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MARTIN M. SHENKMAN, PC
PO Box 1130, Fort Lee, NJ 07024
Email: newsletter@shenkmanlaw.com

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Planning Potpourri

■ Low Tech Works: Sometimes low tech simple solutions are best. If the wrong person signs important documents for a trust or entity that might undermine the integrity of that trust or entity for tax or legal purposes. A modern trust might have a trustee, trust protector, loan director and more. Who signs what? Order self-inking deposit stamps for each trust so you can simply stamp checks for deposit. This is a great and simple way to avoid errors on who can sign a check. Similarly for entities, such as a family LLC it is common to receive documents prepared with forms or names that are incorrect. Have your printer make a self-inking stamp with the name of the entity, beneath it a signature line preceded by the word "By:" and beneath that the name of the person to sign followed by their title. For example: Smith Family Holdings, LLC/By: __________/John Smith, Manager. When you are about to sign something stamp it first. This is a quick and easy way to avoid the wrong person signing, or even the write person in the wrong capacity.

■ Estate Planner's Ripley's Believe it or Not: I thought a summary was a summary. If you google "summary" you get definitions like "brief abstract" or "brief statement or account of the main points of something." Gee seems like a summary of anything by definition cannot include every point or it wouldn't be a summary. I've heard some nasty tales of insurance agents getting caught in a ringer because their summary did not include every fact. If a summary included every fact it would be as long as the documents it was purporting to summarize! While it seems absurd perhaps all professionals, to protect themselves, should consider a caveat on any summary they prepare to the effect that "This is only a summary of selected facts. You must read the entirety of the underlying documents for all pertinent information." Lawyers frequently provide summaries of long complex legal documents. Insurance agents routinely create summaries of a policy or of all of a client's policies. CPAs often prepare summaries of tax planning discussions. It can hardly be rationale for someone to conclude that a 3 page summary of a 55 page will could possibly include every point, or that a 2 page summary of all of a client's insurance coverage could cover every point. Perhaps we should remind clients of the obvious so it will be harder for them to tag us if something that later proves important was not in a summary. PP

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PRACTICAL PLANNER®

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

Planning Tips from the CCH Advisory Board

Summary: Commerce Clearing House (CCH), is publisher of some of the best known tax and financial planning materials. Recently I had the opportunity to participate in their annual Advisory Board Meeting which is a conference call of professionals in different disciplines from around the country.cchgroup.com/planforlife. Following are some of the many comments and planning tips distilled from that three hour conference. The hugs were my idea.

Funhouse Tax Mirrors: How has the planning environment changed? While readers of the Practical Planner have seen these comments before, they warrant repeating because the change in the planning environment is so radical from a mere two years ago and simply too few people have taken action to update their planning. ■ Aging clients' needs must be addressed. This will require much more than the tax planning that has traditionally been the focus of estate planning. ■ A high $5 million inflation adjusted permanent estate tax exemptions ($10,680,000 for a married couple in 2014), permanent top estate and gift tax rates of 40%, permanent portability of the estate tax exemption, have all transformed planning. Most wealthy Americans will no longer face a federal estate tax. ■ The flip side of the tax coin being higher income tax rates, Medicare Surtax, phase out of exemptions and itemized deductions, in aggregate result in income tax rates much higher than they had been for years. ■ Most significant, the relationship of estate tax rates and income tax rates has profoundly changed with income tax rates exceeding estate tax rates for most taxpayers. That turns a lot of prior planning on its head. Bottom Line – if you haven't retooled your planning get moving!

Hug your CPA: ■ The effective income tax rate can be 39.6% (ordinary income tax rate) + 3.8% (Medicare surtax) +2% (phase out of deductions). The marginal tax bracket on investment income can be as high as 45%. If you add state income taxes, the marginal rate could exceed 50%. ■ Tax rate bracket management to capture income in lower brackets should be considered in your income tax planning. You want to try to smooth income to minimize the income taxed at higher brackets. Plan the realization of income, to the extent you can (e.g. a sale of appreciated stock, a bonus from a controlled corporation), to avoid that extra income pushing you up the income tax bracket ladder. ■ Statutory tax shelters (life insurance, annuities, Roth conversions) should be considered to minimize income taxes. ■ Oil and gas investments may be more tax-advantageous. ■ A two year installment sale strategy may be fun too. IRC Sec. 453. If you sell appreciated assets to say your child, and she sells the same assets more than two years later, her sale should not accelerate your gain under the installment note.

Hug your Financial Planner: ■ A more holistic approach to wealth management planning which integrates income tax considerations, and estate planning issues, as well as investments, is the standard to demand. Advisers that can integrate all of this and work in the team environment will provide the most benefit for their clients. If your advisers won't play nicely in with each other the sandbox you'll lose out. Insist on open communication. ■ Retirement planning is important given longer life expectancies and higher health care costs. It is not only investments but withdrawal strategies, risk tolerance, and cash flow needs, that must be factored into your analysis. Many assume that you can

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Checklist: Trust Trends

√ State Income Tax: Several favorable cases have limited various states rights to tax income of non-grantor trusts unless the trust had a substantial connection to the state.

√ Note Sales to Grantor Trusts: Woelbing v. Commissioner (No. 030261-13) is a case pending in Tax Court where the IRS has challenged a sale of asset to the seller's intentionally defective grantor trust for a note. The conclusion of this case could be significant to planning. For now, pay attention to details and formalities of these types of transactions.

√ Decanting: About 22 states now permit trust decanting. The IRS is still looking into the tax consequences of the process so tax uncertainties remain, but that does not seem to have dampened the growth in the number of these transactions as those involved seek to improve old trust arrangements. Decanting is a process where a trustee transfers assets of an existing trust to a new trust. This is permitted if the trustee has discretion to distribute income/principal.

√ Same-Sex Marriage and Trusts: 19 states allow same-sex marriages, 31 states ban it but 12 of these 31 states have overturned the laws and are on appeal. The numbers keep changing and the trend is quite clear. The Windsor case said that DOMA's definition

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...PLANNING TIPS FROM THE CCH ADVISORY BOARD

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safely use a 4% withdrawal rate. New studies are suggesting that may not be the case. Consider that for a 65 year old married couple retiring today at least one of them will be alive in 30 years! Planning to assure adequate financial resources over that long time frame is critical. If you assume the wrong withdrawal rate and don't regularly monitor it you may run out of resources too soon. On the flip side if you want to maximize your later years, limiting your spending too much could inhibit travel or other pleasures. Just like with the three bears you need to get your financial porridge "just right." ■ Reality check: it is incredibly difficult to plan because of: changes in tax residency, divorce, other family status changes, complex asset allocations, the volatile economy. Regular reviews so you can modulate spending, asset allocations and more is therefore important.

Hug Your Estate Planning Attorney: ■ A team approach is required. You cannot effectively engage in estate planning in isolation as had been common in the past because of the income tax, retirement and other complexities. ■ It is almost impossible plan with clients not coming in annually. It is critical for CPAs and financial planners who do meet with clients annually (or more frequently) to push their clients to coordinate with their attorneys. Given the uncertainty and more complex planning environment projections to ascertain steps to take, like portability of the estate tax exemption to the surviving spouse, should be considered. ■ Family limited partnerships (FLPs) and limited liability companies formed to generate discounts can be transformed into income shifting strategies subject to the IRC Sec. 704(e) family partnership rules.

Hug your Pension Consultant: ■ Review plans to see if you can save more dollars in qualified plans. ■ Defined benefit plans may increase the amounts that can be saved in a short number of years. ■ Cash balance plans, 401(k) plans, and so forth, can often be used in combination to give a business owner a great opportunity to deduct more significant contributions to tax favored retirement plans. ■ Withdrawal strategies are key. What are your needs? What is your tax status? If income is changing due to age, or you are transitioning between careers, etc. then multi-year planning may be beneficial.

Hug Your Insurance Consultant: ■ With permanent estate tax exemptions so high what happens to existing insurance plans? ■ When the estate tax exemption was $600,000 funding estate tax with insurance was more common. Now people are redirecting their insurance dollars towards income tax savings, investment diversification as an asset class, and more. ■ No surrender, no commission charge, insurance products are now available.

Congress-Speak: ■ When you say "permanent" you mean in Oldspeak ideas like carved in stone, not changing, etc. When those folks in Washington say "permanent" tax change, they're talking that special political lingo of Newspeak which means, …, well whatever they or the next Congress want it to mean. While most advisers seem kinda confident that the high estate tax exemptions might be permanent, what is "permanent"? Some even suggest that the estate tax may still be repealed. So few tax returns are filed and the cost of administering the system seems significant. But if you repeal the estate tax and the gift tax there will be a movement of assets from high bracket taxpayers to lower bracket taxpayers. Without a gift tax to back stop the income tax, the income tax system will be jeopardized. ■ But on the flip side President Obama has proposed rolling back the transfer tax system to 2009 rules meaning a $3.5 million exemption and a $1 million gift tax exemption and a 45% rate. ■ The bottom line is if you have a large estate, asset protection, or divorce concerns, plan now. Don't wait. Example: You're a physician worried about malpractice claims. You have $3 million in non-retirement assets you might wish to protect. If the gift exemption is lowered to $1 million as the President has proposed several times, you'll lose out on the ability to better shelter more assets. If you have no claims or issues today, why wait. Strike while the litigation iron is not hot! PP

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...CHECKLIST: TRUST TRENDS

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of marriage being only between a man and women, violates the US constitution. Windsor did not address the legitimacy of state laws that ban same-sex marriage. Perhaps one of the pending cases will force that issue. Significant opportunities now exist for same-sex couples to plan unless the Supreme Court upholds as constitutional state statutes banning same sex marriages. The final resolution of this is uncertain in that the Windsor case was a close call with a 5-4 vote. The outcome of a challenge to state law bans is uncertain. Same-sex couples now need prenuptial agreements and all the planning married couples need to address. This means trust planning for same-sex couples must be reviewed.

√ DAPTs-Self Settled Trusts: 15 states now permit self-settled trusts. Several bad cases, Battley v. Mortensen, Adv. D. in Alaska, and Waldron v. Huber (In re Huber), BK.W.D.Wa. in Washington, have had planners rethinking how to best utilize this planning technique. Some planners have dismissed DAPTs entirely, but not all is bleak. All these "bad fact" cases had fraudulent conveyance concerns. Transfers to a DAPT that are a fraudulent conveyance can be voided. The Bankruptcy Act provides that a transfer to a self-settled trust or similar device can be voided by the bankruptcy trustee within 10 years. One of the steps those with existing DAPTs, as well as those planning new ones should consider, is creating a stronger nexus to the state where the DAPT is located. The more assets that are there and the more ties the better you can argue that the DAPT state law (e.g., Alaska) applies instead of your home state law (e.g., New Jersey). To counteract the naysayers consider that DAPTs have been around since 1997 and there are few cases that have questioned these trusts, and of those cases that did, all were fraudulent conveyances.

√ Digital Information: Fiduciaries may get access to digital information. Delaware recently enacted a law assuring access. Digital provides have been lobbying against this. The practical answer is to endeavor to secure all relevant digital information while the settlor or others are alive and well and can communicate it.

√ Crummey powers: Proposals limiting Crummey powers to $50,000 per donor/per year. If you have insurance and other trusts you are gifting substantial dollars to each year using annual gifts you should evaluate options to take now.

√ NINGs and DINGs: Incomplete gift trusts (done in Nevada or Delaware and called NINGs or DINGs respectively) should be considered to save state income tax (NY has legislated these away). These may also works in Alaska and Wyoming. How do these work? You transfer your property outside your high tax state before a sale, e.g., of a highly appreciated family business. This may also save federal tax because you may not be subject to phase out of itemized deductions. NINGs illustrate the increased emphasis on income tax planning generally, state income tax minimization in particular, and the cross-over of attorneys and other planners into the income tax arena.

√ Charitable remainder trusts: CRTs will receive new attention. Charities that had sought bequests may shift the focus to current gifts that generate income tax benefits since all but the wealthiest donor's won't get an estate tax deduction. PP

RECENT DEVELOPMENTS

Inherited IRAs: ■Your IRA affords you some protection from creditors' claims. On your death you can designate heirs as beneficiaries. An inherited IRA is often titled: "John Doe, Deceased IRA for Don Doe." However, after your death if the beneficiary is a non-spouse (e.g., a child), there will be no asset protection afforded that IRA. Specifically, an inherited IRA is not to be considered a retirement account for bankruptcy law purposes and, thus, is not protected in bankruptcy. 11 U.S.C. §522(b) (3)(C); Clark v. Rameker, Dkt. No. 13-299, SCt 2014-1. ■What is the future of an inherited IRA as exempt from creditors? Florida so far is the only state to amend its laws to protect an inherited IRA from creditors. For everyone else you should give serious thought to creating a trust to hold IRAs for the benefit of children and other non-spousal heirs to assure some level of protection. ■ What if the husband dies, and the surviving wife is age 54. The wife could leave the IRA in her deceased husband's name until she turns age 59 ½. If she then rolls it over at age 59 ½ what happens in that intervening period from age 54-59 ½? Is it a spousal IRA or inherited IRA that is not protected from creditors? Planning is much more complex for surviving spouses.

New York Estate Tax Changes: ■NY recently amended its estate tax laws to phase in an exclusion equal to the federal. The changes are favorable but contain costly traps. The NYS Dept. of Tax'n and Finance recently issued guidance. A NY resident's estate is increased by gifts made within 3 years of death, but real estate outside NY won't be counted. If your estate exceeds the exclusion amount by 5% your entire estate is taxable. This "cliff" makes the tax incredibly costly to those that just tip over the exclusion. The current exemption is $2,062,500. So if your estate this year was $2,100,000, $37,500 over the exemption, estate you would have a $49,308 tax. Filing a federal return, even just to claim portability, will preclude separate NY tax elections. TSB-M-14(6).PP