PRACTICAL PLANNER NEWSLETTER
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More Info:

- **Webinar:** **"Tax Update: Estate and Financial Planning In Light of Recent Legislation."** April 20, 2010 12:30 pm—1:00 pm. Call 201-845-8400 for info. Register http://events.meetingbridge.com/Register/?EventCode=06123156693. No charge.

- **Seminars:** AICPA Conference on Tax Strategies for the High Income Individual (May 2-4, 2010), Las Vegas, NV, For info or register on line at www.cpa2biz.com/conferences or call -888-777-7077. Use the coupon code "**SDC**." for a $100 discount. Media inquiries for the conference, call 212-596-6119.

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Planning Potpourri

LLC Myth: Conventional wisdom may be "conventional" but not always sound. Myth — a one member LLC, which is treated as a disregarded entity for income tax purposes, is cheaper then a multi-member LLC, since you don't file a partnership tax return. Right? IRS stats: Audit rate for Schedule Cs with gross receipts of $200,000+ 3.2%, Schedule Cs with gross receipts $100,000-$200,000 4.2%. Audit rate for partnerships and S corporations 0.4%. What's it cost to handle an audit? A disregarded entity may not save accounting fees! Also, while a 1 member disregarded LLC can provide asset protection for suits relating to the entity (e.g. a tenant sues you as landlord, your personal assets may be protected), it does not afford protection from outside claims (you're sued for malpractice and own valuable real estate in a single member LLC). In contrast if you have other real members a claimant levying on your LLC may only be able to obtain a charging order under state law (not become a substitute member). Further, if you're sued and are a 1 member LLC the claimant may see your personal tax return to get LLC info. But, if you have 2+ members the claimant may be limited to seeing the partnership return, not your personal.

Dealing in Currency- Pitfalls for the Unwary: If you deposit/withdraw $10,000+ in cash, the bank must file a Currency Transaction Report with the IRS. If a business receives $10,000+ in cash from a customer, it must file Form 8300 with the IRS listing the customer, his address and Social Security number. But if you "structure" a transaction by depositing or withdrawing $3,500 a day over a short period of time to avoid the $10,000 rule, or pays for goods or services worth more than $10,000 in smaller amounts, you could be prosecuted, go to federal prison and , have the government seize the entire amount. This can be clean money and the transaction can be perfectly legitimate. Structuring a transaction to avoid or evade the reporting requirements by banks or trades or businesses is illegal. Most banks file "Suspicious Activity Reports " when its compliance departments see this type of currency activity. Additionally, it is a crime to aid and assist in structuring or for you accountants or lawyers out there to counsel someone to structure. As the duty shift officer in Hill Street Blues said before every

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PRACTICAL PLANNER

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

Hot Tax Tips

Summary: Every year in May CPAs from all over the country flock to Las Vegas to attend a tax conference (what did you expect they'd do in Vegas, we're talking about CPAs!) "Tax Strategies for the High Income Individual" - one of the best programs of the year. Attendees can glean great planning ideas form scores of experts. Remember Watergate? Well, an undercover operative hired by Practical Planner has pulled off what we'll call "Welch Gate." We planted a hidden camera in the offices of Julie Welch, CPA, one of the keynote speakers, to bring to you some of the best tips from the handout materials for the program *before* the conference takes place! Allen Funt couldn't have done it better.

Partnership Basis Adjustments. A partnership/LLC can elect under Code Section 754 to increase (step up) its tax basis. Example: LLC owns a wig business worth $2M but the LLC's tax basis is only $1M. Jones owns ½ the LLC and dies. Jones' heirs want to step up their interest in the wig business so if it sold they can avoid a tax haircut [sic]. Great planning. Carol Cantrell, Briggs & Veselka. General partners and managers sing the old Simon and Garfunkel tune: "Slow down you move to fast…" You can always amend the partnership tax return and make the election at a later date. But once the election is made it cannot be changed without IRS consent. Err on the side of caution, if you want to be feeling groovy.

Expensing of Business Assets. CPAs are genetically programmed to latch onto tax bennies like a pit bull on a bone. But, tax planning is now the "new normal," and that means new strategies. Code Section 179 lets you write-off immediately up to $250,000 qualifying property placed into service in 2010, but only $25,000 after 2010. Tangible (e.g., a chair not a contract right), personal (not an essential or immovable part of a building) property. If you don't have adequate business income to use the write off, it may not be advisable to claim. John Connors, Tax Educator Network. Everyone thinks that rich folk will be subject to higher tax rates. Higher tax rates might make the depreciation deductions you get in future years more valuable than a current deduction under 179.

C instead of S. This is like a remake of Back to the Future, for accountants. Everyone has organized new businesses as LLCs for years. Folks with S corporations feel left out. Income and deductions flow through to your personal return. But with individual marginal tax rates rising, corporate tax rates may decline, businesses (other than professional service corporations), might wish to convert S corporations to C corporations. John Connors. LLCs might retain hard assets like real estate but incorporate the active business. Owners' perquisites in a C corp. get better treatment too.

Long Term Care Insurance. Like Staples, "That was Easy." But too many people don't address it in their planning. Martin Finn, CPA of Lavelle & Finn. Check out a possible federal and state tax deduction or credit for the purchase. Get creative. Evaluate the role of permanent life insurance as part of long term care planning. Life insurance can enable your heirs to recover what was paid for your health care costs so it is perhaps another approach to replenish the estate.

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Checklist: Funeral Decision

Summary: Few events can be more emotionally traumatic than funeral and related arrangements. It behooves everyone to plan ahead and endeavor to make their wishes known. Just letting your loved ones know what you want will often be inadequate. They may not remember, others may have different understandings of your wishes and worse.

√ Service and Memorial: Do you want a particular type of service? Should any specific limitations be placed on what should be done? Consider the impact on those you leave behind.

√ Burial or Interment: Where should you be buried, or interred? If you have had multiple marriages and perhaps children with several spouses, indicating what you do and don't want can prevent a terrible fight after you pass away. If you can purchase a family plot, or designate a specific cemetery, try to do so. The more details the better.

√ Living Will: State in a living will what wishes you have for religious matters, funeral, last rights, etc. This document confirms a statement of your wishes.

√ Letter of Instruction: Consider writing a personal letter of instruction with all the per-

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...Hot Tax Tips

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Funding Junior. Consider an ongoing aggressive gift program so that once a child attains age 18 they can fund over ½ their support. Their income won't be subject to the Kiddie Tax and will be taxed at lower rates. Janet Hagy, CPA of Hagy & Associates. Don't trust junior use Richard Oshins, Esq.'s favorite -- a beneficiary defective trust (BDIT). Crummey powers can make the child taxable as the grantor of a trust funded by mom.

Don't Forget Fido. Pet lovers don't forget to plan for Fido (sorry Elvis!). Pet lover Rachel Hirschfeld, Esq.. Critters are considered property in the eyes of the law, even if you treat Fido better than your son. Consider setting up a trust for Fido after you're gone.

A Moving Experience. Evaluate whether your old or new state has a better tax rate and sell appreciated stock accordingly. Vern Hoven and Sharon Kreider. Alaska, Florida, Nevada, South Dakota, Texas, Washington and Wyoming have no income taxes. If you're selling out a really large position, is it worth moving first? Pension withdrawals may offer similar planning opportunities.

Smart Charity. Planning a charitable bequest under your will? Consider making the gift now to remove the asset from your estate plus garner an income tax deduction. Lawrence Katzenstein, Esq., of Thompson Coburn. With no estate tax, or if the $3.5 million exclusion is reinstated, few people will pay an estate tax. Update your durable power to permit payment of the intended bequests during your lifetime to obtain an income tax deduction when there is no estate tax deduction. If the gift is to be a prepayment of the bequest in the will, be certain that the documentation confirms that fact.

Employee Savings. Occasional business trips to states other than where you reside could trigger income tax filing obligations in those states. Mark Klein, Esq. of Hodgson Russ, LLP. Worse, if you don't file timely you could lose the a credit for tax paid to that other state on your home state income tax return, you could be whipsawed between two state tax systems taxing the same income, and you could face criminal charges. Ouch! Getting a payment on ending employment and moving? Analyze how a severance payment for past services, versus a buy out of remaining contract rights will be taxed in each state.

Estate Planning Nirvana. Most advisers are obsessed with maximizing valuation reductions for gift and estate tax purposes using discounts for lack of marketability and control. But the estate tax Holy Grail is really the leverage obtained from using grantor trusts over long time. Estate Guru Richard Oshins. With grantor trusts the grantor pays the income tax on earnings which inure to the beneficiary. Stephen Siegel, Esq.

S Corporations. If an S corporation is engaged in more than one type of business, distribute each business into a wholly owned S corporation subsidiary (affectionately, a Qsub) or an LLC. These will be disregarded for tax purposes, but you'll insulate the liability of each business from the other and prevent a domino effect. Sydney Traum, JD, CP.

Business Tips. If your business exports, look into using an IC-DISC to benefit from dividends taxed at a low 15% (proposed to be changed to 20%) instead of ordinary income tax rates. If you use an equity arrangement to compensate a key executive and values are out of whack by year end you can unwind the transaction if you do so during the same tax year. Carolyn Turnbull, CPA of Moore Stephens Tiller, LLC.

Deductions. Maximize net operating losses by identifying business related deductions like income taxes, interest and professional fees. Rev. Rul. 70-40. If you're suing try to characterize settlement proceeds as non-taxable as relating to physical injury. IRC Sec. 104. Structure settlements as employment discrimination and related matters so that the legal fees can be deducted from adjusted gross income (AGI), called "above the line." Otherwise legal fees

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...Checklist: Funeral and Related Decisions

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sonal details of your wishes. Too often the smaller details of what you want are inappropriate to include in a legal document. The explanations of what you hope for survivors, why you want certain requests met, etc. all should be in a personal letter and rarely in a legal document. Google "ethical wills" and consider what types of messages and personal thoughts you'd like to share and leave behind. Your personal letter is a great place to do this. Carefully consider who you give copies to.

√ Health Care Proxy: This is also called a medical power of attorney. You need to designate an agent to implement end of life decisions if you cannot make them on your own. Name one person to serve at a time, not joint agents. Discuss your wishes with the people you wish to name in advance and honestly assess whether they will in fact be able to carry out your desires. Will personal or religious differences prevent them from acting as you wish?

√ Will: A will is almost always found after death so that it is not the primary document people will be able to refer to in order to ascertain your wishes. So why list anything? Because indicating in your will what you want done will authorize your executor to pay for the costs of it. If you are a Hindu and wish to be cremated on the banks of the Ganges, the costs involved will have to be paid for by your estate and may be costly. Authorizing these types of plans in your will makes it clear that your executor has the authority to pay for these.

√ Deductions: Amounts paid for funeral expenses are allowed as deductions for estate tax purposes. These amounts must be actually paid, and properly allowable to be paid out of property subject to claims, under state law. See §20.2053-1(c). A reasonable expenditure for a tombstone, monument, or mausoleum, or for a burial lot, either for the decedent or his family, including a reasonable expenditure for its future care, may be deducted if allowable by state law. Included in funeral expenses is the cost of transportation of the person bringing the body to the place of burial. Treas. Reg. Sec. 20.2053-2.

√ Organ Donations: Address these in a donor card and in your living will. Be clear as to whether any organ and tissue can be donated, or only certain ones. Can they be donated from scientific research or only for transplant?

√ Donating your Body To Science: If you wish to help medical research you can donate your body to science. This process requires some advance planning and documentation. Try speaking with the institution you plan to donate to and get their advice in advance.

√ Religious Issues: You must specifically address religious issues. Whether you have a particular set of beliefs, or not, you need to confirm what your wishes are. Never assume that your family or loved ones know. Religious issues can be incredibly sensitive and there is tremendous variation in observances, differing customs, and personal wishes. Don't leave it to chance, or worse for your heirs to fight about. Specify what religion you were raised in if any, what religion you presently observe, how that should be applied to end of life and burial or related decisions, and what specific differences or variations you wish. Be sensitive to beliefs of those you leave behind. PP

Recent Developments

A bevy of new tax and related changes has been enacted as part of the 2010 Health Care Act (PL 111-148, 3/23/2010) and the 2010 Reconciliation Act. Here's a couple:

Currently, wages are subject to a 2.9% Medicare payroll tax. Workers and employers each pay ½, or 1.45%. If you're self-employed you pay it all but get an income tax write-off for ½. This Medicare tax is assessed on all earnings or wages without a cap. These taxes fund the Medicare hospital insurance trust fund which pays hospital bills for those 65+ or disabled. Starting in 2013 a .9% Medicare tax will be imposed on wages and self-employment income over $200,000 for singles and $250,000 for married couples. That makes the marginal tax rate 2.35% Self-employed persons will face a 3.8% on earnings over the above amounts. Look for more changes like this, a few percent here, a few percent there instead of just the rate increases needed to raise revenues. The result will make tax planning and preparing projections increasingly complex.

Only wages and earnings are subject to the Medicare tax above, but starting in 2013 the 3.8% Medicare tax will apply to net investment income if your adjusted gross income (AGI) is over $200,000 single ($250,000 joint) threshold amounts. These amounts are not supposed to be indexed so inflation will erode these overtime. Net investment income includes interest, dividends, royalties, rents, gross income from a passive business, and net gain from property sales. You can reduce net investment income by properly allocable deductions. Your advisers may have to allocate their bills by category to help. This tax won't apply to retirement assets. Roth IRAs are lookin' better. Earnings on non-IRA investments could be subject to this higher tax, but if used to pay tax on a Roth conversion the