

PRACTICAL PLANNER NEWSLETTER

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More Info:

◦Seminar: "Planning for Closely Held Businesses During Economic Turmoil," Tuesday July 28, 2009 7:30 breakfast 8-10:45 seminar. Marriott Glenpoint, Teaneck, NJ. Call 201-845-8400 for info. Speakers include: Peter Pearlman, Esq., Richard Harris, CLU, Larry Gradzki, CPA. 3 CPE credits. Appropriate for business owners, CPAs, attorneys and financial planners. No charge.

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PLANNING POTPOURRI

Insurance: Before lapsing an insurance policy carefully evaluate your potential future needs for the policy (you may no longer face an estate tax but may face liquidity or other needs), consider the impact of possible income taxes and surrender charges (if any) in your analysis, will health issues impact your ability to obtain insurance in the future?

Reminders: For those suffering from cognitive issues try the creative use of the website www.rminder.com. Set reminders and your cell phone will get a call to remind you of what you need to do at the appointed time. If you have vision impairment and use special computer equipment the rminder converts your text to voice. Sync with recurring entries in your Outlook calendar to make it even easier and more automatic.

Roth IRA Contributions versus Mort-

gage Repayment: Hey Roth contributions can be a tax (and maybe asset protection – see lead article) home run. But before you convert, do the math. If you have a home mortgage which is a better financial option? Paying down your home mortgage or contributing to a Roth IRA? From an asset protection perspective if your state doesn't protect tenants by the entirety home ownership between spouses from creditors, but does protect Roth IRAs, the asset protection answer may be simple. For some investors pencil pushing is necessary. Variables include marginal tax rates, how much interest expense would be deductible above the standard deduction, when and how tax rates may change, after tax returns estimated for each option and the risk associated with each.

Michael Jackson's Estate-Might Own the Taxman but not Owe the Tax Man:

The untimely death of famed pop singer Michael Jackson raises some interesting estate tax issues. For estate tax purposes, assets generally must be valued at their fair market value at the time of the decedent's death. Treas. Reg. Sec. 20.2031-1(b). For anyone who has been on the internet, the fascination with all things Michael Jackson has exploded. It seems pretty incontrovertible that the value of licensing anything with his image or log, or songs, has exploded in value. Yet the value for tax purposes is determined at the date of death when the discussion was of a possible comeback final tour. Might just be that the entire post-death increase in value escapes the tax man?



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

PRACTICAL PLANNER

GOLF TALK—FRONT 9

Summary: So you're spending a lot of time on the golf course? Here's some fairway conversation tips.

Hole #1 As soon as you finish singing "Auld Lang Syne" convert your traditional IRA to a Roth. The income limits that may have prevented you from converting end in 2010. IRA pundits say conversion is a winner if you can pay the tax due with non-IRA funds. Considering that income tax rates will likely rise in the future, it's a slam dunk. But just like the ShamWow! commercial, there may be a "Special Double Offer!" If your state protects Roth IRAs from creditors conversion could give you an asset protection benefit - RothWow! Send the IRS cash that is exposed to creditors to pay the tax due if not fraudulent and enhance the real value of your IRA by transmuting pre-tax dollars into whole after tax dollars. RothWow!

Hole #2 Think lease/purchase options. If you're negotiating a lease, try to get a credit for rent towards a future purchase. In a soft market more landlords might consent to crediting say 20% of rent to a future purchase just to get a property leased. Negotiate a lock-in value for the purchase price, perhaps at current value if you buy in a year, or say 105% if you buy after 1 year but by the second anniversary, etc. For a financially strapped buyer a lease/purchase option is a great idea. This is a buyer/renter's market so use these approaches to get a great deal down the road when you will be in a better financial position to exercise an option and conclude a purchase.

Hole #3 If you recently lost a spouse/partner don't make significant financial decisions for say 3-6 months unless there is a real deadline. You need time to adapt and gain perspective. The vultures circle pretty quickly looking to sell everything from high commissioned annuities to your IRA to the Brooklyn Bridge. But it can be tough to tell people, especially your brother-in-law, "no." So don't say "no", tell them: "Call my lawyer he/she is handling those matters." If the pitchman actually calls your lawyer they're probably for real. Few if any will.

Hole #4 NY requires new LLC's to be published in local newspapers. Then a Certificate of Publication has to be

filed with the State of NY. Section 206(a) of New York LLC Law. Folks still ignore this. If within 120 days after formation, proof of such publication has not been filed with the Depart. of State, the authority of the LLC to conduct business in NY will be suspended, effective as of the expiration of such 120 day period." Whoa, that's serious.

Hole #5 Do your estate planning documents include incentive trusts? Lots of folks thought these were the cat's

meow to motivate Junior to be productive. Some incentive trusts distribute dollar for dollar to the beneficiary's earned income. Earn a dollar, get a dollar. This Forrest Gump trust planning, "Simple Is As Simple Does," was never the right approach. A common problem with incentive trusts is that if Junior became a porno king he'd get a big trust distribution, but if he joined the Peace Corp. he'd get a pittance. In a recession, Junior may have been industrious but lost his

(Continued on page 2)

CHECKLIST: FINANCIAL ABUSE

Summary: Elder financial abuse is widespread and is getting worse. Don't assume it doesn't apply to your parent or because of their wealth or perceived social status. Yes, it even happens in your circles. 50% of those over 85 have cognitive impairment, so many elderly are at risk. But more than the elderly are affected. Anyone with a cognitive or other disability that impairs their ability to protect themselves is at risk. 90 million Americans have chronic health issues, and so face the same risks and need protections. So while most call it "elder abuse" it is really "Financial Abuse of the Infirm."

How do you prevent this abuse?
✓ Acknowledge the risk and that it may affect you or a loved one. Even if your kids (niece, cousin, neighbor....) are too good to do that, temptation compounded by dire finances, can push even "good" people to do bad stuff. Do you really know your home health aide?
✓ One of the best steps is to encourage the person at risk to establish a funded revocable living trust with an institutional co-trustee. With a bank or trust company as co-trustee along with the individual, he or she will remain in

(Continued on page 3)

...GOLF TALK — FRONT 9

(Continued from page 1)

job anyhow. So incentive trust fund kids are being hung out to dry, instead of their trusts helping them through the lean years. Not a great result. Does it make any sense to limit distributions if the beneficiary lost her job because her employer declared bankruptcy? (What if she quit her job, not because she was retreating from the job, but because she was advancing her career in another direction?) The impact of the recession on a poorly drafted trust could be disastrous. If you set up an incentive trust, review it now with your advisers to see what can be done to infuse rationality into incentive provisions. Instead of memorializing incentive provisions in new trusts explain wishes in nonbinding letters so they can be reconsidered in light of new circumstances.



Hole #6 If you've used private fi-

ancing (i.e., not bank financing, etc.) to fund premiums on life insurance policies, there is one requirement that some practitioners have overlooked. Both parties to the insurance financing transaction (e.g., an insurance trust and perhaps yourself, your spouse or another family trust that is loaning funds) must include a signed statement with their income tax return each time a loan is made. That often means every year since each payment towards a premium is treated as an additional loan. Section 1.7872-15(d) spells out the requirements and the form of the statement to be filed. Whether or not you thought the loan is covered by the split-dollar regulations the regulation is so broad that it probably is. In fact, if you did a sale to a grantor trust (often called an IDIT or IDIGIT) for a note and that trust also purchased life insurance, it may fall under the spell of the split-dollar regulations. The positive to that is that you can guarantee loan treatment by following the procedure noted above. Thanks to Richard Harris, BPN Montaigne LLC.



Hole #7 Compensation should be structured in a manner that motivates what is good for the business or professional practice. Too often compensation, as the result of interpersonal dynamics and firm politics, moves away from what is really in everyone's best interest. Example: A physician group compensates based on tenure. The result encourages the partners to compete for time off, less call, etc. Often it is better for the practice and the partners to have a productivity based compensation structure that motivates everyone to contribute to practice profitability. Thanks Gene Balliett, Balliett Financial Services, Inc., Winter Park, FL.



Hole #8 Empower beneficiaries to protect themselves. While the benefi-

ciary's role has traditionally been passive, this is not necessarily advisable. The extent to which beneficiaries have a right to be informed of the financial transactions depends on the trust and local law. If you keep beneficiaries uninformed, they can't monitor trustee performance. Empowered

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beneficiaries can check on trustees. Embody in the trust specific beneficiary rights: they get a copy of the trust, the investment policy statement, and annual financial information. When setting up a trust, "She says, hey beneficiary, take a walk on the wild side....doo doo...." Trusts can get more wild and grant beneficiaries the power to even remove or replace a Trustee.



Hole #9 Horace Greeley said "Go West, young man." But today he would have advised "Go South, retired person." So you "moved" to Florida to escape Northern taxes more than Northern climes. Revise your will and other estate planning documents to reflect Florida law. Consider: An executor must be a Florida resident or have a certain degree of relationship to the testator. Tangible personal property (e.g., jewelry) can be disposed of pursuant to a separate writing signed by the testator and dated. A spendthrift clause is only valid if it restrains both voluntary and involuntary transfers. The executor can only sell real estate without a court order if the will expressly specifically grants such power. In ter-

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

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...CHECKLIST: FINANCIAL ABUSE OF THE INFIRM

(Continued from page 1)

control as long as feasible, and financially safe from abuse. Fund the trust. The more assets (other than IRAs, etc.) which they transfer into the trust the more secure they will be since the institutional trustee can help keep tabs on them. The person at risk requires contractual competency to establish a trust. This is a greater level of competency than required to sign a will. Additional protection can be obtained for the at-risk person by naming successor individual trustees to protect them. Someone should have the right to replace the trust company. The at-risk person can hold this replacement power if able, but also give this power to a trust protector who isn't also a trustee.

✓ A durable power of attorney is an essential step to protect the at risk person. But it is not enough to sign a standard form. If the at-risk person does not have a taxable estate, or any persons he or she is responsible to support financially, the power might expressly exclude authority to make gifts. Gift language is routinely included in powers when in fact the temptation to the agent to abuse the gift power is dangerous. Appoint co-agents and an independent "monitor" charged with providing oversight of agent actions. These checks are an important step to making a power of attorney protective rather than a tool for abuse of an elderly or infirm person.

✓ Yep it sounds simple and costs nothing but consolidating assets into one institution (or as few as feasible in light of reasonable concerns about financial institution viability and insurance limits) is one of the most powerful steps to avoid financial abuse. A secure public institution with adequate insurance is ideal. For those CD lovers pick an institution that participates in the Certificate of Deposit Account Registry Service ("CDARS"), program. It allows investors to keep up to \$50 million invest-

ed in CDs managed through one bank with full FDIC insurance, and under one agreement. We're not advocating CDs as an investment choice, but we are advocating consolidation and organization to protect the at-risk person.

✓ Have a duplicate copy of the at-risk persons monthly statements sent to a trusted person, e.g., a long time CPA. If a cost effective arrangement can be made for the CPA to balance all the monthly statements and send out a periodic report, even better. This assures that at least a bookkeeper at the CPAs office is reviewing everything. The at-risk person might also name an adult child who is not their agent under their power of attorney (nor the current co-trustee under a

revocable trust) to receive monthly statements. The consolidation, simplification and independent review can minimize the temptation that agents and others in confidential and private relationships with the at-risk person might feel. That creates real checks and balances.

✓ Set up accounts for automatic bill payment, payment to credit cards, payment plans with utilities that equalize monthly payments, etc. Simplification and regularity make aberrations due to theft, fraud or other abuse more obvious to spot.

✓ Include in powers, revocable trusts and other documents a periodic mandatory inspection, interview or meeting by a social worker or similar independent organization with the person at risk, and a requirement that

RECENT DEVELOPMENTS

Parents of disabled children may exclude reimbursements for non-public school services from income. Information Letter 2009-0124. The general tax rule, which should come as no surprise, is that reimbursement of any personal expense is taxable as income unless a special rule provides to the contrary. A board of education may be required to pay for non-public education services obtained by a parent for a child if: (1) the services offered by the board are inadequate; (2) the services the parent secures are appropriate; and (3) equitable considerations support the parent's claim. If these conditions are met, the school board must pay for the cost of the non-public education in order to satisfy its legal obligation to provide a free appropriate education.

Single member LLCs are disregarded for tax purposes, but that doesn't mean they don't have a tax consequence as taxpayers recently learned in New Jersey. *Kaplan v. Director Division of Taxation*, Docket No. A-3758-07T3, 2/11/09. The taxpayers held commercial real estate in single member disregarded LLCs. These generated losses to be reported (since the LLCs were disregarded) on their personal 1040 which would not be deductible. So the taxpayers tried to report income realized on other rental real estate partnerships (RELPs) as rent income to offset the LLC losses. NJ headed that one off at the pass. So the taxpayer tried to argue that the single member LLCs were actually tenant in common interests and hence the losses were reportable as partnership results that would offset the RELP income. The court held that the attempt to transmute income into whatever category seemed to provide a tax benefit wasn't cricket.

Income from artistic performances isn't subject to sales tax. Strippers doing a pole dance were held part of the dramatic arts so that the sales tax exemption under Sec. 1105(f)(1) applied. The judge found that: "The pole maneuvers in particular are no small feat to accomplish..." Neither was such legal reasoning!