

POST-MORTEM ESTATE PLANNING

May 10, 2006

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I. WHAT IS POST-MORTEM PLANNING?

- A. Fixing inadequate planning
- B. Implementing and sometimes improving good planning
- C. Providing sound administration and management of the estate
- D. Taking advantage of tax planning opportunities
- E. Improving and revising planning

II. UNDERSTANDING THE ESTATE

- A. Review planning carefully – does it accomplish tax and other planning objectives?
 - 1) Maximizing use of decedent's unified credit
 - 2) Reviewing tax efficiency of planning
 - a) Estate
 - b) Income
 - c) GST
 - 3) Planning for spouse
 - 4) Planning for children/grandchildren
 - 5) Identifying any problems with the planning

B. Inventory assets and liabilities of estate (trust)

- 1) Gather facts
- 2) Assign responsibilities for compiling information
- 3) Appraisals
- 4) Develop strategy for valuation
 - a) Consider effect on basis
 - b) Review any possible discounts
 - (i) Blockage
 - (ii) Restricted stock
 - (iii) Minority interest, marketability
 - (iv) Built-in gain tax
 - (v) Trends in the business, loss of leader, shareholder agreements, etc.
- 5) Probe client – don't always trust
- 6) Remember impact of liabilities on the estate

C. Estimate cash requirements and establish timeline for payment

- 1) Administrative costs
- 2) Estate taxes
- 3) Income taxes
- 4) Cash bequests

D. Review and calendar filing and election deadlines

- 1) Alternate valuation
- 2) 706 and TC-44R

- 3) Extension of time to file
 - a) Delay QTIP election
 - b) Keep estate open
- 4) §645 election to treat estate and trust as one entity
- 5) Election of fiscal tax year for estate
- 6) Income tax filings and estimated tax payments
 - a) Right to file joint return in year of death
- 7) Deadline for disclaimers
- 8) §754 election for partnership or LLC
- 9) QDOT Election or having spouse become citizen
- 10) Spouse's election against will

E. Consider special, unique, problem assets and circumstances

- 1) Closely-held company
 - a) Successor planning
 - b) Divestiture
 - c) Valuation issues
- 2) S corporation
 - a) Shareholder requirements
 - b) No step-up of inside basis
 - c) Allocation of income in year of death
- 3) Partnerships and LLC
 - a) Basis issues - §754 election

- b) Allocation of income in year of death
- c) Continuing FLP
- 4) Large blocks of publicly traded stock
 - a) Lack of diversification
 - b) Discounts
 - c) Problems associated with sale or funding shares (risks and opportunities)
- 5) Fractional interests in real estate
- 6) Tax apportionment issues
- 7) Retirement plans and designations
- 8) IRD
- 9) Joint assets acquired before 1977

F. Review and outline planning opportunities

- 1) Diversifying estate
- 2) Funding marital share – minimizing
- 3) Funding credit share – maximizing
- 4) Timing of sales and funding of shares
- 5) Delaying administration of estate
- 6) Timing of expenses with income or last year of estate
- 7) Taking advantage of brackets
- 8) Using disclaimers
- 9) Making elections

G. Review and resolve any succession planning issues

- 1) Identify the best person to manage company, family limited partnership or family limited liability company
 - 2) Consider person best suited to manage estate assets
 - 3) Get professionals involved
- H. Review how changing estate tax laws may affect planning

III. FAMILY MEETING

- A. Review documents and outline process
- B. Answer questions
- C. Assign responsibilities
- D. Temper expectations
- E. Encourage cooperation
- F. Answer questions

IV. ESTATE INCOME TAX RETURN ELECTIONS

- A. Filing Form 56
- B. Calendar year vs. fiscal year
- C. §645 election to combine Qualified Revocable Trust and estate after death until Applicable Date
 - 1) Easier to administer
 - 2) Fiscal year option
 - 3) Estate is entitled to charitable set-aside deduction
 - 4) Active participation requirement waived for estate
 - 5) Estate is qualified S corporation shareholder
- D. Timing distributions from estate

- 1) DNI
- 2) Bracket Racket
- E. Deduction of estate administration expenses on 706 or 1041
- F. Medical expenses as debt on 706 or as expenses on decedent's final income tax return
- G. §454(a) Election to report all previously reported E or EE Savings Bond or H or HH bond interest on decedent's final income tax return or on estate's income tax return
- H. Partnership and S corporation income
- I. Decedent's final return
 - 1) Joint return election
 - 2) Bunching income to use NOL, capital loss carry forwards, charitable carry forwards, etc.

V. ESTATE TAX RETURN ELECTIONS

- A. Valuation Elections
 - 1) Alternate valuation date
 - 2) Special use valuation
- B. QTIP election
 - 1) Equalizing estate
 - 2) PTP credit
- C. GST election
 - 1) In general
 - 2) Default allocation rules
 - 3) Avoiding fractional inclusion ratios

D. Tax payment elections for owners of closely held businesses

- 1) Election to defer payment of estate tax
- 2) Redemption of stock to pay estate tax

E. Other deductions and exclusions

- 1) Qualified family-owned business interest deduction
- 2) Conservation easements

VI. DISCLAIMERS BY BENEFICIARIES

A. Reasons to disclaim

- 1) Equalize estate
- 2) Create credit share
- 3) Take advantage of Medicaid
- 4) Avoid credit share leakage
- 5) Qualify a QTIP or QSST
- 6) Eliminate dangerous or unwanted powers

B. Qualified disclaimer

- 1) Definition
- 2) Written refusal to accept property
- 3) Disclaimer must be made within nine months
- 4) No acceptance of benefits
- 5) Property passes to spouse of decedent or to a person other than the disclaimant without any direction from disclaimant
- 6) No partial disclaimer of principal powers

VII. SALES OF ASSETS

- A. To accomplish diversification
- B. To raise money for taxes
 - 1) Fiduciary duty
 - 2) Timing issues
- C. S corporation stock
 - 1) Sale and liquidate in same year strategy
- D. Sale of personal residence from family trust to surviving spouse
- E. Alternative valuation date issues

VIII. FUNDING VARIOUS SHARES

- A. Allocate best assets to credit share
- B. Consider having growth assets in credit share to avoid leakage if income payable to spouse
- C. Implementing pecuniary marital share formulas
 - 1) Funding with appreciated assets triggers capital gain
 - 2) Consider effects of funding with assets that have IRD (i.e. installment notes, annuities, etc.)
 - a) Trigger incomes
 - b) Reduces value by amount of tax
 - c) Funding credit share with IRD results in leakage of credit share
 - 3) Timing the funding of the marital share
 - a) Increased market value
 - b) After restrictions lapse

- c) Delay as long as possible in inflationary market and do as soon as possible in deflationary economy
 - 4) Discount issues
 - 5) Consider funding with control block that can later be disposed of to create minority interest
 - 6) Qualifying trust as QDOT or having spouse become citizen
- D. S corporation stock
 - 1) Get to qualified shareholder
 - 2) Make appropriate and timely elections (QSST or SBT)
 - 3) Remember limitation on holding period if owned by grantor trust
- E. Dealing with DNI
- F. Equitable adjustments

IX. RETIREMENT PLANNING

- A. Family trust compliance requirements
- B. Disclaimers
- C. Spousal rollover and new beneficiary designations
- D. Planning for distributions

X. ADJUST ESTATE PLANNING

- A. Review and revise surviving spouse's estate planning
- B. Exercise powers of appointment to accomplish revised objectives
- C. Consider GST planning