Deferred Sales Trust™

A capital gains tax deferral strategy

Owners of businesses, real estate, and other highly appreciated assets are often reluctant to sell due to the significant capital gains tax liability that can result. Fortunately, Estate Planning Team's Deferred Sales Trust™ ("DST") offers an attractive and flexible tax deferral alternative to a 1031 Exchange, which can dramatically decrease or eliminate the capital gains taxes that would otherwise be recognized in the year of the sale.

Rather than experiencing the debilitating drain of equity that results from a fully taxable sale, the DST permits the seller to generate a potentially higher rate of return by leveraging the pre-tax proceeds from the sale, which can be significantly greater.

The DST is a type of IRC Section 453 installment sale, also known as a "seller carry-back" sale. Under this code section, the seller can achieve significant tax-deferral benefits by not receiving actual or constructive receipt of the proceeds at the time of the sale, instead receiving payments made to them over time. Moreover, the Deferred Sales Trust™ has greater flexibility than a conventional installment sale with respect to investment selection, risk management and the repayment timeframe.

The process starts with a detailed consultation with one of our specialized tax attorneys who will gather appropriate details of the transaction to determine if it is suitable for structuring as a DST, as well as what the potential benefits would be to the taxpayer. Then, if the transaction meets the requirements for a DST, and sufficient benefits can be obtained for the taxpayer, a conditional engagement agreement is offered to the taxpayer by the tax law firm. This engagement requires no upfront retainer and does not obligate the taxpayer to pay for any services unless, and until, the closing of the sale of the appreciated asset and a decision by the taxpayer to proceed with the funding of the trust.

When the taxpayer decides to proceed, the ownership of their highly appreciated capital asset is transferred to a dedicated trust, set up solely for the taxpayer's own transaction. The trust then sells the asset to the buyer at the higher cost basis that was just established in the prior transfer from the seller to the trust.