PRACTICAL PLANNER NEWSLETTER
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PLANNING POTPOURRI

Trusts, LLCs and Tax ID Numbers: Every trust or entity has to have a tax identification. Every time you open a bank account, or engage in almost any transaction, you're going to be asked for a tax identification number. Make life easier for everyone. Have the tax identification number typed on the front page of the trust and the front page of any operating agreement when the documents are originally drafted. This simple step will save hours of time and aggravation of having to look for the right tax ID number since it will always be readily available.

Help Grankids and Charity: Combine charitable planning with planning for your grandchildren to avoid the harsh impact of the GST tax, while providing for education and medical expenses for your descendants. If you intended to make charitable gifts anyhow, there is no real incremental cost to this planning. You'd be leveraging your charitable gift to help avoid tax on transfers to benefit your grandkids. Assume you have a large taxable estate and want to pass wealth to grandkids, and in particular provide for the medical care of a grandchild struggling with multiple sclerosis and benefit the National Multiple Sclerosis Society (NMSS) under your will. If you combine charitable and GST planning techniques together you can accomplish both of your goals better, and without allocating GST exemption. Direct payments of tuition or medical expenses are not subject to gift tax (IRC 2503(e)) and are not treated as taxable distribution from a trust for GST purposes (IRC 2611(b)). If these are the only distributions you make from the trust, then there are no taxable distributions. You cannot just set up a trust to fund education and medical costs of your grandkids, because if you do the trust itself will be characterized as a "skip persons" for GST tax purposes and a GST tax may be triggered when you transfer assets to the trust initially (fund). This transfer would be a direct skip for GST purposes. Instead, give an interest in the trust to your favorite charity (which is a non-skip person that won't ever die). Thus, there is no GST tax on funding the trust. Name a specified charity (don't leave it open for the trustee to name a charity). After your death 25% of trust income would be distributed to your favorite charitable, say the NMSS. Your trustee has the discretion to pay medical and tuition expenses for your descendants forever. PP

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PRACTICAL PLANNER

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CHEAP TRICKS

Cheap tricks (and we don't mean the rock band from the 70's) can be used to accomplish some pretty significant estate and other planning goals. Here's a survey of some cheap steps you can take that might save you a bundle:

529 Plans: These popular college savings plans have shortcomings that don't get talked about. When you set up a plan you have to designate an "account holder" who can make investment decisions and pull money out of the plan. Few people bother designating a successor account holder, and the consequences can be costly. If you set up a 529 Plan and die, the ownership of your account may pass on your death to the executor of your estate. Think about that if you're an OB-GYN worried about malpractice claims! From your estate, the account will pass by bequest or operation of law. Not what you had planned. Cheap Trick: Designate a successor account owner and avoid the complexity, administrative costs, and worse.

Elderly or Ailing Family: Keeping an eye on an infirm family member is time consuming and costly. Use personal emergency response systems, sensors to monitor sleep patterns, stoves, etc. (see www.quietcare.com). Video on line chat can help (see www.get.live.com). Medication reminder products are important (see www.epill.com). What about finances? Cheap Trick: To keep an eye on an elderly parent's finances, consolidate all accounts to one institution and have a duplicate copy of each statement mailed to you. At no cost you can quickly eye each month's activity.

Keeping Your Agent Honest: If your capacity is diminishing, you may have to rely on Junior to handle your finances as an agent under your power of attorney. We know junior is a good boy and would never use your bank account for his own benefit. But abuses abound and my mom always taught me that you're better off "safe than sorry". Cheap Trick: Use the same trick above to protect you. Have a close friend who is not an agent under your power of attorney get a duplicate monthly statement. That will enable the friend to keep tabs on you and inform family if an issue arises. It will also enable your friend to keep tabs on Junior if he takes over your accounts as your agent as she'll see all his activities. You probably should mandate in your power of attorney that the agent must continue to send the friend (or a named successor) duplicate copies of each monthly statement. If Junior decides to buy a new fully decked out Hummer (necessary to drive errands for you!) it will likely be a large enough withdrawal on your account that your friend can expose Junior's misbehavior.

Custodian Accounts: Why people continue to set up custodian accounts is not clear. Trusts give you better control. 529 Plans give you better tax breaks (especially now that the Kiddie Tax applies until age 18). If you still have custodian accounts for heirs be aware that if you are the named custodian, on your death the entire account balance is included in your estate. Ouch! Cheap Trick: Name a different custodian and remove your name. No cost. Estate tax problem solved.

Home Equity Lines: A large home equity line is a great way to assure a source of emergency cash. But if you're disabled, will the bank let your agent draw on the line? Probably not. Cheap Trick: Arrange a home equity line that has a checkbook so your

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CHECKLIST: NEWLYWEDS

Still picking rice out of your hair? Your new marriage means time to review and revise all of your planning:

√Investments: Marriage means combined incomes, a different risk profile, and new planning objectives. As newlyweds review your overall financial goals and objectives and revise all of your investments accordingly.

√Current Investments: As newlyweds you may retain separate investment accounts to segregate gift or inherited assets: to protect their immunity in the event the marriage doesn't work out, as a result of an express provision in your prenuptial agreement, or because one of you has greater malpractice risk. But even if you keep separate accounts, you should coordinate your overall investment planning as a family. To do this efficiently, consolidate your accounts with one manager. Approach 1: If you maintain separate accounts, each account could have its own asset allocation. If the marriage doesn't work out you can more fairly go your separate ways then if you had only equities and your spouse only bonds. Approach 2: Use an aggregate approach with an overall asset allocation for

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...More Cheap Tricks

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agent can write checks without having to get lender approval that won't be forthcoming. Have your power expressly grant the agent rights to use the line and indemnify the bank.

Foreign Resident with U.S. Will: You're a U.S. citizen but live abroad. You're still subject to U.S. estate tax on your assets (its part of the love our government shows all it citizens). So you have a will prepared. Which state has authority to probate that will? You might not have any connections to a particular state (especially if you don't have a pied-a-terre here). Cheap Trick: Open a bank account in the state in which you believe probate should occur and state in your will your intent for the laws of that state to govern. Pick a state with a simpler probate process. Check state law first, to verify a bank account will suffice.

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Insurance Trusts: Irrevocable Life Insurance Trusts (ILITs) are used to own insurance to protect the proceeds from tax, misuse and other risks. If you own an existing policy and transfer it to an ILIT, if you die within 3 years the insurance proceeds will be included in your estate. You might be able to offset some of this to the extent that insurance premiums were paid by the trust. The amount included in your taxable estate is only a pro-rata portion of what would otherwise be included based on the pro-rata portion of the total premiums paid. Cheap Trick: Leverage the above strategy by having the trust pay premiums so that the trust will own a larger portion of the policy. Take this planning even further by having the trust repay you for some or all of the premiums you previously paid. This will increase the portion of premiums paid by the trust and arguably remove more of the insurance proceeds from your taxable estate. No new legal documents, just a check.

Guardians: Naming a guardian is probably the toughest estate planning decision. In many cases you may prefer that your child be raised in an intact home so you'll name your sister and her husband, Jane and Atilla as guardians. But if Atilla runs off to besiege Constantinople, who is the guardian? Cheap Trick: Don't name a couple as guardians. Instead name Jane so long as she is married to Atilla on your death. If they divorce, the next named guardian will serve. You also avoid the issue of a legal battle between Jane and Atilla as to who should be the guardian.

Grandchildren Gifts: To make large gifts to grandchildren raises a host of complex tax issues. Gifts in excess of $12,000 per year, or direct payments for tuition and medical expenses, are subject to gift and generation skipping transfer ("GST") tax. Once the $1 million gift tax exclusion is used up the costs are significant. If your GST exemption was used up, the costs would be confiscatory. Thus, to make larger gifts to grandchildren (and even for the annual $12,000 gifts to protect them) many grandparents opt for trusts. However, trusts raise a number of complexities. Gifts to trusts cannot qualify for the annual GST exclusion merely by using the Crummey powers that are so commonly used to qualify gifts to trusts for the annual gift tax exclusion. There are several additional requirements that must be met to qualify for the GST exclusion. The trust should be for only one beneficiary and if the beneficiary dies the trust assets must be included in the grandchild's estate. Cheap Trick: Make advance payments of tuition for all your grandchildren and great grandchildren for all future years. If they're all in private schools, the amount you can transfer is huge. No tax. No legal fees. Simple. There are a few catches to make this work. You must pay the tuition directly to the schools. The schools must be qualified educational institutions (IRC 170(b)(1)(A)(ii)). You must have an agreement with the schools that the tuition payments cannot be refunded. If Junior goes AWOL, you loose the tuition prepayments. LTR 200602002. The impact is huge. If grandma has a $2.5 million estate, payments to the schools for all descendants could solve her entire estate tax problem and avoid the need to file an estate tax return. PP

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...Checklist: Newlyweds

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both of you so that the accounts as a whole are balanced. With this approach, you can focus tax exempt funds on less tax efficient investment transactions and the spouse most at risk for malpractice might hold the hedge funds and alternatives which would be harder for a claimant to seize.

√Budget: Your goals, needs and lifestyles are likely to change from when you were each single. So it's really worth revising the budget in light of the new objectives. This can be then coordinated with your investment planning revisions. The budget should start to take account of long term goals most single people don't address, like a new home, a child, even retirement.

√Prenuptial agreement: Pre-nups are common and need to be considered well before your marriage. If one should have been completed, but wasn't, a post-nuptial agreement can be done. While likely not to be as effective as a pre-nuptial agreement, it can still avoid a lot of heartache if the marriage doesn't work out. Also, pre- and post-nuptial agreements can be used to backstop asset protection and other planning. In any event, whether you have a pre- or post-nuptial agreement, signing it should not be the end of its relevance to your planning. Even if it was an unpleasant experience, don't ignore it. Consider periodically how the agreement affects your planning. Once done, the handling of all post-marital finances should be addressed in accordance with the provisions of the prenuptial agreement. For example, if one spouse is to pay certain expenses or keep separate accounts, that should be done. If accounts are supposed to be titled a certain way, do so. If you vary from the agreement, document that you are intentionally doing so. If the variations are significant have matrimonial counsel prepare a modification.

√Life Insurance: Most singles don't have life insurance, but when you married you may have bought a house, or taken on more debt then before. Debt and financial obligations indicate a need for insurance to address the risk of death. The fact that you are both working doesn't mean that the unexpected death of one of you won't affect the survivor in a financially ruinous manner. Insurance is likely to be inexpensive and easily obtainable at this young stage of your lives. If a child is even a possibility, get insurance in force well in advance. The time to consider coverage is not after the baby is born, but well in advance.

√Disability Coverage: If you have a large mortgage for the first time, a disability of either of you would be a financial disaster. Disability planning may not have been an issue when single because neither of you may have had the level of debt and "overhead" that you now have.

√Estate Planning Documents: You need new wills, powers of attorney and living wills. At this stage each of you may name your own family members, not your new spouse, but these issues need to be addressed.

√ Beneficiary Designations: Update IRA, retirement plan, insurance and other beneficiary designations to reflect your new spouse. PP

Recent Developments

FLP by Estoppel: A family limited partnership (FLP) was formed and hired an investment manager. Years later the FLP sued the manager for providing lousy advice. The manager moved to have the suit dismissed because the FLP's attorney failed to ever file the certificate of limited partnership that the family signed with the state, so the FLP wasn't properly formed. The court applied a theory of estoppel and held that since the investment manager had earned fees for years from the FLP it could not now argue that the FLP was not valid (it was "estopped" from making this argument). The court held the partnership was valid. Since both sides engaged in business in a mutually beneficial manner they could not argue that the entity wasn't valid. The court extended the doctrine of corporation by estoppel to an FLP. *Boslow Family Limited Partnership v. Glickenhaus & Co.*, 7 N.Y.3d 664 (Dec. 14, 2006). Hey, compare this real case to the estate tax FLP cases where the courts have seized on the miniscule violations of entity form to overturn FLPs and LLCs. Perhaps Judge Laro could be encouraged to ponder this case for a while. Laro required adherence to formalities for FLPs for estate tax validity that few FLPs formed for business transactions ever meet. See *Estate of Lillie Rosen*.

Anna Nicole Smith's court battles over her interest in billionaire J. Howard Marshall II's estate may continue following her death. Although J. Howard's son, E. Pierce Marshall died last year, his widow is continuing his side of the court battle. The Supreme Court held that the general rule that state courts have final say on probate and will contest matters didn't apply because a bankruptcy issue, normally disputed in federal courts, was involved. The bankruptcy judge could still continue to hear the case. If Anna Nicole's estate ultimately receives an award, presumably her daughter Dannielynn will benefit, but a paternity suit might be necessary to determine who her father, and perhaps guardian, will be. PP