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PRACTICAL PLANNER[®]

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LOT'S HAPPENING: BIDEN BUDGET, CTA, MORE!

Summary: A lot is happening, and you may need to act. ■ The Corporate Transparency Act (CTA) requires beneficial owners of small business entities to register. You might need to decant trusts, update entity documents, and more to file properly. ■ Pres. Biden's budget includes estate tax changes that would radically alter wealth accumulation and transfer. Acting now might help. ■ Senators Wyden and King have introduced legislation that would hammer common trust techniques and increase income, gift, and estate taxes. ■ The [estate tax exemption will be cut in half at the end of 2025. To plan better, you should start planning now.](#)

■ The Corporate Transparency Act (CTA) – who reports: If you dissolve an entity, or change the people named in an entity or trust before your initial filing, the prior people or dissolved entity do not appear to have to report. So, you want to get your Beneficial Owner ducks in a row before the first filing. The steps will be different for your entities and trusts.

■ CTA and your entity: The CTA has been discussed in prior issues of this newsletter and with growing frequency in the media and professional literature. But too few people have taken steps to begin addressing it, and those steps may be much more involved than you realize. Say you created a S Corporation 20 years ago. When did you last review and update your bylaws? When did you last have an annual meeting and sign minutes or even a unanimous consent? Do you know who is named as officers and directors of the corporation? Many people will have no idea. You can have a corporate attorney update the bylaws, create new minutes appointing officers and directors, and take other actions. But before that is done, consider whether other agreements may govern who is named. Is there a shareholders' agreement, buy-out agreement, or key person employment agreement? Who is listed as a signatory on bank accounts? Each officer, director, key employee, and owner may all be considered "Beneficial Owners" who must file under the CTA. Before the filing is completed, all the above documentation and arrangements should probably be reviewed and coordinated (e.g., you don't want to change the name of a no longer involved officer to a currently active officer and not also update the signature cards on the corporate bank account). This all means that there may be a lot more work and thought than just asking a couple of people to obtain a FinCEN Identifier Number. If your old entity is also owned by a couple of trusts, the complexities and issues could multiply like Tribbles.

■ CTA and your trust: In 2012, you and your spouse created non-reciprocal spousal lifetime access trusts (SLATs), each gifted \$5 million worth of non-controlling

interests in the family business to each SLAT. That could be nearly a dozen years ago. Do you remember who was named as Investment Advisor, Trust Protector, Loan Director, etc., under that trust? Likely not. You can get out your copy of the trust and look up the various positions. But have any of these people resigned or been replaced in those intervening years? Did any of these people sign the trust so they were informed that they held those roles? Many trusts did not require people in these positions to sign a counterpart to the trust document, so they may not even know they were appointed. And even if they did

sign 12 years ago, do you think they remember? What if you have not talked to that person in 10 years? Or worse, what if you had a falling out? How will they react to your asking them for their driver's license, Social Security Number, and home address? Let's say you cannot locate the Trust Protector or that they tell you they have no interest in disclosing confidential data to you or FinCEN. What can you do? That will depend on the terms of the trust. It might have a simple mechanism to remove and replace some of these named people. But for some positions, the

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CHECKLIST: QUESTIONS

Summary: Estate planning means signing a will or doing some tax planning. Right? It means a lot more. There are lots of seemingly simple questions and steps you might consider. Sometimes the obvious non-technical points can have a huge impact on your plan working and you and your loved ones being protected.

✓ Do your heirs know the basics of your plan to act? Do they know where your original documents are located? Do they have contact information for your key advisers (lawyer, CPA, wealth adviser, insurance consultant)? Have they spoken to them? The first time they speak should not be after you're rushed to the hospital.

Do they have key account and password information or know where to access it? Having a Zoom meeting with your key loved ones, fiduciaries, and advisers should be on your short-term to-do list.

✓ How old are your estate planning documents? If the paper they were printed on is yellowing, they're probably too ripe for your protection. Once documents get old some third parties view them as "stale" and get more uncomfortable relying on them. And that is for good reason. Are the people you named in that 10-year-old power of attorney still reliable? Can a 15-year-old will possibly reflect on current law, your financial

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mechanism may be cumbersome or not exist. So, for some trusts, it might be preferable, or even necessary, to decant (merge) the old trust into a new one with different people and provisions. But there is a practical consideration. If you have a trust that is a decade old or more, decanting it into a new trust with more robust modern provisions may be beneficial. It might be a better use of your time and money to decant the trust than to put a band aid on it to comply with the CTA quickly. The bottom line is that trust compliance with the CTA may require time and a lot of work.

■ **Pres. Biden's budget:** Issued 3/11/24, the "General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals" contains harsh tax changes that could transform income and estate tax planning for the wealthy. It is unlikely that anything proposed will be enacted before the election, maybe (see Wyden and King below)! But there is no way to know. Also, Dems have been proposing these

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types of changes for many years, and eventually, some or many of them may be enacted. Why are you waiting to plan? The goal is more revenue to address budget issues and redistribute wealth. It would eliminate preferential long-term capital gains rates for those with income above \$1 million. Income tax will be triggered when you gift appreciated assets or die with them. Distributions from trusts will trigger gain. Every 90 years, trust assets will be deemed sold and gain recognized. Trusts with \$300,000 of assets or income of \$10,000 will face new trust reporting rules. Notice a pattern with the CTA above? Many of these harsh changes will apply no matter when your planning was implemented. Nonetheless, it may be worth trying to get the planning done before any such changes are enacted, as perhaps pre-existing planning might avoid some changes (but based on the proposal, they won't!). So long as you plan carefully and preserve sufficient access to assets transferred, why defer? So you're sure this will never happen? Read below.

■ **Senators Wyden and King legislation:** Introduced 3/20/24 their bill, "Getting Rid of Abusive Trusts Act," targets Grantor Retained Annuity Trusts (GRATs), which have been a common estate planning tool to shift appreciating assets to the next generation. The proposal would tax property transfers between a trust and the deemed owner (grantor) of the trust and other changes similar to the Biden budget above. But these could be expanded beyond GRATs. The bottom line is if you could benefit from asset protection or tax planning, you really should act now. There is no means of predicting what might be enacted or when. This proposal shows that there is a clear objective of trying to enact tax legislation to address wealth concentration.

■ **Vermont tax proposals** could, if enacted, tax people with more than \$10 million of wealth on capital gains, even if not realized. Another proposal could, if enacted, add a 3% additional tax on taxpayers with income above \$500,000. These are similar to the proposals above.

■ **Estate/Gift/GST tax exemption** will

be cut in half: Everyone has heard it many times, but too many have still not planned for it. The gift, estate, and GST exemption (the amount you can transfer free of tax) will be cut in half after 2025. If you have not planned for this, you need to do so. Waiting until 2025 is not advisable. You may have to transfer assets be-

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tween spouses, organize entities, and take other steps. The more time between steps the less likely the IRS might succeed in collapsing those steps and undermining your plan under the step-transaction doctrine. That is a tax concept under which the IRS can merge related steps and recharacterize them accordingly. Also, if you and a spouse are planning, the more time between what you each do, perhaps the less likely the IRS will be able to unravel your planning under the reciprocal trust doctrine. Which would treat each spouse as if they (not the other spouse) formed a particular trust. Also, to plan well, you should get financial forecasts from your wealth adviser, review the benefits of new or different insurance coverage, and more. But all of the above takes time.

■ **Domestic Asset Protection Trusts (DAPT):** A DAPT is a trust that you create and which you can be a beneficiary of, but yet the assets in the trust may avoid your creditors, and if it is a completed gift trust, be outside your estate. On 3/12/24 the Wisconsin Senate passed Bill 667 to allow the creation of DAPTs in Wisconsin. Wisconsin is the 22nd state to have such legislation. For the many naysayers who suggest DAPTs don't work, DAPT legislation continues to grow more common. Exercise caution, but DAPTs should be on the list to consider for pre-2026. **PP**

...CHECKLIST: QUESTIONS

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condition today, and other changes? If you're still pondering that, the answer is no.

✓ Nothing has changed. This is the most common excuse people use for not updating their plans and documents. It is rarely true after three or so years. Life is volatile and changing; tax and other laws change, legal drafting conventions evolve, people get sick or die or stop being friends, and so much more. Usually, "but nothing has changed" is a flimsy excuse to avoid dealing with unpleasant topics or incurring the cost of cleaning up old planning and documents. The reality usually is that whatever cost or aggravation you'll incur, keeping it all current will be a fraction of the hassles if you fall ill or die with outdated planning in place.

✓ Have you factored religious considerations into your plan? Whether or not you are religious, different levels of observance or family members and fiduciaries of different faiths can create all sorts of complications. People's observance of any faith can also change over time as they age or experience major life events. It is best to address these considerations directly. If you grew up in a particular faith but that is no longer relevant to you, your documents should indicate that. You don't want healthcare agents struggling to determine what you do (or don't) believe during an emergency. You should not name someone to take health care or other actions that they may find immoral. You might want maximum pain relief if you are ill or injured, but "maximum" might hasten the onset of death, and if the person you named to make that decision would find hastening the onset of death antithetical to their religious beliefs, that could be a disaster.

✓ Should You Be A Personal Representative Or Trustee? Uncle Joe asked you to be his executor. You're flattered, but should you say yes? Do you have any idea what is involved? Are his financial and legal affairs in order, or do they more resemble the attic you've been meaning to clean up for a decade? Do you have the time to devote to the duties that will be required of you? Can you do the

job properly? Are you sure of what responsibilities might be involved? Do his heirs get along? What might you realistically be getting involved with? What liability might you face?

✓ Do you really have enough assets to support your lifestyle expenses until some prudent age like 100? Unless you have a known health issue, using younger ages for forecasting might be a mistake. Many people, even those of considerable wealth, spend at such a high burn rate that they realistically and conservatively may not be able to support themselves. Having to cut your living style substantially is painful and unpleasant. The sooner you confront reality, the easier those adjustments will be. The reality is that some people get angry when their advisers tell them the truth they don't want to hear. Instead, thank them for their integrity

and heed their advice.

✓ Are you being objective and honest about your designated heirs? Are there mental health or addiction issues that you have not addressed in your plan? While these can be incredibly painful to speak about, failing to address them can cause worse pain. Depending on the addiction involved, a carefully crafted trust might help preserve dignity and provide protection.

✓ "Simple is as simple does," was a great Forrest Gump phrase but not how your plan will work. Sure, you can eat Cheerios for dinner; that's simple. But is that really what you want? Balancing the many goals even a "simple" estate plan entails (personal wishes, tax considerations, asset protection, family dynamics, etc.) will never be simple. Focus first on moving towards real goals. PP

RECENT DEVELOPMENTS

- **Closely Held/Family Business:** The option price for a stock buyout between parents Lloyd and Patricia Huffman and their son Chet of \$5M was found not to be a bona fide price. It was deemed a device to transfer stock to a family member and was not comparable to similar arrangements between unrelated parties. A transfer for less than adequate and full consideration in money or money's worth is deemed a gift under Code Sec. 2512(b). The IRS thought the stock was worth over \$30M. If you have a buy-sell agreement with family, it must meet strict criteria under Code Sec. 2703 to be respected, and failing to do so can unravel your plan. When was the last time you had your buyout arrangements reviewed? *Huffman v. Commissioner*, TC Memo 2024-12.
- **FBAR Filings Should Not Be Ignored:** Foreign Bank and Financial Accounts (FBAR) may require you, under the Bank Secrecy Act, to report every year certain foreign financial accounts (e.g., bank accounts, brokerage accounts, mutual funds) to the Treasury Department and keep certain records of those accounts. There is no shortage of recent cases where people failed to report and tried to get out of the costly penalties. If you have any foreign accounts or assets, check with your CPA and ensure you meet your filing requirements. The penalties can be substantial! In *United States v. Kelly*, 133 AFTR2d 2024-710 the failure to file the FBAR report was willful because no professional advice was sought. Get help from an expert! In *United States v. Wolin*, 133 AFTR2d 2024 the court enforced collection of the FBAR penalty against a US citizen living abroad. In *United States v. Harrington*, 133 AFTR2d 2024, failing to file for 4 years was found to be reckless. In *United States v. Gaynor*, 133 AFTR2d 2024-716, the holder did not willfully evade FBAR reporting.
- **Gift value of life insurance:** Taxpayer valued insurance policies on the value that could have been received if the policies were sold into the life settlement market. The IRS argued that a life settlement value was not a legitimate measure of policy value for gift tax purposes. The case was settled between the interrelated terminal reserve value and the life settlement value. *M. Joseph Dematteo v. Commr.*, T.C. Docket No. 3634-21. PP

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■ Some Insurance companies are not alerting agents when premiums are late or policies lapse. Some carriers are unwilling to accept premium payments even a few days late without requiring reinstatement paperwork. Other companies are ceding administration to third parties. Thanks to Steven A. Fishman, CLU. Protect yourself. Calendar due dates for making premium payments and don't miss out and make sure your trustee is diligent. Send payments in with tracking to prove when sent or wire payments. If you can put premiums on autopay, that may be wise. Watch for your payment to clear the bank account. Meet with your agent annually and review the status of all policies to avoid bad surprises.

■ If you or a loved one lives with a chronic illness or other neurologic condition, consider getting a letter from your neurologist to keep in your car. Illustration: "Multiple Sclerosis can cause issues with balance and walking, which can vary day to day,

or even within a day. MS commonly results in balance, gait, or coordination difficulties. The walk and turns of the field sobriety test (FST) that police frequently administer to detect whether a DUI suspect is under the influence of alcohol or drugs will be failed by people living with MS because of these issues. Failing such a test, therefore, would not be an accurate assessment of whether they are under the influence of drugs or alcohol." People with neurological challenges have been handcuffed and imprisoned for failing the FST. Keep a letter from your neurologist in your car's glove compartment. It might help.

■ Consider completing the "Authorization to Disclose Personal Health Information Release Form" from the Department of Health and Human Services, Centers for Medicare and Medicaid Services. This will add a named person with whom Medicare can share information. While lawyer-prepared documents, such as a HIPAA Release or Health Proxy,

should offer the same result, it may prove much easier to empower someone to access your confidential medical information from the government if you complete their form.

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