



**WINTER
2021**

Estate Planning with
Family Businesses

Unclaimed Property
in New Jersey

Increased Estate &
Gift Tax Exemption

planning matters

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ESTATE PLANNING & WEALTH PRESERVATION

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estate planning with family businesses

by Anne Marie Robbins, Esq.



To the owners of family businesses, estate planning can sometimes be an after-thought. Owners are often so involved in building their business and managing its daily operations that they do not have time to devote to the planning that will become important when the owner is ready to hand over management control and ownership to successors. It is often the case with successful family businesses that there has been little or no thought given to the transition of management and ownership, with the result being there is no succession plan in place. Further, available strategies to transfer the ownership of the business to younger generations of the family in a tax-effective manner may not have been utilized.

When a family business is one of the assets, or perhaps the primary asset, a well thought out strategic and financial plan for the business and an estate plan for the family are critically important. The following is a brief and by no means exhaustive outline of some points to consider.

• Strategic Planning

A good place to start is with strategic planning for the business. Are other family members employed in the business, or likely to be employed in the future? Will those family members one day have the desire and temperament to manage the business? If so, map out a plan for increased responsibilities and changing roles over time.

Is it more likely that when current management retires, the business will be sold? In that case, identify the people and resources who can help with an eventual sale.

Does the business have non-family members involved in management or as board members? Would having an objective third party on the board provide a perspective that would benefit the business?

• Financial Planning

Obtaining an appraisal of the business by a CPA experienced in business appraisals or other business valuation expert is an important step. Consideration should also be given to key man

insurance, which could help pay down debt and provide capital during a management transition.

Two classes of stock, one with voting control and one without, can help maintain control by the business owner while allowing transfer of equity interests to other family members (usually younger generations of the family), allowing them to participate in any increase in value.

The shareholders should enter into a shareholders' agreement that contains restrictions on transfers and sets forth a plan for the purchase of shares if a shareholder dies or wishes to sell shares. Life insurance may be needed in order to fund the purchase price.

• Estate Planning

There are estate planning strategies that work well to transfer future appreciation in a growing business. For example, gifts of restricted stock to family members or trusts for their benefit would qualify for a valuation discount under present law. In addition, certain strategies using irrevocable trusts such as Grantor Retained Annuity Trusts (GRATs) and Intentionally Defective Grantor Trusts (IDGTs) can transfer stock at little or no transfer tax cost to the donor.

When a family business is the primary asset, a business owner may have liquidity needs in order to pay death taxes and other expenses. Life insurance is usually the solution in such situations. Depending upon the size of the estate and the tax law at the time, an irrevocable life insurance trust (ILIT) may be employed to prevent inclusion of the insurance proceeds in the owner's taxable estate.

Effective strategic and financial planning for the business and estate planning for the family can maximize the value of a family business while minimizing exposure to estate and gift taxes. Early attention to such planning and frequent communication with family members are critically important if a smooth transition of management and ownership is the goal.



unclaimed property in NJ

by Anne Marie Robbins, Esq. & Colleen E. Hallenbeck, Paralegal

Every state has an unclaimed property program holding forgotten property belonging to its residents such as uncashed checks, security deposits, abandoned accounts, and more. “Unclaimed property” generally refers to tangible (items in safe deposit boxes) and intangible (bank accounts, stocks, and checks) personal property. Eventually, the state takes over the unclaimed property in a process known as “escheatment.”

In New Jersey, the Unclaimed Property Administration is a section of the Department of the Treasury. The Mission Statement of the Unclaimed Property Administration is set forth on its website¹ and reads as follows:

“The Unclaimed Property Administration (UPA) recovers and records abandoned or lost intangible and tangible property. The UPA’s goal is to return this property to the rightful owner and/or heirs. The New Jersey Unclaimed Property Statute ensures that property owners never relinquish the right to this property and the UPA only acts as a custodian until the property is returned.”

The unclaimed property law is set forth in Title 46 of the New Jersey Statutes at N.J.S.A. 46:30B-1 *et seq.*, and in the New Jersey Administrative Code at N.J.A.C. 17:18 *et seq.*

In estate administrations, it is a good idea to check the Unclaimed Property Administration website for any abandoned property in the name of the decedent. This simple practice often leads to the discovery of assets that had been unknown to the family. It is best to look into the matter of a decedent’s unclaimed property early in an estate administration, because the assets must be included on any required inheritance or estate tax returns.

• When is Property Considered Abandoned?

New Jersey property is generally presumed abandoned if it has remained unclaimed by the owner, or if there has been no activity other than automatic activity (interest posting on a bank account is considered automatic activity) for more than three years. After unclaimed property is given to the state by a business, the owner or the owner’s heirs must reclaim it from the state.

Note that the state does not take over the funds but instead holds them as custodian until claimed. There is no time limit on filing a claim, because New Jersey never assumes ownership of unclaimed funds. The funds are held by the state in perpetuity until claimed by the owner or owner’s representative.

• Responsibilities of Businesses

New Jersey businesses have a number of responsibilities concerning unclaimed property. Initially, written notice must be sent to the apparent owner of the unclaimed property, if known. If the property remains unclaimed, businesses have annual filing and reporting requirements to the state. Most importantly, after the applicable time period businesses are required to turn over all unclaimed property to the state, and penalties apply to businesses that fail to comply with any of these requirements.

• Claims Process

The claims process is relatively straightforward, although locating the required documents can be time-consuming. The owner’s name and town of residence is entered on the UPA website, which then produces a list of possible claims. A claimant then selects and submits the appropriate claims via the website. Shortly thereafter the claimant is emailed information with a claim number or numbers, and the documents required to support the claim (death certificates, proof of ID, executor’s or administrator’s short certificates, and the like) with directions to either mail the necessary documents or to upload the documents through the website.

• Payment of Claim

After the required documents are provided, a check will issue in payment of the claim, including interest on the assets from the date of receipt by the state to the date of return. In our experience, it can take from one to two months for a claim to be processed. You may check the status of your claim by entering the claim ID on the website or by calling the UPA directly. The UPA staff are usually quite helpful.

increased estate & gift tax exemption for 2021

The federal estate and gift tax exemption (known as the “basic exclusion amount”) has increased to \$11.7 million per taxpayer in 2021. The exemption in 2020 had been \$11.58 million. The increase means that in 2021, an individual can make gifts during life or at death totaling \$11.7 million without incurring gift or estate tax; a married couple can transfer \$23.4 million of assets. The annual gift tax exclusion remains at \$15,000 per donee (or \$30,000 if spouses elect gift-splitting).

Note that it seems likely the Biden administration will attempt to pass a reduction in the exemption as well as other changes to the estate and gift tax law during the next two years when there are Democratic majorities in the House and Senate. It is unknown whether any such changes will be made retroactive to January 1, 2021. We recommend consulting with your estate planning attorney early in 2021 to discuss whether large gifts now may be advisable.



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1. <https://www.state.nj.us/treasury/unclaimed-property>



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