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Transfer of Utah Jazz Provides Context on Dynasty Trust Benefits

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On January 23, 2017, Utah Jazz Owner Gail Miller made basketball news by announcing that she and her family had transferred the NBA team and the Vivint Smart Home Arena into a dynasty trust. Gail Miller and her late husband, Larry Miller, purchased the franchise in 1985 for $26 million. The transfer into the dynasty trust was part of a larger family estate plan. According to Miller, the trust will “last forever, as long as we have people who are willing and able to take care of it.”

Although the details of this dynasty trust are private, the Miller family and their advisors have made several public statements about the transfer. These statements provide hints about the trust design and illustrate the flexibility and benefits offered by dynasty trust planning for wealthy individuals who want their assets to be continued in trust for the family for an extended period of time.

OVERVIEW OF DYNASTY TRUSTS

A dynasty trust (also known as a legacy trust) is a long-term trust designed to hold family assets for multiple generations. Dynasty trusts differ from other types of trusts which are typically designed to terminate and distribute their assets upon the death of the trust creator or his or her children. The objective of a dynasty trusts is to hold assets for as long as possible under applicable state law. Although beneficiaries may have some access to trust income or principal during their lifetimes, they do not receive the property outright -- it continues to be held in trust for as many succeeding generations as possible under applicable law. Dynasty trusts work best if they are structured to be exempt from generation-skipping transfer (GST) taxes so that their assets are undiminished by both estate and GST taxes as the assets continue to be held and administered for succeeding generations. While the Miller family created its trust in 2017, economic conditions and tax law changes since the formation of the Miller family trust have made this planning vehicle even more attractive to families with substantial business interests or accumulated wealth which they desire to maintain within the family.

In 2019, each spouse of a married couple can allocate a total of $11.4 million of state and gift and GST exemption to a dynasty trust (for a total of $22.8 million). Once the assets are transferred to the trust, distributions are made at the discretion of the Trustee. Typically, small distributions are made in the first few years, allowing much of the initial transferred wealth to appreciate. While the trust remains subject to income tax on the portion of its ordinary and capital gains income that is not distributed to beneficiaries, the accumulated income can to be reinvested to meet the growth objective. Under the current scenario, i.e., that the donors' estate and gift and GST exemptions are applied to the trust and the gifting is properly reported, all appreciation in the trust assets is removed from the donors' estates. That, in and of itself, can create substantial tax savings. Moreover, the trust assets will be and will remain exempt from estate or gift tax (and GST tax) as long as the trust exists. This means that the assets placed in the trust are subject to the federal gift and estate tax regime just once, when initially transferred to the trust. The assets are not taxed again until the trust terminates and its assets redistributed to family members several generations removed from the generation of the original donors.

Dynasty trusts also have built-in asset protection benefits. Beneficiaries of a dynasty trust normally have no right to distributions. Instead, dynasty trusts are typically structured as discretionary trusts with spendthrift clauses that prevent trust assets from being assigned to creditors or being subject to collection by creditors or used to satisfy other debts or obligations of any beneficiary. This protection normally prevents trust assets from being subject to equitable division if a beneficiary is involved in a divorce (subject to certain state laws protecting spouses and children in such circumstances.).

Another benefit of a dynasty trust is privacy. It is clear that the trust created by the Miller family is private, but we can glean some information from statements the Miller family and related parties have previously made so as to consider the additional non-tax benefits that a dynasty trust can provide.

From these statements, we know that one of the primary purposes of the Miller dynasty trust is to prevent wealth dissipation by providing consolidation of assets and continuity of management over the long term. According to the Salt Lake Tribune:

> *"[Gail] Miller will serve as the trustee, and will eventually cede control of the franchise to a six-person board of managers, comprised of members of her family… The board of managers will need either a majority or a super majority, depending on the nature of the business, to make future decisions for the franchise, attorney and former Utah Jazz president Dennis Haslam said."*

Consolidation of assets and continuity of management is equally important in the family business context for those thinking about the benefits of a dynasty trust and continuation of a successful business after the initial creators have retired or are deceased. Creation of a dynasty trust forces the settlors to focus on succession planning in that the trust structure, including provisions to provide for the succession of trustees who will control the assets for the future generations, will be an important aspect of a successful dynasty structure. This is evident from the choices made by the Miller family.

For states whose laws have not dispensed with the rule against perpetuities (placing limitations on the duration of a trust), the time that property can remain in a dynasty trust is lengthy but limited (in California it can be as long as 90 years). With proper planning, it may be possible to form the trust under the laws of a jurisdiction without a rule against perpetuities, which could allow the assets to remain in trust indefinitely.

CONCLUSION

The dynasty trust utilized by the Miller family demonstrates how innovative thinking can be implemented in the trust design process. Some benefits of the trust — GST tax savings, continuity of management, asset protection — are available to all dynasty trusts. But other features may be less common. The fact that the Miller family dynasty trust has some unusual features demonstrates the flexibility and benefit provided by dynasty trust planning. Each such trust is tailored to meet the needs of the family for which it is being implemented and the state law in which it will be administered.
