PRACTICAL PLANNER NEWSLETTER
MARTIN M. SHENKMAN, PC
PO Box 1300, Tenafly, NJ 07670
Phone: 201 837-1400
Email: newsletter@shenkmanlaw.com
RETURN SERVICE REQUESTED

First-Class Mail
US Postage Paid
Hackensack, NJ
Permit No. 1121

More Info:

- **Publications:** Sign up for an e-version of this newsletter at www.laweasy.com. Past issues and an index are available at www.shenkmanlaw.com.
- **Seminars:** CPE Seminar series begins May 2007. Call Chris 201-837-1400 for more information. If you cannot attend audio clips will be posted on the www.laweasy.com website under "Seminar Materials".
- **Freebies:** Submit your questions on the Law Made Easy Press website, www.laweasy.com.

Address corrections: or to be removed from this mailing list, email newsletter@shenkmanlaw.com or call 888-LAW-EASY.

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

PLANNING POTPOURRI

<u>Executor Liability</u>: Contact the decedent's property and casualty insurance company and specifically have the estate and executor added to the homeowners and personal excess liability policies. This should provide protection for the property damage, personal injury and other claims.

<u>Software "Stuff"</u>: Organize software CDs, instructions, and other materials. Throw out the bulky box after cutting off bar code and related data. Store it all in a zip lock plastic bag labeled as to which computer the software was for and the date. Works great for cell phones, digital cameras and more. Cuts storage space dramatically, but most importantly makes it easy to find what you need when a problem arises.

<u>Darth Vader Death Tax</u>: In 2004 only 18, 431 estate tax returns were filed. That was only .8% of all estates for the year. Many of those probably had surviving spouses so that there was no tax as a result of the unlimited marital deduction. The number of filers will decline as the exclusion increases. In New Jersey in 2005 only 733 federal estate tax returns were filed that owed tax (and NJ is a wealthy state). How evil is the death tax?

<u>Credit Report Reminder</u>: You can get a free credit report from each of the 3 credit reporting agencies for free once per year. So every 4 months, get another report. This can be done simply and quickly on line. The errors and other issues you'll find will be surprising. You can object to errors on line. https://www.annualcreditreport.com/cra/index.jsp.

<u>Credit Card Security</u>: Don't sign the back of your credit cards. Instead write "PHOTO ID REQUIRED".

<u>Be a Charitable Big Shot</u>: You have a favorite charity and would really like to make a long term and meaningful commitment. It's a great "feel good" to help a worthy cause, it sends a loud "thanks" to all the other volunteers you work with, and its sets a great example for children and others who look to you for guidance. You can make a large commitment now. Buy a permanent insurance policy the charity owns and is beneficiary of. Each year gift the premiums to the charity. You'll get a charitable contribution deduction for the gift. The cash value will build a valuable asset for the charity. You'll have made a large gift which you can pay over time. Don't reduce your annual donations, the insurance policy should be additional since the charity can't use the premium payments for current needs. PP

VOLUME 2, ISSUE 1
JANUARY 2007

PRACTICAL PLANNER

Martin M. Shenkman, CPA, MBA, JD

ANNUAL REVIEW MEETING A MUST

<u>Annual Meeting a Must</u>: You need to have an annual estate, financial, tax and planning review. You go to your internist for a physical once a year and your dentist twice a year. You need to see your estate planner once a year as well. If your investment adviser meets annually to review performance, you're on the right path but you still need more. Even if your wealth manager has an attorney and CPA on staff, you must still meet with your advisers. You need the independence, and you need to maintain the relationships so in an emergency your advisers are familiar with your circumstances. There are always loose ends. New issues arise. An annual review will catch many of these before they become serious. A well orchestrated annual review will solidify your understanding of your overall plan. It will make the complexity far more manageable. The first comprehensive meeting will be a bit complicated, but future meetings will become progressively more efficient and beneficial. While the steps differ depending on your personal situation, consider:

<u>Coordinate Advisers</u>: You need to coordinate all the components of your plan. This requires many disciplines and professionals: accountant, investment manager, life insurance agent, property and casualty insurance agent, corporate attorney, estate planning attorney, pension consultant, and so on. While an annual board meeting with key family and advisers is the optimal approach, in many cases the cost or difficulty of coordinating it are too great. Instead some of your professionals can participate by conference call. Example: Meet with your estate planner and investment adviser and call in to your accountant, and insurance consultants. This is easy to coordinate and modest in cost, but significant in benefit. By assuring each adviser has communicated with your other key advisers your planning will be coordinated and each adviser will have an opportunity to request documents they need for their files. Often, creative ideas are presented from the interaction of your various advisers that would not have otherwise occurred. Example: Instead of using 2 year rolling GRATs for estate tax minimization as proposed by your wealth manager, you opt for the gift of LLC interests to a longer term GRAT to preserve asset protection proposed by your attorney.

<u>Crummey Powers</u>: When gifts are made to a trust, a notice must be signed by the beneficiaries acknowledging that they were afforded the opportunity to demand the gift money from the trust. These notices are essential so that gifts to trusts will qualify for the annual gift tax exclusion $12,000/donee. Gifts to trusts can be reviewed and all Crummey powers prepared and signed at your annual meeting. If all signers aren't present, those that are can sign, and someone can be designated to obtain the remaining signatures.

<u>Minutes</u>: Family and closely held business entities may have formal meetings as part of your family annual meeting. Minutes can be prepared and signed for each corporation, even LLCs. Other business entity matters can be reviewed. Example: Your family LLC leases real estate to your family manufacturing business. Verify that the lease is still valid, and if not, renew it. Confirm that the rent is arm's length, or designate someone to obtain a report of an independent broker as to the fair rent. Annual minutes and other formalities support the validity of your entities in the event of an IRS or creditor challenge. If you have both a corporate and estate planning attorney, coordinate who is responsible for which actions. You can coordinate your

(Continued on page 2)

CHECKLIST: COLLEGE SAVINGS

A child or grandchild might go to college – start a 529 college savings plan. While this is probably good advice for most, it's not the only option. For many, it's not the best option. If you're a physician, business owner or anyone worried about estate tax or asset protection, there may be better approaches. Let's review many of the options for funding college costs:

√<u>529 College Savings Plans</u>: Contributions to these well known plans, named after the tax code section that creates them, are not tax deductible, but the earnings escape all income tax if the funds are used for college costs (tuition, room and board, books). You can gift $12,000/year and even front load 5 years' of contributions at one time. If you withdraw funds for non-qualified expenses you'll pay income tax on the gain and a 10% penalty. Many states offer tax breaks for contributions to 529 plans. The recent extension of the Kiddie Tax (taxes kids under a certain age at their parent's tax rate) to age 18 enhances the advantages of 529 plans over other options.

√<u>Coverdell Education Savings Accounts</u>: You can contribute $2,000 per child under age 18. While you don't get a deduction, and the maximum

(Continued on page 3)

...Annual Review Meeting a Must

(Continued from page 1)

business annual meeting to proceed or follow your personal/family annual meeting making the process efficient.

Gifts: As plans become more complex, it becomes more important to track all gifts to your various trusts, 529 Plans, etc. to determine whether you've exceeded the $12,000/donee annual gift tax exclusion. An annual meeting is an ideal time to confirm current year gifts, plan next year's gifts, and decide with your advisers whether a gift tax return should be filed.

Investments: Review investment policy statements for each entity and investor. If you have a family FLP it should have a separate investment policy statement documenting its investment goals. Reviewing these goals also is an ideal time to call your accountant to be certain that your wealth manager has the correct information and assumptions as to the tax status of each entity, trust and family member for whom they are investing. Review the allocation of assets as between the various entities. Example: Assets more likely to appreciate might best be held in a by pass trust, and assets generating income in a marital or QTIP trust. If all the various trusts consolidate assets into a single LLC for investment efficiency, the investment planning for that LLC should address the needs of the underlying trusts.

Notes and Loans: Be sure any intra-family loans are supported by written loan agreements and adhere to all formalities of repayment. If there are covenants, the lender should confirm that they are being met.

Retirement Plans: If your plan received an IRS determination letter confirming tax exemption this should insulate your plan in the event of bankruptcy. Confirm that you have a copy of the plan's determination letter. Review and coordinate beneficiary designations.

Life Insurance Trusts (ILIT): Verify that the ILIT bank account is in the correct name, and has the correct tax identification number. Be certain that the insurance policies intended to be held by the trust, are in fact held by the trust. Obtain an in force illustration of the policy and have the insurance agent review it. Verify the economic status of the insurance company.

Property and Casualty Coverage (P&C): To often P&C is ignored in planning. If your estate planner and accountant restructured assets as a result of a gift program, formation of a new trust, or LLC, P&C coverage must be reviewed to be certain that the correct owners for each asset are listed, that the risks are properly addressed, and so on. Trustees may need to be named insured. In some cases coverage that is no longer needed can be dropped for significant savings. Obtain a summary of all coverage in advance.

Trust Administration: In the first year you become a trustee you should review the terms of the trust with an estate planner and list the responsibilities you have and key steps you need to take. At least annually, thereafter, you should review the operations of the trust to be certain you are complying with the terms of the trust. Call your accountant to be certain that the correct positions are being taken on the trust's income tax return. Review distribution matters with your investment adviser. Discuss communications with trust beneficiaries. A report to beneficiaries can be developed at your annual meeting. If a trust is intended to be taxed as a grantor trust (you as the grantor pay income tax) the mechanisms used to create grantor trust status should be reviewed. Example: The fact that the trust can use income to pay for insurance on your life is used in part to create grantor trust status. Have the trust buy a small policy.

Terms in red defined in the glossary at www.laweasy.com. For e-newsletter sign up at www.laweasy.com.

Buy-Sell Agreements: Many closely held businesses set an agreed or stated value that will govern buyouts. Most of these have sunsets so that if the figures are not revised periodically the buy-out defaults to a formula. An annual meeting is an excellent opportunity to update and sign a new Certificate of Stated Value. Call the business insurance agent to verify the performance and adequacy of the insurance coverage.

Conclusion: Many steps can be taken at an annual meeting depending on your personal planning situation. Failing to have a regular meeting and following up on all the details will almost assure the failure of your

Publisher Information: Practical Planner is published monthly by Law Made Easy Press, LLC, P.O. Box 1300, Tenafly, New Jersey 07670. For assistance or information email newsletter@shenkmanlaw.com, or call 888-LAW-EASY.

...Checklist: College Savings Not Just 5-2-9

(Continued from page 1)

contributions are limited, these funds can be used for any type of educational costs, including K-12 grades. 529 plans cannot. The ability to use this benefit is phased out when your income reaches $220,000 (MFJ).

√Direct Tuition Payments: Benefactors can pay unlimited amounts for tuition costs if paid directly to the institutions. For wealthy families already giving the maximum $12,000/year/donee gifts, this is a great planning step as it doesn't count against these annual gifts. Grandparents looking to shrink their estates can simply pay tuition as part of their gift program. If you have a durable power of attorney be sure to authorize gifts in the precise manner you wish them to be permitted. Name the permissible donees, the maximum annual gifts, and whether direct tuition payments should be permitted. Permitting non-GST exempt trusts to make distributions for grandchildren's tuition (and medical) won't trigger GST tax. This can be a powerful addition to a child's trust, by pass trust, or other family trust.

√Save in Your Name: This non-plan can actually be a great plan. You have total control over the investments and distributions. Funds you hold may be counted less harshly for financial aid then funds in the students name. While you can't get the income tax break of a 529 plan, you can use tried and true investment strategies (harvesting gains and losses, growth stocks with negligible current dividends, etc.) to minimize income taxes. This provides no asset protection or estate tax benefits.

√IRA: You can withdraw money from your IRA account without penalty if the funds are used to pay for college and graduate school. This is probably the last option a student should consider. It undermines a key savings plan. The withdrawals may constitute income that adversely affects your financial aid efforts.

√Get a Job-Employer Pays: A great way to pay for graduate school is to get a job with an employer that pays for tuition. A qualified employer educational assistance program lets you receive up to $5,250 tax free for tuition and other costs.

√Save in Your Child's Name: This is typically in a custodial account. Recent tax law changes make this costly for income taxes since income of a child under 18 is taxed at your highest tax rate. Assets in a custodial account if you're the donor and custodian will be taxed in your estate.

√Trusts: Instead of putting assets in a child's name where you loose control, set up a trust to hold the gifts for future education costs to protect the assets. Trusts create some complexity and are taxed at higher tax rates faster than individual taxpayers. Trusts can own 529 Plans.

√FLP/LLC: If you're setting up an FLP/LLC to consolidate family investments, protect assets, minimize estate tax, coordinate investments, etc. instead of creating 529 Plans consider setting up a trust for your children which will instead invest the funds in your FLP/LLC. This can further support the validity of the FLP/LLC as a family investment vehicle, fractionalize ownership, reduce your ownership, and contribute to the entity being a more efficient family investment vehicle. You won't get 529 Plan tax breaks, but you may achieve more important family goals. PP

Recent Developments

State Taxation of Non-Resident: So you live in State A, but have some contacts in State B. If your contacts and involvement in State B are sufficient, State B might be able to tax some of your earnings. In a recent New York case, the court found the tax authorities went a tad too far. Occasionally spending the night at your paramour's apartment, or a business apartment, should not suffice as a tax hook. The court stated that the tax authorities have the burden of proving that the taxpayer had established a New York place of residence displacing his prior permanent home in another state. What apparently triggered the audit was the listing of a NY address on several tax forms (the little stuff always matters!). *Matter of Craig F. Knight*, DTA No. 819485. The court distinguished a prior case which looked at several similar facts. *Aetna National Bank v. Kramer* (142 App Div 444). In Aetna the change in domicile was acknowledged to have occurred, and the only issue was when it occurred.

Mileage: Instead of calculating maintenance, repair, depreciation and other costs for using your car in business, you can simply multiply the business miles driven by an IRS allowed rate to simply calculate your deduction. The expense which you can deduct for each mile driven for business purposes has increased to 48.5 cents/mile for 2007. Rev. Proc. 2006-49, 2006-47, IRB 2006-168. If you reimburse your employees at this rate, the reimbursement is tax free if the employee corroborates the time, place, business purpose and mileage of each trip.

Pension Sub-Trust: Time to kiss them goodbye? Pension sub-trusts were a plan to give taxpayers the opportunity to have their cake and eat it too. Use pre-tax pension dollars to buy life insurance and then have the policy owned by a sub-trust of the pension plan to keep it out of your estate. A recent TAM stated that a sub-trust may disqualify the entire pension plan. PP