Crummey is Bad with a Special Child: If you have a grandchild with special needs it’s a common recommendation to set up a family trust (SNT) under your will to help care for the special grandchild. Instead set up the SNT now while you are alive (an inter-vivos trust) so it is something that is more tangible. That will help family understand what was done. Also, an inter-vivos trust may lessen any court challenge by the special needs beneficiary and guarantee family unity. 

Crummey is Good with a Successful Child: If Junior is an entrepreneurial wizard recommend she not own her next startup entity. Why have it subject to estate tax if the business is a success? Some might transfer the newfound business to a trust for their children (your grandchildren). But they can do better. You as the parent can set up an irrevocable trust with $5,000 giving son a Crummey power (the right to withdraw to qualify for the annual exclusion and grantor trust status) and let son sell equity interests to terminate a trust (maybe don’t want a trustee that would present that as a starting point). Have the arrangements agreed to memorialized in a fee agreement.

PLANNING POTPOURRI

More Info:
- Publications: Sign up for an e-version of this newsletter at www.laweasy.com.
- Seminars: RV4TheCause will present seminars on planning for chronic illness in April/May in: Kansas City, Albuquerque, Las Vegas, Denver, St. Louis, Cincinnati. Details will be posted on www.RV4TheCause.org.

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NUGGETS FROM HEEKLING

Summary: RV4TheCause Institute on Estate Planning is the estate planning world’s equivalent of the Oscars. Can you imagine anything more spellbinding than nearly 3,000 tax attorneys discussing estate tax planning for an entire week? Well, if you missed all the excitement, we’ve culled some hot tips from the week-long extravaganza! We’ve kinda violated our Newsletter’s usual format a bit. Please forgive us but there were so many pearls to share.

Funky Gifts: Interests or rights you may hold may cause estate tax inclusion at death. These might include: a retained life estate, the retained power to vote stock in a closely held company, the power to remove and replace a trustee, incidence of ownership in life insurance, etc. Now is an ideal time to review existing estate planning documents, especially those dusty old trusts that have not been given any love by your estate planner in years. Gift or terminate these rights now.

Family Harmony: Equalizing family lines. If clients have made annual gift exclusion gifts to children, spouses, and grandchildren, etc. over time the different family lines may have become quite unequal. Some clients would like to equalize. The $5 million exclusion affords a great opportunity to do this.

Liquid Diet: Everyone loves to stretch an IRA and lots of planning is done to accomplish this tax wonder. But does it work? An AXA study concluded that 87% of children liquidate an inherited IRA within one year of death. All the great planning is really pretty much for naught! Glucoseamine might help those joints stretch further.

Surviving Spouse and IRA: Surviving spouses can roll over an IRA (and rely on portability to preserve the estate tax exclusion of the deceased spouse). While rollovers are the cat’s meow for most estates, there are times when it’s not advisable. Say the surviving spouse is young, say, 49, and so the will need money from the IRA for living expenses. If she withdraws money from a rollover IRA she’ll get nailed with a penalty. So, when a surviving spouse plans to roll over her deceased spouse’s IRA and she’s under 59 ½, it may be prudent to leave enough money in the deceased spouse’s IRA account to cover the withdrawal’s she’ll need until she reaches age 59 ½ to avoid penalties. So a partial rollover may be the wiser move.

Checklist: More Nuggets

Your Tax Reimbursement Clauses Might Be Dangerous: Some grantor trusts (income taxed to you) include a provision that permit the trustee of the trust to forgive to you for taxes you pay on trust income. If reimbursement is mandatory, Go To Tax Jail. Do Not Pass Go. It causes inclusion in your estate. So does that mean a discretionary reimbursement is guaranteed not to cause inclusion of trust assets in your estate? Not so fast Charlie. If your creditors cannot reach the trust assets under state law the trust assets should not be included in your estate. But (all tax rules have a “but”) so long as there was no implied understanding between you and trustee. An actual pattern of distributions (e.g., taking all income, giving all taxes reimbursed over a number of years) would probably sink your tax ship.

But what if you and the trustee sell stock in closely held businesses that you, but not the trust, own. How to fund the trust and you immediately get a tax reimbursement? Was there an understanding from the get go that you’d get the tax paid by the trust? Most folks probably don’t want these clauses any how since the tax payments reduce your estate. There are other things we can do to make sure the trust reimbursement you and thereby give the IRS the right (Continued on page 2)
Could you have inadvertently contracted for 400% of the asset in Sec. 2653. Even if the GST rules sunset after 2012, the GST event that could have inadvertently caused you to raise the “implied understanding argument.” Instead, the trustee can plan and act quickly. Address elder skip people for future years because you loan you money to pay the tax. See PLR 200944002; Rev. Rul. 2004-64. Zapped by a Gift Tax: So here’s Transformer Trusts: Often you can for the tax, even if it is not their gift for the value of the plan in excess of your benefited from your trust. They are “transformer trusts” as the trust agreement will not trigger any gift tax. Your medicaid. This is the minority rule, so it might work elsewhere. % Just Say No Doesn’t Always Work

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