PRACTICAL PLANNER NEWSLETTER
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◦Publications: *Estate Planning for People with a Chronic Condition or Disability* by Martin Shenkman, CBA, MBA, JD was nominated for the 2009 Foreword Magazine Book of the Year Award. To obtain the book at a 20% discount go to www.demoshealth.com. Enter the code Foreword09 at checkout. All royalties go to charity.

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Planning Potpourri

Deteriorating Competency: Standard planning is to set up and fully fund a revocable trust to manage assets. Consider setting up a small balance checking account, with an attached credit/ debit card, outside the trust. If checks are inappropriately written, or the card is lost, trust assets can't be reached. This can preserve independence while protecting most assets. Thanks Mike W.

Annual Meetings: Closely held businesses use unanimous consents in lieu of formal meetings. Consider a real annual meeting and signed minutes as taxing authorities can be sensitive about formalities for family businesses. A meeting may be viewed as more formal even though written consents suffice.

Disability Income Replacement Insurance versus Disability Buyout Insurance: Many lay people are aware of the latter and some--as well as some lawyers-- may confuse it with the former. Disability income insurance replaces your earnings if lost due to disability. Disability buyout insurance can be used to fund the repurchase of your equity in a closely held business if you're disabled. Many businesses purchase life insurance to fund death buyouts, but far fewer address disability insurance to fund a buyout if an equity owner is disabled. Proper planning requires addressing both. Thanks Stuart L. Pachman, Esq. of Brach Eichler, Roseland, NJ.

Gift tax returns don't get enough respect. Evaluate whether you should file to elect out of 2009 GST automatic allocation rules. Also, consider filing every year and reporting Crummey (annual demand) gifts. Few CPAs encourage this, but it's a great way to run the statute of limitations on Crummey powers. Although nearly ubiquitous in trust planning (most insurance trusts have them) they remain complex and audit triggers. To meet the adequate disclosure rules the trust will have to be disclosed to the IRS, crummy powers attached, and perhaps more. Check with your CPA. Thanks Rich Greenberg, Esq.

Lost Wallet. A prior Potpourri snippet suggested that if your wallet is lost or stolen you should report it to the IRS. The reader called the appropriate IRS office and they required a form to be filled out for someone who is a victim of identity theft. For the next 3 years your returns are flagged and your 1040 will be delayed as a

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PRACTICAL PLANNER

Martin M. Shenkman, CPA, MBA, PFS, JD

Scheduled Maintenance Guide

Summary: So you bought a new car and you want it to last. Check out the Scheduled Maintenance Guide. Yep, change the oil every 5,000 miles, but a lot more is recommended. Doesn't your estate plan deserve the same care? Page references are to the 2010 Ford Motor Company Scheduled Maintenance Guide. For some reason most folks understand that their car needs TLC, but they don't apply the same logic to their estate and financial plans.

Warning: The Ford Scheduled Maintenance Guide cautions readers [p.2]: "Today's vehicles are more sophisticated than ever and need to be properly maintained to help ensure that they operate at the highest level." Well, Henry, your grandmother may have driven a Model T, but her estate plan surely didn't have split-dollar loans, trust protectors, directed trusts, unitrusts, GRATs, discounts, guarantee fees, and all the other bells and whistles your plan has. If your estate plan is too complicated to crank out on legalzoom, then the maxim for car maintenance applies to your estate plan too.

General Maintenance: The Ford Scheduled Maintenance Guide provides recommendations for different mileage markers. The basic service at a 7,500 mile marker includes changing oil, filters, tire rotation and performing a "multi-point inspection." [Ford Manual p. 14]. For your estate plan, each year you should do some of the basics like: Update key data including balance sheet and family info. Your advisers need current data to advise you about the adequacy of your plan and documents, and especially in the event of an emergency. Review the ownership (title) of your assets and beneficiary designations to assure that they are consistent with your plan. Values change, liability exposure can shift, tax rules change. Regular monitoring, just like oil changes, is pretty inexpensive and can avoid much more costly problems. A quick conference call between your various advisers keeps your "team" coordinated. Often this requires modest time. Assure that your investment adviser and CPA are on the same page as to capital gains and losses, marginal tax rates, etc. With the uncertainty about estate tax repeal and carry over basis your estate planner needs to be on the call too. Business succession planning requires coordination of your estate and corporate attorneys, CPA and insurance consultant. Don't forget your "multi-point inspection." [Ford Manual p. 14]. For your estate plan, just like your car, that means running through details that your advisers deem important to assess the functioning of your plan. How is your asset allocation disbursed to different trusts and entities (asset location)? Is the approach optimal? Is your insurance coverage adequate in light of current circumstances? Are policies performing?

Special Operating Conditions: Before relying on just the regular maintenance schedule, you need to first determine whether you operate your car in a more demanding special condition. If you tow an Airstream trailer, that's a "special operating condition" and you need to have some items "maintained more frequently." Works for your car, works for you estate plan! If you're towing a heavy load you need more frequent maintenance. Most plans should be reviewed every couple of years. These are plans that are for an intact non-

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Checklist: GRAT Decisions

Summary: To make great decisions for your GRAT you need to think creatively. The following checklist will help. But for those who missed the lecture on GRATs in acronym school, it stands for Grantor Retained Annuity Trust. It is a trust to which you can transfer assets, receive back an annuity for a specified number of years and thereafter the appreciation of the assets in the GRAT in excess of a federally mandated hurdle rate, inure to the benefit of your children. It's a great estate tax plan for many well do to folks.

√ Financial: Which assets should go into which GRAT? How should your overall asset allocation be placed in your GRATs and other trusts (asset location?) Should you use single asset class GRATs? Be sure that your wealth manager leads the way with whatever investment strategies are optimal.

√ Term: How long should your GRAT last? A common plan has been to use two year GRATs and to re-GRAT the large annuity payments each year. But the Obama administration has proposed 10-year minimum GRATs. So the 2 year re-GRAT'ing game may be in the ninth inning. Should you use a long term

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...Scheduled Maintenance Guide

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blended family, face no estate tax issues, or the tax costs are simply solved, no sophisticated trusts, etc. If you have "special operating conditions" you need to "inspect frequently, service as required." Special conditions might include: closely held business with buy out provisions; complex blended family (unless your last name is Brady); family partnerships or LLCs (achieving estate tax minimization and asset protection goal is never normal maintenance); etc. The manual recommends much of the basic service every 5,000 miles instead of every 7,5000 miles. [Ford Manual p. 41]. Ditto for your estate plan.

Idle Hours: If your car is used for police, delivery or other purposes it may experience significant idle time. Idle time is like stealth miles – it doesn't appear on your odometer, but idle time is insidious and potentially damaging to your car. Even though your odometer is not registering wear and tear, each hour of idle time can be the equivalent of 33 miles of driving. [Ford Manual p. 43]. Your estate plan can similarly be undermined by issues that are hardly registering on your radar screen. Spending rates can inch up ever so slightly such that continuing an annual gift program to the kiddies could begin to erode your financial security. Court cases could reinterpret nuances of provisions in your documents that only a professional can identify.

Deferred Maintenance: Would you show up at your dealer for your first oil change with 50,000 miles on your SUV? No, but why do so many clients not talk to their insurance consultant or estate planner for a decade after their trust was signed? Would you blame your mechanic if your SUV was a bit cranky after 50,000 miles with no care? Why should your professional advisers somehow be responsible for similar owner neglect? When your insurance plan was formulated and implemented the estate tax exclusion was $600,000, last year it was $3.5 million, and this year we're still wondering what it is! When you show up to the dealer 10,000 miles late for your last service call and get tagged with some extras, do you accuse your dealer of bilking you, or do you thank the mechanic for catching a problem before it became an even bigger and more costly issue? When you've skipped the recommended scheduled maintenance you expect the bills to be more costly and the repairs more difficult. The moral of the story for both your car and estate plan: regularly service.

Emergency Repairs: You hit a pot hole and blow out your tire. Your car may be new, but the bottom line is you have to fix the tire. If you're lucky you can plug the hole. If you not so lucky you have to replace the tire. If you're really unlucky you may have thrown the alignment out. So you just signed your will, but the unimaginable happened and Congress actually let the estate tax lapse in 2010. You really need to update it. Regardless of how new your car is, pot holes don't differentiate. A trustee turns out not to be so trustworthy. A responsible heir turns out to be anything but. Your insurance company's performance is less than stellar jeopardizing your plan. Your wealth manager changes his name to Willie Sutton. Estate plans hit unexpected potholes: marriage, divorce, re-marriage, new children, significant changes in wealth, diagnosis of a major health issue, change in residency, and more. Just because you spent a lot of time, money and effort implementing a comprehensive and flexible plan doesn't mean you can ignore emergencies any more than you can ignore the thud of a flat tire.

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Replacement: "In general, tires should be replaced after 6 years, regardless of tread wear." [Ford Manual p. 9]. But how old did you say your will is? States adopt new laws. Courts interpret tax laws. The Treasury issues new regulations. Practitioners create new techniques. Forms evolve. Old approaches could become dangerous. After some years your documents should be replaced even if your situation hasn't changed. Updating existing documents is analogous to balancing and rotating tires.

Conclusion: Take care of your car since regular maintenance avoids

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Review: Andrew Wolfe, CPA, JH Cohn LLP, Roseland, NJ.

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...Checklist: GRAT Decisions

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GRAT to lock in the current low interest rate hurdles?

√ Legal: State law considerations – should you be in Delaware? How should grantor trust status be structured? How should power to substitute be used?

√ Remainder Beneficiary: If your GRATs succeed, who should get the benefits? If you name children, should their distributions be outright or in trust? Trusts are preferable from a tax, control, safety and flexibility perspectives, but what terms? If the remainder beneficiary is a trust should that trust be a grantor trust after the GRAT term? That would permit you to continue to pay the income tax on trust earnings even though your children are the beneficiaries. That's a powerful wealth transfer technique! What about naming your insurance trust (ILIT) as remainder beneficiary? That can provide a very tax efficient method to shift dollars into the ILIT without being limited by annual gift tax exclusion amounts. If your ILIT is party to a split-dollar arrangement the GRAT proceeds can be used to tax efficiently rollout (unwind) that arrangement.

√ Accounting: If funded with business or real estate interests rather than stock, proper operation of entities held by the GRAT is essential. Have your CPA review expenses of the entity to avoid indirect additional contribution to GRAT, maintain records for the trust, and monitor payments. If you've been earning a $1M salary and cut it to $250,000 and a GRAT owns 50% of the stock in the business that could be viewed by the IRS as an additional gift of $375,000 to the GRAT thereby disqualifying it.

√ Annuity: Some advisers prefer the annuity be paid based on a December 31 year end so that it is due when your April 15 tax return is due. Easier to remember. Some recommend that the annuity be paid based on the anniversary date of the GRAT. But that can be a funky date more easily overlooked. With a two year GRAT basing it on the anniversary date means two annuity payments instead of one. However, if the Obama 10 year GRAT rule is enacted, it would mean 11 instead of 10, not such a big deal. While you can defer the annuity payment until say April 14, doing so might give you more opportunity to grow assets outside your estate. However, if interest rates are insignificant, or you don't anticipate market appreciation of other GRAT assets that will be paid out, waiting may be detrimental.

√ Insurance: Have your property and casualty insurance consultant review business and real estate transferred to GRATs to assure that they are properly insured. Using life insurance to back stop mortality risk of GRAT is important to evaluate if you use longer term GRATs. While it can be done for a two year GRAT few view the risk as worth addressing. But if the Obama administration 10 year minimum GRAT term is enacted, buying a term policy to backstop your GRAT (if you die before the GRAT ends all the assets are in your estate) will be commonplace.

√ Trustee: Some wealth managers prefer a domestic trust (formed in your state of residence) with you the grantor as the sole trustee since this simplifies it all, and gets the plan in place cheaper. However, your estate planner may prefer an institutional trustee and establishing the trust in Delaware, or another state with fa-

Recent Developments

Roth Tax Tips: Roths are hot! A common conversion approach is to divide your IRA into separate IRAs converting each with investments in different asset classes. The ones that don't appreciate you re-convert to regular IRAs so you don't have to pay income tax on a unfavorable investment result. Everyone in your foursome converted their IRA to a Roth so you jump on the bandwagon. Check out your State estimated tax payments. If you don't pay in enough your extension may not be valid. This can be tricky. If you made estimates assuming some IRAs would be reconverted from Roth to regular IRAs, you could void your state extension. Pay estimated state tax as if reconversion isn't an option. If you have a large Roth conversion consider amending your durable power of attorney and will to authorize your fiduciaries (agent, executor) to reconvert a Roth back to a regular IRA, or to convert a regular IRA to a Roth. Caution – if the beneficiaries of the IRA (regular or Roth conversion) are different then those receiving gifts under your power, or bequests under your will, clarify how this should be addressed.

FICA Taxes: Severance payments made by a bankrupt retailer to employees were not subject to Social Security taxes. Quality Stores (D.C. Mich). The IRS is likely to appeal this pro-taxpayer court ruling so the "jury is still out." However, it may be advisable for companies to file protective refund claims on Form 843. The statute of limitations (the time period during which a claim can be filed) for 2006 years is almost over (3 years after the due date of tax return.) Severance payment refunds may also be available for 2007 and 2008, and you will need to take this new case into consideration for 2009. Thanks Julie Welch, CPA, CFP, of Meara Welch Browne, P.C., Kansas City, MO.