PRACTICAL PLANNER NEWSLETTER
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More Info:

Seminars: "Chronic Illness Planning" Registration 7:30 am. Seminar 8-11am. 3 hours CPE/CFP credits. Open to professional advisers, those living with chronic illness, and caretakers. 2 Dates and locations: Tuesday December 15 Marriott 100 Frank W Burr Blvd, Teaneck, NJ RSVP 201-845-8400 Thursday December 17 Marriott Hanover, 1401 Route 10 East, Whippany NJ RSVP (973) 451-9400. Invite your clients, family or friends who are living with a chronic illness to this informative program.

Creative solutions that coordinate all your planning goals:
· Estate · Tax · Business · Personal
·Financial ·Asset Protection

Planning Potpourri

ID Theft. If your wallet was lost or stolen, report to it immediately to the IRS ID Theft Unit 800-908-4490. Your account will be flagged immediately. So if the "bad guy" makes any filing or refund request under your name or Social Security number it will be flagged and the IRS will contact you before taking any action.

Money Service Business. You thought an MSB meant a bank! A hotel, corner grocery store selling money orders and other businesses can be ensnared by the tough anti-money laundering compliance program. Your business needs a policy and procedures appropriate to the size and sophistication of the business. MSBs must register with FINCEN as a money service business and renew by the end of second year from the initial registration. Maintain check cashing activity logs. Transactions over $10,000 must be reported. The penalties for non-compliance are huge! For info see www.fincen.gov go to MSB link, or www.irs.gov and click to MSB info. Center. Thanks Hilly Kaufer, CPA.

What to do with Some Spare Cash: Tax refund, property finally sold, big birthday gift, what should you do with the dough?: Consider buying some term life insurance. Everyone's savings and retirement plans and home values have been hammered. If you die will your family make it? Buy at least a 10 year term policy to supplement savings until asset values regain former ground to support them. And since the estate tax looks permanent, consider a more comprehensive revision of your insurance plan. Consult with an independent CPA or financial planner. They are objective. Everyone's finances have been pounded. Get an objective non-sales compensated expert to look at your estate plan, investments, retirement planning, and get you on track. Pay down costly debt. Some folks still have credit card and other debt that is accruing interest at high rates. Line up all your bills and pay off the most costly first. If you are at risk of not being able to pay off your debts, call up your creditors and tell them how much debt you have and what cash you have and offer to strike a deal. If you can selectively do this you might get yourself "out from under" a lot of pressure for a lot less money than you thought you needed, and back on track to rebuilding. Put it away for that rainy day fund mom always warned you to have but which

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PRACTICAL PLANNER

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

Roth IRA Conversions

Summary: To convert or not to convert, that is the question. Many websites, and even some advisers, use simplistic calculators that don't do the decision justice. Others use modeling so sophisticated they could be mistaken for space shuttle algorithms. While some advisers bring nearly religious zeal to their views, the realities are that for some taxpayers the answer may be quite obvious, while for others a coin toss will do (not as cool as the slick models, but perhaps as effective of an analysis for many). We'll try to demystify this topic with some background. Then we'll try to help you identify whether you pretty obviously fall in the *convert* or *not convert* camp. For those in the gray zone in between we'll try to give you some pointers to discuss with your advisers. The Solomon-like approach of splitting the baby might just be the most prudent approach for those in the gray zone.

What's the Deal? Roth IRA's are cool: All growth is tax-exempt. There are no minimum distributions required at age 70½ as exist for regular IRAs. That's big since the assets can continue to compound tax free which enhances the Roth asset growth prospects (hopefully enough to cover the tax paid and then some) and possibly creditor protected. If your modified adjusted gross income (MAGI) exceeds $100,000 you cannot convert your regular IRA to a Roth but in 2010 that limit disappears. If you convert in 2010 the resulting taxable income can be reported 1/2 in 2000 and 1/2 in 2012. You can elect out of this deferral and report all income in 2010 if that proves advantageous (e.g., large rise in future tax rates). Election has to be made by 10/15/11, on an extended return. Hedge your bets and extend.

Favoring Conversion For conversion to make sense some of the following should be present: Future tax rates are expected to be higher than the rate you pay when you convert. This creates a positive tax arbitrage. Rising rates seem like a Wilt the Stilt slam dunk…how could they not? You have significant tax attributes available to offset the current income tax triggered (e.g, charitable contribution carryovers, investment credit carryforwards, "Madoff-type" carryovers). Post-conversion Roth IRA funds will almost assuredly not be needed to support living costs for a long time, if ever, so that the assets can remain invested to compound tax free to be left to your heirs. This is a key question which requires a careful analysis of your cash flow, assets and "burn-rate" (spending). If you leave your Roth to a properly designed generation skipping tax (GST) exempt trust, your grandchildren may be able to withdraw Roth IRA money over their life expectancies. That's many years of income tax free growth. Adequate cash resources outside of IRAs and qualified plans to pay the income tax due on conversion.

Asset Protection Asset protection worries might make conversion a great deal if your post-conversion Roth is protected from claimants under state creditor protection laws. Conversion could present an opportunity to convert a regular IRA to a Roth IRA, and using outside funds to pay the tax, you have effectively taken 60-cent dollars that are protected inside a regular IRA, and turned them into 100-cent dollars that are protected inside the resulting Roth IRA, and eliminated a non-protected asset by using it to pay the income tax on conversion. (The opposite can occur if qualified plan assets are converted to a Roth leaving

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Checklist: Disability Issues - I

Summary: Professionals and business owners are admonished to purchase disability income insurance to replace family income if they become disabled, business overhead insurance to keep their practice afloat, and disability buyout insurance to fund a buyout. So you've paid all 3 premiums dutifully for years and unfortunately suffer a debilitating illness which derails your career, dreams, and worse. The process of collecting on these can be daunting.

√ Just diagnosed? Get someone not emotionally vested to shepherd you through the process. If you're dealing with the emotional trauma of a new diagnosis you need someone methodical and objective to deal with what might be several independent insurance companies. The paperwork can be voluminous. The technical issues (medical, tax, legal) may be complex. If your hands are full dealing with treatment plans, rehab, etc. get help. Paying for your accountant and a disability attorney to handle the submissions will cost a bit up front but can avoid tremendous difficulties. As a layperson, your imprecise use of terminology could delay or derail your case. You need to make sure the facts are appropri-

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...ROTH IRA CONVERSIONS

(Continued from page 1)

less protection.) You can continue making contributions to your Roth IRA after age 70½ and never have to withdraw from it. That leaves Roth dollars snug and safe. In contrast, you can't contribute to a regular IRA after 70 ½ and you have to take MRDs.

Other Factors To get it right many variables need to be factored into your analysis. What will your post-conversion investment rate of return be? Is there a tax bracket arbitrage available? For example, if you're terminally ill it might pay to convert while married filing joint at a lower tax rate than your surviving spouse will have if she takes distributions out of a taxable IRA at a single person's tax bracket after your death. Arbitrage can be negative if converting pushes you from a current low bracket into a higher tax bracket. Will the IRS attempt to tax Roth dollars in the future (e.g., via phase outs of other tax benefits based on Roth balances or withdrawals)? If the federal fisc remains hungry in decades to come most anything is possible. What financial needs for health or other emergencies might cause Roth funds to be tapped before anticipated? Can you really model these factors? How can you guesstimate how the government may change the tax rules applicable to well to do taxpayers, yet alone guesstimate the percentage likelihood of such changes? If you convert the income tax you pay will reduce your estate possibly lowering your estate tax. If you split the baby and only convert say ½ your IRA, perhaps you should first split the IRA into parts, say a bond part and equity part. Then convert the equity part which is more likely to appreciate then the bond part.

Estate Tax and 691 What's the estate tax consequence of Roth versus not? Some background first. Your IRA is included in your taxable estate and could be subject to a 45% federal, and potential state, estate tax. Since a regular IRA represents income that has not been subjected to income tax (ignoring non-deductible contributions), this is called "income in respect of a decedent" (IRD). IRD is subject to income tax as your heirs receive it. So the 55% left after the estate tax bite gets bitten again with a 35% income tax rate (which will likely increase in the future). Ouch!

The double tax whammy is somewhat mitigated by an income tax deduction for the federal estate tax paid. Code Sec. 691(c). This is not a perfect offset. If you're in a state that has an estate tax there is no offset for state estate taxes paid. The beneficiary paying the tax might not be the one inheriting the IRA and getting the benefit. The IRD deduction may be subject to phase out of deductions under Code Section 68 reducing the benefit. So, it might be a better deal to die Roth'd.

How to Convert If conversion still seems plausible after the initial evaluation, review timing of tax payments with your CPA. You can report income at once or spread it. Consider whether you can divide your IRA into separate IRAs by asset class and convert each asset class IRA separately. That way, if a particular asset class IRA declines in value before the extended due date for the return, you can un-convert (recharacterize) it and avoid the tax. So if you convert 1/1/10 right after the ball drops in Times Square, you can hold your tax breath until 10/15/11 to decide. That's a 21 ½ month looky looky. Why pay income tax to convert a loser? Be wary that the IRS and/or Congress may get hip to this jig and try to kibosh it. They're trying to do just that with zeroed out short term GRATs that similarly present a "heads you win, tails try again" paradigm. If you unconvert you have to wait 30 days before trying again. Review estimated tax payment requirements.

Free Seminars 12/15 and 12/17 "Chronic Illness Planning" for Professionals, those living with chronic illness and caregivers Call 201-845-8400 for more info

Qualified Plans If a child is your qualified retirement plan beneficiary she can direct your plan from the qualified retirement plan to a: (1) Roth IRA; or (2) Non-spousal beneficiary regular rollover IRA. Once the qualified plan has been rolled into a regular inherited IRA it cannot thereafter be converted to a Roth IRA. If you rolled an ERISA plan into a regular IRA and then "Roth it" you might reduce your asset protection position. PP

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

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...DISABILITY ISSUES—PART 1

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ately and clearly presented.

√ Your planning should have involved more than just a disability income policy. You should have had an exit strategy from your business or professional practice. Don't defer selling or transitioning your practice or business for too long. If you run it into the ground there will be little to sell. If you have a buy sell get your accountant and attorney on the case as quickly as possible as there may be critical deadlines.

√ If you have a business overhead policy, it should protect you if you cannot work full time. These policies are sold to help cover your fixed costs, like rent. You may have to prove partial or total disability to collect on them. You also have to substantiate the expenses you are incurring. Often these are geared to expenses that are deductible for tax purposes. It can serve well as gap insurance while slowing down. The definitions and calculations may differ from those under your disability income policy. Again, the concepts are likely to be technical and the paperwork substantial. Consider involving your accountant. If you are totally disabled and close down your practice or business the coverage may prove ephemeral.

√ Try to be consistent with what you report to your business overhead insurer, disability company, the IRS, credit and mortgage applications, etc. The insurance companies will get access to all these documents. Consistency, unfortunately, is probably impossible given the different definitions and purposes of the financial and tax reporting you might be involved in. The confusion can be substantial and differences may have to be reconciled.

√ Your disability income company wants to know the quality and nature of your work. They need to determine how you derive your income (e.g., surgery, office hours, lecturing). The quality and quantity of work you do defines the "duties of your occupation." This might require some fancy accounting analysis that no one had ever focused on before.

√ Working while you are disabled, especially at earlier stages of a progressive illness, is common. You want to maintain normalcy as long as possible. Your business overhead coverage may be a huge help if you're only partially cutting back. But be wary, disability income insurance companies may view your working initially as an indication that you can continue to work even though you're sick. This could shift the dynamic to you if you cut back further in the future, or cease working, to demonstrate that even though you previously worked with the disability you can no longer do so. You may have to demonstrate a more recent development that has created the new change (e.g. a worsening of your condition; inability to find continued work).

√ Be carefull about sending Emails. It's too easy to hit that [send]. Instead write a Word document and attach it so you can review it to be certain that the facts are correct. If there are tax or accounting issues, have your CPA review it. If there are policy definition issues, consult with your agent. Have a disability attorney review everything before it is sent. Thanks to Bonny Rafel, Esq. Livingston, NJ for her insights. PP

RECENT DEVELOPMENTS

Expatriates: Ben Franklin said: "In this world nothing can be said to be certain, except death and taxes." Expatriating to avoid taxes won't work either. In Notice 2009-85 the IRS explained the new Code Sec. 877A mark-to-market exit tax enacted as part of the Heroes Earnings Assistance and Relief Tax Act in 2008. The tax can is levied on unrealized appreciation of assets over $600,000.

RMD: You don't have to take a required minimum distribution (RMD) from your IRA in 2009 because RMDs are suspended this year only. In Notice 2009-82, 2009-41 I.R.B. 491 the IRS addressed a number of issues created by the waiver of 2009 RMDs. Because these rule changes were enacted so late in the year, the IRS has provided some leniency to taxpayers. The IRS won't consider a plan to have failed to be operated according to its terms merely because, between 1/1/2009 and 11/30/2009, 2009 RMDs were or were not made, beneficiaries weren't given option of not receiving distributions that included 2009 RMDs, or direct rollover option was or wasn't offered for 2009 RMDs. For taxpayers who have already received 2009 RMDs, the IRS extended the normal 60-day rollover period so that it doesn't end before 11/30/2009. Thanks to Charles C. Shulman, Esq. Teaneck, NJ.

Innocent Spouse Relief: When spouses file a joint income tax return they are both jointly and severally on the hook for any tax. If certain requirements are met one spouse might qualify for relief from the tax attributable to the other spouse under IRC Sec. 6015: H&W filed a joint return; There was an understatement of tax due to an erroneous item of H; W didn't know, and had no reason to know, of H's understatement; It's inequitable to hold W liable for the tax based on all the facts and circumstances; and W elects innocent spouse