

2024 Year End: Could It Be the Most Challenging Ever?

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**A KEY ESTATE
PLANNING GUIDE**

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2024 Year End: Could It Be the Most Challenging Ever?

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This Webinar is Different

- It is not a detailed discussion of a technical topic but rather an overview of many current hot topics, intending to identify practice and planning implications for practitioners.
- You may be familiar with each of the substantive topics addressed quickly in this program, but have you consider the broader implications to practice?
- What can you do to thrive, not dive, in the current environment?
- What should you be telling clients?
- How might you revise billing rates and engagement letters?
- What should you be thinking about the long-term future of your estate planning practice? Paperless offices, document generation software, and Zoom meetings have transformed practice. AI, the growth of wealth advisor involvement in estate planning, and an increasingly rapid pace of change will all transform estate planning.

Big Picture

- The year-end 2024 crunch is coming. What should you consider and do now?
- So much is happening that affects estate planning, and you need to evaluate it.
- The estate planning world is changing in dramatic ways.
- Getting a big-picture view of many dynamics can help you consider what you should be doing for clients and for your practice.

Corporate Transparency Act

- Filings are due 12/31/24.
- Most business owners and others in control positions over entities that will have to report appear not to have addressed filing yet.
- Even for many that have begun, it does not appear they understand the ripple effects of filing requirements on trusts and other structures.
- Finally, FinCEN issues new FAQs that complicate the reporting process (e.g., dissolved entities, trusts, etc.).
- Noncompliance penalties are about \$600/day per infraction and up to two years in jail.
- Compliance may require much more than just filling out the FinCEN form online. Your clients may need to revise bylaws and shareholder agreements for entities, change people appointed in trusts that own entities, or even decant those trusts.

Corporate Transparency Act – Unauthorized Practice of Law

- The Corporate Transparency Act presents difficult issues. One state bar issued tough conclusions that advising on the Corporate Transparency Act is the practice of law, and only lawyers can do it.
- They carved out a special exception to permit CPAs to assist clients if the issues and filings were not “complicated.” And what determines what is complicated with such an obtuse law?
- The result is that non-lawyer advisers may have to limit the help they will give, or even restrict what they do to providing mere generic advice. While lawyers can offer advice, not all law firms have geared up by studying the new rules, and some have been wary of getting involved given the complexity, uncertainty, and harsh penalties that can be assessed.
- The bottom line is those seeking professional help may not find that they can get the help they need, especially if they wait too long.

Pre-2026 Planning Needs to be Done Sooner

- This is not just planning that must be done before the end of 2025, when the exemption will be cut in half.
- From several planning perspectives, your clients need to address this before the end of 2024. That is essential to provide an opportunity to create Spousal Lifetime Access Trusts (“SLATs”) in different tax years, retitle assets in different tax years, and have more time between various transfers (e.g., husband gifts assets to wife and thereafter, wife gifts assets to an irrevocable trust).
- Time compression will harm planning. The less time between various planning phases the more susceptible that planning may be to IRS challenge under the reciprocal trust doctrine (various trusts were so similar they can be unwound), and the step transaction doctrine (various steps in your plan will be disregarded thereby altering the outcome from what you intended).
- So, the deadline for safer planning is in some sense 12/31/24.

The Presidential Election May Radically Change Estate Planning

- But whatever might happen, “waiting to see” may be the worst approach. Plan with all possible outcomes in mind.
- If President Trump wins re-election, he may succeed in repealing the estate tax. So, ensure your planning is comfortable and sensible for non-estate tax reasons.
- If Vice President Harris may win, and the Democrats may secure enough votes to enact harsh estate tax changes along the lines of what they have repeatedly proposed for over a decade.
- Vice President Harris appears to have indicated that she will support harsh tax changes on the wealthy along the lines of the recently issued Senator Elizabeth Warren’s tax proposal, the “American Housing and Economic Mobility Act of 2024.”
- If that occurs, planning for the 2026 exemption reduction will be overtaken by the need to prepare sooner for much more drastic changes. Tee up client planning now, even if your client wants to wait longer to pull the trigger. Retitle assets to facilitate planning and set up grantor trusts. Prepare documents and planning now or your clients may have insufficient time to do anything.

The Presidential Election May Radically Change Estate Planning

- You can establish an inexpensive trust in your client's home state with a family trustee and trust protector who can move to a better jurisdiction if Harris wins. If you have prepared gift or other transfer documents, your client could sign them as late as New Year's Eve to consummate planning. That may be critical in the event that practitioners are overwhelmed with work. But this will only be possible if it's all set in advance.
- Consider drafting provisions to anticipate those changes now. What about giving a special powerholder acting in a non-fiduciary capacity the right to defer a descendant's status as a beneficiary vesting to defer the harsh GST tax proposals? One of the changes proposed in the Warren plan might result in the application of a GST tax as soon as a great-grandchild becomes a beneficiary. The way many trusts are drafted includes all "descendants" as beneficiaries. Perhaps it might be advantageous if someone can defer when a descendant becomes a beneficiary to defer negative tax implications.
- Flexibility is almost always advisable, with unknown tax changes looming.

FTC Ban On Noncompete Agreements

- The FTC issued a Rule prohibiting most non-compete agreements. The restriction is extensive and harsh. A few exceptions were provided for agreements with certain senior executives existing before the September effective date, and for those owning and selling equity in a business.
- The rule seems to have been stopped by a court for now, but
- If your client's business relies on non-competes to protect the business and to facilitate succession planning, revisit all these restrictive arrangements and endeavor to make them more supportable in case the rule banning non-competes is salvaged or if your state enacts restrictions.
- When the ban was proposed, many attorneys began to rethink what might be feasible. Those considerations should still be explored.

Insurance-Funded Buy-Sell Agreements

- The Supreme Court's holding in the Connelly made it clear that if you have a business entity that owns life insurance on its owners to fund a buy-out if they die, the value of the life insurance must be included in the value of the business.
- That value cannot be reduced by the business's obligation to buy out the equity owner's interests (e.g., a deceased shareholder's stock).
- A technique that some had used, an insurance LLC, to own the life insurance appears to be subject to the same rules.
- Connelly should be a catalyst for all closely held businesses to review their buyout arrangements and be sure that the terms of the agreements make sense, that the valuations are current, and that the estate tax consequences of this Connelly case are addressed.
- This should not be put off as some agreements will have a disconnect between what the owners believe will happen and the results.
- Consider that the Elizabeth Warran tax proposal calls for a \$3.5 million exemption, so if that is enacted, many more business owners will be subject to estate tax than under the current \$13,610,000 exemption amount.

Loper – Courts Will Give Less Deference to the IRS

- The Supreme Court in the Loper case overruled the deference given to agencies such as the IRS under the landmark Chevron doctrine.
- In simple terms, that means that unless the statute involved expressly stated that the agency, e.g., the Treasury (IRS), should issue guidance on the law, the courts are not bound to give deference to what the IRS has said but can instead interpret an ambiguous statute themselves.
- This is all still pretty muddled, and more guidance will be necessary to understand how to interpret what different language in a statute may mean regarding the clout of an IRS regulation.
- Revisiting planning decisions, how some tax returns were filed, and evaluate whether filing protective claims for refunds may be advisable. Some tough positions that the IRS took on different areas of the tax law may now be more susceptible to challenge.

New IRA Regs

- The Treasury has issued final Regulations providing guidance for the Secure Act. They generally apply to calendar years beginning on or after January 1, 2025.
- Generally, annual RMDs for IRAs are required, subject to the new 10-year rule.
- Surviving spouse may wait to begin distributions until the deceased spouse would have reached their RBD.
- Divorce after joint & last survivor QLAC purchase.
- Outright distribution to trust beneficiary (splitting/distribution in case of multi-beneficiary trust allowed).
- Full distribution by the end of the calendar year includes the tenth anniversary of death. This rule applies if a qualified Designated Beneficiary is not an Eligible Designated Beneficiary (e.g., someone disabled). For traditional IRAs consider tax bracket management prior to year 10. For Roth IRAs, wait until year 10 to maximize tax-free compounding.
- Review client planning and beneficiary designations to see if updates are advisable.

IRS Audits Will Increase

- The IRS audit rates of tax returns of high-income and wealthy taxpayers will increase.
- Be proactive and advise clients to meet and clean up your tax compliance before the audit notice arrives. Set up meetings, not to focus on preparing a tax return, but to take a big-picture review of your client's planning, tax returns, recordkeeping, and more.
- Most taxpayers' relationship with their CPAs focuses on completing their tax returns. That's important but not enough if audit rates increase.
- Does the client have an S corporation and been underpaying salary to save payroll tax? Is the client using their business to pay for personal expenses? Does the client maintain proper records to deal with an audit? Is your client's personal automobile inappropriately owned by their company?
- Identify issues and take corrective action before you receive an audit letter.

Will You Be Able to Help Your Client?

- While most clients believe, perhaps rightfully, that they can always call on their advisers to get help, that may not be possible.
- If the election (whichever way it concludes) leaves either party in control in Washington, there will be a tidal wave of clients asking advisers for help. It simply may not be possible to help all who call. This may repeat the crunch at the end of 2012 when the law provided that the estate tax exemption would drop from \$5 million to \$1 million. Many advisers (appraisers, attorneys, and others) stopped accepting new work by September 2012 because they were too busy. Warn clients.

CPA Workflow Timing

- CPAs should use post-October 15 to plan and ensure estimates are done for year-end. If Harris wins, this will accelerate.
- Ask for insurance policies, buy-sell agreements now, and book meeting times in January to review Connelly and buy sell agreements.
- CPAs after January, depending on the election, should use that window to coordinate planning with lawyers for their clients regarding Connelly and other changes.

Engagement Letters

- What changes might practitioners make to engagement letters? What about increasing billing rates or minimum fees for planning if the year-end becomes a tidal wave of clients asking for help?

Evolution of the Estate Planning Professions

- Estate planning is rapidly changing, affecting who clients speak to and how they get help. Practitioners will have to adapt.
- AI is and will transform the profession even more. AI can be a powerful and helpful tool. However, as is no doubt clear, it can be abused, and some advisers may rely on AI when they should not.
- The role of financial advisers in providing estate planning is growing. It will change the dynamic of estate planning, with wealth advisers more often leading the charge on much of estate planning. That is good for consumers because it may offer more ongoing contact and continuity of planning. But it can also be dangerous for consumers. How capable is the wealth adviser or the estate planner in the firm your client is speaking to? Are they relying on AI software to do work that may require a skilled estate planner? Is the wealth adviser fostering collaboration with other advisers like the attorney and CPA, enhancing the help the client is getting? Or is your wealth adviser trying to keep the client as controlled as possible to retain the client? That may not be so good.
- The continuing evolution of estate planning will create confusion and disruption, but being proactive will be critical for every adviser.

Overwhelming Change

- An incredibly number of issues and planning matters are in flux. The pace of new developments is overwhelming, and many practitioners cannot possibly cope with all of this. Even in a larger firm, it is a challenge.
- What can you do? Consider involving more specialists on your planning team. Be open to rethinking what the role of each of a client's advisors will serve. A collaborative and fluid team, where the mantle of team quarterback rotates among advisers as planning needs and new developments occur, may become the new gold standard for planning.
- The team must be fluid as different experts consult with your core team as needed. You might need a care manager, art expert, special needs attorney, or other experts involved as appropriate.
- Clients should be educated to be wary of any firm or adviser that suggests they can handle everything and have all the answers. It is getting more challenging to do that.

Conclusion

- “Times and conditions change so rapidly that we must keep our aim constantly focused on the future.”
 - Walt Disney

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