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April 2011

The new estate planning

The federal estate tax roller coaster pauses.

There were several big surprises in the compromise over the "Bush tax cuts" reached in December 2010. The first was the amount exempt from the federal estate tax for 2011. Without the new law, the exempt amount would have dropped back to \$1 million. The administration favored going back to the 2009 exemption of \$3.5 million. Throughout 2010, there had been a bipartisan effort to phase in a \$5 million exemption, coupled with a reduction in the tax rate, from the 45% of 2009 down to 35%. The change would have been phased in over ten years. Those efforts were stymied in the Senate.

The December surprise was that the \$5 million/35% paradigm was adopted for 2011 and 2012, with no period for phasing in. Just as the estates of billionaires who died in 2010 were "let off the hook" of paying federal estate tax, so also for a two-year period would estates of moderate wealth. The estate tax will be refocused on the largest estates, which have long generated the bulk of the estate tax revenue.

The second surprise was the introduction of a new tax break for married couples. With some basic estate planning, married couples have long had the opportunity to double the estate tax protection for family wealth. That would mean \$10 million in 2011 and 2012. However, what if a couple didn't take those steps? A portion of the couple's federal estate tax exemptions could be "wasted." The new law provides a remedy for that problem, something that estate planners call "portability." A surviving spouse now may inherit any unused exemption amount from a deceased spouse.

For some estates, the "portability option" might take the place of the more traditional marital trust/bypass trust formula. Having simplified, "all to spouse" wills is less problematic than it once was, but not many estate planners are recommending that route. The new portability rule is temporary, just as is the higher estate tax exemption. After 2012, we revert to the old rules. Without further Congressional action, an unused estate tax exemption inherited in 2011 or 2012 simply will disappear in 2013.

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Even if the portability rule were permanent, there are important nontax benefits inherent in traditional trust planning for couples. See *Family benefits of "bypass trusts"* below for details.

A final detail in the new tax legislation that surprised estate planners was that the federal estate tax was reinstated retroactively for 2010. Perhaps to avoid a constitutional challenge, estates of those who died in 2010 were permitted to opt out of the estate tax. The choice is not as simple as one might guess. Choosing to skip the estate tax means choosing to accept the carryover basis rules that will affect the income taxes of heirs. There are some circumstances in which it would be better to pay a little estate tax up front to avoid a lot of income and capital gains taxes down the road. If you are the beneficiary of a 2010 estate, you'll want to monitor the decisions of the executor closely. (If you are the executor of a 2010 estate yourself, seek professional tax advice immediately. We can help.)

Three new estate planning myths

Following the debate and publicity about the enlarged exemption from the federal estate tax, some misconceptions have emerged about estate planning. Here are three that we've heard most often.

"I don't need an estate plan anymore." The most important objective of every estate plan is to designate who will receive property after the owner's death. This goal is unchanged. Strategies to address tax management at death, always important and often a motivator, are nevertheless secondary.

"Estate planning is easier now." Estate planners have brand-new tax rules and choices to discuss with their clients. That will make planning harder, not easier, in the near term.

"The new tax law ends the uncertainty." In fact, we have more uncertainty than ever. Yes, for those who die in 2011 and 2012, there will be a \$5 million exemption from the federal estate tax. No one knows the date of his or her own passing, however. It's only prudent to plan for longer life, and for the possibility that the exemption will fall back to \$1 million in 2013. If that happens, death taxes suddenly will become important to many more affluent families.

More issues

Most states already have dropped their death taxes (either estate taxes, inheritance taxes or both). However, the 20 states that retain them in one form or another typically impose them on estates far smaller than \$5 million. Anyone who lives or owns property in those states will need to take those taxes into account. Some might want to change residences to achieve a measure of tax freedom.

Estate planning is about more than tax management, however. The broad range of property management issues, of identifying heirs, and of specifying how property will be distributed remains vital for estates of all sizes.

The gift opportunity

The exemption from the federal gift tax is also set at \$5 million for 2011 and 2012. Like the estate tax exemption, the gift tax exemption also is scheduled to fall to

Family benefits of "bypass trusts"

Because the new rule of estate tax exemption portability is temporary, few advisors are recommending that married couples build an estate plan around it. Instead, a combination of traditional marital deduction trusts, QTIP trusts and bypass trusts will be included as core recommendations. Even if Congress makes portability permanent, the bypass trust strategy will survive. Five reasons stand out:

Protection from creditors. Assets that are left to your heirs in a trust rather than outright won't be available to former spouses, creditors and others who may sue your heirs.

Protection from remarriage. When a surviving spouse remarries, the deceased spouse's unused exemption amount may be forfeited. Also, the bypass trust allows the grantor to control who gets the remaining assets upon the surviving spouse's death. An outright inheritance to a spouse runs the risk of children being disinherited.

Estate freezing. If your assets are left in trust, any appreciation on those assets will not be included in your surviving spouse's estate. This fact reduces the possibility that your spouse's estate will be worth more than the exemption amount when he or she dies.

Provide for grandchildren. The new portability policy does not apply to the \$5 million exemption from the generation-skipping transfer tax. If grandchildren are to be heirs, one can make lifetime gifts to them or apply part of the GSTT exemption to the bypass trust and include them as beneficiaries.

Administrative convenience. The unused exemption will be lost unless the executor files an estate tax return for the first spouse to die. This is required even if no estate tax is payable. When this approach is taken, the statute of limitations for taxes for the first spouse's estate remains open for the entire life of the surviving spouse. With a trust plan, the estate can be closed under the usual rules.



\$1 million in 2013. As a result, some are advising their wealthier clients to make aggressive use of the enlarged gift tax exemption while they can.

Practical considerations will come into play, however. An irrevocable gift of \$5 million is a big step, even in the wealthiest of families.

Plan for more than two years

The roller coaster that is the federal estate tax may have paused, but it has not stopped. The reversion to a \$1 million exemption in 2013 hangs over affluent families like the Sword of Damocles. On the one hand, most observers are saying that there is no way that the estate tax exemption won't be renewed at the \$5 million level. On the other hand, many of those same observers were equally confident that the 2010 suspension of the federal estate tax would be resolved long before it came to fruition. What's more, the President's budget proposals already

are counting on a return to the more limited, \$3.5 million estate tax exemption in 2013 and later years.

Can one estate plan work in all of these tax environments? Probably not, which is why regular will review is a must for the affluent.

Who will settle your estate?

In difficult times, it's good to have professionals on your side. A death in the family will have financial as well as emotional repercussions. Estate settlement can be a complicated process, with plenty of opportunity for error for amateur executors. This is especially true when the tax environment is in a period of constant change, as seems to be the case today and in the coming years.

Estate settlement is one of the core services that we provide to affluent families. We are experienced; we have support systems in place; and we do this work every day. We may be the best choice for settling your estate. □

Mickey Rooney and elder abuse

If you thought that being a legendary Hollywood movie star would protect you from being taken advantage of, Mickey Rooney wants you to know that you are wrong. The still-active star of innumerable films dating back to the late 1920s, Rooney went before Congress in March to plead for stronger laws to protect the elderly from abuse. In his own words:

"Elder abuse comes in many different forms—physical abuse, emotional abuse, or financial abuse. Each one is devastating in its own right. Many times, sadly, as with my situation, the elder abuse involves a family member. When that happens, you feel scared, disappointed, angry, and you can't believe this is happening to you. You feel overwhelmed. The strength you need to fight it is complicated. You're afraid, but you're also thinking about your other family members. You're thinking about the potential criticism of your family and friends. They may not want to accept the dysfunction that you need to share. Because you love your family and for other reasons, you might feel hesitant to come forward. You might not be able to make rational decisions. What other people see as generosity may, in reality, be the exploitation,

manipulation, and sadly, emotional blackmail of older, more vulnerable members of the American public.

"I know, because it happened to me."

The details of the abuse Rooney suffered are scarce, but we do know that he obtained a restraining order against his stepson and the stepson's wife. The couple was ordered to turn over all of Rooney's ID cards and passports to the court. Rooney has accused them of physically and emotionally abusing him for a period of years and of mismanaging his finances, possibly stealing from him. The couple has denied any wrongdoing.

The incidence of elder abuse may be on the rise. According to a report by the Government Accountability Office, more than 14% of noninstitutionalized older adults experienced some form of elder abuse in 2009. That would be shocking enough, but the report suggested that much of the actual abuse goes unreported.

Protective steps

In addition to Rooney's testimony, the Senate Special Committee on Aging heard other horror stories of elder abuse. Very often the abusers are fam-



"I know, because it happened to me."

ily members, entrusted by the elderly person to supervise everything from medical treatments to daily finances.

One alternative to putting the burden of investment and financial management on the shoulders of a family member is to employ a living trust managed by a corporate fiduciary, such as us. Interposing a neutral, non-family professional into the situation may be a good way to defuse tensions and resolve discord.

There are no easy answers as America ages and the incidence of dementia and Alzheimer's disease climbs. □

Trust popularity

According to a recent report by Spectrem Group, more than half of families with assets of \$5 million to \$25 million have a trust. More than a third of those with \$1 million to \$5 million are similarly taking advantage of trusts for their asset management. What accounts for the surge in popularity of trusts?

- **Professional asset management.** When a corporate fiduciary (such as a trust company or a bank trust department) is employed as trustee, the assets in the trust will be invested and managed by experienced professionals.
- **Probate avoidance.** Assets in a living trust don't pass through probate. Accordingly, the delays and costs associated with probate and estate settlement may be avoided.
- **Financial privacy.** Wills become public documents in the probate process. The terms of a trust normally do not become public. Accordingly, the identities of trust beneficiaries, and the terms of their inheritances, normally remain secret.
- **Estate plan implementation.** A trustee may impartially carry out the wishes of the trust creator for his or her wealth for years, even decades, after the trustor's death.
- **Tax benefits.** Some irrevocable trusts provide income, gift or estate tax benefits, in addition to the benefits mentioned above.

Given this list of benefits, the high level of trust utilization among the wealthy is not surprising. Even among families with less than \$1 million, according to the Spectrem study, the incidence of trust usage has reached 11%.

To learn more about how a trust could enhance financial security for you and your family, arrange to meet with one of our officers at your earliest convenience. □

Quoted

Next to being shot at and missed, nothing is quite as satisfying as an income tax refund.

—F. J. Raymond

The worst thing about [the week before tax returns are due] may not be the taxes themselves, but the commiserating rhetoric of the politicians who, having created the present tax system, will spend the next few days deploring it as if it were the handiwork of strangers.

—The Washington Post

If you make any money, the government shoves you in the creek once a year with it in your pockets, and all that don't get wet you can keep.

—Will Rogers



Do you have a young heir?

If you have children or grandchildren to provide for, come talk to us. With gifts or inheritances in trust, we can help you help them.

Learn why a thoughtfully planned trust may be the best possible way to safeguard a young beneficiary's financial future.

Our experience as trustee is at your service.

Doug Oldaker, J.D.

Senior Vice President

402-221-0122

DOldaker@snbomaha.com

Monte Schatz, J.D.

Vice President/Trust Manager

402-221-0120

MSchatz@snbomaha.com

Sarah Lierman, J.D.

Trust Officer

402-221-0140

SLierman@snbomaha

Brent Boyce

Trust Investment Officer

402-221-0162

BBoyce@snbomaha.com

Kevin Poots

Trust Officer

402-221-0121

KPoots@snbomaha.com



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- Not a Deposit • Not FDIC Insured
- May Go Down in Value • Not Guaranteed by The Bank
- Not Insured by Any Federal Government Agency