PRACTICAL PLANNER NEWSLETTER
MARTIN M. SHENKMAN, PC
PO Box 1300, Tenafly, NJ 07670
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.
- **Seminars:** "Future of the Estate Planning Profession: What Practitioners Must Know and Do" May 1, 1:00pm EST Register at: https://www3.gotomeeting.com/register/167487806
- **Freebies:** Submit your questions on the Law Made Easy Press website, www.laweasy.com.

For address corrections, or to be removed from this mailing list, email us at 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

Power of Attorney – most folks sign POAs to avoid the need for guardianship. While this can work a POA is not always sufficient and you might want your position as agent reinforced by being appointed guardian of the property for the person (grantor) you're serving. It provides a structure, you can do a formal accounting to protect yourself, and the rules are more defined. This can be done preemptively to fend off potential problems or claims from difficult spouses or heirs. Thanks to Steven Greenberg, Esq. of Hackensack, NJ.

Terminal Illness Planning Denial and emotional issues make planning once a loved one is diagnosed with a terminal illness very difficult. Involve care managers and others to help move the process forward as updating documents and planning while feasible can avoid potential costly problems later. Consider signing a new durable power of attorney that is effective immediately (i.e., non-springing to avoid having to prove it is effective). Update or obtain a revocable trust and transfer appropriate assets to the name of the trust. This is the best tool to manage assets during health challenges. Consider including a clause that permits an independent person to revoke your loved ones' rights to trust assets transforming the transfer to the formerly revocable trust into a completed gift.

Elderly and Infirm: For elderly or infirm use American Express for all credit card transactions. Their customer support (e.g., if a vendor charges an inappropriate amount, or doesn't respond to a complaint), and fraud detection are incredible. This can provide a great addition to the other more routine safety net procedures. It is also advisable for the same people to sign up for a credit monitoring service as they are the vulnerable targets that those committing financial abuse take advantage of.

Powers of Appointment Trap: Powers of appointment, a right given typically in a trust or will to someone to designate who might enjoy property, are powerful and flexible tools. But roses have thorns. Limited powers of appointment (LPOAs) are sometimes used to create flexibility without causing estate inclusion. An LPOA is the right to appoint to anyone other than your creditors, your estate, or creditors of your estate. If you made a gift to your spouse, and your spouse gifts the assets to an irrevocable trust over which you are given a LPOA, does that create an

LAW MADE EASY PRESS
Practical legal stuff...
in plain English
www.laweasy.com

VOLUME 8, ISSUE 2
MAR-APR 2013

PRACTICAL PLANNER

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

Risky Estate Business

Summary: So we have a $5 million inflation adjusted exemption and a couple can transfer $10.5 million in 2013 with nadda tax due, so like who cares about estate planning? Well, you might like to be the Alfred E. Neuman of estate planning "What! Me Worry?" but Alfred, there are still worries out there.

Estate Exemption Bad Penny – Its back! Just when you thought the estate tax was permanently out of your heir [pun intended] President Obama issued on April 10, his new budget/tax proposal, affectionately referred to as the "Greenbook." This fiscal gem includes a call for a 45% estate tax rate and a $3.5 million exemption in 2018. Yes, this is the same exemption that was permanently pegged at $5 million inflation adjusted and a rate that was permanently reduced to 40%. While it's hard to understand the delay in effective date, or to imagine this ever being enacted, elderly or ill taxpayers that have estates over $3.5 million that haven't used all of their exemption, might want to plan before Congressional budget horse trading results in a worse result.

Grantor Trust Bad Penny: Last year's Greenbook included an estate tax planning bomb that would have all assets of grantor trusts (trusts on whose income the grantor is taxed) included in the grantor's estate. That broad sweeping proposal could have taken down every common insurance trust along with more sophisticated planning trusts. The new 2013 Greenbook proposal seems to narrow the range to focus more on including in the grantor's estate appreciation in assets sold to a grantor trust. While this may remove many trusts from the legislative crosshairs, it leaves one of the most powerful and common planning techniques still available to the very wealthy subject to potential elimination. For those high net worth taxpayers who might still benefit from these transactions they should be completed before the law changes.

GRAT Bad Penny: Last year's Greenbook proposal to mandate a minimum 10 year term for Grantor Retained Annuity Trusts is baaaaaack! GRATs are a great leveraging tool whereby you could gift an asset to a trust, receive back an annuity for a set number of years, and thereby shift any increase in value of the asset above the interest rate used to calculate the annuity out of your estate. GRATs are an especially great tool if you've used up all your exemption, want to make more transfers to heirs, but don't like the prospect of paying gift tax. The moral of this story is the same as that for the note sale transactions described above, complete planning now, don't wait for the law to be changed.

Home State Connections: When planning for self-settled trusts (you form the trust and are a beneficiary) there are some that worry about any connections your trust has to any state that doesn't permit this type of planning. For example, you might live in NY but set up a trust like this in South Dakota that does permit it. This problem could be of particular concern when the trust owns interests in a close business and you're named the investment trustee of the trust. Some advocate forming a family limited liability company ("LLC") in the state where the trust is set up. The "direction" of the trust investment activity is made by the LLC. The trust protector could be the LLC as well. Further, having this type of LLC formed in the state where the trust was formed arguably is another connection to that state, perhaps boosting the nexus to that

(Continued on page 2)

Checklist: Your Wallet

Summary: Here are a few tips to answer the Viking question "What's in your wallet?" Hopefully they will give you some practical pointers on this common "stuff" that is viewed as so basic few folks stop to think about it.

√ First, whatever you have in your wallet, make a photocopy of the front and back of it all and keep it in a secure place. Scan the copies. Perhaps black out portions of the numbers from credit cards to avoid the risk of misuse if your computer gets hacked. If you ever loose your wallet it's a lifesaver. I actually lost my wallet about 20 years ago. Took my photocopies and went to the Department of Motor Vehicles to get a new license. While in line I called and canceled all my credit cards and had new ones issued. On the way home I stopped at the library and Blockbusters (life before Redbox and Netflix) and got new cards. But for the photocopies, I would not have easily or quickly remembered what was in the wallet, or had all the numbers readily accessible.

√ Here's one 'cause I'm a tax attorney. And this will be a great tax benefit to lots of readers. I carry two American Express cards, one Master Card, and one Visa Card.

(Continued on page 3)

...Risky Estate Business

(Continued from page 1)
state and thereby further supporting the trust. South Dakota has lead the charge in this arena and might present an opportunity worth considering.

Grantor Trust Surprise: – So you put assets into an irrevocable grantor trust, for your spouse and descendants. Then the big "D" happens. Your now ex-spouse has the growing trust assets to benefit from. But if the trust is a grantor trust might you still bear the income tax burden on the trust earnings post-divorce! Ouch. Be sure that the mechanism to turn off grantor trust status is addressed in your property settlement agreement and implemented as a condition to the overall divorce.

Reciprocal Trusts: This is a common planning technique. Wife sets up trust for Husband and descendants, and Husband sets up a trust for Wife and descendants. This is a great way to grow wealth outside both of your estates, protected from claimants and in a way you can each access significant assets. But to succeed, the trusts have to be different enough that the IRS won't unravel the plan as mirror (reciprocal) trusts. Did you really differentiate the trusts sufficiently? Perhaps it is worth a review to be sure, and if not use the various powers in the trusts, or the possibility of decanting (pouring one trust into a new better crafted one), to bolster your position. Some advisers claim using a limited power of appointment (LPOA, explained below) in one trust but not the other suffices to differentiate them. Not so according to one expert, Jeffrey A. Baskies, Esq. of Boca Raton, FL. The idea of using a LPOA to distinguish one from the other comes from a misreading of the Levy case. Levy can't be cited as precedent (it's only a Tax Court Memorandum decision), and apparently never even reached the issue of whether having a LPOA in one trust only made the trusts non-reciprocal.

Tax Reimbursement: – So you set up a grantor trust for your heirs, and the trustee has the right to reimburse you for income taxes you pay on income earned by the trust. So you have a big sale of the business and ask the fiduciary to reimburse you for taxes. Well in the intervening years you and your kids who are the beneficiaries of the trust have had a falling out. Yeah, that usually only happens after the big bucks are given away to them. So when you ask the trustee for a reimbursement the kids who are the beneficiaries, and to whom the trustee has a fiduciary duty, object to any distribution to reimburse you! Egaads! What happens? Would your trustee make a huge discretionary distribution to a non-beneficiary when the real beneficiaries say don't? Even if your kids still talk to you, might the IRS still argue that you had an "understanding" with the trustee about the reimbursement and pull the whole trust back into your estate? If you have a reimbursement clause and hope to use it, chat with your advisers well in advance to address these and other issues.

Spousal Lifetime Access Trusts (SLATs): The use of a SLAT, or lifetime bypass-type trust were a hot ticket in 2012 and still present what for many is the optimal way to minimize or avoid federal or state estate tax. But SLATs can present potentially surprising tax concerns. Bear in mind that while the concepts of SLATs have been used for decades, historically they were most frequently used in the context of life insurance trusts which are fundamentally different than the SLATs many taxpayers are setting up today. The comparison to the traditional bypass trust can be a bit dangerous too since for a traditional bypass trust the grantor spouse is deceased. In the inter-vivos bypass-like trust such as a SLAT the grantor spouse is alive. If distributions are made to the beneficiary spouse, and really used by the grantor spouse, and if the IRS can demonstrate that there was an implied agreement that the grantor spouse would continue to benefit from the funds in the trust, the IRS may cause the trust assets to be included in the grantor spouse's estate. Creditors might argue the same. If distributions the beneficiary spouse receives from the SLAT are deposited into a joint checking account on which the grantor spouse writes checks, that sequence may corroborate the IRS challenge. Confirm that the assets you transferred to the

For seminar announcements follow "martinshenkman on www.twitter.com and www.Linkedin.com/in/martinshenkman

≈

For e-newsletter sign up at www.laweasy.com.

Disclaimer to Readers: Practical Planner provides reasonably accurate information, however, due to space limitations, and other factors, there is no assurance that every item can be relied upon. Facts and circumstances, including but not limited to differences in state law, may make the application of a general planning idea in Practical Planner, inappropriate in your circumstances. This newsletter does not provide estate planning, tax or other legal advice. If such services are required you should seek professional guidance. The Author, publisher and NAEPC do not have liability for any loss or damage resulting from information contained herein. This newsletter constitutes attorney advertising 22 NYCRR 1200.

Review: Andrew Wolfe, CPA, Esq.

IRS Circular 230 Legend: No information contained herein was intended or written to be used, and cannot be used, for the purpose of avoiding U.S. federal, state or local tax penalties. Practical Planner was not written to support the promotion, marketing, or recommendation of any tax planning strategy or action.

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

...Checklist: What's In Your Wallet?

(Continued from page 1)
One Amex is for business and one for personal. Visa is business and Master Card personal. I intentionally obtained different cards so that it is visually easy to identify personal from business. This is an easy, and pretty audit proof way to simplify tax reporting and legitimately maximize deductions. If I'm buying something for business I use a business card. If I am buying something personally I use a personal card. If I go into Cosco or Home Depot, for example, I almost always end up buying personal stuff as well as stuff for my business. Simple – I put the business stuff on the business card and have a second order I pay for on the personal card. I cannot overlook deductible items at year end and I don't have to hunt for them. They've already been paid for from the business. I don't have to worry about garden ornaments ending up on my business return and causing grief on a tax audit, because they were paid for personally. Anyone that has their own business will benefit tremendously from this.

√ Here's another one that is a bit personal to us, but should serve as an example of how you can tailor emergency planning for your personal circumstances. For any of you readers who are among the 130 million Americans living with chronic illness or disability (yes that is a real number!) and who travel, some of these steps (or similar ones) should be considered. We travel around the country in an Airstream and I lecture to professional advisers (CPAs, attorneys, financial planners) and consumer groups on financial and estate planning for chronic illness. See www.chronicillnessplanning.org. We travel through lots of rural areas, and far afield. If there is an emergency I carry a number of cards for emergency services we've signed up for. I might have a problem with our truck (that pulls the Airstream), the Airstream itself, or with a health emergency. So we carry AAA which could help with the truck (and the cars at home), a Good Sam Club Platinum Emergency Road Service Card (Good Sam is like the AAA of the RV world), Good Sam Travel Assist (they can fly us home and have someone drive the RV back) and Skymed a medical evacuation service (I like a plan "B" because in life "stuff" happens). Anyone with a significant health issue or disability can carry what works for them, but the bottom line for everyone is, if you carry what you need to protect yourself and your family/loved ones in an emergency you'll be better prepared.

√ Record all your key data, card numbers and passwords in an encrypted cloud based system so you can access it if needed even on the road, and in an emergency, someone you trust can access it to help. While it's nice to have a scan of your wallet, especially accessible on the road, it really doesn't suffice in a web based world. While there are a number of such services, we use a password App called Keeper. https://keepersecurity.com/

√ If you have lots of affinity credit cards in your wallet, e.g. with Airline miles, plan for them. Consider making a specific bequest of them in your will. The reality is that transferring miles post-death can be difficult and costly, if feasible, try to spend them prior to death. PP

Recent Developments

Related Party Loans: It is difficult to establish that an employee's dominant motive for a loan was to retain his job when he was a significant shareholder. If a substantial investment motive was present, the shareholder-employee's loan, if unpaid, will result in a non-business bad debt rather than a business bad debt. Haury, TC Memo 2012-215. Caution should always be exercised when making any related party loan.

Avoiding Penalties Not Always Easy: An estate was subjected to a late filing penalty. The executor demonstrated that the estate's CPA obtained an extension but incorrectly advised the executor as to the due date being a year later rather than the correct six months later. The court held that relying on the CPA did not constitute "reasonable cause" to abate the penalty. Peter Knappe, Executor of the Estate of Ingborg Pattee v. U.S. (CA 9 4/4/2013).

New Jersey Law Updates: Several new laws updating New Jersey's Business Corporation Act and the Revised Uniform Limited Liability Company Act have been enacted. For example, the changes permit shareholders to participate remotely at meetings. For LLCs operating agreements may be more broadly construed to include certain verbal agreements. The prior statutory right of a terminated member to receive fair value for membership interests if the operating agreement was silent has been eliminated. Non-controlling LLC members have been given more rights akin to minority shareholders.

Valuation of Interest in Art: In Elkins the estate owned fractional interests in art that had to be valued. The co-owners of the art were the decedent's children. While the case provided a substantial victory for the IRS, that victory may prove short lived. It appears according to some commentators that the Tax Court committed what might be a fatal valuation error in considering the circumstances of the children/co-owners in the analysis. The valuation should have used the tax paradigm of a hypothetical willing buyer, not the children themselves. Elkins Est.