ESTATE PLANNING AND CRYPTOCURRENCY

You purchased and own some form of cryptocurrency (e.g., Bitcoin, Ethereum, Ripple, etc.). You're optimistic that their value will climb sharply. If that wish happens, how do you handle those cryptocurrencies for estate planning purposes?

One of the key selling points for buying cryptocurrency is its anonymity. There is no paper trail, and there are no physical assets to touch. However, this becomes a significant drawback when you die. How does your family access the cryptocurrency? Do they even know that you own cryptocurrency? You need to notify your professional advisors (e.g., attorneys, accountants, wealth managers and financial planners) and your family that you own cryptocurrency so they can act appropriately. More important, you need to make sure that your cryptocurrency can be accessed upon your disability or death.

Cryptocurrency is accessed through the use of a "private key" – essentially a password. Cryptocurrency users store the private keys in "wallets." Wallets are generally stored online. Once someone has access to the wallet, cryptocurrency can be purchased, sold or transferred. Accordingly, it is important that the executor of your estate, agent under a power of attorney or trusted family member has access to the private key. There are numerous anecdotes of people losing millions of dollars by selling their computers only to remember that their hard drives had their private keys – oops!

We recommend that you prepare a detailed letter – to be kept in a safe deposit box or other secure location with your other important documents (e.g., Will, Power of Attorney, Advance Health Care Directive, etc.) – specifying any private keys and cryptocurrency transactions. Of course, this letter should be updated periodically. In addition, the letter should set forth detailed instructions on how to access the cryptocurrency, including any passwords or codes needed to take custody of the cryptocurrency.

While we naturally think of cryptocurrency as "currency," the Internal Revenue Service held in Notice 2014-21 that cryptocurrency is ***property***, not currency. The tax implications of this holding is that you will have gain or loss on the sale or transfer of cryptocurrency and must maintain records to show your tax basis in cryptocurrency. For example, if you used $2,000 of Bitcoins to buy furniture and the Bitcoins cost you $500, you have a gain of $1,500 that needs to be reported on your income tax return.

While cryptocurrency may be the currency of the future, it is essential that you take the necessary steps today to ensure that your family can access the cryptocurrency on your death.

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