

By K. Eli Akhavan

Legal Gaga

Tax planning and asset protection strategies for celebrities

Ultra high-net-worth entertainers, film and television personalities and professional athletes (celebrities) require specialized estate and asset protection planning. In the past year, the media has been inundated with stories about the commercial and familial disputes in the entertainment and professional sports industries. We're all too familiar with the business confrontation between Charlie Sheen and CBS/Warner Bros., the high profile divorces of Frank and Jamie McCourt (and the impact on the ownership of the Los Angeles Dodgers), Arnold and Maria Schwarzenegger, Marc Anthony and Jennifer Lopez and of course, Kris Humphries and Kim Kardashian. This plethora of tabloid fodder highlights the importance of estate and asset protection planning for celebrities.

Here's a primer to inform celebrities' legal and financial entourage on the planning issues confronting celebrities and to help advisors to celebrities be as creative as their clients.

Unique Approach

While planning for celebrities may be based on a similar foundation as planning for civilians, celebrities have many distinctive attributes, which necessitate a unique approach to their assets and estates, including:

- Heightened level of exposure to frivolous lawsuits due to the perception, as well as the reality, that celebrities hold large amounts of liquid wealth;
- Celebrities' performance-related compensation, lifestyles and spending habits are constantly report-

ed in the media;

- Celebrities, especially athletes, frequently earn large amounts of money in relatively short timespans with peak earning periods;
- Celebrities, especially athletes, perform services and earn income in myriad taxing jurisdictions in any given year;
- Celebrities own unique intellectual property assets, including rights of publicity, which require advanced planning to minimize the transfer tax burden and to be properly managed post-mortem; and
- Celebrities desire a heightened level of privacy when purchasing certain high value assets, such as residential real estate, personal vehicles and yachts.

The unpredictability of physical and economic harm, the financial stakes involved and the relatively short amount of time that many celebrities might have in their peak earning years underscore the need to ensure and protect assets and future income streams.

Income Tax Planning

Celebrities are exposed to federal, state and international income taxation. But certain planning opportunities can help mitigate a celebrity's income tax burden.

Types of income. Celebrities who work in the motion picture and television industries are sometimes compensated contingent on the net profits or gross receipts of the motion picture or television program, which are called "participations." Celebrities in these industries can also be compensated based on "deferments" (fixed future payments) and "residuals" (additional payments based on future exhibitions of the film or television production). Finally, many celebrities can derive a major part of their income, especially after their retirement, from personal appearances and product endorsement.



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Recording artists are typically entitled to “royalties” based on future record sales.¹ Athletes derive their income from base compensation, bonuses, awards, personal appearances and endorsements and royalties from merchandising or licensing.

“Loan-out” entities. Celebrities have historically used a popular vehicle called a “personal service company,” also known as a “loan-out” company (the loan-out entity), to provide personal services (including services of musicians, songwriters, producers, actors and, to some extent, professional athletes). For federal income tax purposes, loan-out entities can be structured as C corporations, S corporations or limited liability companies (LLCs) taxable as partnerships, depending on the celebrity’s needs and circumstances.

In a loan-out entity arrangement, the celebrity enters into a formal employment contract with his loan-out entity, and the company enters into contracts with third parties to provide the celebrity’s services. One of the primary advantages of the loan-out entity is that the celebrity can participate in some form of qualified retirement plan, such as a profit sharing or an Internal Revenue Code Section 401(k) plan. Qualified retirement plans can provide a current tax deductible contribution to the loan-out entity and help ensure there’s no entity-level income tax.

Compared with the past, today’s federal income tax environment has a relative parity of individual and corporate income tax rates, as well as a relative parity of contribution limitations applicable to individual and corporate qualified retirement plans. Accordingly, there are fewer tax advantages to providing services through a loan-out entity, but it’s still used by celebrities due to the asset protection benefits it provides (since the celebrity doesn’t own the loan-out entity’s assets), and since it’s a vehicle entrenched in the entertainment industry. For example, Charlie Sheen’s loan-out entity, 9th Step Productions, helped shield his assets from liability in the suit against him by CBS and Warner Bros.

Furthermore, film studios and production companies sometimes prefer a loan-out entity to an individual, since it’s easier for the studio to deduct business expenses, such as office space, assistants and computers.

The studio also isn’t required to withhold taxes from the payments to a loan-out entity. Instead, the loan-out entity is responsible for withholding its own taxes and handling the payroll taxes.

Finally, celebrities are likely to incur expenses that will be characterized as miscellaneous itemized deductions, such as business manager and agent fees, guild fees (for example, Screen Actors Guild), travel expenses and tax and legal consultation fees. Miscellaneous itemized deductions can be limited by 2 percent of a

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taxpayer’s adjusted gross income. A loan-out entity is beneficial when a celebrity is repeatedly restricted from receiving full income tax benefits from expenses treated as miscellaneous itemized deductions, since a loan-out entity generally isn’t subject to these same restrictions.

Deferred compensation plans. A celebrity’s income can substantially fluctuate from year to year, potentially resulting in different effective tax rates for each year. A celebrity’s advisor should consider non-qualified deferred compensation planning to maximize these fluctuations. However, the advisor should ensure that there’s a carefully negotiated and documented deferred compensation agreement prior to the rendering of services. Also, there may be a risk that the payor won’t be able to meet the payment obligations in the future.

If an advisor anticipates that the celebrity will generate substantial self-employment income, a qualified

retirement plan should be considered, since contributions to the plan are currently deductible, but no income is reported until distributions are made. In addition, qualified retirement plans may offer federal and state creditor protection benefits.

State income tax planning. A celebrity is likely to perform services and earn income in many different states each year. He may be exposed to reporting obligations and tax liabilities. His advisor should plan to minimize the tax burden. **One of the most important factors is the celebrity's domicile.**² For example, a celebrity who resides in Florida and earns income solely from Florida sources won't be subject to state income tax, because Florida has no personal state

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income tax. However, if the celebrity performs in other states, there's a possibility of taxation for the income allocated to a state that does have a state income tax. Furthermore, if the celebrity resides in a state that has an income tax and performs in other states that also have a state income tax, he may be subject to double taxation with no credit relief allowable. Advisors should familiarize themselves with the income taxation rules of the celebrity's domicile, as well as those of the states where the celebrity performs.

Professional athletes may have their compensation taxed based upon the "jock tax" regime, which many states have adopted. **Pursuant to these rules, an athlete's compensation is prorated and potentially taxable to each state where the athlete performs on a "duty day" basis** (the definition of "duty days" depends on the taxing jurisdiction, but generally includes all days during the taxable year from the beginning of the team's official pre-season training period through the last game in which the team competes). A crucial principle is that **the state where an athlete's team is based isn't necessarily the**

domicile of the athlete for state income taxation purposes. Accordingly, if the athlete's domicile is in a state with no income tax, only the compensation that's allocable to the state with income tax based on the duty day concept will be subject to state income tax. Accordingly, **an athlete will find it very beneficial to be domiciled in a state with no income tax.** Furthermore, an athlete's advisor should be aware that **there may be offsetting state income tax credits depending on the athlete's domicile and where he performs the services.**

For all celebrities, advisors should **consider using deferred compensation planning if the celebrity plans on retiring in a state with a relatively low or non-existent income tax regime.**

International taxation. Celebrities may be subject to the various sovereign taxing regimes if they perform services, such as acting, directing, performing in a concert or playing professional sports, in different countries.

The rules governing the income taxation of international celebrities are quite complex and potentially contain many pitfalls for celebrities and their advisors. **The principles underlying international taxation are: (1) source of income; and (2) the residence and/or domicile of the taxpayer.** Furthermore, the United States has entered into tax treaties with many countries with specific provisions for athletes and entertainers, which advisors should be familiar with. Finally, similar to state taxation rules, there may be offsetting foreign and domestic tax credits available to mitigate any double taxation.

Estate Planning

Estate planning for celebrities presents distinctive challenges because of the unique assets they own, including rights of publicity, copyrights, trademarks, trade dress and interests in film investments. These assets raise complex transfer and valuation issues.

Generally, **tangible personal property (for example, vehicles, yachts and artwork) can be transferred through a deed of gift or via a testamentary document, such as a will or trust.** Intangible personal property, such as copyrights, can be transferred only by **complying with specific regulations and formalities.**

Earned Compensation

There are some planning techniques that minimize the estate tax liability for a celebrity who's earned income during his lifetime, but hasn't been paid yet.³ As a general

rule, IRC Section 691(a) provides for the treatment of certain items as income in respect of a decedent (IRD). Generally, IRD is income that's accrued to a cash basis taxpayer (that is, a taxpayer who reports income and deductions in the year that they are actually paid or received, not when accrued) prior to his death but hasn't yet been received.⁴ For an heir to treat income as IRD, the decedent must have been entitled to an item as income. IRD generally includes unpaid salary, bonuses paid after death and deferred compensation.⁵ IRD items of income are treated as gross income to the recipient in the taxable period during which they are received and are includible in a decedent's estate for estate tax purposes, because the decedent had a right to the income at date of death. Furthermore, no step-up in basis is allowed for IRD.⁶

Deductions for business expenses attributable to IRD that aren't allowed on the celebrity's last income tax return are allowed from the celebrity's estate in the tax year in which they are paid.⁷ Deductions for IRD may be made on both the federal estate tax return and the fiduciary income tax return.⁸

Therefore, IRD is included in the decedent's estate for estate tax purposes and is also subject to income tax in the hands of the recipient. To lessen this double taxation, IRC Section 691(c) permits an income tax deduction based on the federal estate tax attributable to the inclusion of IRD on the estate tax return. The deduction is determined by recalculating what the federal estate tax liability would have been had the IRD item not been included in the estate. The difference between that amount and the federal estate tax actually paid is the allowable IRD deduction.

The takeaway is, since there's no step-up in basis for IRD, an advisor should ensure that all available deductions have been taken with respect to IRD and estate income.

Using a GRAT for Film Investing

Many celebrities in the entertainment industry invest in films and are entitled to a percentage of the gross revenue generated from the film's distribution and film-related franchise. Investments are generally in the form of non-controlling interests in an LLC. Assuming the film is a hit at the box-office, the celebrity investor may recoup his initial investment and may also receive additional income from continued distribution in related markets (for example, DVD, broadcast and cable television, licensing and merchandising).

If the investment is successful, the membership interests may greatly appreciate in value. An advisor may want to freeze the value of the investment and pass the appreciation to the client's children or other family members free of gift tax. One technique would be to place the LLC interests in a grantor retained annuity trust (GRAT).⁹

The GRAT is a relatively simple technique to implement and works best in a low interest rate environment. The celebrity transfers his LLC interests to an irrevocable trust and retains the right to an annuity for a number of years. The advisor should select a GRAT term in which he projects that the LLC interest will substantially appreciate in value. Once the GRAT term expires, the LLC

A GRAT is a particularly effective transfer vehicle for film investments.

interests in the trust are distributed to the beneficiaries named in the trust. For gift tax purposes, the grantor is treated as having made a gift on the date that the assets are transferred to the trust in an amount equal to the difference between the present value of the assets transferred and the present value of the retained annuity payments. The value of the retained annuity payments is based on monthly interest rates published by the Internal Revenue Service. Therefore, it's possible to structure the GRAT so that the value of the LLC interests transferred and the value of the retained annuity are almost equal, resulting in zero or minimal gift value and therefore, no gift tax liability.

A GRAT is a particularly effective transfer vehicle for film investments because films generally aren't successful from an accounting perspective, and this impacts the value of the investment on the date it's transferred to the GRAT. Of course, an advisor should ensure that a professional appraiser is retained to value the celebrity's interest in the LLC before transferring it to a GRAT, and perhaps the LLC interests should be placed in another properly structured LLC so that the value reflects a significant discount for lack of marketability and control, in addition to the

uncertainty regarding the investment. If the film does well, then the amount of appreciation that will be transferred after the GRAT terminates can be enormous and may even result in future royalty streams being paid for the benefit of the grantor's family over an extended period of time. If the film does poorly, then the celebrity is just out of pocket for the administrative expenses.

Right of Publicity

Many celebrities enter into ventures that provide for the use of their likeness in connection with paraphernalia, including posters, apparel, games and other similar products. Certain states recognize this right of publicity as a right that can be bequeathed to a celebrity's heirs. In *Estate of Andrews*,¹⁰ the only case that's dealt with the right of publicity for federal estate tax purposes, the

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court held that the "name and likeness" was an asset that can be valued for estate tax purposes. The case dealt with an author's estate and the valuation issue focused on the estate's right to hire a ghostwriter to write the books that the author had agreed to produce, but hadn't completed prior to death. The court determined that the value should be based on the facts known at the date of death, which was what a willing buyer and a seller would have negotiated based on the possibilities for success or failure of the first book that the ghostwriter would produce. The case demonstrates that the IRS can assess an estate tax value for the right of publicity of prominent celebrities.¹¹

It's important for advisors to note that not all states recognize a post-mortem right of publicity. For example, if a celebrity is domiciled in New York at the time of his death, any rights to publicity of his name and likeness are terminated at death. Accordingly, for a celebrity who's domiciled in New York, his estate will likely not

include the value of the right of publicity.

Copyrights

Tax planning. As a general rule, if a celebrity's main income-earning activity is the performance of personal services (for example, the celebrity is a songwriter or an actor), most of the income from the activity will be characterized as ordinary income during the celebrity's lifetime and will be subject to the IRD rules after the celebrity's death. If there are any business expenses attributable to the IRD, they may be deductible in the year of death or on the estate or income tax return for the estate.

On the other hand, if the celebrity owns manuscripts, master recordings, motion picture and television films, copyrights and other similar assets, those may be subject to capital gains tax upon disposition and receive a step-up in basis. This means that the income tax basis will adjust to the fair market value (FMV) of the asset at the time of the decedent's death. The beneficiaries can then sell the asset with little or no taxable gain.

The main issue revolves around whether the celebrity owns the copyright at his death or whether he's treated as having sold the asset during his life and at his death owns merely the right to receive the sale proceeds. In the former, the tax concepts of stepped-up basis and depreciation apply, whereas in the latter, the IRD rules govern. Put differently, the issue is whether the celebrity's estate has a "license" for tax purposes or whether a sale has taken place and the celebrity no longer owns the copyright.

The IRS has ruled that amounts earned before death are always IRD, but that royalties earned after death are IRD only if the copyright was "sold" during the decedent's lifetime. A transfer of the exclusive, perpetual right to exploit a copyrighted work in a particular medium of publication will be treated as a disposition of the property for income tax purposes, provided that the transferor possesses no right to reacquire the transferred right except upon the failure of certain conditions outside the transferor's control. A transfer for less than the full period of copyright protection or transfer of non-exclusive rights will be treated as a license and not a sale (that is, royalties earned after death aren't IRD).

The sale-versus-license issue can apply not only to copyrights, but also to motion picture and television films, master recordings and manuscripts, making it

somewhat challenging to determine whether these assets will get stepped-up in basis or whether they'll give rise to IRD. The sale-versus-license issue is one in which the celebrity's advisors can play an important role in adopting and advocating a position, depending on the particular circumstances.

Transfer planning. One important estate-planning issue with copyrights is that special "forced heirship" rules may potentially frustrate a celebrity testator's wishes.¹²

Federal copyright law provides that copyrights created on or after Jan. 1, 1978, have a term that extends for the life of the author, plus 70 years.¹³ Copyright law gives the celebrity a right to terminate any grant or license the celebrity executed—regardless of whether the grant or license is for exclusive rights to the work.¹⁴ The celebrity can't waive or contract the right to terminate.¹⁵

Beginning 35 years after the date of the grant or license, there's a five-year window during which the grant or license can be terminated.¹⁶ Furthermore, the celebrity must give notice for the termination and the notice must specify a termination date that falls within the five-year period. The earliest that the celebrity can give a termination notice is the first day of the 25th year (to take effect on the first day of the 35th year); the latest that a celebrity can give a termination notice is the last day of the 37th year (to take effect on the last day of the 39th year).

An estate-planning problem arises if a celebrity dies before he can exercise the termination right (that is, before year 25), or dies between years 25 and 38 without having given a termination notice.¹⁷ Under these circumstances, the copyright law provides that the celebrity's surviving spouse and descendants jointly have the termination right, with the surviving spouse having a 50 percent right (or 100 percent if there are no descendants) and the descendants per stirpes having the other 50 percent (or 100 percent if there's no surviving spouse). Only those individuals who hold a majority of the termination right can exercise the notice of termination; accordingly, in the case of a celebrity who's survived by both a spouse and children, a majority would require the consents of both the spouse and at least one of the children.

A celebrity has no right to change

this statutory design by any estate-planning documents, unless the celebrity exercises this termination right.¹⁸ Therefore, there's a "forced heirship" of the celebrity's copyrights if the celebrity dies holding an unexercised or unexercisable termination right.

The forced heirship created by the copyright law may frustrate a celebrity's intent for his legacy. For example, a celebrity may want his surviving spouse to receive all the royalties for life. The descendants can prevent the surviving spouse from exercising the termination right to make a better licensing deal. Or perhaps the celebrity wants to give a portion of his copyrights to his siblings or a favorite charity and is prevented from doing so because of the statutory scheme.

Estate planners should be aware that **techniques exist to avoid the forced heirship.** For example, the celebrity, during his lifetime, can exercise the termination right; once the termination notice has been sent, the forced heirship rules don't come into effect. Another method includes drafting an in terrorem clause in the celebrity's will to provide that a beneficiary who attempts to exercise a termination right will no longer have any right to receive any future distributions from the celebrity's estate.

Additionally, since the forced heirship rules don't apply to "work for hire," one suggested technique is for the celebrity to contract with his wholly-owned LLC to author certain works (for example, songs or compositions), which the LLC then copyrights and grants or licenses to third parties. Some practitioners are against this method because, by coming under the work-for-hire exclusion, the celebrity is taking away from himself (and his surviving spouse or descendants) what can be a very valuable right.¹⁹

Finally, a celebrity can avoid the forced heirship

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issue by never granting or licensing the copyrights to a third-party publisher. Instead, the celebrity can self-publish under his own label. However, as celebrity advisors may know, this rarely occurs except in the case of some extremely successful songwriters.

Entity Planning

The advisor may want to recommend that the intellectual property (including the right of publicity) be owned by an entity at death, and the entity interests can be transferred as part of the estate plan. As with any closely held business that has appropriate documentation (shareholders agreement or operating agreement), the entity interests can be transferred after the death of the owner. The entity interests typically will be bequeathed to the celebrity's surviving family members, purchased by other owners or sold to an outside party. The celebrity's tax advisor should guide the business on the income tax aspects of the planning, particularly if the entity will yield ordinary income from the celebrity's activities. For example, if after the celebrity's death, there's IRD being recognized by an entity that was established during the celebrity's lifetime, the advisor may advise against the liquidation of the entity to delay the recognition of income by the celebrity's estate or beneficiaries. If the entity is liquidated, the celebrity's estate or beneficiaries may incur an immediate tax liability. However, if the entity is kept in existence, IRD will only be recognized by the celebrity's estate or beneficiaries when they actually receive the money.²⁰

Valuation and Liquidity Concerns

Copyrights, music catalogs and film and television interests are very difficult to value. The applicable test set forth by the IRC and Treasury regulations is a willing buyer and a willing seller, with neither under compulsion to buy or sell and both having reasonable knowledge of relevant facts.²¹ The difficulty is exacerbated by the fact that there are usually relatively few sales of these types of assets, and the assets are hardly comparable with one another making it challenging to determine an accurate value.

A common valuation method is to attempt to estimate the future income stream and then discount that income stream to present value. Estimating the future income stream can be somewhat complex in the entertainment industry. Post-death events may be relevant if they were based on facts known or reasonably foreseeable at the date of death. For example, in *Estate*

of Pascal,²² the court stated that it wasn't foreseeable at death that rights to produce the musical play and movie of "Pygmalion" would turn into the "My Fair Lady" blockbuster, when neither composers nor producers had been engaged when the rights holder died.

Furthermore, unique and fairly valuable assets owned by celebrities at the time of death may give rise to a significant estate tax liability, yet be illiquid. Advisors should be aware that the IRC offers two avenues for deferral relief in this scenario.²³ First, IRC Section 6161 provides that the IRS may extend the time for payment of estate tax for up to 10 years upon a showing of "reasonable cause." The Treasury regulations give as an example of reasonable cause, a situation in which an estate is composed in substantial part of assets consisting of rights to receive payments in the future, such as copyright royalties and contingent fees. The deceased celebrity may have such assets.

IRC Section 6166 provides the second possibility for deferral relief. Section 6166 requires that the decedent celebrity own an interest in a closely held business that constitutes more than 35 percent of his adjusted gross estate. Under this section, the estate tax attributable to the closely held business can be paid in up to 10 equal annual installments, with the first payment deferred up to five years from the initial due date of the estate tax return. Although interest is payable annually, it's at reduced rates.

Advisors should note that deferral under Section 6166 is available only for an interest in a "trade or business," a term that the statute doesn't define. The value of any interest in the closely held business doesn't include any "passive assets" of that business. Revenue Ruling 75-367 provides that the term "trade or business" isn't to be determined by reference to a broad definition of that term for purposes of IRC sections other than Section 6166, but rather Section 6166 is intended to apply only "to a business such as a manufacturing, mercantile, or service enterprise, as distinguished from management of investment assets."

There's no guidance as to whether Section 6166 can apply to a celebrity's illiquid estate. However, it would appear that if the celebrity actively managed the illiquid assets, Section 6166 deferral is likely to be available.²⁴

"Transmutation" Agreements

One particular asset protection issue that frequently gets the attention of the media is the adjudication of

pre- and post-nuptial agreements in celebrity marriages. The McCourt spousal dispute over the ownership of the Los Angeles Dodgers threw into the spotlight a species of the post-nuptial agreement—the “transmutation” agreement.²⁵

Property division during divorce entails that all the property be divided between the spouses. How the property is divided will depend on whether the couple is in a community property jurisdiction or a common law jurisdiction.²⁶

In a community property jurisdiction (such as California), assets that both spouses have earned or acquired during the marriage belong to both of them, and the money that either spouse had before the marriage or from an inheritance or gift belongs to that spouse as separate property. Increased equity in separate property may become community property in certain circumstances, and separate property that’s commingled with community property often becomes community property.

The courts in community property states will usually divide the community property equally between the parties and give each spouse his separate property. The property is divided so that each spouse gets half of the total net value, which is the FMV of assets minus community debts.

In a common law jurisdiction, the spouse whose name appears on an ownership document, like a title, deed or registration, owns the property. Unlike in community property states, a spouse isn’t entitled to keep separate property. Each spouse is entitled to receive a fair and equitable share of the property of the other spouse. Since there’s no precise definition of “fair and equitable,” the factors most commonly considered in the division are the needs of the spouses, the length of the marriage and the fairness of the division.

Many community property states allow a bit of alchemy, called “transmutation.” Transmutation permits the parties to change the character of “separate property” to “community property” or vice-versa, generally through a written agreement. This was the issue that the McCourts litigated—in particular, whether ownership of the Dodgers had been properly transmuted to Frank McCourt.

Practitioners should note that when only one spouse benefits from an interspousal transaction, the law generally presumes that the transaction was the product of undue influence. Once that presumption arises,

the advantaged party has the burden to prove that the disadvantaged party wasn’t unduly influenced.²⁷ *In re Marriage of Delaney*²⁸ sets forth the elements that the advantaged spouse must establish to prove that no undue influence was used in a transmutation. First, the disadvantaged spouse must have freely and voluntarily made the transmutation. Second, the disadvantaged spouse must have had full knowledge of all the facts. Third, the disadvantaged spouse must have had a com-

Advisors should tell their clients to make high value purchases through vehicles such as LLCs and trusts.

plete understanding of the effect of the transmutation. These rigorous standards of fiduciary duty and undue influence leave little room for deception in estate planning before a divorce.

Advisors should also note that there may be adverse tax consequences to entering into a transmutation agreement. Accordingly, advisors to celebrities who are about to get married, or already are married, should consider whether a transmutation agreement would be beneficial for their clients.


Privacy Concerns

Celebrities frequently make high value purchases that potentially may become matters of public record (for example, real estate, automobiles and boats). Accordingly, advisors should tell their clients to make these purchases through vehicles such as LLCs and trusts. The trust can provide how the assets should pass to the celebrity’s next of kin. In addition to the asset protection and potential estate tax benefits that these vehicles provide, they also confer a layer of anonymity behind the celebrity’s purchases.

For example, the purchaser of a mega-yacht can be an LLC and the signatory a manager of the LLC, who also happens to be the celebrity’s advisor or business manager. Or, the purchaser of a house can be a trust, and the signatory on the sales contract a trustee, who’s another advisor to the celebrity. The names of the LLC or trust will be names that won’t be so easily connected

to the celebrity to protect him. However, certain tax benefits, such as capital gains exclusion, may be lost in these scenarios—the advisor should weigh all the advantages and disadvantages prior to using an entity as a purchase vehicle.²⁹

Back to the Future

The tax and asset protection laws that affect us mere mortals also apply to celebrities. Much like celebrity careers, these laws are ever changing and evolving, and advisors must keep themselves abreast of the case and statutory law. Advisors must also be creative in using these ever-changing bodies of law to ensure their clients' interests are protected to the fullest extent possible. 

Endnotes

1. For income tax purposes, “royalties” generally refer to payments received for the license of an intangible asset. In the case of a recording artist, “royalty” refers to the artist providing recording services.
2. “Domicile” generally refers to a person’s fixed and permanent home and is the place to which a person has the intention of returning, even if absent for periods of time.
3. See Jeffrey K. Eisen and Allan E. Biblin, “Estate Planning for Clients in the Entertainment Business,” *Estate Planning* (February 2006) for a more detailed explanation. See also Tim Matson and Scott Nelson, “Estate Planning for the Entertainer or Athlete,” *Entertainment and Sports Lawyer* (Summer 2011).
4. Treasury Regulations Section 1.691(a)-1(b).
5. Internal Revenue Code Section 691(b).
6. IRC Section 1014(c).
7. IRC Section 691(b).
8. See IRC Section 642(g). If these deductions more than offset gross income, they should—if possible—be taken on the final income tax return of the estate, rather than on an earlier fiduciary income tax return, so that the excess deductions will be available to the beneficiaries on termination of the estate.
9. This section is based in part on Daniel J. Scott, “The Hollywood GRAT Pack,” *Entertainment and Sports Lawyer* (Fall 2007).
10. *Estate of Andrews*, 850 F. Supp. 1279 (E.D. Va. 1994).
11. See Matson and Nelson, *supra* note 3.
12. See Eisen and Biblin, *supra* note 3.
13. 17 U.S.C. Section 302(a).
14. 17 U.S.C. Section 203(a).
15. 17 U.S.C. Section 203(a)(5).
16. 17 U.S.C. Section 203(a)(3).
17. See *supra* note 14.
18. 17 U.S.C. Section 203(b)(2).
19. See Eisen and Biblin, *supra* note 3.
20. See Matson and Nelson, *supra* note 3.
21. Treas. Regs. Section 20.2031-1(b).
22. *Estate of Pascal*, T.C. Memo. 1963-336.
23. See Eisen and Biblin, *supra* note 3.

24. See Revenue Ruling 75-365, 1975-2 C.B. 471; Private Letter Ruling 9801009 (Sept. 26, 1997).
25. Stephen Dunn, “Why the McCourt Marital Agreement Failed,” *Forbes* (Dec. 14, 2011).
26. See Howard S. Klein, “Parting of Ways,” *Los Angeles Lawyer* (June 2010) for further background information.
27. See *ibid.*
28. *In re Marriage of Delaney*, 111 Cal. App. 4th 624 (2003).
29. See Marc Santora, “Keep My Boldface Name Out of It,” *New York Times* (June 5, 2011).



SPOT LIGHT

Fresh Powder

“St. Gervais-les-Bains” (39 in. by 24 in.) by Roger Broders sold for \$3,200 at Swann Auction Galleries’ recent “The Complete Poster Works of Roger Broders” sale on Dec. 15, 2011 in New York City. St. Gervais-les-Bains is actually a commune and not a resort. As such, it has a large year-round population (by remote ski village standards at least) and doesn’t experience much seasonal fluctuation.