensive, but not so unreasonably restrictive that it discourages negotiations.
- 3. The objective is to permit the Buyer to investigate the business while protecting the Seller's business interest.



D. Letter of Intent.

- 1. A Letter of Intent is also known as a memorandum of understanding, agreement in principle, or commitment letter. It is similar to a term sheet which uses bullet points rather than a letter format.
- 2. Using a Letter of Intent is not mandatory in a business acquisition, and may be helpful or harmful depending on the circumstances.



- 3. Advantages to using a Letter of Intent:
 - a. Provide assurance that the parties possess a legitimate interest in seeing the deal through to closing.
 - b. Set the ground rules for negotiation.
 - c. Provide the framework for the final agreement.



- d. Save time and money by evaluating major issues before negotiating finer points of a deal.
- e. Avoid ambiguity of verbal communication.



- 4. Disadvantages to using a Letter of Intent:
 - a. Can waste time and money if too much time is put into negotiating the Letter of Intent rather than the final agreement.
 - b. If the parties become wrapped up in minute issues rather than focusing on universal issues, they may prematurely shut down negotiations.



- c. May promote confusion and ambiguity which could be exploited by one of the parties to a transaction.
- d. May be determined by a court to be binding even though one of the parties believed the letter to be nonbinding.
- 5. Letters of Intent should be prepared and/or reviewed by an attorney prior to signing.



- E. Structure of Transaction.
 - 1. Major Considerations.
 - a. Assets.
 - b. Liabilities.
 - c. Financing.
 - d. Security.
 - e. Taxes.



- 2. Basic Types of Business Acquisitions.
 - a. Sale of Assets.
 - 1) The most common form of business acquisition where the Seller sells and the Buyer buys some or all of the assets of a company.
 - 2) The Buyer does not acquire the Seller's liabilities, except in limited circumstances.
 - 3) Required approvals needed to approve a sale of assets.



- b. Sale of Equity.
 - 1) An entity or individual purchases stock or membership interests for cash or upon terms.
 - 2) Fewer legal complications typically are encountered, since the Buyer is dealing directly with the selling shareholder or member.

THINK ONCE...

THINK BUSINESS FOR SALE.

THE SMART CHOICE. EMPOWERS YOU.



- 3) No appraisal rights or corporate formalities need to be observed.
- 4) Restrictions on the sale of equity (e.g. buy-sell agreements) must be considered.
- 5) The Buyer assumes the liabilities of the target company.





- c. Tax-Free Reorganization of C Corporations:
 - Type "A": Mergers The surviving corporation assumes the identity of the other corporations to the merger and all of their assets and liabilities.
 - Type "B": Stock for Stock One corporation acquires all of the outstanding shares of another corporation from its shareholders in exchange for the acquiring corporation's shares.





3) Type "C": Stock for Assets - An acquired corporation transfers all (or substantially all) of its assets to the acquiring corporation in exchange for stock in the acquiring corporation. The acquired corporation is then liquidated, and the stock of the acquiring corporation is distributed to the acquired corporation's shareholders.



- A. Due Diligence: Investigation and Analysis.
 - 1. Purpose of due diligence from the Buyer's perspective:
 - a. To determine the legal status of the target company.
 - b. To determine the financial condition of the target company.



- c. To determine the existence and value of assets and liabilities of the target company.
- d. To determine the steps to be taken before closing the transaction.
- e. To determine the rationality of a proposed transaction.



- 2. Purpose of due diligence from the Seller's perspective:
 - a. To determine the legal status of the Buyer.
 - b. To determine the financial ability of the Buyer to complete the transaction.



- 3. Due diligence should be completed as soon as possible to save the parties time and money.
- 4. Due diligence should be planned and coordinated among the parties' advisors to save time and money.





- 5. Due diligence generally occurs after a letter of intent has been signed, but before a definitive purchase agreement is signed. However, it may occur before the signing of the letter of intent and after the signing of a definitive purchase agreement.
- 6. The scope of due diligence will depend on the assets being acquired and the liabilities being assumed.



7. Key categories of due diligence:

a. Organizational documents.

- b. Corporate Minute Books.
- c. Capital Stock.
- d. Financial Statements.
- e. Tax Matters.
- f. Title to, liens upon and condition of assets.



- g. Real Property, including title, encumbrances, zoning and condition.
- h. Uniform Commercial Code (UCC) Searches.
- i. Personal Property.
- j. Intellectual Property (including any trademark rights in names to be sold).
- k. Contracts, commitments, permits, and licenses. Review should include change of control and assignment provisions.



- I. Products and Services (Warranties).
- m. Insurance.
- n. Environmental Matters.
- o. Litigation and Claims.
- p. Labor and Employment Matters.
- q. Benefit plans and arrangements.
- r. Export Control Violations.
- s. Sarbanes-Oxley Act of 2002.



- B. Pre-Closing Notices, Filings and Forms.
 - 1. Form UIA 1027 Business Transferor's Notice to Transferee of Unemployment Tax Liability and Rate.
 - Agency ("UIA") form is to notify the Buyer of the target company's unemployment tax rate and payment history as, generally, a Buyer who acquires 75% or more of the assets of a business is liable for unpaid unemployment taxes and interest owed as of the date of transfer, up to the reasonable value of the organization, trade, business, or assets acquired less the Buyer's security interest in the assets.



- b. The Seller must provide the Buyer with the form at least two calendar days (not counting Saturdays, Sundays, or legal holidays) before the Buyer accepts the Seller's offer to transfer the business.
 - c. Failure to provide accurate information is a misdemeanor that may result in imprisonment of up to 90 days, a fine of up to \$2,500, and a consequential damages award.
 - d. Obtain Form UIA 1346 Disclosure of Transferor
 Account to complete Form UIA 1027.



- 2. Form UIA 1395 Clearance of Account.
 - a. This form certifies the status of tax liability (taxes owing UIA) of the Seller.
 - b. The Seller or the Buyer should request the tax clearance prior to the sale, in writing not less than 10 days before the transfer of business, as to any amounts owing to the UIA.
 - c. When the UIA provides the clearance of account which certifies the tax liability as of the request date, the Buyer will not be liable for any amount due from the Seller in excess of the amount certified by the UIA.



- 3. Michigan Department of Treasury Form 5156 Request for tax clearance application.
 - a. The Buyer is required to escrow funds to cover the Seller's unpaid taxes, interest, and penalties until the Seller produces a receipt that the taxes have been paid or a certificate that no taxes are due and owing.





- b. Upon the Seller's written waiver of confidentiality, the Michigan Department of Treasury, shall within 60 days of receipt of the request, release to a Buyer a business's known or estimated tax liability for the purposes of establishing an escrow account for the payment of taxes.
- c. If the Buyer complies with these provisions, it will not be liable for more than the amount escrowed, and if the Department fails to produce the known or estimated tax liability then the Buyer shall have no liability for the Seller's unpaid taxes.





- 4. Worker Adjustment and Retraining Notification (WARN) Act notices.
- 5. Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 11 USC § 18a.
- 6. Notices to shareholders and members where applicable.
- 7. Notices to unions or employees.



- 8. COBRA notices.
- 9. Notices to customers (as agreed by the Buyer and the Seller).
- 10. Notices to suppliers (as agreed by the Buyer and the Seller).

Notices



C. Other Considerations.

- 1. Security law matters should be considered when equity interests are to be acquired.
- 2. The Exon-Florio provisions of the Defense Production Act of 1950, Pub. L. 81-774, 50 USC § 2061 et seq., provides for national security review when certain transactions could result in foreign investment in the United States.



- 3. Insurance.
 - a. Health insurance and COBRA issues (e.g. Post-closing health insurance for selling equity holders).
 - b. Administration of self-insured programs (Health Insurance and Worker's Compensation).





A. Purchase Agreement.

- 1. Key provisions for purchase agreements.
 - a. Draft date and parties.
 - b. Background.
 - c. Purchase price, payment, and adjustments.
 - d. Related agreements.
 - e. Pre-closing actions.





- f. Conditions precedent to the Buyer's obligations.
- g. Conditions precedent to the Seller's obligations.
- h. Closing matters.
- i. The Seller's representations and warranties.
- j. The Buyer's representations and warranties.



- k. Indemnification.
- I. Expenses.
- m. Termination.
- n. Miscellaneous provisions.
- o. Severability.
- p. Execution.



- 2. Additional key provisions for an asset purchase agreement.
 - a. Assets purchased and excluded assets.
 - b. Liabilities assumed and excluded liabilities.
 - c. Allocation of purchase price.
 - d. Delivery of assets free of encumbrances.



- e. Conditions precedent to the Buyer's obligations.
 - 1) Minimum Net Asset Value.
 - 2) Instruments of Transfer.
 - 3) Obtain known or estimated tax liability.
 - 4) Unemployment Insurance Contribution Liability.
 - 5) Name change documents.



- f. The Seller's representations and warranties.
 - 1) Material contracts.
 - 2) Title to purchased assets.
 - 3) Condition of purchased assets.
 - 4) Sufficiency of purchased assets.
 - 5) Progress payments.





- g. Employees.
- h. Post-closing receipts.
- i. Risk of Loss.
- j. The Seller's name.



- 3. Additional key provisions for a stock or membership interest purchase agreement.
 - a. Agreement to purchase equity interests.
 - b. Conditions precedent to the Buyer's obligations.
 - 1) Company's minimum net worth.
 - 2) Equity interest certificates.
 - 3) Waivers.
 - 4) Resignations of Officers.



- c. The Seller's representations and warranties.
 - 1) Articles and Bylaws or Operating Agreement.
 - 2) Capitalization.
 - 3) The Seller's Equity Interests.
 - 4) Contracts and Commitments.
 - 5) Title to Assets.
 - 6) Condition of Assets.
 - 7) Sufficiency of Assets.
 - 8) Materiality.



- d. Tax Matters.
 - 1) Indemnification.
 - 2) Preparation of Tax Returns.



B. Disclosure Schedules.

- 1. Part of the purchase agreement.
- 2. Provides qualifications and exceptions to representations and warranties made in the purchase agreement.
- 3. It is <u>critical</u> for the Seller to be accurate and complete to avoid liability to the Buyer.



C. Other Transaction Documents.

- 1. Bill of Sale (for asset sale).
- 2. Escrow Agreements.
- 3. Assignment and Assumption Agreement (for asset sale).
- 4. Personal Service Agreements.
- 5. Financing and Security Documents.



- 6. Bring-down certificate for conditions precedent.
- 7. General releases.
- 8. Opinion of counsel.
- 9. Letter to terminate the Seller's employees at closing (for asset sale).
- 10. Shareholder and director authorizations approving the transaction with secretary's certificate (for corporate parties).



- 11. Member and manager authorizations approving the transaction with member/manager certificate (for LLC parties).
- 12. Certificate of Good Standing / Certified articles.
- 13. Amendment to articles to change name (if acquired by the Buyer).
- 14. Termination of Assumed Names / Certificate of Assumed Names.



- 15. Resignations (officers, directors, managers, employees, and retirement plan trustees).
- 16. Stock certificates, endorsed for transfer, with assignment separate from certificate and stock transfer records (for stock sales).
- 17. Membership interest certificates (if any), endorsed for transfer with assignment of membership interests (for membership interest sales).



- 18. Vehicle titles endorsed for transfer (for asset sale).
- 19. Agreement and plan of merger / certificate of merger (in a merger transaction).
- 20. Transition services agreement.
- 21. Earnout agreements.
- 22. Closing Statements.





- D. Real Estate Transaction documents.
- E. Formation documents for any new entities.



A. Closing.

- 1. Ensure conditions precedent are satisfied.
- 2. Ensure all transaction documents are drafted and agreed to.
- 3. Ensure all authorizations and approvals (including third-party approvals) have been obtained.



- 4. Ensure all bank/third-party financing and loan documents are in place.
- 5. Address any Broker commissions.
- 6. Ensure insurance is in place (property and casualty, health, worker's compensation, life insurance, environmental, representation and warranty coverage, etc.).



- 7. Transfer keys, codes, combinations, garage-door openers, company record books, warranties, owner's manuals, and service records.
- 8. Set up bank accounts and obtain new bank signature cards.
- 9. Ensure payroll procedures are in place.



- 10. Coordinate transfer of utilities.
- 11. Appoint new directors and officers/managers for acquired entities.



B. Post-Closing.

- 1. Post-closing adjustments to the purchase price.
 - a. Time frame for adjustments.
 - b. Define key terms (e.g. accounts receivable, inventory, earnout triggers, working capital).
 - c. Provide access to books and records.



- d. Inventory adjustments.
- e. Accounts receivable adjustments.
- f. Earnouts.
- g. Accounts payable.
- h. Dispute mechanism.



- 2. IRS Form 8594 Asset Acquisition Statement Under IRC § 1060 (regarding tax allocations).
- 3. Employee benefit distributions, COBRA elections, and COBRA notices, if applicable.
- 4. Dissolution and liquidation of entity if applicable with required state and federal filings.



CLOSING AND POST-CLOSING MATTERS

- Michigan Department of Treasury Filings and UIA Filings (examples):
 - a. Michigan Department of Treasury Form 163
 - Notice of Change or Discontinuance (to be completed by the Seller to discontinue or change tax types).
 - b. Michigan Department of Treasury Form 5156
 - Request for tax clearance application (to be completed by the Seller).



CLOSING AND POST-CLOSING MATTERS

- c. UIA Schedule B Successorship

 Questionnaire (to be completed by the
 Buyer to fulfill successorship reporting
 requirement when acquiring the assets,
 trade, or business of another employer).
- d. Form UIA 1772 Discontinuance or Transfer of Payroll or Assets in Whole or Part (to be completed by the Seller).





BANKRUPTCY

By: Jerry M. Ellis



SUMMARY OF STATUTORY DEFENSES

The statutory defenses to a preference claim are set forth in 11 USC §547(c). They are summarized as follows:

- A. the transfer was a contemporaneous exchange for new value;
- B. the transfer was a payment in the ordinary course of business;
- C. the transfer was the granting of a purchase money security interest;
- D. the transfer was followed by subsequent new value given by the creditor to the debtor;



- E. the transfer was the granting of a security interest in inventory or a receivable or proceeds, and did not improve the creditor's position vis a vis his or her security interest prior to the preference period;
- F. the transfer is pursuant to a statutory lien not avoidable under § 545;
- G. the transfer was in payment of a debt for a domestic support obligation;
- H. the aggregate amount of the transfers from a consumer debtor did not exceed \$600;
- I. the aggregate amount of the transfers from a non-consumer debtor did not exceed \$5,475.



Other Possible Defenses:

- A. The Michigan Construction Lien Act, MCL §570.1101, et seq., grants to a contractor, subcontractor, supplier or laborer the right to place a lien for improvements to real estate on the real estate generally within 90 days of completing the work.
- B. The Michigan Building Contract Fund Act, MCL §570.151. This Act, commonly known as the Builders Trust Fund Act, provides in the building construction industry that the building contract fund paid by any person to a contractor, subcontractor, etc. is considered a trust fund for the benefit of the payor and the payees.

Other Possible Defenses:

C. The Michigan Special Tools Lien Act, MCL §570.541 provides to a "special tool builder" a lien on "special tools" (i.e., tools, dies, jigs, gauges, fixtures, etc.) for use in the fabrication of metal parts if the builder has (1) permanently recorded on the tools he made his name and address; and (2) files a financing statement pursuant to the UCC §9-502. MCL § 440.9502.







THE BASICS OF PROPERTY

THE BA



OVERVIEW

- The Michigan Legislature adopted a new foreclosure process in 1999.
- > The new process speeds up the time between the first delinquency and the transfer of title.



FORFEITURE PROCESS

- > Property taxes become delinquent on March 1 of the year following the due date of the taxes ("Year +1").
- On June 1 of Year +1, the County Treasurer must send a notice.
- On September 1 of Year +1, the County Treasurer must send a second notice.
- By February 1 of the second year following the due date of the taxes ("Year +2"), the County Treasurer must send a third notice.
- On March 1 of Year +2, if the delinquent taxes remain unpaid, the property forfeits to the County Treasurer.



FORFEITURE PROCESS

- By April 15 of Year +2, the County Treasurer must record a notice of forfeiture with the County Register of Deeds.
- Anyone with a legal interest in the property can redeem the property from the forfeiture.
- > The Year +1 and Year +2 unpaid taxes (if any) do not need to be paid.



FORECLOSURE PROCESS

- > By June 15 of Year +2, the FGU must file a petition for foreclosure in the Circuit Court for the county in which the property is located.
- > A Show Cause hearing and Judicial hearing must be held in January or February of the third year following the due date of the taxes ("Year +3").
 - The Show Cause hearing is an informal hearing.
 - The Judicial foreclosure is a formal hearing that must be held in the Circuit Court within 30 days prior to March 1 of Year +3.



EFFECT OF THE EXPIRATION OF THE REDEMPTION PERIOD

- Once the redemption period has expired (usually March 31 of Year +3), fee simple title to the property vests in the FGU without any further redemption rights.
- All liens and interests in the foreclosed property are extinguished with certain limited exceptions.
- IRS liens are also extinguished so long as the FGU provided proper notice to the IRS.



EFFORTS TO SET ASIDE THE FORECLOSURE

- Wayne County Treasurer v. Perfecting Church, 478 Mich 1, 732 NW2d 458 (2007).
- ➤ As a result of the Supreme Court's holding, property owners and others with an interest in the property are still able to challenge the foreclosure in Circuit Court and through an appeal in the event of an unfavorable ruling.



DISPOSITION OF FORECLOSED PROPERTIES

- Properties acquired through the foreclosure process are offered for sale at auction by the FGU.
- The buyer acquires fee simple title to the property, free and clear of virtually all interests.



MICHIGAN OFFER IN COMPROMISE PROGRAM

03

By Gary Schwarcz



MICHIGAN OFFER IN COMPROMISE PROGRAM



- Michigan has never previously had an offer in compromise program. Michigan is one of the last states to establish such a program.
- As many practitioners are aware, Michigan can be difficult to work with when a client owes taxes to the State.



- The program will allow taxpayers a fresh start and will allow taxpayers to become in compliance.
- Beginning on January 1, 2015, the State of Michigan may compromise all or any part of a Michigan tax liability, including any related penalties and interests, if one or more of the following grounds exist:
 - A doubt exists as to liability if the Department of Treasury concludes, based on evidence provided by the taxpayer, that the taxpayer would have prevailed in a contested case if the taxpayer's appeal rights have not expired.

- A doubt exists as to collectability if the taxpayer establishes both of the following:
 - ☐ The amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income, and
 - ☐ The taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability then the amount offered, within a reasonable period of time.



- A federal compromise of tax IRC § has been granted for the same tax years.
 - □ The State Treasurer may compromise the outstanding balance of the liability for each year by applying the same percentage as the federal liability compromised to the total federal liability.



Example:

Samantha owes the Internal Revenue Service \$1,000,000 and the State of Michigan \$500,000.

Samantha's federal offer in compromise has been accepted and she now owes the IRS \$200,000.

Since Samantha's offer in compromise was accepted by the Internal Revenue Service for 20% of the tax owned, her Michigan offer may be accepted for 20% of the \$500,000 tax owed to the State of Michigan.



An offer in compromise accepted by the State is subject to continuing review by the State. The State may revoke any compromise, may reestablish all compromised liabilities without regard to any statute of limitations that may otherwise be applicable, if either of the following occurs:



 The State Treasurer determines that the person receiving the compromise concealed from the State any property belonging to the taxpayer, the estate of a taxpayer, or any other person liable for the tax or, with the intent to mislead, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax to induce the compromise, or



 The taxpayer fails to comply with any of the terms and conditions relative to the offer or to file subsequent required returns and pay subsequent final tax liabilities within twenty (20) days after the Department issues a notice in demand to the person stating that the continued failure to file or pay the tax may result in the revocation of the compromise.



* The State Treasurer was instructed to establish guidelines for the offer in compromise program within one hundred eighty (180) days after the effective date (June 27, 2014). Additionally, the State Treasurer is to establish procedures for an independent administrator review within the department of any rejection of a proposed offer in compromise made by a taxpayer.



❖ In order to initiate a review, the taxpayer has to make a written request on a form prescribed by the Department within thirty (30) days after the Department issues the rejection.



* Except for a revocation provided in slide (6) above, a tax that was compromised is not subject to additional assessment or collection unless the compromised tax is modified or adjusted as a result of information received from the Internal Revenue Service or as a result of an audit performed by the State of Michigan.



* The State will not levy against property to collect a liability while an offer to compromise is pending unless the State Treasurer determines that the taxpayer's offer to compromise was intended to delay collection.



- A taxpayer who submits an offer to compromise a tax, penalty, or interest will remit with its offer \$100 or 20% of the offer, whichever is greater, to the Department. The amount remitted will be applied to the outstanding balance.
- * Except for the independent administrative review provided by the law, a rejection of an offer to compromise, in whole or in part, is final and is not subject to further challenge or appeal.



TAX CREDITS FOR INDIVIDUALS UNDER THE AFFORDABLE CARE ACT

By Stacey DiDomenico



ELIGIBILITY TO RECEIVE THE TAX CREDIT

- Requirements :
 - Purchase coverage through the Marketplace;
 - Have a household income between 100% to 400% of the federal poverty line depending on family size;
 - Not be able to obtain affordable coverage through an eligible employer plan;



ELIGIBILITY TO RECEIVE THE TAX CREDIT

- Not be eligible for coverage through a governmental program (Medicaid, Medicare, CHIP or TRICARE);
- Do not file a Married Filing Separately tax return; and
- Cannot be claimed as a dependent by another person.



ELIGIBILITY TO RECEIVE THE TAX CREDIT

- The next open enrollment period
 - Begins November 15, 2014 and ends February 15, 2015.



February



RECEIVING THE CREDIT (NOW OR LATER)

 The amount of the Tax Credit is based upon family size and projected household income . . .





Number of people in your household							
		1	2	3	4	5	6
Private Marketplace health plans	You may qualify for lower premiums on a Marketplace insurance plan if your yearly income is between See next row if your income is at the lower end of this range.	\$11,670 - \$46,680	\$15,730 - \$62,920	\$19,790 - \$79,160	\$23,850 - \$95,400	\$27,910 - \$111,640	\$31,970 - \$127,880
Private Marketp	You may qualify for lower premiums AND lower out-of-pocket costs for Marketplace insurance if your yearly income is between	\$11,670 - \$29,175	\$15,730 - \$39,325	\$19,790 - \$49,475	\$23,850 - \$59,625	\$27,910 - \$69,775	\$31,970 - \$79,925
overage	If your state is expanding Medicaid: You may qualify for Medicaid coverage if your yearly income is below	\$16,105	\$21,707	\$27,310	\$32,913	\$38,516	\$44,119
Medicald coverage	If your state isn't expanding Medicaid: You may not qualify for any Marketplace savings programs if your yearly income is below,	\$11,670	\$15,730	\$19,790	\$23,850	\$27,910	\$31,970



RECEIVING THE CREDIT (NOW OR LATER)

- An individual may receive the Tax Credit in one of two ways:
 - Have the Tax Credit paid directly to the insurance company to lower the monthly payment, or
 - Claim the Tax Credit when he or she files the following year's federal income tax return.



RECEIVING THE CREDIT (NOW OR LATER)

 An individual that chooses to have the credit paid in advance directly to the insurance company may be required to repay any funds previously paid that exceed the amount of the Tax Credit as calculated on the 2014 Marketplace statement, which could result in a lower refund amount or balance owed to the IRS.



RECEIVING THE CREDIT (NOW OR LATER)

If an individual was entitled to a greater Tax
 Credit than was actually paid, the individual is entitled to deduct that additional amount on their return.



Form 8962 Department of the Treasury Internal Revenue Service Name shown on your return		- informati	Premium Tax Credit (PTC) ► Attach to Form 1040, 1040A, or 1040NR. ► Information about Form 8962 and its separate instructions is at www.irs.gov/form8962.					
iame show	on your re	tum		Your social	security number			elief see instructions)
Dart 1. A	nnual a	and Monthly Co	ntribution Amou	nt			la	ee matructionay —
					A, line 6d, or Form 104	nNR line 7d	1	
		St: Enter your mo	and the second second	The second secon	r total of your depen			
		ructions)	2a		(see instructions) .	idents modified	2b	
			ounts on lines 2a and			13620	3	
4 Fee	doral Dow	setu Line: Enter the	fodoral powerby amoun	nt or determined by the	he family size on line 1	and the federal		
por	verty table		esidence during the ta		ns). Check the approp	riate box for the	4	-
5 Ho	usehold in	come as a Percenta	ge of Federal Poverty I	ine: Divide line 3 by fir	ne 4. Enter the result ro	unded to a whole	5	
					55.) (See instructions for if the result is less than		5	9
		ntinue to line 5 les	a man or equal to 400	ras (See Instructions)	i vie result is less than	100%.)		
			aceive PTC If was ree	eived advance nevme	nt of PTC, see the inst	metions for how		
to	report you	r Excess Advance F	TC Repayment amou	nt.	TO, POOL DIE TIEL			
7 Ap	plicable Fi	gure: Using your line	5 percentage, locate	our *applicable figure	on the table in the inst	ructions	7	
		ribution for Health			thly Contribution for He			
Mu	iltiply line	3 by line 7	8a	line 8	a by 12. Round to whole	dollar amount	8b	
					e Payment of Pre			
					and want to use the alt			
					or Year of Marriage.			
					r with no changes in month			
		ntinue to line 11. 0	Compute your annual	PTC. Skip lines 12-23		No. Continue our monthly PTC a		nes 12-23. Compu
ani	Continue	100	D. Annual Dana			our monthly PTC 8	_	
	C 7 T 1	A. Premium	B. Annual Premium					
Anni			Amount of SLCSP	C. Annual	D. Annual Maximum	E. Annual Premi	um	F. Annual Advance Payment of PTC
Anni		Amount (Form(s) 1095-A, line 33A)	Amount of SLCSP	C. Annual Contribution Amount (Line 8a)	D. Annual Maximum Premium Assistance (Subtract C from B)	E. Annual Premi Tax Credit Allow (Smaller of A or	ed	Payment of PTC (Form(s) 1095-A, lin
Calcul	ation	Amount (Form(s)	Amount of SLCSP (Form(s) 1095-A, line 33B)	Contribution Amount	Premium Assistance	Tax Credit Allow	ed	F. Annual Advance Payment of PTC (Form(s) 1095-A, lin 33C)
Calcul		Amount (Form(s) 1095-A, line SSA)	Amount of SLCSP (Form(s) 1095-A, line 33B)	Contribution Amount (Line 8a)	Premium Assistance (Subtract C from B)	Tax Credit Allow (Smaller of A or	ed D)	(Form(s) 1095-A, lin 33C)
Calcul	ation ual Totals thly	Amount (Form(s) 1095-A, line 33A)	Amount of SLCSP	Contribution Amount (Line 8a)	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or	ium red	(Form(s) 1095-A, lin
11 Annu Mont Calcul	ation ual Totals thly ation	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
11 Annu Mont Calcul	ation ual Totals thly	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
Mont Calcul	ation ual Totals thly ation	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
Mont Calcul	ation ual Totals thly ation nuary bruary urch	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
Mont Calcul 12 Jar 13 Fet 14 Ma	ation ual Totals thly ation nuary orusry irch ril	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
Mont Calcul 12 Jar 13 Fet 14 Ma 15 Apr	ation al Totals thly ation nuary bruary rich ril	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
Mont Calcul 12 Jar 13 Fet 14 Ma 15 Ap 16 Ma	ation al Totals thly ation nuary bruary rich ril	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
Calcul 11 Annu Mont Calcul 12 Jan 13 Fet 14 Ma 15 Ap 16 Ma 17 Jun 18 Jul	ation al Totals thly ation nuary bruary rich ril	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
Calcul 11 Annu Monti Calcul 12 Jarr 13 Fek 14 Ma 15 Ap 16 Ma 17 Jur 18 Jul 19 Au 19 Au	ation ual Totals thly ation nuary prousry rich ril ry nue y	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
11 Annu Mont Calcul 12 Jar 13 Fet 14 Ma 15 Ap 16 Ma 17 Jur 18 Jur 19 Au 20 Se	ation all Totals thly ation nuary property rich ril ry ne y gust	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
Calcul 11 Annu Mont Calcul 12 Jar 13 Feb 14 Ma 15 Ap 16 Ma 17 Jun 18 Jul 19 Au 20 Seg 21 Oc 22 No	ation all Totals thly ation nuary prusny arch fil by gust ptember tober vember	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
Calcul 11 Annu Mont Calcul 12 Jar 13 Feb 14 Ma 15 Ap 16 Ma 17 Jun 18 Jul 19 Au 20 Seg 21 Oc 22 No	ation ual Totals thly ation nuary bruary roh fil ny gust ptember tober	Amount (Form(s) 1095-A, line 33A) A. Monthly Premium Amount (Form(s) 1095-A, ines 21–32, column	Amount of SLCSP (Form(s) 1095-A, line 33B) B. Monthly Premium Amount of SLCSP (Form(s) 1095-A, lines	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from line 8b) or alternative marriage	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow	ium red	F. Monthly Advance Payment of PTC (Form(s) 1095-A, line
Calcul 11 Annu Mont Calcul 12 Jarr 13 Fet 14 Ma 15 Ap 16 Ma 17 Jur 18 Jur 19 Au 20 Se 21 Oc 22 Nor 23 De 24 Tot	ation all Totals thly ation nuary prusry rich ril ry gust ptember tober vember cariber tal Premiu	Amount Form(s) 1085-A line 33A) A Monthly Premium Amount Form(s) 1085-A rises 21-32, column A column	Amount of SLCSP (Formig) 126-24, line 338) A. Inset SLCSP (Formig) 1095-A. Inset 21-32, column B) the amount of the sum o	Contribution Amount (Line 6a) C. Monthly Contribution Amount to the contribution Amount to the contribution and the contribution and the contribution (and the contribution) and the contribution (an	Premium Assistance (Subtract C from B) D. Monthly Maximum Promium Assistance (Subtract C from B) through 23E and enter through 23E	Tax Credit Allow (Smaller of A or E- Monthly Pren Tax Credit Allow (Smaller of A or	ium ium red D)	Form(s) 1095-A in Form(s) 1095-A in Famous of PIC Form(s) 1095-A line 21-32, column C)
Calcul 11 Annu Mont Calcul 12 Jarr 13 Fet 14 Ma 15 Ap 16 Ma 17 Jur 18 Jur 19 Au 20 Se 21 Oc 22 Nor 23 De 24 Tot	ation all Totals thly ation nuary prusry rich ril ry gust ptember tober vember cariber tal Premiu	Amount Form(s) 1085-A line 33A) A Monthly Premium Amount Form(s) 1085-A rises 21-32, column A column	Amount of SLCSP (Formig) 126-24, line 338) A. Inset SLCSP (Formig) 1095-A. Inset 21-32, column B) the amount of the sum o	Contribution Amount (Line 6a) C. Monthly Contribution Amount to the contribution Amount to the contribution and the contribution and the contribution (and the contribution) and the contribution (an	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance (Subtract C from B)	Tax Credit Allow (Smaller of A or E- Monthly Pren Tax Credit Allow (Smaller of A or	ium red D)	Form(s) 1095-A in Form(s) 1095-A in Famous of PIC Form(s) 1095-A line 21-32, column C)
Calcul 11 Annu Mont Calcul 12 Jar 13 Fet 14 Ma 15 Ap 16 Ma 17 Jur 18 Jul 19 Au 20 Seg 21 Oc 22 No 23 De 24 Tot 26 Ad 100	ation all Totals thly ation nuary pruary rich ril ry gust ptember tober vember tel Premium tal Premium to, line 89;	Amount Form(s) 1085-A line 33A) A Monthly Premium Amount (Form(s) 1085-A, nies 21-3c, column m Tax Credit: Enter ment of PTC: Enter Tax Credit: If line 24 from 1040-A line 24	Amount of SLCSP (Formig) 1962-A line 389, A mount of SLCSP (Formig) 1963-A line 319, A mount of SLCSP (Formig) 1963-A lines 21-32, column B) the amount from line the amount from line signator than line 25, and a mount from line signator than line 25, and a mount from line signator than line 25, and a mount from line or from 1904/B, line 6	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from Ine 8a) The Contribution of all the second from Ine 8a (Amount from Ine 8a) The Contribution of all the 8a (Amount from Ine 8a (A	Premium Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance (Subtract C from B) The Maximum Assistance (Subtract C from B) Through 23E and enter hrough 23F and enter 24. Enter the difference makes calculation for matter 24.	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow (Smaller of A or Smaller of A or the total here the total here the total here here and on Form ariage, enter zero.	ium red D)	Form(s) 1095-A in F. Monthly Advance Payment of PTC Form(s) 1095-A line 21-52, column C)
Calcul 11 Annu Monti Calcul 12 Jar 13 Fet 14 Ma 15 Ap 16 Ma 17 Jun 18 Jun 19 Au 20 Seg 21 Oc 22 No 23 Dec 24 Tot 25 Ad 26 Net 16 Itili	ation all Totals thly ation nuary broth ril y gust ptember tober vember cember tal Premium 40, line 69; ne 92 equa	Amount Form(s) 1095-A, line 33A) A Monthly Premium Amount (Form(s) 1095-A, rises 21-52, column A) In Tax Credit: Enterment of PTC: Enter Tax Credit: If line 24 form 1040A, line 45, is line 25, where 450, whe	Amount of SLCSP [Formig] 108-A, lines B, Monthly Premium Amount of SLCSP Formig] 1095-A, lines 21–32, column B) the amount from line the amount from line signed than line 25, so r Form 1040NR, line 25 is go Form 1040NR, line 25 is go Form 1040NR, line 25 is go Form 1040NR, line 25 is	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount Memount on the 8b contribution Amount (Amount ton the 8b contribution) 11E or add lines 12E t 11F or add lines 12F t 11F or add lines 12F t ubtract line 25 from line 8. If you deced the aller 8ct than line 24, leave teat than line 24, leave	Deminum Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance (Subtract C from B) Library C from B) Through 23E and enter hrough 25F and enter 24. Enter the difference mattly calculation for matter and contributions of the contribution of the contr	Tax Credit Allow (Smaller of A or E. Monthly Prem Tax Credit Allow (Smaller of A or Smaller of A or the total here the total here the total here here and on Form ariage, enter zero.	ium ium red D)	Form(s) 1095-A in F. Monthly Advance Payment of PTC Form(s) 1095-A line 21-52, column C)
Calcul 11 Annu Mont Calcul 12 Jarr 13 Fet 14 Ma 15 Ap 16 Ma 17 Jur 18 Jul 19 Au 20 Seg 21 Oc 22 No 23 De 24 Tot 25 Ad 26 Net 10 It is	ation all Totals thly ation nuary property property gust y gust y y gust tober vember vember vember toser toser	Amount Form(s) 1085-A line 33A) A Monthly Premium Amount Form(s) 1085-A rises 21-32, column A column Tax Credit: Enter ment of PTC: Enter Tax Credit: If line 24 Form 1040A fine 45, sine 26, enter zees A	Amount of SLCSP (Formig) 198-A line 339 A. Inne 339 A. Inne 349 A. Inne 21-32, column B) the amount from line the amount from line the amount from line as greater than line 25, so or Form 1040/R, line 8 Stop here. If line 25 is or Form 1040/R, line 8 Stop here.	Contribution Amount (Line 6a) C. Monthly Contribution Amount of the Contribution Amount of the Contribution and the Contribution of the Contribut	Deminum Assistance (Subtract C from B) D. Monthly Maximum Promision Assistance (Subtract C from B) Promision Assistance (Subtract C from B) Prough 23E and enter through 23F and enter through 23F and enter through 25F	Tax Credit Allow (Smaller of A or E. Monthly Pren Tax Credit Allow (Smaller of A or Interest of A or Tax Credit Allow (Smaller of A or Interest of A or	24 25	Form(s) 1095-A in F. Monthly Advance Payment of PTC Form(s) 1095-20 21-52, column C)
Calcul	ation all Totals thly ation nuary brushy rich fil y gust ptember tober vember ceriber tal Premiu vance Pay t Premium to, line 69; ne 24 equa ceps Advar dess Advar	Amount Form(s) 1086-A line 33A) A Monthly Premium Amount (Form(s) 1085-A, ness 21-52, column Tax Credit: Enter ment of PTC: Enter Tax Credit: If line 24 form 1040A, line 25 is line 25, enter zero, and of Except and one Payment of PTC:	Amount of SLCSP (Formig) 196-A line 389, Amount of SLCSP (Formig) 196-A line 319, Amount of SLCSP (Formig) 195-A lines 21-32, column B) which is a substitution of the amount from line amount from line as greater than line 25, is es Stop hear. If line 25 is greater than 25 is in a divance Paymen It line 25 is greater than 25 is greater	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount from the 8d) or allorable manning monthly contribution to the 15th Contribution of allorable manning monthly contribution; 11E or add lines 12E to 11F or add lines 12F to 12th Contribution; S. F. You elected the 25 from line is easily a second to 15th Contribution; S. F. You elected the 15th Contribution in 25 from line 8th Contribution; To the Permitted in 25 from line is easily a second to 15th Contribution; To the Permitted in 25 from line is 4 subtract line 24. Subtract line 25 from line 15th Contribution in 15th	Deminum Assistance (Subtract C from B) D. Monthly Maximum Perminum Assistance (Subtract C from B) Library Maximum Assistance (Subtract C from B) hrough 23E and enter hrough 23F and enter through 23F and enter 24. Enter the difference with calculation for multi-library and contin Tax C radiatr 24 Form line 25. Enter th	Tax Credit Allow (Smaller of A or Tax Credit Allow (Smaller of A) or Tax Credit Allow (Smal	ium red D)	Form(s) 1095-A in F. Monthly Advance Payment of PTC Form(s) 1095-20 21-52, column C)
Calcul 11 Annu Mont Calcul 12 Jara 13 Fet 14 Ma 15 Ap 16 Ma 17 Jur 18 Jur 19 Au 20 Seg 21 Oc 22 No 23 De 24 Tot 25 Ad 10 Interpretation 11 Interpretation 12 Interpretation 12 Interpretation 12 Interpretation 12 Interpretation 12 Interpretation 12 Interpretation 13 Interpretation 14 Interpretation 15 Interpretation 16 Interpretation 16 Interpretation 16 Interpretation 16 Interpretation 17 Interpretation 16 Interpretation 17 Interpretation 18 Interpretatio	ation aal Totals thity ation aal Totals thity ation prorusny roth ril ril y y gust tober tober tober tober tober tops provember tober tops provember tober tops provember tober tops provember tober provember tober tober provember prove	Amount Form(s) 1095-A, line 33A) A Monthly Premium Amount (Form(s) 1095-A, rises 21-32, column Amount of PTC: Enterment of PTC: Enterment of PTC: Enter Tax Credit: Effine 24 16 form 1040A, line 45, is line 25, ent of Excess A column of PTC: enterment of PTC: Ente	Amount of SLCSP [Formig] 106-A, lines 369 B. Monthly Premium Amount of SLCSP Formig] 105-A, lines 21-32, column B) the amount from line the amount from line the amount from line s greater than line 25, s or Form 1040NR, line 6 Stop here. If line 25 is greater tha the percentage on line	Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount Monthly Contribution Amount (Amount to mine 8b co alternative marriage monthly contribution) 11E or add lines 12E t 11F or add lines 12F t 11F or add lines 12F t 11btract line 25 from line 8. If you elected the alter at the line 24, leave t 10f the Premium nine 24, served to fthe Premium nine 24, subtract line 5 s and your line 2 s and your line 2 s and your line 3 s and you line 3 s and y	Deminum Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance (Subtract C from B) Library Common Assistance (Subtract C from B) Through 23E and enter hrough 25F and enter 24. Enter the difference matrix calculation for omit this line blank according to the common according to	Tax Credit Allow (Smaller of A or Tax Credit Allow (Smaller of A) or Tax Credit Allow (Smal	24 25 26	Form(s) 1095-A in F. Monthly Advance Payment of PTC Form(s) 1095-C. 21-50, column C)
Calcul 11 Annu Mont Calcul 12 Jar 13 Fet 14 Ma 15 App 16 Ma 17 Jur 18 Jur 19 Au 20 Seg 21 Oc 22 No 23 De 24 Tot 26 Ad 10 Ibr	ation all Totals this by ation author ation	Amount Form(s) 1085-A line 33A) A Monthly Premium Amount (Form(s) 1085-A line 32A, column are 21-32,	Amount of SLCSP (Formig) 1962-A line 338) A. B. Monthly Premium Amount of SLCSP (Formig) 1965-A. lines 21-32, column B) the amount from line the amount from line se greater than line 25; and the subject of Form 1940/RI, line 8 Stop hear. If line 25 is greater than the smount from the amount from the amount from the second from 1940/RI, line 8 Stop hear. If line 25 is greater than the smount from the amount from the smouth free columns from 1940/RI (SLC) (Contribution Amount (Line 8a) C. Monthly Contribution Amount famount from line 8b commonthly contribution in 12E to 11F or add lines 12E to 11F or add lines 12F to ubtract line 25 from l	Demium Assistance (Subtract C from B) D. Mornthly Maximum Perenium Assistance (Subtract C from B) Editor of the B) Incomply 23E and enter hrough 23F and enter hrough 23F and enter 24E their the difference matter calculation for mittel ine bark and contribute of the Bark and contribute Complex Section 17 Tax Credit 24 from line 25. Enter the tatus, locate the repair and contribute of the Complex Section 18 of the Complex Section	Tax Credit Allow (Smaller of A or E-Monthly Prem Tax Credit Allow (Smaller of A or Tax Credit Allow (Smaller of A or the total here the total here the total here the total here to the total here the to	24 25	Form(s) 1095-A in F. Monthly Advance Payment of PTC Form(s) 1095-C. 21-50, column C)
Calcul Mont Calcul 12 Jaran 13 Feter 14 Man 15 April 16 Man 17 Juru 19 August 19 Aug	ation aal Totals thiy ation auairy purph ation auairy purph ation ati	Amount Form(s) 1095-A line 33A) A Monthly Premium Amount (Form(s) 1095-A, nies 21-3c, column and the second an	Amount of SLCSP (Formig) 1962-A line 338) A. B. Monthly Premium Amount of SLCSP (Formig) 1965-A. lines 21-32, column B) the amount from line the amount from line se greater than line 25; and the subject of Form 1940/RI, line 8 Stop hear. If line 25 is greater than the smount from the amount from the amount from the second from 1940/RI, line 8 Stop hear. If line 25 is greater than the smount from the amount from the smouth free columns from 1940/RI (SLC) (Contribution Amount (Line 8a) C. Monthly Contribution Amount (Amount to Mine 8a) 11E or add lines 12E 1 11E or add lines 12E 1 11F or add lines 12F 1 11F or add lines 12F 1 10btract fine 25 from line 8. If you decided the aller 8ct than line 25 from line 10ct than 10ct 10ct 10ct 10ct 10ct 10ct 10ct 10ct	Deminum Assistance (Subtract C from B) D. Monthly Maximum Premium Assistance (Subtract C from B) Library Common Assistance (Subtract C from B) Through 23E and enter hrough 25F and enter 24. Enter the difference matrix calculation for omit this line blank according to the common according to	Tax Credit Allow (Smaller of A or E-Monthly Prem Tax Credit Allow (Smaller of A or Tax Credit Allow (Smaller of A or the total here the total here the total here the total here to the total here the to	24 25 26	Form(s) 1095-A in F. Monthly Advance Payment of PIC Form(s) 1095-A line 21-52, column C)



/OMI	4: Shared Policy A	nation for up to four shared	policy allocations. See	instructions for allocation	details.			
har	red Policy Allocation	1						
30	a Policy Number (Fo		N of taxpayer sharing allocation c Allocation start m		start month	d Allocation stop month		
	Allocation percental applied to monthly amounts	ge e. Premium P	l'ercentage	f. SLCSP Percentage		g. Advance Payment of the PTC Percentage		
har	red Policy Allocation	2		AO	-			
31	a Policy Number (Fo		SN of taxpayer sharing	allocation c Allocation	start month	d Allocation stop month		
	Allocation percenta applied to monthly amounts	ge e. Premium P	lercentage	f. SLCSP Percentage	g.	g. Advance Payment of the PTC Percentage		
har	red Policy Allocation	3		1				
32	a Policy Number (Fo		SN of taxpayer sharing	allocation c Allocation	start month	d Allocation stop month		
		37 X P	ALE A					
	Allocation percentage applied to monthly amounts		rcentage f. SLCSP Percentage		g.	g. Advance Payment of the PTC Percentage		
33	a Policy Allocation a Policy Number (Fo	m 1095-A, line 2) b S	SN of taxpayer sharing lercentage	ring allocation c Allocation start mont		d Allocation stop month g. Advance Payment of the PTC Percentage		
						1000		
	amounts							
34	Have you completed Yes, Multiply the policies with amounts total for each month of		by the allocation perce from Forms 1095-A, if B, and F, Compute the	entages entered by policy any, to compute a combi amounts for lines 12-23,	ned total for e	od amounts across all alloca ach month. Enter the combin and continue to line 24.		
Part	Have you completed Yes. Multiply the policies with amounts total for each month? No. See the instrict 5: Alternative Cale	amounts on Form 1096-A s for non-allocated policies on lines 12-23, columns A, i actions to report additional culation for Year of N	by the allocation perce from Forms 1095-A, if B, and F. Compute the shared policy allocation farriage	entages entered by policy any, to compute a combi amounts for lines 12–23, ss.	ned total for e columns C-E,	ach month. Enter the combin and continue to line 24.		
Part	Have you completed Yes, Multiply the policies with amounts total for each month (No. See the instruction of the control of th	amounts on Form 1096-A s for non-allocated policies on lines 12-23, columns A, i actions to report additional culation for Year of N	by the allocation perce from Forms 1095-A, if B, and F. Compute the shared policy allocation farriage culation for year of mar	entages entered by polici any, to compute a combi amounts for lines 12–23, is.	ned total for e columns C–E,	ach month. Enter the combin and continue to line 24.		
Part	Have you completed Yes, Multiply the policies with amounts total for each month (No. See the instruction of the control of th	amounts on Form 1095-As for non-allocated policies on lines 12-23, columns A, luctions to report additional culation for Year of N to elect the alternative call	by the allocation perce from Forms 1095-A, if B, and F. Compute the shared policy allocation farriage culation for year of mar	entages entered by polici any, to compute a combi amounts for lines 12-23, is. riage. For eligibility to ma the instructions for this P	ned total for e columns C-E, ke the election art 5.	ach month. Enter the combin and continue to line 24.		
Part Comp	Have you completed Yes. Multiply the policies with amounts total for each month of No. See the instruct. 5: Alternative Call blete line(s) 35 and/or 36 Alternative entries	amounts on Form 1095-As for non-allocated policies on lines 12-23, columns A, luctions to report additional culation for Year of N to elect the alternative cal 36 and compute the amount amount of the second secon	by the allocation perce from Forms 1095-A, if. B, and F, Compute the shared policy allocation farriage culation for year of mar its for lines 12-23, see	entages entered by policy any, to compute a combi- amounts for lines 12-23, ss. ss. c Alternative sta	ned total for e columns C-E, ke the election art 5.	ach month. Enter the combinand continue to line 24.		



REPORTING CHANGES IN CIRCUMSTANCES

- Notify the Marketplace if circumstances surrounding family size or household income change, including:
 - Increase or decrease in household income;
 - Marriage or divorce;





REPORTING CHANGES IN CIRCUMSTANCES

- Birth or adoption of child;
- Other changes to household composition;
- Moving to a different state; or
- Gaining or losing eligibility for government sponsored or employer sponsored health care coverage.





RECENT REVENUE PROCEDURES

- REV. PROC. 2014-37, 2014-33 I.R.B. 363
- REV. PROC. 2014-41, 2014-33 I.R.B. 364
- REV. PROC. 2014-46, 2014-33 I.R.B. 367



RECENT FEDERAL APPEALS COURT DECISIONS

Conflicting rulings on the validity of Tax
 Credits received as a result of purchasing insurance through the Federal Marketplace





RECENT FEDERAL APPEALS COURT DECISIONS

- Halbig v. Burwell, No. 14-5018
 (D.C. Cir., July 22, 2014)
- King v. Burwell, No. 14-1158 (4th Cir., July 22, 2014)
- Oklahoma ex. Rel. Pruitt v. Burwell, No. CIV-11-30 RAW (September 30, 2014)



ASSET TRANSFER TECHNIQUES

By Jeffrey A. Levine



SELF-CANCELING INSTALLMENT NOTES



A. Description

1. A Self-Canceling Installment Note ("SCIN") is an obligation given in connection with an installment sale, with a provision that all future amounts due will be canceled upon the transferor's death. Unlike a regular promissory note, the remaining balance of the SCIN at the obligor's death is not included in the decedent's gross estate.



- Besides direct gifting, no other planning strategy provides the immediate removal of an asset from an estate as does the SCIN.
- 3. If stock of a family business or interests in a Family Limited Partnership ("FLP") are sold pursuant to a SCIN, gain recognition to the seller is generally deferred under the installment sale rules.





- 4. If the client has a capital loss available, it may be advantageous to elect out of installment sale treatment to use up the capital loss currently.
- 5. If the seller dies before the note is paid off, depending on one's view of the law in this area:



a. The seller's estate has to recognize the balance of the forgiven gain in the estate's initial 1041 income tax return as income in respect of a decedent (§691). See Estate of Frane, 998 F.2d 567 (8th Cir., 1993); or

Department of the Treasury - Internal Hevenue Service U.S. Income Tax Return for Estates and Trusts OVIE No. 1545-0092 A Check all has apply: For calendar year 2012 or fiscal year beginning Decedents estate Name of estate or trust (if a grantor type trust, see the instructions). G Employer Identification number Simple trust Name and title of tidudary D Date entity treated Complex rust Quarted deapiny dust E. Nonexempt charitable and split-Number, street, and room or suite no. If a P.O. box, see the instructions ! ESBI (S portion only) terest trusts, check applicable Granto: type trust Bankruptsy estate-Ch. 7 Described in sec. 4 847/39(1). Uheck here City or town, state, and ZIP code Bankruptsy estate-Ch. 11 enot a private foundation Pooled mame fund Number of 3th edules K-1 Amended return Change in trusts name I Change in fictudary's name Change in fiduciary's address Interest income Qualified dividends allocable to: (1) Beneficiaries Business income or (loss). Attach Schedule C or C-EZ (Form 1040) Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040) corne or thereb Attends Calculate E Corne 40400



b. If the decedent does not live in the 8th Circuit, it may be possible to argue that the gain should be reportable on the last income tax return of the decedent pursuant to Code §453B.



- 6. The term of the SCIN cannot be greater than the seller's life expectancy.
- 7. The SCIN needs to include either an interest premium or a principal premium in order to provide the seller with an enhanced price due to the risk that death will occur before the end of the stated term of the note.



8. The IRS may scrutinize an interestonly SCIN, with a back-end balloon payment, more closely than a principal premium SCIN. See the Estate of William Davidson (U.S. Tax Court No. 013748-13 (filed June 14, 2013).



B. Advantages

1. From the buyer's perspective, the buyer gets a stepped up basis equal to the purchase price, and the buyer should also be able to deduct the interest on the note payments (subject to the "type" of interest being paid).



2. Unlike FLPs and Grantor Retained Annuity Trusts ("GRATs"), if the SCIN valuation is properly set (with an interest premium or principal premium), there is no use of the seller's annual gift exclusions or lifetime gift-giving ability.



3. In Chief Counsel Advice ("CCA") 201330033, the IRS took the position, relating to the Estate of William Davidson, that the usual valuation methodology under Code § 7520 did not apply and that the "willing buyerwilling seller" standard applied, and required that the life expectancy of the seller be taken into account. Section 7520, the Service said, applies to annuities, interests for life or a term of years, remainders and reversions, but not to debt instruments (the SCIN note).



- 4. Even with a premium, the sale of assets on a SCIN basis freezes the value for purposes of the client's estate. Future appreciation is not going to be subject to estate tax on the client's death.
- 5. The SCIN gets the assets to the client's designated recipient(s) and without any transfer taxes on the transaction because it is a sale and not a gift.



- 6. The buyer gets to use the acquired assets at the time of sale; there is no delay in gaining access to those assets.
- 7. Potentially, payments owing under the SCIN may be made with loans secured by the acquired assets.



- 8. Interest payments may be deductible to the buyer [but investment interest and other rules need to be taken into account].
- 9. Gain on the sale is likely deferred on the installment method and will not be recognized until and to the extent that the purchasers make payments.



c. <u>Disadvantages</u>

- 1. The buyer needs current cash to pay the SCIN note payments.
- 2. The proceeds received, including the premium paid for the SCIN, will be part of the seller's estate at death, unlike a successful FLP or GRAT.

Disadvantages:(



a. As noted above, there is income tax to pay on the forgiven debt if the seller dies before the full SCIN note term ends. If Frane is respected, the income tax is payable by the estate. If Frane is not followed, the income tax is payable on the seller/decedent's final income tax return (thus reducing the size of the estate further). However, if there is no estate tax at that time, there will be an income tax due, where no estate tax would have been due had no transaction occurred.



b. Just as with FLPs, the SCIN terms need to be followed carefully. Like the FLP, there must be a bona fide sale for adequate and full consideration. See Costanza v. Commissioner, 320 F.3d 595 (6th Cir., 2003), with some "bad facts", which the taxpayer won anyway and where the SCIN was respected.



- 3. If the seller outlives the SCIN term, the seller loses out on the cash flow which he/she was receiving, and may be without sufficient assets to live.
- 4. The purchaser will have paid more than the asset value, due to the premium feature of the SCIN.



5. If valuation is not properly set, there may be a gift tax to pay. For example, in the recent Tax Court case of William Cavallaro (TCM 2014-189), (which is not a SCIN case but still illustrates the importance of proper valuation), the Tax Court found that there was a gift of \$29.6 million.





GRANTOR RETAINED ANNUITY TRUST (GRAT)

A. Grantor Retained Income Trusts ("GRIT"), Grantor Retained Annuity Trusts ("GRAT") and Grantor Retained Unitrusts ("GRUT"), are trusts in which the grantor retains a right to an income amount, an annuity amount, or a percentage of the fair market value of the trust each year, for life or a term of years. The value of the remainder is a gift to the ultimate beneficiaries, typically children or grandchildren.



The goal of a GRIT, GRAT or GRUT is to В. transfer assets to children or grandchildren at less than face value. The value of the interest kept by the donor is determined under IRS regulations, depending upon the amount retained, the length of the payout term to the donor, the donor's age and the IRS interest rate for the month in question. If the trust gets more income than the applicable IRS interest rate used to determine the value of the donor's interest, the excess will accumulate for eventual distribution to heirs and a "discount" results.



- c. The Trust property passes to a family member at the end of the trust term, which is designed to occur during the grantor's lifetime.
- D. However, if the grantor dies during the trust's term, the trust property will be included in the grantor's gross estate under Code § 2036.



E. GRITS, GRATS and GRUTS are typically treated as grantor trusts, meaning the seller/grantor is taxed on the trust's income and gains, as though the trust does not exist.



AFR LOANS

A. As noted above, the SCIN has many advantages, but clients may be able to use the short, mid-term or even long-term applicable federal rate (AFR) for intra-family sales structured with a loan, to avoid the SCIN mortality risk premium.



- B. Refinance notes previously issued at the applicable federal rate. If a promissory note provides a right of prepayment, consider issuance of a new note at lower current AFR.
- c. No cancellation of debt income to borrower since principal balance due remains the same.



- D. No gift as the value of the note equals the unpaid principal which does not change.
- E. The IRS has taken the position in certain cases that the sale to a GRAT using the AFR as the interest rate may have a zero value, resulting in an immediate gift of the entire asset transferred.



U.S. Internal Revenue Code § 1031 Tax Deferred Like Kind Exchanges

By: Gregg A. Nathanson



WHAT IS A 1031 EXCHANGE?

- Valuable Planning Tool
- Taxpayer "exchanges" one property for another
- Income Tax on gain is deferred
- Dispose of property without (immediate) tax liability
- Use tax-deferred dollars interest free loan from IRS – to acquire another property



Elements of 1031 Exchange

- Both "relinquished property" and "replacement property" must be:
 - "Held" for productive use in trade or business, or
 - "Held" for investment
- Must be exchange, not sale and purchase
- Must be "like kind"



Additional Rules

- Must trade equal or up in equity and value
- Can use some (but not all) of proceeds to acquire replacement property, but...
- Unused proceeds received by Taxpayer = taxable "boot"
- Exchange can be "simultaneous", "deferred", "new construction" or "reverse"



What is a Simultaneous Exchange?

- Taxpayer and third party swap properties at same time
- Exchange may include cash
- Receipt of cash = taxable "boot" to Taxpayer







Additional Requirements for Deferred Exchange

- 45-Day Identification Period
- 180-Day Completion Period



- Use of independent Qualified Intermediary (QI)
- Proper documentation and implementation



What is a New Construction Exchange?

- Use exchange proceeds to acquire <u>and</u> improve replacement property
- QI takes title to replacement property; improves it (using exchange proceeds); then transfers title to Taxpayer, all within 180 days
- 45-day notice identifies replacement property including improvements not yet in existence
- Consider value of improvements in place on date Taxpayer receives deed to improved replacement property



What is a "Reverse" Exchange?

- Taxpayer acquires new (replacement) property before disposing of old (relinquished) property
- Basically, buy first, then sell
- Taxpayer "parks" replacement property with Exchange Accommodation Titleholder (EAT) who holds title until exchange is completed



Reverse Exchange Requirements

Same requirements as "forward" exchange, plus





Reverse Exchange Safe Harbors

- Under Rev. Proc. 2000-37 Taxpayer may:
 - Guarantee EAT's obligations, including repayment of [secured] debt to acquire replacement property
 - Indemnify EAT
 - Loan EAT money to acquire replacement property
 - Lease replacement property from EAT before completing exchange



GUARANTEED

Reverse Exchange Safe Harbors

 Manage property, supervise improvements, act as contractor and provide certain other services while EAT holds title to replacement property





What About Second Homes and Vacation Property?

- Historically, "personal residence" (second or vacation home) could not qualify for 1031 exchange treatment
- In 2008, IRS provided safe harbor for second homes and vacation property to qualify, even if Taxpayer enjoys occasional personal use (Rev. Proc. 2008-16)



What About Second Homes and Vacation Property?

- Must own relinquished property at least 24 months before exchange, and
- Must own replacement property at least 24 months after exchange, and
- ➤ Must rent property to others at "fair rental" at least 14 days in each of 2 years before, and 2 years after exchange, and



What About Second Homes and Vacation Property?

- Personal use cannot exceed greater of 14 days and 10% of number of days property rented during each such 12 month period, and
- Must satisfy all other 1031 exchange requirements
- Possible to fall outside safe harbor and still establish property qualifies for tax deferred exchange?

