DeWitt LLP Law Firm



Nathan J. Nelson

Partner

Minneapolis, Minnesota

612-305-1409

njn@dewittllp.com

Service Areas:

- Business
- Transportation & Logistics
- Trusts & Estates

Education:

- L.L.M., Villanova University School of Law
- J.D., Hamline University School of Law
- B.A., University of St. Thomas

Admissions:

- Minnesota

Nate serves as a business and estate planning attorney and provides counsel to both companies and individuals. He approaches his legal practice by listening to his clients' concerns and working with them to accomplish their objectives. Nate works closely with his clients to develop an action plan. He analyzes the specific facts of each clients' case and uses his skills and experience to achieve his clients' goals.

He assists clients with general business and international trade matters including export controls, economic sanctions, inbound/outbound foreign investment, and customs. Nate's clients appreciate his direct approach to problem solving. His particular attention to transaction analysis ensures that his clients' business interests are well-protected.

As a transactional corporate and estate planning attorney he focuses his practice on addressing both general and specific business matters, including start-ups, joint ventures, mergers and acquisitions, and dissolutions. Nate is a member of the Minnesota Trucking Association and has represented hundreds of motor carriers and logistics companies in all facets of legal matters or other snafus, including licensing, reorganizations, mergers, sales, acquisitions, and all aspects of accident defense.

Nate also drafts contract hauling agreements, equipment leases and trailer interchange agreements as well as assists with worker mis-classification issues, OOIDA issues, freight claims and other challenges transportation companies encounter. Nate has extensive experience in business succession and tax planning matters. In addition, He drafts tax-efficient estate planning instruments to transfer wealth and businesses from one generation to another. Nate has obtained his Series 7 and Series 66 brokerage licenses.

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Affiliations

- Board Member – Hold Your Horses - 2018-2020
- Member – Hennepin County Bar Association
- Member – Minnesota State Bar Association
- Minnesota Trucking Association
- Transportation Lawyers Association

Articles & Presentations

- "Transportation and Logistics Entity Structure Briefing - Separation of Brokerage Business from Carrier Entity" – June 2021
- "Mergers & Acquisitions of Pass-Through Entities: Structuring to Minimize Taxes & Maximize Deal Value" – Strafford (November 8, 2018) [co-presenter]
- "Using LLC's to Protect Assets" – National Business Institute Live Video Webcast (August 29, 2017) [co-presenter]
- "Residency Issues" – Stockwell Eldredge Radio Show (July 16, 2017)
- "Piercing the Corporate Veil: Minimizing Alter Ego Liability for Subsidiaries, Affiliates and Related Entities" – Strafford (June 8, 2017) [co-presenter]
- "Corporate Structure" – Minnesota Trucking Association Management Conference (April 20, 2017)
- "Trusts for Business Owners" – Truck Writers, (April 2017) [co-presenter]
- "Feature Presenter" – Stockwell Eldredge Radio Show (February 5, 2017)
- "How Creating Holding Companies & Silos Can Protect Your Trucking Business" – Truck Writers (May 25, 2016)
- "Prince and the Importance of Estate Planning" – Stockwell Eldredge Radio Show (May 8, 2016)
- "The Ultimate Guide to LLCs as Asset Protection Tools" – National Business Institute (February 2016) [co-presenter]
- "Parent-Subsidiary and Related Business Entity Law" – National Business Institute (November 2015) [co-presenter]
- "Drafting Shareholder Agreements for Closely Held Businesses" – Straffordpub (November 2015) [co-presenter]
- "Minnesota's LLC Makeover – Increased Certainty Heightens LLCs' Appeal" – Minnesota CLE (September 2015) [co-presenter]
- "Estate Planning, Financial Planning & Asset Protection for Business Owners" – Bunker Hills Golf Club (July 30, 2015) [co-presenter]
- "Minnesota's New LLC Law" – Ramsey County Bar Association (June 24, 2015) [co-presenter]
- "CRTs: A Powerful Tool for Income-Tax Planning" – Minnesota Bench & Bar (April 2015) [co-author]
- "Minnesota's LLC Makeover" – Minnesota Bench & Bar (February 2015) [co-author]

Estate Planning

Nate Nelson's approach to the practice of law is to listen to his clients' goals and work with them to accomplish their objectives. Nate analyzes the facts and details associated with a transaction, uses his skills and experience to gauge a particular result, and then works with his clients to develop a course of action to achieve the desired outcome.

2019 Exemptions

The federal estate and gift tax exemption is $11,400,000 per individual and up to $22,800,000 for a married couple. The annual gift tax exclusion is $15,000 per donee. The Minnesota estate tax exemption is $2,700,000 per individual (no portability) and scheduled to increase to $3,000,000 in 2020.

The following is a summary of traditional techniques and considerations many of our clients and customers address when creating their estate plans.

Pour-Over Wills and Revocable Trusts

These instruments work together to ensure the successful transfer of an individual's assets without the need for probate proceedings. The concept is only successful, however, to the extent that the individual transfers title to all of his/her probate assets (i.e. those titled in one person's name along for which there is no beneficiary designated) to his/her trust, i.e. "funding" the trust before death. The will only applies to probate assets which are not in the trust at the time of death. Thus, a brief review of revocable trusts is warranted.

A revocable lifetime trust, sometimes also known as a "living" or "inter vivos" trust, is a trust which is established by an individual (the "grantor") during his/her lifetime. The grantor would establish such a trust by signing a written trust instrument (the "trust agreement")

and transferring the title of the assets which he/she desires to place in the trust (e.g., real estate, stocks, bonds, bank accounts) to the person or persons whom the grantor name as the trustee or trustees of the trust. Typically, the grantor is also the initial trustee and, if required, a relative, corporate, or independent trustee may serve as a successor trustee in the event something happens to the grantor. The trustee then holds the assets which have been transferred to the trust in accordance with the terms and provisions set forth in the trust agreement for the benefit of one or more persons who are called the "beneficiaries" of the trust. The grantor can be both a beneficiary of such a trust and a trustee of such a trust. The living trust is generally revocable, which means that the grantor of the trust reserves the right to amend (change) or revoke (terminate) the trust at any time during his/her lifetime. Upon revocation the assets are transferred back to the grantor.

There are no estate or income tax savings afforded by the revocable living trust which cannot be achieved by a tax-planning will. Rather, the advantages are purely practical non tax advantages. The four most important of these are as follows: (i) investment management, (ii) avoidance of guardianship/ conservatorship, (iii) avoidance of probate; and (v) privacy.

Power of Attorney and Health Care Directives

A power of attorney designates an individual or entity as the principal's agent to act on the principal's behalf. Generally, the powers granted by the power of attorney are quite broad and are designed to handle all types of financial transactions on one's behalf. However, the principal may limit the scope and powers granted under the power of attorney. The power of attorney may also be "durable" which means it may continue to be effective even if the principal later become incapacitated or incompetent. Finally, the powers may be revoked by the principal at any time so long as he/she is competent.

Under a health care directive, the principal may designate someone to make health care decisions for him/her in the event he/she cannot communicate his/her thoughts on medical treatment. Generally, the health care directive form is quite broad in granting authority in a medical situation. For instance, it automatically includes the ability of the agent to make all types of medical decisions that the principal could make for himself/herself including those defined as "intrusive mental health treatment." The form also provides that the agent has unlimited access to medical records and the form continues to be effective except as it may be subsequently revoked by the principal. In addition, there is a section on the form which allows the principal to initial the line in front of one or both powers if the principal wishes to affirmatively grant to his/her agent the ability to decide whether to donate the principal's organs upon death, and to decide whether the principal would be buried or cremated.

Update Wills and Trusts Created Prior to 2014

As noted above, the Federal Exemption from Estate Tax is $11,400,000 but the Minnesota Exemption is $2,700,000. Trusts drafted before 2014 (and many thereafter) need to be updated to create a "State QTIP." In 2014 a State QTIP provision was passed by the Minnesota legislature that we recommend be included in almost all of our wills or trusts. A State QTIP can provide when the first spouse dies, no estate tax will be due on the difference between the Federal Exemption and Minnesota Exemption if the difference is available only for the surviving spouse. This technique can defer or eliminate up to $1,145,000 in Minnesota Estate Taxes.

Hot Takes

Last year the hot topic in estate planning circles concerned the holding in Fieldinq v. Commissioner decided by the Minnesota Supreme Court. The facts are beyond the scope of this paper but in sum the case centers around irrevocable trusts and the definition of a "resident trust" (which are taxable by the Minnesota Department of Revenue). Minnesota law provides if the grantor of a trust was domiciled in Minnesota when the trust became irrevocable, then irrespective where the trustee resides, all income earned by the trust would forever be subject to Minnesota fiduciary income tax. The Minnesota Supreme Court held the law, as applied, was unconstitutional because in Fielding the trustee did not have sufficient contacts with Minnesota to satisfy due process requirements. Thus, in this case Minnesota could not tax the trust on all of its income based solely on the grantor's domicile when the trust became irrevocable. What this means, is if you have customers who are beneficiaries of irrevocable trusts that are managed out of state, refund opportunities may exist.

Service Area Subspecialties

- Business
  - Business Formations
  - Mergers & Acquisitions

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