CUMMINGS & LOCKWOOD LLC

HOW IS A PRIVATE ANNUITY CALCULATED?

A properly structured private annuity agreement must meet the following criteria:

- The value of the annuity payments should equal the value of the property transferred, because the annuity transaction is not treated as a gift as long as the actuarial value of the annuity equals the value of the stock that is transferred. Unless the seller/annuitant has a terminal illness, the annuity payments are determined by using the section 7520 rate and the IRS-approved actuarial tables for the month in which the sale occurs. An essential element to this planning requires that you get a medical opinion that you have at least a 50% likelihood of surviving for one (1) year as of the date of the sale. Actuarial tables cannot be used to value the seller's life expectancy if there is a 50% or more chance that the seller will die within one (1) year after the transaction due to current health problems. If there is a 50% or more chancethat the seller will die within a year, the seller's actual life expectancy must be used. However, if the seller actually lives for eighteen (18) months after the transfer, then the seller is presumed to not have been terminally ill.
- The annuity payments cannot be tied to the income generated by the transferred interest, either directly or circumstantially. Doing so would give the IRS grounds to assert that the seller retained the right to enjoy the income for his or her lifetime, which would cause the entire value of the transferred interest to be includible in the seller's estate for estate tax purposes.