

THE
NATIONAL LAW REVIEW

Using LLC or Trust to Receive Lottery Winnings

Tuesday, January 12, 2016

Today, the hottest financial topic (aside from the collapse of Chinese markets) is who will win the **PowerBall** drawing (latest estimates are at \$1.4 billion) and what will they do with the winnings! A couple of points are worth noting before you turn in your winning ticket.

First, whoever wins will not receive \$1.4 billion in a lump-sum. If the winner elects to receive a lump-sum, the current estimated payout is around \$868 million (based upon the present value of a stream of payments over 29 years). Then, you have to subtract federal and state income taxes. The highest federal income tax rate is 39.6 percent; the state rates will range from a high in New York and Maryland of around 8.8 percent to a low of zero in certain states that do not tax lottery winnings (such as California, Pennsylvania and Florida). Note that the IRS only requires withholding of 25 percent at the time of the payout if the winner gives his or her Social Security Number; the rest of the federal taxes come due with the next estimated tax payment voucher (i.e., April 15th). A winner can file IRS Form 5754 to allocate the proceeds among multiple winners and spread the income tax consequences according to their contributions or other sharing agreement they may have.

Given that lottery winners are sometimes as cursed as they are lucky (i.e., people constantly asking for handouts, others trying to steal the proceeds, the winner having to deal with the complexities and burdens of “excessive” wealth), the natural inclination of a few savvy individuals is to try to remain anonymous and not disclose the fact that they have won. This is not as easy it sounds. Of the 44 states and the District of Columbia who participate in the PowerBall bonanza, only six states permit pure anonymity (DE, KS, MD, ND, OH and SC). Three other states apparently allow anonymity if the winnings are claimed through a trust or limited liability company (LLC). The remaining states (including Virginia and DC) generally require disclosure of the winner’s name, hometown and place where the winning ticket was purchased. Needless to say, the winners will be hounded by the press and others once their names are announced. Each winner, at a minimum, should consider, changing his or her phone number before signing the winning ticket and submitting it to the appropriate state lottery authority.

While it may not be possible to completely hide the identity of the PowerBall winner in all states, it may be possible to create a legitimate smokescreen for multiple winners using an LLC or trust. If you are using either type of entity, you will want to be careful to select the right jurisdiction where the LLC or trust will be subject to the least adverse income tax consequences. Either type of entity can be used to provide privacy for multiple winners. For example, if you use a trust, then each winner will sign a trust agreement agreeing to transfer his or her interest in the winning ticket to the trust and appointing one or more trustees to act on behalf of all of the winners. With this PowerBall jackpot being so high, the prospective winners should consider selecting a corporate trustee or bank to serve in that role. Alternatively, the winners can form an LLC and appoint a single manager to handle the logistics of receiving the winnings, reporting to the IRS and state taxing authorities and distributing the proceeds in the manner they have agreed.

Importantly, the winners should consult with their own attorney as soon as they learn that they have won the jackpot and before they announce this windfall to the world. The attorney should have significant experience in income and estate and gift taxes, as well as trust and LLC planning. The attorney also can help create a sharing agreement or contribution agreement outlining everyone’s rights, powers and responsibilities, as well as the appropriate trust or LLC documentation, on a timely basis. In addition, the winners should individually consult with



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a CPA and certified financial planner to determine how they will structure the lottery payout and how they will plan their lives following receipt of the lottery proceeds. This team of professionals should be consulted before the winning ticket is signed and turned in, which usually is required within 90-180 days after the winning numbers are announced (depending upon the state). In that way, the winners can maximize the benefits and minimize the stress of being the “chosen ones”.

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