Estate Planning

Historical Perspective

Basics of Asset Protection in Estate Planning

AMERICAN ACADEMY OF FINANCIAL MANAGEMENT

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Estate Planning

Key Issues

1. Wills, Testaments, and Assets
2. Husband and Wife?
3. Children
4. Valuation
5. Probate and Non Probate Assets
6. Insurance and Beneficiary Issues

Diagnosis and Wealth Management

- Assets, Cash, Stock, Bond, Fund Investments
- Home, Real Estates
- Partnerships, LLCs, C-Corporations
- Children, Grandchildren, Parents and related assets
- Cash Flow, Burn Rate, College, Retirement
- Tax Deferred Vehicles 401K or other
- Insurance Policies and Beneficiaries
- Estate Planning Issues and Probate Issues
- Taxation issues on income, stocks, or other
- Gaining confidence to produce a report…..

Estate Planning Key Concepts

- **Concepts** 1) Estate Planning: 2) Estate Planning: Estate Planning Basics 3) Estate Planning: Introduction To Wills 4) Estate Planning: Other Types Of Wills 5) Estate Planning: Will Substitutes 6) Estate Planning: Introduction To Trusts 7) Estate Planning: Marital And Non-Marital Trusts 8) Estate Planning: Charitable Trusts 9) Estate Planning: Estate Taxation 10) Estate Planning: Life Insurance In Estate Planning 11) Estate Planning: Health Problems, Money Matters And Death 12) Estate Planning: Conclusion

Back to the Future? Changed?

- Taxes are set to revert back to the Clinton Years.
- Estate Taxes are set back 10 years without "inflation enhancement"
- Wills and Testaments…
- Strategy..
- We will discuss

Wills

- **Requirements for a Valid Will**
  For a will to be considered valid, the following criteria must be met:
  The will has to be executed according to your state laws.
- You must be of sound mind at the time the will is prepared.
- You must understand the results of preparing your will.
- You must understand the nature and extent of the property you own.
- Generally you have to be at least 18 years of age, or the age of majority as defined under the laws of your state.
- The will has to be signed, dated and witnessed by the number of people required under the laws of your state.
- Some states require that your signature and those of your witnesses are notarized.

Valid Wills

- **Valid Forms of Wills**
  There are three generally acceptable forms of wills. These are:
  Typewritten or Witnessed Will: This type of will is authorized in every state, and more often than not they are drafted by attorneys. They must satisfy the state's witness requirements; for instance, a state may require that the witness be at least a certain age and must be considered 'credible'.
- *Holographic / Olographic Will*: This is a will that is completely handwritten, dated and signed…
- Other wills i.e. oral *Nuncupative Will*:
- http://www.investopedia.com/university/estate-planning/estate-planning3.asp

What avoids the Written Will?

- **Right of Survivorship**
  Joint tenancy with right of survivorship *(JTWROS)* and tenancy by entirety (TBE) transfer assets directly to the surviving tenant at the death of the other. However, tenancy by entirety can only be used by legally married husband and wife and is not recognized in all states.

  Beneficiary Designations
  Naming of a beneficiary can also be considered a will substitute. Examples of these include:
  Payable-on-Death (POD) Accounts: In states where it is allowed, this involves depositing funds for the benefit of another, payable on the death of the original depositor.

Beneficiaries….

- *Transfer-on-Death (TOD) Accounts:* Similar to a payable-on-death account, except it is used for individual stocks or a stock account.
- *Contract Provisions Effective at Death:* This can include life insurance, annuity contracts, qualified plans i.e 401K, 403(b) plans, 457 plans and IRAs, where you designate a beneficiary to whom payments are made after your death.
- *Deeds of Title:* In some states a valid deed may be used to pass a present interest to the grantee during your lifetime to avoid testamentary formalities.
- *Funded Living Trusts:* Revocable living trusts is the most common form of will substitutes. These trusts are funded during your lifetime to avoid probate at death.

Owning property as joint tenants with right of survivorship or as tenants by the entirety between spouses will cause the property to pass outside of the decedent's probate estate and not be available to fund the bypass "B" family trust

- May result in underutilization of first spouse's exemption
- Property passing to surviving spouse tenant will qualify for the marital deduction

Assets

- Stocks and investments can belong to an individual or be joint or be Community Prop…
- Boats and Cars can be registered to an individual
- Bank Accounts – Who's Name, POD etc. CASH?
- Insurance – Who is the Beneficiary, Second, Contingent.
- 410K, IRA – Who is beneficiary and secondary etc.
- Probate versus Non Probate
- Trusts
- Ownership? Inheritance, Stock, Shares, possibilities?
- Gifts
- Debts, Fees, Expenses…

The Estate Table – Sunset Stopped

Exhibit: Estate, gift, and GST changes, 2001–2011

Year	Maximum estate and GST tax rate	Estate tax effective exemption/ GST exemption	Maximum gift tax rate	Gift tax effective exemption
2001	55% + 5%	$675,000/ $1.06 million	55% + 5%	$675,000
2002	50%	$1 million/$1.10 million	50%	$1 million
2003	49%	$1 million/$1.12 million	49%	$1 million
2004	48%	$1.5 million	48%	$1 million
2005	47%	$1.5 million	47%	$1 million
2006	46%	$2 million	46%	$1 million
2007	45%	$2 million	45%	$1 million
2008	45%	$2 million	45%	$1 million
2009	45%	$3.5 million	45%	$1 million
2010	Repealed	Repealed	35%	$1 million
2011	55%	$1 million	55%	$1 million

Note: The GST exemption is $1 million in 2002, 2003, and 2011, as indexed for inflation. The gift tax exemption is indexed for inflation after 2011. 5% surtax applied to gifts and estates over $10 million in 2001.

http://www.journalofaccountancy.com/web/chartingacourse

Last Minute Catch

Year	Max. Estate Tax Credit	Max. Gift Tax Credit	Max. Unified Rate
2002	$1 million	$1 million	50%
2003	$1 million	$1 million	49%
2004	$1.5 million	$1 million	48%
2005	$1.5 million	$1 million	47%
2006	$2 million	$1 million	46%
2007	$2 million	$1 million	45%
2008	$2 million	$1 million	45%
2009	$3.5 million	$1 million	45%
2010	Repealed	$1 million	35%
2011	**$5 million**	**$1 million**	**35%**
2012	$5 million	$5 million	35%
2013	$1 million	$5 million	50%

Table

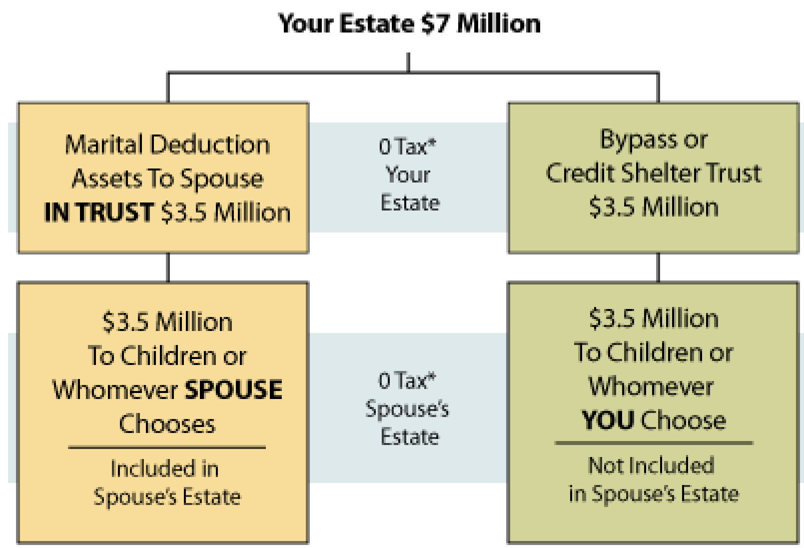
- As the table demonstrates, the Gift Tax Credit historically has not been as large as the Estate Tax Credit. For gifts made in 2002 or later, the gift tax maximum exclusion was locked at $1 million. This gift tax exclusion remained in effect for subsequent years. However, the new Tax Relief Act of 2010 provides for estate and gift tax rates to be unified once again.
- Estate taxes are due to the IRS only 9 months from date of death. In many cases, heirs and loved ones are forced to sell personal property, real property, and other belongings at below market value to pay for this huge tax bill.

Uncertainty Changed

- There was great uncertainty as to what would happen once 2010 ended. Lawmakers did not want estate and gifts taxes to repeal to their original 2001 levels, especially after a year where estate taxes had completely disappeared. However, on December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. The Act provided for the federal estate tax to be restored, but not to its original 2002 levels. For tax years 2011 and 2012, a special $5 million estate tax exemption was created.

2009 Trusts and Big Money

TWO-TRUST ESTATE PLAN



* Assumes an estate-tax credit of $1,455,800 available in 2009. This credit allows $3.5 million of assets to pass tax free.

Generation Skip

- **Skipping a Generation Costly**
- When you gift over $5 million to grandchildren (effectively "skipping" a generation), the IRS slaps a double tax on you. In fact, the IRS treats such a gift as "two gifts in one" and slaps a 35% tax on the gift **twice**. When such a gift is hit once with a 35% tax… and then again with another 35% tax, **the gift is effectively reduced by nearly 60%**! That means $5 million of your hard-earned wealth immediately shrinks to just under $2,112,500 for your heirs, with the remainder going to Uncle Sam. And if you live in a state that imposes its own inheritance taxes, that amount could be even smaller.

Tax Basis in Estates OLD

Tax cost of selling inherited assets

Year of death	Amount of property exempt from the estate tax	Basis of inherited property used to calculate capital gains tax
2002 and 2003	$1 million	Full step-up in basis
2004 and 2005	$1.5 million	Full step-up in basis
2006, 2007, 2008	$2 million	Full step-up in basis
2009	$3.5 million	Full step-up in basis
2010	Tax repealed	Carry-over basis, with additional step-up basis of up to $1.3 million for nonspousal heirs; property left to husband or wife allowed additional $3 million step-up (total basis of $4.3 million).
2011	$1 million	Full step-up in basis

http://www.bankrate.com/finance/taxes/estate-tax-elimination-could-cost-heirs-1.aspx

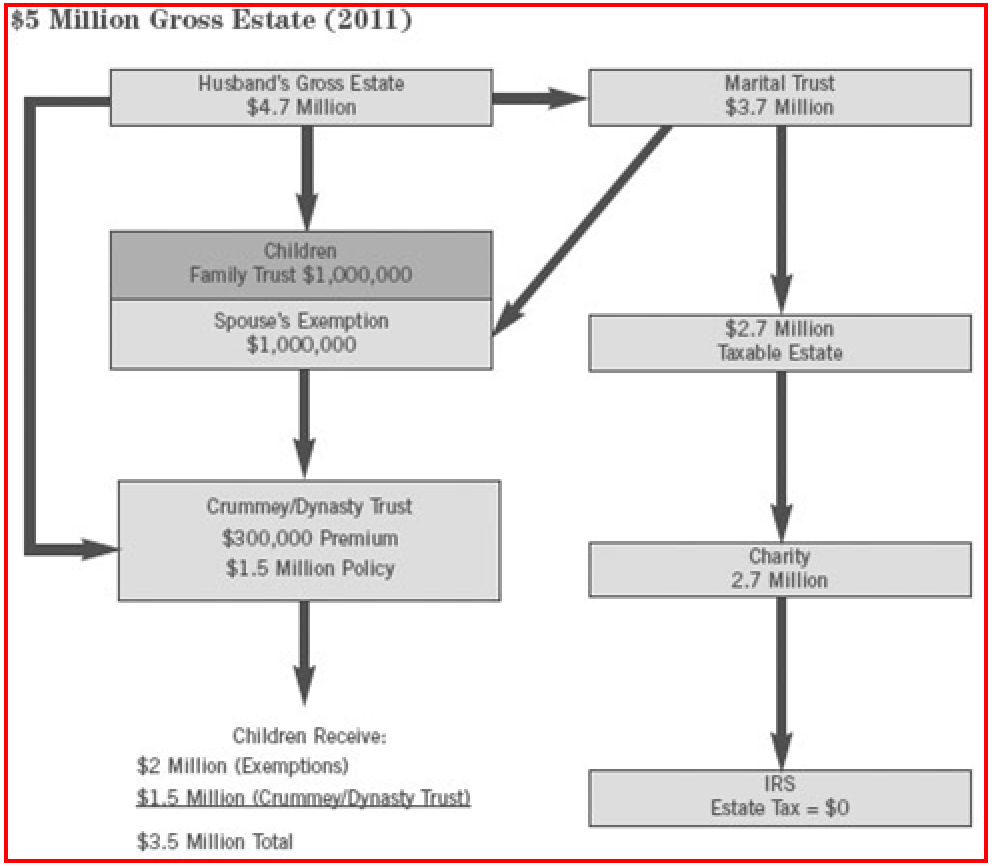
Marital and Bypass Trusts

- Gives surviving spouse full use of family's wealth
- Minimizes total federal estate tax payable at the death of both spouses
- Usually eliminates federal estate taxes at the death of the first-to-die of the spouses by capitalizing on the coupling of the:
  - Marital deduction
  - Unified credit
- Avoid overqualification for the marital deduction because of underutilization of unified credit of the first spouse to die

How it Works

- A-B Trust Plan
  - Fund the bypass trust with amount equal to remaining unified credit exemption equivalent amount
    - Tax on these assets will be offset by the unified credit
    - Bypass trust assets and their appreciation will not be taxed again for estate purposes at the surviving spouse's death
    - Spouse typically receives income for life from these assets
    - Spouse may also be given a limited power or power to take the greater of $5,000 or 5% of the trust principal
  - Fund the marital trust with the balance of the estate
    - Marital trust assets pass estate tax-free to the spouse using the unlimited marital deduction
    - Marital trust assets will be taxed at the surviving spouse's death

What it would have looked like



http://www.advancedstrategiesgroup.com/zero-estate-tax.html

Testamentary Trust

- **What Does *Testamentary Trust* Mean?**
  A trust created as a result of explicit instructions from a deceased's will. Thus, the will is effective and also creates a trust.

http://www.investopedia.com/terms/t/testamentarytrust.asp

Marital Deduction

- Marital Deduction: One of the primary deductions for married decedents is the Marital Deduction. All property that is included in the gross estate and passes to the surviving spouse is eligible for the marital deduction. The property must pass "outright." In some cases, certain life estates also qualify for the marital deduction.
- http://www.irs.gov/businesses/small/article/0,,id=108143,00.html#4
- Little known fact: Probably Applies to same sex marriage also.

Living Trusts

- **Understanding Trusts**
  The revocable living trust is an arrangement by which you transfer ownership of your property into a trust throughout the course of your lifetime. To fully understand how a trust operates, let's take a look at the four main components:

  Grantor - the creator of the trust
- *Trustee* - the person or entity that distributes and manages the trust property according to the trust documents
- Trust Assets - property transferred into the trust
- *Beneficiaries* - those who receive the benefits of the trust

Advantages of the Living Trust

Let's look at some of the advantages of having a revocable living trust.

- ***Changeable or Revocable*** - The living trust allows you to make changes (or amendments) to the trust document while you are still alive.
- ***Avoidance of Probate***
- ***Privacy Preservation***
- ***Eliminate Challenges to the Estate*** -By using a trust, you can specifically disinherit anyone who posts a challenge to your wishes upon your death.
- ***Segregation of Assets*** - This is useful for married couples with substantial separate property that was acquired prior to the marriage. The trust can help segregate those assets
- ***Assignment of Durable Power of Attorney/Guardianship*** -It can also authorize another person to act on your behalf if you become incapacitated and need someone else to make medical decisions for you.
- ***Continuous Management***
- ***Estate Tax Minimization***
- http://www.investopedia.com/articles/pf/06/revocablelivingtrust.asp

Probate

- Because of the costs of court involvement in the probate process and the potential for involvement of lawyers who collect fees from the estate of the deceased, many people try to minimize costs associated with the probate process. There are tremendous legal and tax complexities in the probate process, so it is advisable to have a will and speak with a lawyer and financial professional in order to insure that your loved ones are not left with the complicated and often messy task of distributing the assets of your estate upon your passing. http://www.investopedia.com/terms/p/probate.asp

Life Insurance

- **Types of Insurance**
- *Term Insurance*
- *First-to-Die Life Insurance Policy*

  Also known as joint whole life insurance, this is a group insurance policy where benefits are paid out to the surviving insured upon the death of one of the insured group members. The insurance policy can be designed as either a whole life or universal life policy. A first-to-die policy can reduce taxes upon the death of the first spouse if the unlimited marital deduction is not fully used.
- *Survivorship Life Insurance Policy*

  Survivorship life insurance, also know as second-to-die

Life Insurance Trusts

- *Irrevocable Life Insurance Trust*
  The purpose of this arrangement is to exclude life insurance proceeds from the estate of the first spouse to die and from the estate of the surviving spouse. The spouse may be the life income beneficiary, but may not have any right to or power over trust principal except per the discretion of the trustees.

Charity

- Philanthropy through charitable contributions generates not only goodwill, but also has significant income and estate tax benefits for donors. For wealthy individuals, this may translate into hundreds of thousands of dollars in estate and income tax savings. A great way to accomplish this goal is through the use of charitable trusts. http://www.investopedia.com/university/estate-planning/estate-planning8.asp

Life Insurance Ownership

- If a life insurance policy is owned by the insured, the advantage is that he has continued control of the policy and any ownership in the associated cash values ITR of a permanent policy. However, the death benefit of this policy would be subject to estate tax and the three-year inclusion would apply if it's transferred out of the estate.

- http://www.investopedia.com/university/estate-planning/estate-planning9.asp

706

- In general, a federal estate tax Form 706 must be filed for all decedents who are U.S. citizens or residents. The estate tax liability amount on Form 706 will be the total gross estate plus adjustable taxable gifts equaling or exceeding the amount of the applicable credit equivalent for the year of death. The executor of the estate is responsible for paying the tax.

  An estate tax return for a U.S. citizen or resident needs to be filed only if the gross estate exceeds the applicable exclusion amount

What other information do I need to include with the return?

See Form 706 (PDF) and Instructions (PDF) and Publication 950. Among other items listed:

- Copies of the death certificate
- Copies of the decedent's will and/or relevant trusts
- Copies of appraisals
- Copies of relevant documents regarding litigation involving the estate
- Documentation of any unusual items shown on the return (partially included assets, losses, near date of death transfers, others).

Gifts before Death and After

- **Annual Gift Tax Exclusion Amount**: No change. For tax year 2010, the current gift tax exclusion limit of $13,000 will stay the same. Often overlooked by most taxpayers, the gift tax stipulates that gift givers must pay a special tax on gift amounts that exceed a certain amount per year.
- Gifts to charity are not taxed
- Direct payments for tuition to the institution are not taxed.

Powers of Atty…

- **Durable Power Of Attorney For Healthcare**
  A durable power of attorney for healthcare (HCPA), also known as a healthcare proxy document, allows you to name a specific person to make medical decisions for you in the event that you are unable to make those decisions on your own. If you do not appoint a medical power of attorney, the decision about your care defaults to your spouse. If you aren't legally married, decisions fall to your adult children or your parents.
- **Advance Medical Directives**
  This document will specify the individual or individuals who can make healthcare decisions for you if you can't make them for yourself.
- **Financial Power Of Attorney**
  This document will dictate how the person should make decisions when managing your financial affairs.
- **Living Wills**

Guardians

- **What Does *Guardian* Mean?**
  An individual who has been given the legal responsibility to care for a child or adult who does not have the capacity for self care. The appointed individual is often responsible for both the care of the ward (the child or incapable adult) and that person's affairs.

What is *Community Property*?

A U.S. state-level legal distinction of a married individual's assets. Property acquired by either spouse during the course of a marriage is considered community property. For example, an IRA in the name of an individual with a spouse, accumulated during the course of the marriage, would be considered community property. Community income is earned in Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington and Wisconsin. Double Step UP?

http://www.investopedia.com/terms/c/communityincome.asp

Review of Key Issues

- Wills
- Powers of Atty and other documents
- State and Federal Laws – Community Prop and Step UP
- Trust Laws
- Non Probate Assets – Property, Plans, Insurance
- Insurance and Beneficiaries
- Family Dynamics and Economic Dynamics
- Other issues: Gifting, Education 529…
- Charity

Use of a LLC

- Put assets in LLC name
- Write Operating Agreement
- Gift shares over time.
- Reduce Estate
- At death, maintain Control but be a minority owner.
- Continuous Exist/Activity with no interruption.
- Access to accounts by Manager.
- Ability to employ family members

Growth? And Assets……Valuation

Estate Duties/Tasks

- Probate of will
- Advertise Grant of Letters
- Open estate checking and savings accounts
- Write to banks for date of death value
- Value securities
- Appraisal of real property and personal property
- Obtain 3 years of U.S. individual income tax returns and 3 years of cancelled checks
- Obtain 5 years financials on business interest plus all relevant agreements
- Obtain copies of all U.S. gift tax returns filed by decedent
- Obtain evidence of all debts of decedent and costs of administering estate

Duties More

- Death Certificates for Insurance Policies.
- File personal property tax returns-due February 15 of each year estate in administration
- Determine if estate subject to ancillary administration in another state(s)
- Determine if administration expenses and losses should be claimed as an income or estate tax deduction
- File inventory – check local state law for requirements and due date

- Reference: National Underwriter

References

Estate tax to return in 2011, and it could hurt ordinary folks
http://www.usatoday.com/money/perfi/taxes/2010-07-21-estatetax21_CV_N.htm

Almost Half of All Households Don't Pay Federal Taxes *(MainStreet.com)*

Establishing a Living Trust:
http://www.investopedia.com/articles/pf/06/revocablelivingtrust.asp

Three Documents you should have:
http://www.investopedia.com/articles/pf/05/050905.asp

Frequently Asked Questions on Estate Taxes
http://www.irs.gov/businesses/small/article/0,,id=108143,00.html

Save Wealth *http://www.savewealth.com/planning/estate/taxes/*

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