You've Won the Lottery! Now What?

by Barry A. Nelson, Esq.

You wake up Sunday morning, look at the morning paper and find that you just won the $25 million Florida lottery. What do you do? This article addresses various steps that should be taken if any of us are fortunate enough to win the lottery or for any other reason become instantly wealthy.

I. Safeguard the Ticket.

The first thing you should do is to make a Xerox copy of the lottery ticket and place the original in your safe deposit box. Call the Florida Lottery at 1-800-PLA-YFLA to verify the numbers.

II. Seek a Tax and Financial Planning Team.

No single professional is skilled enough to give you advice in all areas such as: taxes, investments, wills and trusts and insurance. A team of professionals is your best alternative. Obviously, you need to call someone initially, and typically the first professional will help put together the financial planning team. The team would typically consist of a tax attorney, a certified public accountant, a financial planner or investment advisor and possibly an insurance specialist. Once the team is put together, the following issues should be discussed:

1. Who is the ticket owner?

Is the ticket owner an individual or a group of persons who invested together in the ticket. If the owner is an investment group, additional complexities arise. The Department of the Lottery will only make payment to one individual or entity (such as a Trust, Corporation or Partnership). Accordingly, all of the owners of the lottery ticket must designate one person or entity to receive annual distributions, which will be made annually over a twenty year period, on behalf of the other owners of the ticket. For this reason, the preferred alternative is to have a lawyer form a trust instrument and designate the Trust as the owner of the ticket.

2. Income taxes.

The Florida Department of Lottery will withhold 20 percent of the lottery proceeds for federal income taxes. However, it is likely that additional income taxes will be payable by the lottery winners due to the fact that existing tax rates for a lottery winner will be 28 percent. A C.P.A should give advice to the lottery winner as to any estimated tax payments which would be required during the year to avoid tax penalties.

3. How the lottery checks should be deposited.

The Financial Planner should give advice as to how the lottery checks should be deposited into the winners' accounts. For example, based upon the number of failing Savings & Loans (in which your accounts are guaranteed by the Federal Government up to only $100,000), it would not be advantageous to have the first $1 million or $2 million check deposited in a Savings & Loan (even on a short term basis). Professional advice should be obtained immediately in order to determine where to "part" the initial lottery check and then how to invest the lottery proceeds as they are paid.4. Estate and tax planning.

One of the first steps a lottery winner should take is to review his or her Will. It has been reported that at least one-third of all adults do not have Wills. If the lottery winner should get into a fatal accident on the way home from claiming their lottery prize, Florida law would designate the beneficiaries of the deceased lottery winner's estate unless the lottery winner had a Will.

For example, if the deceased lottery winner was in the midst of a divorce, but the divorce proceedings were not finalized, then unless a Will was executed, the deceased lottery winner's spouse would receive approximately 50 percent of the lottery winnings, assuming the lottery winner was married at the time of his/her death and had children or all of the lottery winnings if the deceased lottery winner was married without children. Obviously, lottery winners should take the time to prepare a new Will in order to be sure that their beneficiaries will inherit the remaining lottery winnings in the event of death.

Estate tax consequences should also be considered. Currently, anyone having assets in excess of $3 million pays estate taxes at the rate of fifty-five (55%) percent. Due to certain surcharges, estates in excess of $10 million can be taxed at estate tax rates as high as 60 percent. With such a substantial tax bite ahead, estate planning becomes very important.

One alternative is to obtain life insurance for the lottery winner through an Irrevocable Life Insurance Trust in order to pay estate taxes on the lottery winnings upon the death of the lottery ticket winner. Fortunately, the Internal Revenue Service should generally allow a decedent's estate taxes to be paid in installments in the event of the death of a lottery ticket winner as his estate (or beneficiaries) receive annual lottery proceeds.

In preparing a Will and Trust, the lottery ticket winner will have to consider difficult non-tax issues. For example, at what age should the winner's children inherit such large sums of money in the event of the lottery winner's death. Most of my clients believe that it is advantageous to delay large distributions to younger family members until they finish college and have work experience so they obtain a healthy work ethic.

A will can provide incentives to younger children. For example, the Will of a lottery ticket winner could provide that the winner's children would receive certain amounts as needed for their health, education, maintenance and support. Additional distributions can be made to such children equal to the amount of earned income of the children from legal sources. When the children attain certain ages (e.g.,30, 35 and 40) they can receive distributions of one-third of the assets of the lottery ticket winner's estate. This type of distribution gives incentive to the lottery ticket winner's children to graduate from college and achieve successful employment.

5. Planning for retirement.

Depending upon the age of the lottery winner, consideration must be given to what happens after the 20 years of payments are received. It seems that many of us tend to spend a little more than we earn. Accordingly, without proper planning, it is possible that a lottery winner could spend all of his lottery proceeds on an annual basis for twenty years. Suddenly, in the twenty-first year, his checks will terminate and notwithstanding the fact that the lottery winner has become accustomed to an extremely high standard of living, his source of income will be cutoff.

6. Creditor protection.

In prior issues of Aventura Times this column addressed certain problems that could arise with creditors. Lottery ticket winners should be careful about what they do after winning the lottery. For example, one lottery ticket winner quit his job and decided to produce records. It is likely that he would incur substantial expenses in setting up a record recording studio. Generally, the bank would require collateral for such a loan which would be an assignment of future lottery winnings in the event the loan is in such default. Obviously, careful consideration is necessary before any such loan is obtained by a lottery winner.

III. Conclusion.

Notwithstanding all of the problems and concerns described above, all of us would love to win the lottery. Like anything else, planning is necessary to put together the best financial team to assist you with your lottery bonanza/ dilemma. It's an exciting time for both the lottery ticket winner, their family as well as their professionals. Should you be lucky enough to win, head the advice of this column and plan before you visit Tallahassee to pick up your first check Good luck!

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