MATTHEW JAMES

DEFERRED TAX

STRATEGY

A Capital Gains Tax Deferral Approach

MATTHEW JAMES

tax & wealth management

MJ

THE PROCESS

1. THE SALE

OF REAL ESTATE OR A BUSINESS

2. THE TRUST

PROCEEDS FROM SALE
[PART OR ALL TRANSFER DIRECTLY INTO THE TRUST]

- Deposited into major bank as custodian with legal firm as trustee
- All taxes deferred as assets remain in trust [pay taxes on distributions only]
- Customer maintains control
- Proceeds now in liquid, ‘invest as you wish’ account

3. ALLOWED INVESTMENT ALTERNATIVES

- MATTHEW JAMES Tax & Wealth Management [for investing in stocks, bonds, bank cd’s, mutual funds, money market, ETF’s, hedge fund]
- Real estate: residential rentals or commercial real estate

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matthewjames.com/dts

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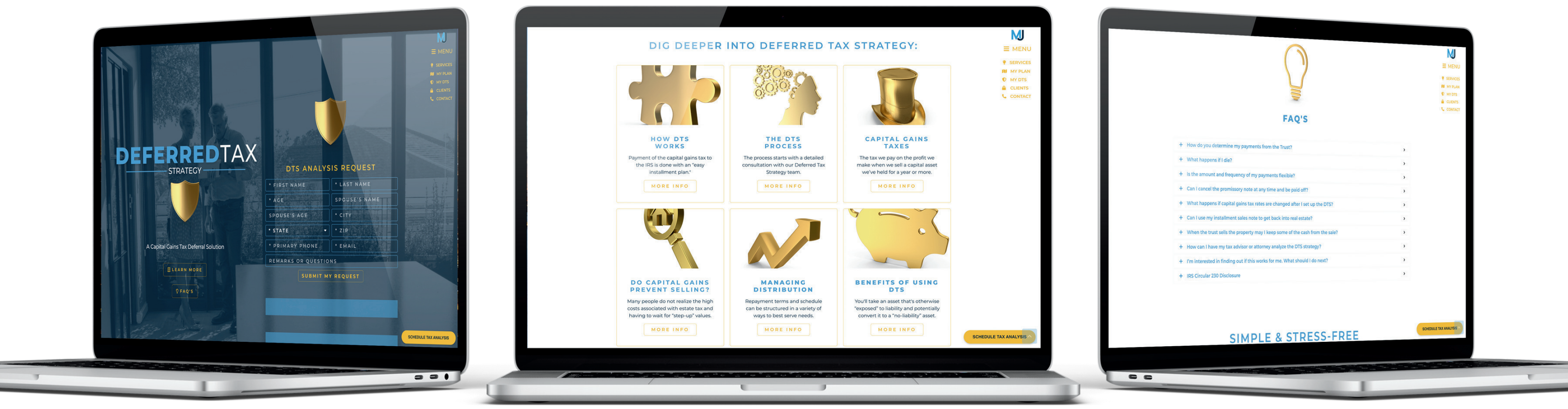
DEFERRED TAX STRATEGY

Owners of businesses, real estate, and other highly appreciated assets are often reluctant to sell their property due to the significant capital gains tax liability that can result. Fortunately, the MATTHEW JAMES Tax & Wealth Management Estate Planning Team offers the Deferred Tax Strategy ["DTS"].

Our DTS offers an attractive and flexible tax deferral alternative to a 1031 Exchange, which can dramatically decrease or defer the capital gains taxes that would otherwise be recognized in the year of the sale. Rather than experiencing the debilitating drain of equity that results from a fully taxable sale, the DTS permits the seller to generate a potentially higher rate of return by leveraging the pre-tax proceeds from the sale, which can be significantly greater.



The DTS is a type of IRC Section 453 installment sale, also known as a "seller carry-back" sale. Under this code section, the seller may achieve significant tax-deferral benefits by not receiving actual or constructive receipt of the proceeds at the time of the sale, instead receiving payments made to them over time. Moreover, the Deferred Tax Strategy has greater flexibility than a conventional installment sale with respect to risk management, the repayment timeframe, and the trust's investment selection.

The process starts with a detailed consultation with a specialized attorney who will gather appropriate details of the transaction to determine if it is suitable for structuring as a DTS, as well as what the potential benefits would be to the taxpayer. Then, if the transaction meets the requirements for a DTS, and sufficient benefits can be obtained for the taxpayer, a conditional engagement agreement is offered to the taxpayer by the law firm. This engagement requires no upfront retainer and does not obligate the taxpayer to pay for any services unless, and until, the closing of the sale of the appreciated asset and a decision by the taxpayer to proceed with the funding of the trust.

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When the taxpayer decides to proceed, the ownership of their highly appreciated capital asset is transferred to a dedicated trust. There are generally minimal Capital Gains Taxes due from the trust on the sale since the trust often purchases the property for a price and value similar to what it may get sold to a third-party buyer for.

As a result, there is likely no capital gains tax immediately owing from the initial transfer to the trust under Section 453, and no capital gains tax liability from the sale from the trust to the buyer because there is no capital gain.

By utilizing the DTS structure, the seller of the property becomes a noteholder (creditor) and the trust makes the agreed upon payments to the noteholder, pursuant to a payment agreement called an "installment sales contract."

Under this contract, the trust is obligated to make installment payments to the noteholder (seller), representing interest on the pre-tax proceeds or principal from the sale, or both.

If the noteholder [seller[has other income and doesn't need the payments right away, they may elect to defer the start date of the note payments. The tax code does not require payment of the capital gains tax until the seller starts receiving payments of principal.

The capital gains tax that will be recognized and paid to the IRS and the State is only that portion of the overall capital gains due from the taxpayer's sale to the trust, based upon the proportion of principal repayment established in the terms of the installment agreement.

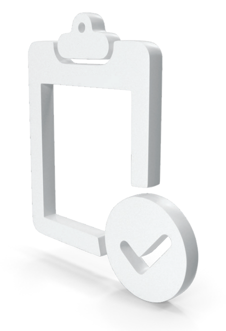
The note payments and the capital gains tax deferral effect from the DTS will continue to the next generation upon the demise of the seller. With additional planning by the DTS attorneys, the proceeds from the sale can be entirely removed from the seller's taxable estate.

PRIMARY BENEFITS

DEFERREDTAX

When appreciated assets are sold, tax on the gain is deferred until the seller receives payments of the principal. Opting to receive future payments in lieu of an immediate lump sum delays the recognition of capital gains, thereby enabling the taxpayer to enjoy the benefit of the pretax proceeds for an extended period.

Managing the amount and frequency of principal distributions can also enable the seller to benefit from lower marginal tax rates for the years in which the gains are recognized. The DTS can defer capital gains taxes on the sale of almost any type of highly appreciated asset including businesses & professional practices, commercial real estate, investment properties, high end primary residences, major stock positions, and very valuable artwork and collectibles, among other things.



FLEXIBLE PAYMENT OPTIONS

The repayment terms and schedule can be structured in a variety of ways to best serve the needs of each specific taxpayer. This includes anything from minimal repayment of principal or rapid amortization. In addition, the commencement of payments can be immediate or can be delayed into the future.

LIQUIDITY & DIVERSIFICATION

Can potentially convert an illiquid asset, like a business or commercial real estate, into a diversified portfolio of liquid investments.This can help reduce risk and volatility by preventing overexposure to a single asset class.

ENHANCED RETIREMENT INCOME

Can provide a stream of income for retirement based on the pre-tax proceeds from the sale instead of the after-tax proceeds, which are likely to be substantially less.

PRIMARY BENEFITS

MAINTAINS FAMILY WEALTH

Helps to maintain wealth within the family in a number of ways. First, by avoiding a massive drain of equity at the time of the sale, resulting from the immediate recognition of the full capital gains tax liability at the highest rates. Second, by potentially providing significant estate planning benefits. And finally, the DTS can provide estate liquidity so that significant assets of the family do not have to be liquidated under less- than-ideal circumstances.

ESTATE TAX BENEFITS

The DTS can be combined with additional planning to accomplish an estate freeze for estate tax purposes, and to potentially remove the proceeds of the sale from the seller’s taxable estate beyond the amounts exempted by the unified credit. Further, the ability to select the state in which to domicile the trust can provide additional tax savings.

SEPARATE A PARTNERSHIP INTEREST

When a partnership or other ownership group sells an appreciated asset, they do not need to remain together to achieve tax deferral, as is typically the case with a 1031 Exchange. Each individual owner can have their own Deferred Tax Strategy, the assets of which can be managed to each taxpayer’s own individual risk tolerance and preferences.

FA 1031 EXCHANGE ALTERNATIVE

Unlike a 1031 Exchange, the proceeds from the sale do not have to be invested in “like-kind” property in a very short timeframe to achieve tax deferral.

ASSET PROTECTION

Subject to state-specific laws, and in conjunction with additional planning, the taxpayer can potentially secure asset protection by utilizing our DTS.

PROBATE AVOIDANCE

With additional planning, the DTS can help avoid the delays and expense of probate.

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HYPOTHETICAL SCENARIOS

COMMERCIAL PROPERTY SALE IN NYC

Sales Proceeds After Commissions & Closing Costs:	20,000,000
Seller's Original Basis:	$5,000,000
Capital Improvements:	$1,000,000
Depreciation:	$4,000,000
Mortgage Balance At Time of Closing:	$2,000,000
Seller's Adjusted Basis [purchase price + capital improvements - depreciation:	$2,000,000
Taxable Gain [net sales proceeds minus adjusted basis]:	$18,000, 000
Federal Tax [unrecaptured section 1250 gain applies]:	20-25%
NY State & City Tax:	12.7%
Medicare Tax:	3.8%
Approximate Tax Due:	**$6,770,000**
Approximate Tax Due with Deferred Tax Strategy:	**$0**

PRIMARY RESIDENCE IN L.A.

Sales Proceeds After Commissions & Closing Costs:	$20,000,000
Seller's Original Basis:	$5,000,000
Capital Improvements:	$1,000,000
Depreciation:	$4,000,000
Mortgage Balance At Time of Closing:	$2,000,000
Seller's Adjusted Basis [purchase price + capital improvements - depreciation:	$2,000,000
Taxable Gain [net sales proceeds minus adjusted basis]:	$18,000, 000
Federal Tax [unrecaptured section 1250 gain applies]:	20-25%
NY State & City Tax:	12.7%
Medicare Tax:	3.8%
Approximate Tax Due:	**$6,770,000**
Approximate Tax Due with Deferred Tax Strategy:	**$0**

BUSINESS IN CHICAGO

Sales Proceeds After Commissions & Closing Costs:	$10,000,000
Seller's Original Basis:	$0
Business Loan Balance At Time of Closing:	$250,000
Taxable Gain [net sales proceeds minus adjusted base]:	$10,000,000
Federal Tax:	20%
Illinois State Tax:	4.95%
Medicare Tax:	3.8% [does not apply]
Approximate Tax Due:	**$2,495,000**
Approximate Tax Due with Deferred Tax Strategy with Mortgage Over Basis:	**$62,375**

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CREATING YOUR DTS

1	**DETAILS:** Enter the relevant details of the sale of your real property, business, or other highly appreciated asset on matthewjames.com/dts or call us so we can assist you with the process. This information will be used to evaluate your case. An experienced DTS Attorney, Trustee, and Case Manager will review your case to determine if the DTS is a good fit for your transaction.
2	**DISCOVERY CALL:** An introductory conference call is set up to discuss how you may benefit from using a DTS for your sale, and a tax deferral illustration is created for you. During this call, the Deferred Tax Strategy structure will be explained to you and any questions that you have will be answered. Follow-up calls can be scheduled, if necessary.
3	**AGREEMENT:** A conditional engagement agreement is provided to you by the DTS attorney for your review. There is no upfront cost or obligation. Once the conditional engagement is signed, the law-firm will establish the trust and engage in preliminary planning. You are under no obligation to proceed or pay for services unless your sale closes and you decide to fund the trust.
4	**PREPARATION:** The attorney prepares the documentation and implements the Deferred Tax Strategy at the close of sale, either through escrow or your attorney. The pre-tax proceeds from the sale are delivered to the Trust, the funds are invested in a manner that is consistent with your risk tolerance and preferences, and payments are made to you pursuant to the payment schedule.

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FAQ'S

How do you determine my payments from the Trust?
The payments are based on what you, the seller/taxpayer, arrange and pre-negotiate with our DTS trained and approved trustee. Depending on your income goals and other objectives, the amount and length of term of the installment sales note are your choice and subject to your approval.

What happens if I die?
With proper estate planning [i.e., by creating a Living Trust] scheduled installment note payments otherwise due to you can continue to pay to your legal heirs pursuant to the note term that you have chosen.

Is the amount and frequency of my payments flexible?
Yes. The DTS Trustee, in his or her absolute discretion, may allow you to renegotiate the terms of your installment note.

Can I cancel the promissory note at any time and be paid off?
If the DTS Trustee deems appropriate, he/she may elect to terminate the installment sales contract. However, you would immediately owe all the taxes, including all unpaid capital gains due from the original sale of the property/capital asset.

What happens if capital gains tax rates are changed after I set up the DTS?
Politicians, from time to time, discuss changing capital gains rates. If that happens, you would pay the new rate on the capital gains portion of your installment note payments as they are received. However, there is usually adequate notice to make a sound financial decision prior to any such change in taxation or tax rates.

Can I use my installment sales note to get back into real estate?
Yes, please contact MATTHEW JAMES Tax & Wealth Management or a duly qualified DTS attorney to discuss this option.

When the trust sells the property, may I keep some of the cash from the sale?
Yes. In that case, you would pay taxes only on the capital gain portion of the money which you kept for yourself outside the trust.

How can I have my tax advisor or attorney analyze the DTS strategy?
For detailed technical information, have your CPA contact MATTHEW JAMES Tax & Wealth Management to discuss your scenario with an attorney with DTS experience. The names Deferred Tax Strategy and DTS were created to describe a technique and are not specifically found in the code. All of the legal and tax authority used in the DTS are in the tax code, treasury regulations, cases, or rulings based upon the foundations found within the tax law.

I'm interested in finding out if this works for me. What should I do next?
It's very easy. Your next step is to fill out a simple DTS Analysis request on my website.
Once you have received the illustration summary, you can then review this information with a trust case manager and share this information with your CPA or tax attorney for further review.

ESTATE PLANNING TEAM

The Deferred Tax Strategy is offered by MATTHEW JAMES Tax & Wealth Management's Estate Planning Team members, along with experienced and specialized attorneys. These attorneys have unique expertise at structuring transactions in this manner for sellers of highly appreciated real estate, businesses or other highly appreciated assets, who wish to defer their capital gains taxes.

CONTACT ME FOR MORE INFORMATION

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NOTES

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