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THE PLANNER

THE JUNE 2011 EDITION

Volume 6, Issue 5

A monthly newsletter for Accounting, and Financial Professionals with a focusing on Estate Planning, Elder Law, and Special Needs Persons.

The Planner is a newsletter to inform and educate Accounting and Financial Professionals of the ever changing areas of estate taxes, and elder law to better service their clients.



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Is There a Crisis in Estate Planning?

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA 2010), which the President signed on December 17, 2010, has had a major impact on estate planning.

TRUIRJCA 2010 increased the applicable exclusion amount to \$5 million, made it portable for the first time, adjusts it for inflation starting after 2011, set the maximum estate tax rate at 35%, and restored the gift tax exemption at \$5 million - but all only through 2012.

The result is that most families don't have an estate tax problem, at least not for now. Few families have net estates of more than \$5 million; even fewer married couples have combined net estates of more than \$10 million. This is causing a crisis for professionals who have promoted estate tax avoidance as the primary reason to do estate planning. Insurance advisors who for years have sold policies to fund estate tax liabilities are now finding fewer buyers for their

products. Lawyers who have always sold planning as a way to pass wealth on instead of paying it to Uncle Sam are floundering.

The Danger and Opportunity Before Us

The danger is real. Prospective clients may think there is no need for them to plan because they are exempt from the estate tax, at least for now. They may be lulled into a false confidence that the estate tax does not affect them, when in reality it may in the near future. They may be forgetting that the current tax law is only a two-year deal that Congress made, and the law will change in 2013, or possibly sooner. Or they may be foolishly using "waiting to see what the Congress will do" as an excuse to postpone their planning.

The opportunity is real, too. As estate planners, we need to give up the "addiction" of relying on the estate tax as a primary business driver. We need to re-think our

approach and remember why we became estate planners in the first place.

While some may view the new tax law as an end to estate planning as we know it, we can also see it as an opportunity to finally focus on what our clients really want.

What Clients Really Want

Essentially, clients want the same things we all want:

For Themselves -- Protection and Control. They want control over their assets and health care decisions. They want financial security. They want to be protected from the risks of life, which include lawsuits, disability and the cost of long-term care. Most have some philanthropic goals.

For Their Surviving Spouse -- Financial Security. They want to know that their hard-earned assets will not pass to a new spouse. And they want the surviving spouse protected from taxes, primarily from income tax.

For Their Children and Grandchildren -- An Education and Financial Security, including Asset Protection from Immaturity, Divorce and Lawsuits. A big motivator for planning can be protecting assets from gift, estate and income taxes for as long as possible, even for several generations. They want their family members to live successful lives that include a work ethic, integrity, faith, and appreciation and respect for family members. Above all, they want their family members to love each other, spend time together and avoid conflict. They do not want them to be harmed by the wealth that is left to them. This is often far more important than tax planning.

For Their Business or Farm. They want to attract and keep quality talent and have protection from frivolous lawsuits. They want their business or farm to pass to family members who desire to own and operate it, while treating non-participating family members fairly, or they want to sell it to employees or outsiders.

What We Can Provide

These client needs are timeless. No Congress can ever legislate these needs away. Our solutions are also timeless. We need to build our practices around these needs and solutions, instead of having estate tax avoidance be the main need and motivator.

Planning Tip: Think about why you do what you do. People don't buy what you sell; they buy why you sell it. If you sell a product, they can always find someone who will sell it for less. If your "why" is protecting your clients, their families, their farm or business, etc., they will see that you are putting these needs first.

Five Ideas that Will Get Results... for You and Your Client

The following planning suggestions will work now for most of your clients, and can help you get on the right track in your practice.

Idea #1: Teamwork Produces Better Work

Use a two- to four-meeting process involving other professionals. This will allow you to provide more thoughtful solutions to your client's needs. It will also allow time for the team of advisors to meet without the client, discuss the situation and possible solutions, and make sure all advisors are on board so that the client hears a consistent message from each advisor. Also, having a team approach over time allows the client to see that recommended financial products (life insurance, annuities, trusts, long-term care insurance, etc.) are part of the total planning solution and not a sales pitch.

Planning Tip: Ask for the name of any other persons the client will consult (friend, CPA, etc.) in making a decision, and get permission to talk with them before making recommendations to the client. Then have those talks and assure all will endorse the plan ahead of time. It will take more time on the front end, but will keep things from being sabotaged by someone you were not even aware of.

Idea #2: Use the \$5 Million Gift Tax Exemption Now

We may only have this for a couple of years, but it could disappear even sooner than 2013 as Congress begins to focus on how to raise revenue and cut spending. Discounts may also go away. You can legitimately create a sense of urgency to use this exemption to start moving appreciation out of a potentially taxable estate.

Use the \$5 million gift tax exemption to fund a large life insurance policy in an irrevocable life insurance trust (ILIT) that can build up cash value for a supplemental retirement fund or provide an alternative financial

investment. A second-to-die policy to pre-fund estate taxes could also be purchased. The \$5 million exemption can also be used to fund a GRAT or seed an IDGT sale using LP, LLC or C- or S-corp stock.

Planning Tip: There are two relatively easy ways to give clients access to insurance owned by an ILIT. First, set up the ILIT so that the trustee can make withdrawals or loans from the cash value of the policy and lend the proceeds to the grantor/insured. It can be an interest-only loan during the grantor's lifetime, with no additional income tax due; at the grantor's death, the loan can become a debt of the estate. (It must be a credible loan, fully documented, and the grantor must have the means to make the interest payments.) Alternatively, the distributions can be made to the insured's spouse, on the assumption that they will stay married and the spouse will "share" the proceeds with the insured.

Planning Tip: Remember that both GRATs and IDGT sales need insurance protection, and insurance is easier to fund with a \$5 million gift exemption (\$10 million if married). You may even be able to avoid Crummey gifts altogether.

Idea #3: Encourage Clients to Leave Assets in Trust

This is good for your clients, and for your clients' children and grandchildren. Assets kept in a trust are protected from predators (including the surviving spouse's next spouse), irresponsible spending, creditors, divorce, etc. Ask your client: "If you could protect the assets, why would you not?"

This is also good for you and for your team of advisors, as it keeps the assets under professional management and establishes a relationship with the next generation. This is an excellent way to protect the financial advisors' book of business against a very real threat.

Idea #4: Think Differently about Your Client's IRA and Other Tax Qualified Plans

Most clients want to maximize the stretch out on an IRA, but don't know how to do it. There's a way to maximize stretch out, provide long-term divorce and lawsuit protection, and create a large life insurance sale. And it will apply to many families with "average" sized estates and IRAs.

Step 1: Leave the IRA to a stand-alone IRA trust for younger generation family members (children or grandchildren). This will provide the maximum stretch out and protection from divorce and/or creditors. An outside trustee can prevent an early cash out and protect the intended stretch out.

Step 2: Use the required minimum distributions to purchase life insurance on the IRA account holder in an ILIT for the benefit of the surviving spouse. When the account holder dies, the surviving spouse will have lifetime access to the proceeds in the ILIT, tax-free. This can be a much better deal for the surviving spouse than becoming the successor to the IRA. The ILIT design provides for successor beneficiaries if the spouse dies first.

Planning Tip: To make the benefits clear for your client, run projections with the spouse as beneficiary of the IRA and a child/grandchild as the beneficiary. Remind your client that distributions from the IRA will be taxable, while the proceeds from the life insurance in the ILIT will be tax-free.

Planning Tip: For those who are charitably inclined, make a charity or church the beneficiary of the IRA; it will receive the proceeds tax-free. Again, use the required minimum distributions to purchase life insurance on the IRA account holder in an ILIT for the benefit of the surviving spouse.

Idea #5: Use Trusts to Help Clients Create a Non-Financial Legacy

Creating a non-financial legacy helps your clients become more connected to the estate planning process and empowers them. Have them write their motivations for the planning and explain discretionary guidelines. If there is heirloom property that is sentimental or historical, they can provide a handwritten note with a story or significance of the item(s).

Planning Tip: Arrange for family meetings after the trust has been signed. You can have them in person for those who live in the area and/or via Skype for out-of-towners. Talk about the planning that has been done and why. This is good for the beneficiaries, as it brings

them into the process and helps them understand the motivations, the planning, and the intended results. It also gives the advisors opportunities to meet and become familiar with the next generation.

Conclusion

While TRUIRJCA 2010 has provided us with challenges and has forced us to re-think our approach to estate planning, it has also freed us to be able to do the estate planning that our clients really want without regard to the need for estate tax avoidance. Trust planning remains an integral and valuable part of estate planning, and is beneficial for the client and the professional team of advisors.

To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax adviser based on the taxpayer's particular circumstances.



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