PRACTICAL PLANNER NEWSLETTER
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"Charitable Planning for Chronic Illness" Carmel IN 9/2 for planned giving professionals.

See www.rv4thecure.com for info or call 201-845-8400.

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Planning Potpourri

Roth IRA Conversions and Charity: **When converting your IRA or qualified plan to a Roth make a donation to charity to offset much of the income tax cost generated by the conversion. Example: Convert over 5 years to spread the tax cost and make a charitable gift reducing the tax. Example: Instead of an outright gift contribute to a charitable remainder trust (CRT) sufficient appreciated non-IRA assets to reduce your Roth conversion tax and increase your yearly cash flow. Example: Combine the Roth conversion with grandchildren as beneficiaries and life insurance held in an insurance trust (ILIT) to provide more inheritance for your children to make up for the converted Roth being stretched for your grandchildren. Thanks to Henry Rubin of Yeshiva University, NYC.**

Power Roths. When you convert your IRA you first split your regular IRA into say 5 smaller IRAs and convert each separately. Each post-conversion Roth is invested in a different asset class. You then use hindsight on your extended income tax return to determine which to leave converted and which to recharacterize. Practical Planner 11/09. If you're disabled when recharacterization has to happen, will your wealth manager respond to your agent? Do you have a durable power that expressly authorizes an agent to reconvert? What does it say about naming beneficiaries? Some wealth management firms continue to refuse to respect powers other than their own. The forms may not expressly addressed Roth conversions. This could become a problem!

New Charity. A new charitable/educational endeavor, RV4TheCure. See www.rv4thecure.com and join our Facebook page (search "rv4thecure").

Our mission is simple: educate professional advisers (CPAs, attorneys and financial planners) on estate, tax and financial planning for those living with chronic illness. Thanks to Lorman Education Services we'll be able to give free CPE, CLE and CFP credits for most programs. NAPFA is encouraging members to host our programs. AICPA-PFP division hosted a free webinar on the topic (the podcast will be posted on www.rv4thecure.com) and will be hosting a free webinar for consumers on October 6. Sample forms, power points, planning memos and more have been posted to the website for your use. We're NOT asking anyone for money, just help in spreading the

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PRACTICAL PLANNER

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Cedar Point Estate Tax Ride!

Summary: Summer is big at Cedar Point, long known as the haven for roller coasters. Rides like the "Disaster Transport," thrill visitors. Their website describes the ride: "Take a journey into the unknown! Disaster Transport takes you through time and space – and in complete darkness!" Sounds like a description of the estate tax!

Wherever You Go, There You Are
Mindfulness and tax planning: Repeal; Retroactive reinstatement; $1 million exclusion next year… Wherever you go for estate planning, there you are…confused. Well, there is no estate tax today, we're living under the so called carry over basis regime under which assets held on death are not subject to the estate tax. The quid pro quo is that the tax basis (investment) in assets is not adjusted at death but retains the same tax or cost basis as the decedent had. There are a host of complex exceptions to this that permit a limited amount of appreciation to be eliminated (i.e., a step up) at death. In simple terms, $1.3 million of appreciation on any estate plus $3 million on property passing to a spouse. A detailed analysis of these rules can be found on www.laweasy.com in a white paper initially published by www.leimbergservices.com. While everyone was convinced that the absurdly complex carry over basis rules would be retroactively repealed, the same everybody was positive that we'd never have estate tax repeal. So much for positive thinking!

Roller Coaster Tax Bills
The Rolling Thunder roller coaster at Six Flags is a dual-track wooden roller coaster with a nearly 8- story drop and 10 great hills. Kids stuff. Consider these drops and hills: The estate tax exemption in 2001 was $675,000. It rose up hill to a whopping $3.5M in 2009, then a drop to oblivion in 2010 with repeal (try to beat that Six Flags!) and now a cliffhanger of potentially $1M in 2011. Boy, depending on when you checkout what the kids get will vary dramatically. The federal estate tax on a $4M estate in 2009 would have been about $225,000. If the kids kept you on the "on" until 2010 the tax would be zip when you code [sorry!]. If the kids let you hang on for too long and you squeaked into 2011, the tax on the same $4M estate would hit nearly $1.5M in 2011.

Food Court Fun
After a wild morning on the roller coasters, its time to hit the food court to get you through what a taxing afternoon might bring. What might you do not knowing what's around the next bend?

GRATs. Gifts to grantor retained annuity trusts have received so much press that we won't belabor them here again but suffice to say that most advisers believe that this technique will be restricted significantly in the near future (perhaps before you read this!). So if GRATs are on your planning menu, eat quickly! Consider whether there is an advantage to using a longer than two year GRAT to lock in today's low interest rates.

Crummey Gifts. Gifts to trusts are often structured so that the beneficiaries have a right to withdraw the money for a brief period of time. This enables the gift to qualify for the annual gift tax exclusion, $13,000 this year. There are some rumblings about Crummey's being zapped so use 'em while ya can.

Gift of Property. Gift the vacation home to your kids to get it out of your estate. So your condo on the beach is worth about ½ of what it was

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Checklist: Charity Letter

Summary: When planning a significant charitable gift or bequest consider a letter agreement with the charity clarifying for all involved what your intent is, how the charity will use the funds, and addressing other issues. The following checklist will provide a starting point for some of the many issues you may want to address.

√ Be specific as to when the bequest to the charity shall take place. If the bequest is made under your will, state the date of the will that governs the bequest and what will happen if you revise your will? Refer to the correct nature of a bequest your will provides that the named charity will receive the intended bequest only if your children die not survived by issue, that is a contingent bequest. Imprecise wording, e.g., listing the bequest as one of your remainder estate, might be misleading and create an incorrect inference.

√ Have the charity provide a copy of the letter they receive from the IRS granting them tax exempt status. Occasionally, the name the charity is known by is not the actual name, and you want to be certain the correct organization, and one which is tax exempt, is properly named. Example: "ABC Charity, Inc., which is recognized by the

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...Cedar Point Estate Tax Ride!

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a few years back so perhaps you give that away to the kids. If the gift won't exceed what remains of your million dollar gift exemption that might be a shrewd move. Even if it does, paying gift tax at 35% might itself be tax beneficial if the estate tax rate in fact climbs to 55% next year. But what if your estate is worth $4.5 million? If the estate tax exclusion is $1 million next year getting the condo out of your estate might be looking good, especially if it appreciates in value. However, if Congress gooses the exclusion up to $5 million you'll might end up having paid a gift tax to save an estate tax that no longer applies to you. That'll leave you with the same feeling as a ride on the Corkscrew (that's three inversions!) after a Big Mac at the food court. The focal point shouldn't be the decline in value, that's history. Will the condo appreciate post-gift? What about probate and domicile? If you gift away a vacation condo in another state, that might save your heirs the cost and hassle of probate in that state. But if it's a close call as to whether you may qualify as domiciled in that other state, gifting away the condo might undermine your ability to claim domicile there. That could have a far more costly impact. Giving away a condo is not quite as simple as writing out a check. You'll need a deed prepared by counsel in that state. There may be transfer taxes, estimated or withholding taxes, etc. depending on state law. If there is a mortgage you'll need lender approval. It might be advisable to sign a gift letter confirming the transfer by gift. If you're giving the condo to one kid, do you want to equalize the other kids? You'll have to obtain an independent written appraisal of the value of the condo given. Your property tax bill don't cut the mustard. You will probably have to file a gift tax return for this. The property will have carryover basis so if your kids later sell it they'll pay capital gains on the excess of the sales proceeds over what you paid. If capital gains increase enough that could offset much of the perceived tax benefit.

<u>Split-Dollar Life Insurance Loans</u>. If you loan $1 million to your daughter's insurance trust so that it can buy life insurance on your daughter's life, how does that help your estate? Split-dollar life insurance loans, under Treasury Regulation §1.7872-15(d) might just provide that unexpected thrill when you thought the ride was nearly over. The split-dollar loan can accrue interest and mature on the death of the child/insured. Both the borrower and the lender must sign a written representation. This must be included with their tax returns filed not later than the last day (including extensions) for filing the Federal income tax return of the borrower or lender, whichever is earlier, for the taxable year in which the lender makes the first split-dollar loan under the split-dollar life insurance arrangement. The estate tax vig might come from the determination of what the fair value of the loan is in parent's estate on death. If daughter is age 40 and mom age 84, on mom's demise her estate will hold a loan that pays no interest or principal until daughter's death when the insurance policy pays. What is a reasonable market based rate of interest would be as of the valuation date? What will the present value of the split-dollar note be?

Given the estate tax uncertainty, if the few plays out differently the loan might be repaid to unwind the transaction.

<u>Beneficiary Defective Inheritor's Trust (BDIT)</u>. The key to the BDIT is that someone other than you sets up the trust to benefit you. If mom establishes your trust and makes a $5,000 gift, and you never gift to the trust, you may have more flexibility to be a beneficiary and trustee of the trust as compared to the more common grantor trust arrangement. For example, if you gave gifts to fund the trust and retained rights to enjoy the assets transferred, the full value of those assets will be included in you estate. This structure permits you to sell assets to the BDIT at still depressed prices, for a note at low interest rates, be a discretionary beneficiary of the trust yet freeze the value included in your estate. PP

Review: Andrew Wolfe, Esq., CPA.

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...Checklist: Charitable Pledge Letter Agreement

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IRS as qualifying for the unlimited estate tax charitable contribution deduction. A copy of its tax exemption letter from the IRS is attached."

√ If your bequest is under a will consider whether the language of the gift letter should, or should not, make the bequest a binding commitment. Any charity will opt for the latter. If in fact the charity is starting a program or making commitments today based on your pledge, making it binding might be only fair (and might be the only way to encourage the charity to proceed with the program you wish). However, if there is no current reliance by the charity, consider whether you should expressly state that the pledge is not binding. This way, as circumstances change, you may revise your will and the bequest. "I recognize that this pledged gift is a not a binding obligation of my estate, but merely a statement of my current wishes which may change."

√ If the charity has overseas offices, specify whether you wish the funds to be retained and used within the U.S. Be certain that if you want the funds used overseas that your charitable deduction is not jeopardized. Example, you might need to make your gift to a U.S. "feeder organization" that qualifies within the U.S. and distributes funds overseas.

√ Consider whether you want to designate specific goals for the bequest. (e.g. held as part of the charity's endowment fund to support services for those living with Parkinson's disease.) Work out language with the charity that is specific enough to assure that your charitable intent is adhered to, but within those agreed parameters as flexible as possible to give the charity the latitude to adopt to changed circumstances to assure the effectiveness of your gift.

√ You should confirm the arrangements for you to be informed of, or even participate in, the selection of specific expenditures, or making other decisions. Consider whether you want the charity to report to anyone on the use of the funds after your disability or demise, who that should be and how it should be handled.

√ Bear in mind there is no estate tax chartable contribution deduction in 2010, but charitable gifts by you during your lifetime, or by your children from an inheritance after your death, will qualify for income tax benefits.

√ If you designate that income from this fund shall be used for a specific purpose you should also try to provide flexibility for future years if the goal is no longer relevant (e.g., a cure for Parkinson's disease is discovered), or in case the size of the fund declines to the point at which it is not feasible to maintain.

√ State happens to a dedicated project if there are changes. For example, you donate a waiting room in a new wing of a hospital. 5 years later the hospital is redesigned and your waiting room moved. Does the dedication continue? What about 15 years? What if you donated funds for a research lab and the hospital ceased engaging in research as part of a strategic restructuring? There is no longer a lab to bear the plaque. Does the plaque acknowledging the gift get thrown out? Displayed? Where? Often significant charitable gifts are intended to honor a particular cause or individual as well as accomplish the good the funds contributed will achieve. Address these matters in reasonable detail. PP

Recent Developments

<u>Estates, Trusts and Tax Matters Partner (TMP)</u>. Partnerships (including LLCs taxed as partnerships) with more than 10 partners are subject to consolidated audit procedures. IRC Sec. 6221. Partnerships/LLCs can designate a single partner as the TMP to receive notice and make certain decisions. Treas. Reg. Sec. 301.6231. The TMP acts on behalf of the partners in dealing with the IRS in a unified partnership proceeding. The TMP is the general partner the partnership designates as such on its return (Form 1065). If no designation is made the general partner with the largest profits interest is the TMP. If the GP dies the remaining partners with a majority interest in a partnership can designate a TMP. Treas. Reg. Sec. 301.6231(a)(7)-1(f). In a recent IRS field advice the GP/TMP of multiple LLCs treated as partnerships died. The IRS determined that the partnerships could select the trust to which the majority of the partnership interests passed as the new TMP, provided the trust is the general partner in each of the partnerships at the time of designation. FAA 20103001F.

<u>NY Trust Change Sign of Things to Come</u>. States remain hungry for revenues. Who better to tax than a non-resident individual or trust. NY taxes the income of any NY resident trust. This generally includes a trust established under the Will of a NY domiciliary and an inter-vivos trust established by a NY domiciliary. A NY resident trust doesn't pay tax if: (i) none of the trustees are NY domiciliaries, (ii) no trust assets are located in NY, and (iii) the trust doesn't have NY source income. NY resident trusts that are exempt from tax must now file NY income tax returns. This isn't a tax increase but a clear effort to catch non-filers who owe NY tax. TSB-M-10(5)I, 7/23/10.