Estate Planning

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A SPECIAL ADVERTISING SUPPLEMENT

20TH ANNUAL ESTATE PLANNING GUIDE

You and Your Wealth: Recent Tax Laws and other Important Developments

Palm Beach Daily News
THE SHINY SHEET®

Contents contributed by members of the Palm Beach County Estate Planning Council, Inc.

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A Message from the President

Take Control Over Your Financial Future

'The articles contained in this 20th edition of the Estate Planning Supplement will help you understand some of the major issues you should consider when thinking about your own personal situation.'

—David Holland

David Holland

An estate plan is a vehicle that gives you control. An estate plan, in its essential form, is a structured organization of your assets and property into a plan that carries out your wishes. A comprehensive estate plan can continue these wishes through death or your incapacity. Additionally, it can accomplish much more.

A carefully implemented plan can help lower taxes, gain access to government benefits and protect your family from financial harm, whether from themselves or the less scrupulous in society.

In the past 10 years, we have seen numerous changes in the laws surrounding these topics. Taxes and regulation have created new planning opportunities but have also made some old opportunities obsolete. It is important to understand your plan and to make sure it is accomplishing your goals.

Laws are not the only variables that change with time; your family's needs and goals are also constantly changing with every life-changing event.

The articles contained in this 20th edition of the Estate Planning Supplement will help you understand some of the major issues you should consider when thinking about your own personal situation. The Palm Beach County Estate Planning Council is a multi-disciplined organization that supports the team concept of estate planning.

Among our 175 members, you can find well-trained, extremely knowledgeable estate planning professionals who provide the tools needed to implement your plan. With a collaborative effort across disciplines, these professionals can help you preserve your wealth, and then in a tax efficient manor, assist you in passing it on to the people and institutions that matter to you.

On behalf of the members of the Palm Beach County Estate Planning Council, I hope you can benefit from the knowledge and experience of our council members. Please feel free to contact the authors directly should you have any questions regarding the information provided. This supplement also contains a membership directory at the end of the Supplement with names of professionals ready to help you with your plan. You can find more information on our Council and our members at pbcepc.org.

The Palm Beach County Estate Planning Council, Inc. is the resource for estate planning professionals in Palm Beach County. The two key purposes of the Council are to increase the overall knowledge of its membership and to enhance the professionalism and interaction of the members for the benefit of their clients and the public via academic exploration of specific topics of common interest.

Professionals seeking membership information should contact Administrative Director Wanda H. Doumar at (561) 310-5442.

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Move for the Warm Weather, Beautiful Beaches and Booming Economy? Or, Favorable Tax and Asset Protection Laws? Decisions, Decisions...

By Suzanne S. Weston
Chilton Trust

When my husband and I moved to Florida from Manhattan, our friends and family were skeptical. To them, this is the land of the early bird special and aging baby-boomers who retired in "heaven's waiting room". Vacation, yes. Full time, no way …

Now four years later, we personally know these clichés are passé. The secret is out. A great place to vacation, a great place to retire and a great place to work and raise a family need not be mutually exclusive. Think I'm exaggerating? Check out the facts.

Per a December 2017 US Census Bureau report, Florida was the 2nd highest state in the country (after Texas) for numeric growth from 2016-2017. Florida is today the third most populous state, having just passed New York, trailing only California and Texas.

The Florida Chamber Foundation recently reported the State's economy topped $1 trillion in GDP for the first time, making it the 18th largest economy in the world. Larger than Saudi Arabia, Argentina and Switzerland.

The Kiplinger Letter said Florida is one of the top 10 states with the fastest projected rates of job growth in 2018, beating California and New York.

Those are pretty attractive statistics for career seekers, which may explain why the median age of


Suzanne S. Weston

Floridians is about 41 years (yes, it surprised me, too) per the World Population Review.

Apart from quality of life (which continues to surpass our every expectation) and career potential, the financial benefits of tax savings and asset protection provided by Florida are also pretty motivating.

Florida is one of the most tax-friendly states. We have no state income tax or state estate tax. Wages, Social Security, pension and retirement income are not taxed locally. This can be a significant savings. If you live in a place that has a state and city income tax, such as New York City, you may pay up to 13% in state and local taxes.

Since Florida does not have a state estate tax, your loved ones may receive more assets at your death. By remaining a resident of a state that imposes an estate tax, such as New York, Massachusetts and Rhode Island, your estate may be taxed at a rate up to 16%.

Florida's Homestead Exemption also provides Floridians with tax savings. By homesteading your primary residence, the first $50,000 of the property value is exempt from property taxes, and there is a cap on the increase of the property's annual assessment which is the lower of 3% or the change in the Consumer Price Index. The cap is valuable because it shelters property taxes from drastically increasing as many Florida home values have significantly increased.

Obtaining Florida's tax benefits and establishing your Florida domicile can be simple by taking a few steps such as filing a "Declaration of Domicile", registering to vote, obtaining a Florida driver's license, filing the Homestead Exemption and becoming involved in the community. However, it is important to speak with your legal and tax advisors to avoid being subject to income tax or estate tax in another state. Depending on the state, if you spend a certain amount of time or maintain certain connections in that state, then you may be subject to income tax in that state. Also, if you own real or tangible personal property in a state that applies an estate tax, such property may be subject to estate tax by the state where the property is located.

In addition to the attractive tax savings, Florida provides residents an array of ways to protect their assets from creditors. The Florida Homestead statute protects your primary residence, no matter the value, from creditors with certain exceptions such as mortgages. Your qualified retirement accounts (IRA's and 401K's) and profit-sharing plans are also exempt. Life insurance proceeds may be protected from the insured's creditors. And, medical savings plans and 529 plans are exempt.

Florida also recognizes that property can be held jointly by spouses as tenants-by-the-entireties. A creditor of one spouse may not attach the tenants-by-the-entireties asset unless both spouses are indebted to the creditor.

In the end, Florida's tax savings and creditor protection benefits can provide your family with additional resources to enjoy the Sunshine State and the comfort of knowing that many of your assets are protected for retirement and your loved ones.

Albeit, if you are still missing the occasional blizzard, tornado, wildfire or mudslide, then the benefits of Florida that we cherish may not be for you. Did I mention, we have three major airports within a quick drive or train ride away?

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Chilton Trust, a private, independent Trust Company, advises and provides wealth management services including fiduciary services and investment solutions to high net worth individuals, families and foundations.

Fiduciary Access to Digital Assets

By Joseph C. Pauldine
Cypress Trust Company

Digital assets can take many forms in today's electronic environment. A short list of examples might include websites/blogs, gaming characters, email and social media accounts, as well as photos/documents stored "in the cloud." We can expect that as technology continues to evolve, so will the nature of information which falls into the definition of "digital assets."

Taking effect in mid-2016, the Florida Fiduciary Access to Digital Assets Act addresses how an owner of digital assets can plan for their administration. Much like more common tangible property – artwork, journals, jewelry – digital

Joseph C. Pauldine

assets can have sentimental as well as possible intrinsic value. The Act outlines provisions that "owners" may consider incorporating into their estate plan to provide fiduciaries with the legal authority to administer and dispose of these assets as they would with more common property.

It may not seem like much, but think for just a minute about how much content each of us might have that fall within the definition of digital assets. Facebook, LinkedIn and Instagram are all fairly common today. Add to that content stored on Google Docs, a Gmail account and thousands of photos uploaded to iCloud and you have a pretty good representation of an average individual.

Now imagine that this individual has passed away. The custodians of these accounts (for example, Google would be considered the custodian of a Gmail account) have an obligation to protect the privacy of users and consequently would be unlikely to simply turn over the user's content or reset a password to just anyone. On the other hand, the fiduciary/personal representative needs to be able to thoroughly administer the decedent's estate, inclusive of digital assets.

The Act is intended to accomplish two things:

1. Give the personal representative or fiduciary the legal authority to administer digital assets in the same manner as more common, tangible property; and

2. Grant authority to the custodians of these assets to interact with the appointed fiduciary without breaching a user's expectation of privacy.

There are three ways that the Act handles the disclosure of a user's digital assets. In order of priority, these are:

1. Online Tool – An online tool is defined as "an electronic service provided by a custodian which allows the users to provide directions for disclosure or non-disclosure of digital assets to a third person." These online tools are specific to each custodian or provider. For example, Facebook (as a custodian) offers a "Legacy Contact" feature within its user settings. This means a user can appoint a specific individual directly within the application to interact with Facebook should the user pass away or become incapacitated. The appointment of an individual through an online tool supersedes any direction by way of a will or a trust agreement.

2. Will, Trust or Power of Attorney – Second in priority to an appointment through a specific online tool is the stated direction an individual would incorporate into his or her top estate planning documents. Including language to address digital assets in the preparation or modification of wills and/or trusts is becoming more common for this reason.

3. Terms of Service Agreement – Absent the appointment through an online tool or specific direction within a will/trust/POA, the provider's Terms of Service Agreement will govern the disclosure of the digital assets with that particular provider. It is fair to say that only a small percentage of users actually take the time to read these, let alone understand them. As a result, relying on these as a fallback plan could be problematic when administering an estate.

So the takeaway from all this is to point out that legislation has been adopted to address the disposition of digital assets. With the priority ranking established within Florida statutes, the most effective way to

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Don't Fall Off the New York Tax Cliff!

By Lisa A. Schneider
Gunster

Lisa A. Schneider

Although the enactment of the Tax Cuts and Jobs Act at the end of 2017 created additional planning opportunities at the federal level, the spread between the federal and New York State estate tax exemptions has increased significantly creating another compelling reason for wealthy New Yorkers to migrate south for more than just the winter months.

Back in 2014, in order to keep up with the then increased federal estate, gift and generation-skipping transfer ("GST") tax exemptions of $5 million (indexed for inflation), New York increased its estate tax exclusion amount from $1 million to the exemption amount then provided under federal law. The result was an increase in the New York estate tax exclusion amount to the 2014 federal exemption level of $5.25 million. Without any further action on the part of the New York State legislature, the New York estate tax exclusion was set to increase along with the federal estate, gift and GST exemption amount to approximately $5.6 million as of Jan. 1, 2019.

Although the increase in the New York estate tax exemption was clearly motivated by the increase in the federal estate, gift and GST exemptions, it has fallen short of convincing New Yorkers to maintain residency in the Empire State.

As if the spread of $5.93 million (for 2018) between the federal and New York State exemptions is not significant enough, the increased New York State exclusion amount is not available to all New Yorkers. Rather, a wealthier New Yorker is subject to a phase out of the New York exclusion if his or her New York taxable estate (plus certain taxable gifts made within three (3) years of death) exceeds 100 percent of the then-New York exclusion amount. If a decedent's New York taxable estate (plus taxable gifts made within three (3) years of death) exceeds 105 percent of the then New York exclusion amount, the benefit of the New York exclusion amount is completely phased out. This means that the entire estate will be subject to New York State estate tax at a top rate of 16 percent.

For example, upon the death of a New Yorker prior to Jan. 1, 2026 (the date upon which the increased federal estate, gift and GST exemption "sunsets," reverting the exemptions to pre-2018 levels (indexed for inflation)) with a New York taxable estate of $11.18 million the decedent's federal taxable estate would be zero, but the decedent's estate would pay New York State estate tax on approximately $5.58 million (or $460,000 in New York State estate taxes). This effect essentially causes wealthier New Yorkers to begin to fall off the New York estate tax cliff once their taxable assets reach $5.6 million. The wealthier the decedent, the deeper and more costly the fall.

So what is a wealthy New Yorker to do? One option is to make gifts in order to reduce the New York taxable estate to $5.6 million. Although New York no longer has a gift tax, if the donor dies within three (3) years after making a gift, the gift is brought back into the New York taxable estate. The ability to make federal tax-free gifts is limited by the current federal gift tax exemption of $11.18 million or $23.36 million for married couples. It may be difficult to find a wealthy New Yorker willing to reduce his or her net worth from $11.18 million to $5.6 million (or from $22.36 million to $11.2 million if married). To make matters worse, unlike federal law, New York does not recognize portability of the New York exclusion amount. Moreover, the super wealthy New Yorkers with assets exceeding $16.78 million, or $33.56 million if married, cannot gift assets to get below the New York estate exclusion amount without paying a federal gift tax. As a result, an appealing option may be to change domicile to a state like Florida which does not have a state estate tax, and at the same avoid New York income taxes altogether (for non-New York source income).

Before making any gifts or commencing a change of domicile to Florida, we recommend contacting your tax advisor.

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When Family Business Owners Get Divorced

By Karen Piershalski
in collaboration with
Diane Peterson McNeal
Wilmington Trust

Diane Peterson McNeal

Navigating the emotional and financial challenges of a divorce can be daunting enough. But when a family business is part of the divorce proceedings, there are additional decisions to be made to determine the future of the business and the equitable distribution of its assets.

If only one spouse is involved in the business and will continue to operate it as such, then an appraisal of the business will be needed to determine its value for purposes of buying out the non-operating spouse. When combined with the balance of the marital assets, this valuation will provide the basis for an equitable settlement.

However, when both spouses are involved in running the business, other factors need to be considered. Can you continue to work together for your mutual financial well-being and to preserve the business? If not, two choices remain: 1) Sell the business and split the proceeds; or 2) One spouse buys-out the other. A buyout requires a business appraisal as well as a strategy to fund the buyout. If the business has cash flow to support financing, a loan can be sought. Substitution of other marital assets can be an alternative to financing.

Determining the value of the business

There are three approaches to determine the value of a business: the income approach; the market approach; and an asset-based approach. They are not mutually exclusive and a comprehensive analysis should consider each method and detail why it may or may not be appropriate given the circumstance. The income method requires the estimation of future income and conversion to value using a discount or capitalization rate appropriate given the level of risk of achieving expected returns. The market approach is based on the principle of substitution. Comparable private company sale transactions or stock prices of publicly traded companies can be used to capitalize the returns of the company being valued. The asset-based approach focuses on the balance sheet and deriving a value through the hypothetical sale of the assets.

A business appraiser will also take other factors into consideration including employment agreements, operating agreements, and shareholder agreements. Contracts

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Examining the enhancements in long-term care options

By Steven Hein
Hein Wealth & Tax Solutions LLC

Steven Hein

The cost of a private nursing home in Florida averaged more than $106,000 in 2017. By 2047, that same cost is projected to grow to more than $258,000 a year. A few years in a nursing home and the costs of long-term care (LTC) can be quite alarming. With a 72 percent chance of a long-term care event, the question is: Why are people not purchasing more long-term care? Some people are under the misconception that either Medicaid, Medicare or health insurance covers long-term care but each of these options has severe limitations. Despite the tremendous need for long-term care, traditional long-term care sales have plummeted for three reasons:

1. People think they will be lucky enough to not need it;
2. Premium increases of 50 percent on some policies haves left people angry; and
3. Limitations on submitting claims for care by licensed health care providers only, limits the options for care providers.

Life insurance/long-term care

Life insurance with a long-term care rider is growing in popularity because there is no scenario in which the insured or beneficiary will not benefit: People either die or utilize long-term care. Once a no-lapse policy is purchased and the premium is paid, there should be no more future premium increase. Most of these policies are also indemnity policies which means that once a person qualifies for long-term care , the benefit is a cash payment which can be paid to unlicensed caregivers including family members, utilized for home modifications, or utilized for other expenses or needs. These polices provide compelling income-tax-free rates of return. They also help families by enabling for instance, compensation to a particular family member who is providing most of the care. Further, long-term care policies can be offered in second to die policies and potentially in irrevocable life insurance trusts. Life insurance long-term care can also be utilized on the key caregiver spouse or for spouses in second marriages.

Annuities/long-term care

For people who are less concerned about providing a legacy but want to still provide for long-term care, annuity long-term care products are also increasing in popularity. These products usually provide for substantially more in long-term care than the cash that is put into the policy. A 60-year-old female putting $100,000 into a long-term care annuity can accumulate a pool of over $780,000 of long-term care by age 85. This product typically allows owners the flexibility to: (a) cash in the product and get their money back or (b) die and leave the cash invested to their heirs. Some of these policies are also the indemnity policies described above and have the flexibility of utilizing the proceeds for many different uses. These annuities can either be paid for in a lump sum or be paid for over as many as 15 years. An advantage of paying for the annuity/long-term care over a number of years is that a portion of the long-term care expenses can be paid from a health savings account. A health savings account enables you to receive a tax deduction for money contributed and the money grows tax-free to be used later for health care expenses, including long-term care premiums and some annuity/long-term care premiums.

With the cost of long-term care continuing to increase, plans should cover the likely possibility of a long-term care event. With the life insurance/long-term care and annuity/long-term care options, you or your heirs will receive a benefit so there is no "use it or lose it" as with traditional long-term care. The ability to receive cash once you qualify, that can be used as you see fit, is a major advantage compared to a traditional reimbursement model. The reduced likelihood of a premium increase for life insurance

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2017 Tax Cuts and Jobs Act Highlights for Business Aviation

By Michael L. Kohner, CPA, CAP® & AEP®
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Michael L. Kohner

While the 2017 Tax Cuts and Jobs Act (TCJA) provided significant tax benefits to business aviation, such as 100 percent expensing for both new and used aircraft, other sections of the tax reform law may have a negative impact on the industry as well. New challenges are expected as the industry seeks to fully understand the complex legislative changes, including the commencement dates of the implementation of the new rules and the phase out dates of numerous other stipulations. Key provisions of the new tax law as they relate to business aviation are discussed below.

100 Percent Expensing (Bonus Depreciation)

TCJA now allows 100-percent expensing, which may allow taxpayers to immediately write off the entire cost of an acquired aircraft. Factory-new or pre-owned, it must be placed in service for the first time by the taxpayer between September 27, 2017 and January 1, 2023 (January 1, 2024 for certain longer production period property and certain aircraft).

Mixed Commercial and Personal Use: The Predominant Use Test

To qualify for the accelerated expensing mentioned above using the Modified Accelerated Cost Recovery System (MACRS), the aircraft must be used predominantly for qualified business use in every taxable year that the aircraft remains in service. If more than 50 percent of the use of the aircraft during each taxable year constitutes business use, this predominantly business use test is satisfied. However, if business use falls to 50 percent or below in any taxable year, then the aircraft must change to the straight-line Alternative Depreciation System (ADS) during such taxable year and all subsequent taxable years, and prior excess depreciation must be recaptured.

Disallowance of Travel Business Entertainment Expenses

The TCJA makes far-reaching changes to the basic deduction disallowance rules for business entertainment, which could affect many businesses operating aircraft. Beginning in 2018, all entertainment related expenditures are dis-

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Estate Planning for Families with Special-Needs Children

By Mitchell I. Kitroser
Kitroser & Associates

As parents, we serve our children as guides, counselors, and piggybank (along with many other roles). We anticipate guiding them from infancy through their teenage years and then sending them off to college. We hope they will find a fulfilling career, meet someone special and become independent and productive members of society who, one day, will give us grandchildren to spoil. For parents of special-needs children, the future is a very different picture.

Parents of special-needs children know that their child may never be able to live a completely independent life. Their child may never

Mitchell I. Kitroser

have a career, may not be able to manage their own finances nor be able to make complex decisions about their healthcare. These parents anticipate being a source of support in every way for their child for the remainder of their lives. They must also put together a plan of care that continues beyond their own lives which covers the remainder of their child's lifetime. The planning must be comprehensive and should include medical, social, residential, financial, and legal aspects. In a perfect world, parents might assume their other children would step up to take care of their sibling with special needs after the parents have died, but reality is far from perfect. Parents often fail to consider the possibility that something may happen to the child who is slated to take over support obligations in the future. The following is a brief summary of some of the issues that families should consider:

Social and Residential

Where will my child live and who will look after him or her? Many parents of children with special needs keep them at home. After all, who is better at taking care of their child than they are? The challenges that come with this decision are that the parents will continue to age and will eventually be unable able to care for their child. A 60-year-old special-needs child who has never lived independently will be completely unprepared when mom and dad pass away. This "child" will have limited socialization experience and virtually no emotional support system in place if there is no advanced planning for the transition. In anticipation of this reality, many parents look into other residential options for their special-needs children before the crisis arises. This allows the parent to participate in and oversee the residential transition. Families also turn to social service agencies that provide case management, so the agency can work with the parents and the child in preparation for providing support once the parents can no longer participate or are no longer alive.

Financial

How will my child afford to live? Families of all different economic backgrounds approach this issue with the same initial question; how much money will my child need? Of course, the answer depends upon the unique needs of each child, but a financial advisor is always a good starting point. Advisors take into consideration costs of living, including housing and medical needs, what support needs to be put into place (i.e. case management) and what, if any, government programs will be available to the individual (ex. Social Security disability, Medicare and Medicaid) versus the anticipated expenses to support and maintain the child. Attorneys can recommend the use of appropriate trusts to help protect the child's wealth, so as not to jeopardize the child's government benefits such as Medicaid and SSI. The challenge for many parents is planning how to fund the anticipated costs of living for their child for the remainder of that child's lifespan, considering the likelihood of future inflation and the ultimate aging and increased needs of the child. Some families are fortunate enough to have the resources to accomplish this task, while others will need to employ a combination

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Who's In and Who's Out: Collecting Presidential Memorabilia

By Collin Sherman Albertsson
Florida Regional Director,
Doyle Auctioneer & Appraisers

Collin S. Albertsson

Presidential memorabilia is a billion-dollar industry filled with collectors with a multitude of special interests. Some build collections based on a single president while others are fascinated by presidential pastimes. Some collectors seek autographs from all 45 Presidents and create bound volumes of them. A determining factor in the value of presidential signatures can be whether or not the document was signed while the president was in office. William Henry Harrison, the ninth president, died of pneumonia 31 days into his term and items related to his short presidency are extremely rare and therefore, valuable. Washington, Lincoln, FDR and Kennedy are currently the most in-demand with Truman and Reagan gaining in popularity. Although one can find a Clinton bumper sticker or a MAGA hat on the internet for a couple of dollars, some presidential memorabilia fetches hundreds of thousands of dollars. There are many factors that determine an item's value — historical significance, subject matter, rarity, condition and provenance.

In today's auction market some of the most valuable presidential items are those related to George Washington. Recently Doyle has been fortunate enough to auction two particularly fascinating and deeply patriotic letters written by Washington. The first letter, auctioned on behalf of the Estate of Nelson Doubleday, Jr. is from April 17, 1776 and Washington is demanding that the citizens of New York stop supplying provisions to the British ships of war in New York Harbor. This evocative letter, from the crucial period before the Declaration of Independence and the Battle of Long Island, sold for $53,125. The second letter was written at the end of the war to his wartime aide James McHenry on Dec. 10, 1783. He declares his intention to resign his commission as Continental Commander and become "translated into a private Citizen." This historically important letter achieved the World Record for a single-page war-date letter, selling for $362,500. Although Washington signed hundreds of letters throughout his long career as both general and president, his

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Recent Case Law Provides a New Road Map for Deductibility of Family Office Expenses

By Stephen G. Vogelsang
Pressly, Pressly, Randolph & Pressly

"Forbes' World's Billionaires" list debuted 30 years ago with the names of 140 billionaires. The same list today contains more than 2,200 names. This explosion of private wealth has brought with it an increased reliance on single family offices to manage these growing fortunes. Family offices oversee the financial affairs of a family. A family office may prepare consolidated investment reporting statements or perhaps even direct asset management, engage professionals to provide accounting and legal services and provide "concierge services" such as bill paying, hiring household staff and arranging family travel plans. Two significant events affecting the operation of family offices occurred in December 2017. First, on December 15, 2017 the U.S. Tax Court issued its decision in Lender Management v. Commissioner ("Lender") which held that a family office was engaged in a trade or business for federal income tax purposes allowing the deduction of operating and investment expenses under Section 162 of the Internal Revenue Code (the "Code"). Second, President Trump signed the Tax Cuts and Jobs Act (the "2017 Act") on December 22, 2017 creating significant new limitations on deductions related to investment expenses.

Stephen G. Vogelsang

Family offices may be structured either as "pass-through" entities such as limited liability companies or as "C" corporations which are subject to federal income tax. "C" corporations have historically benefited from a presumption that they are engaged in a trade or business entitling them to deduct most of their operating expenses under Section 162. Many families, however, prefer to operate their family office as a pass-through for federal income tax purposes, particularly where the family office operates at a profit. Unlike "C" corporations, pass-through entities don't enjoy a presumption that they are operated as a trade or business, making it far more difficult to deduct expenses under Section 162. In years prior to 2018, these family offices would likely have deducted their operating and investment management expenses under Section 212 which allowed for the deduction of expenses related to the "production of income." Section 212, however, was less beneficial than Section 162 because Section 212 deductions were subject to AGI limitations and created alternative minimum tax issues. More significantly, the 2017 Act completely disallows Section 212 deductions beginning in 2018.

The Code does not define "trade or business." Generally speaking, expenses incurred by a taxpayer performing investment related activities strictly for his own account are not deductible under Section 162 as expenses incurred in carrying on a trade or business. The Tax Court in Lender, however, determined that the investment management activities of the Lender family office ("Lender Management") did rise to the level of a trade or business based primarily upon the following factors:

■ **Family Office Owners Different than Owners of Investment Entities:** Lender Management was owned by the Marvin Lender Trust and the Keith Lender Trust. Keith Lender was the grandson of Harry Lender, the founder of the company that later became Lender's Bagels. Lender Management provided investment management services to three separate family investment vehicles, each of which was owned more than 90% by Lender family members other than Marvin or Keith. This significant difference in ownership allowed Lender Man-

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Florida's Decanting Statute Gets Better with Age

By Matthew N. Turko
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Matthew N. Turko

Trust decanting is a process by which the trustee of a trust distributes all or part of its trust property to a trustee of another trust. Decanting essentially allows for a "do-over" for an irrevocable trust and can be used to cure a myriad of problems and/or issues encountered with an existing irrevocable trust.

Florida first enacted its decanting statute in Florida Statute section 736.04117 effective July 1, 2007. However, Florida has long recognized the concept of trust decanting at common law going all the way back to the Florida Supreme Court case of Phipps v. Palm Beach Trust Company, 196 So. 299 (Fla. 1940). Under the old statute and Phipps, a trustee could only decant to a new trust if the trustee possessed an absolute power to invade trust principal. Absolute power is a power to invade principal not limited to specific or ascertainable standards. For example, the ubiquitous distribution standard of health, education, maintenance and support is an ascertainable standard. This standard precluded a trustee from decanting a trust in Florida. Unfortunately, this was a commonly encountered barrier to a trustee exercising decanting authority.

The revised Florida decanting statute now allows for decanting when a trustee does not have absolute power. Each beneficiary of the first trust must have a substantially similar beneficial interest in the second trust. Substantially similar means there is no material change in a beneficiary's beneficial interests or in the power to make distributions. It also means the power to make a distribution under a second trust for the benefit of a beneficiary is substantially similar to the power under the first trust to make a distribution directly to the beneficiary. This adds a level of flexibility to the statute that did not previously exist: It allows a trust decanting as long as the distribution standards remain substantially similar between the trusts. Also, a second trust may now deviate on issues unrelated to the distribution standard; for example, trustee appointment provisions.

If the first trust confers a power of appointment on a beneficiary, the second trust must include the same power of appointment in

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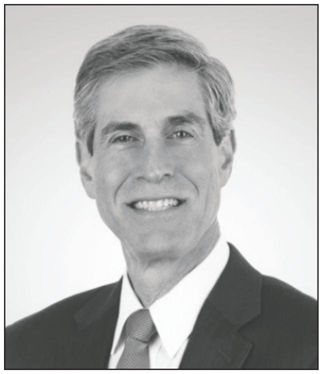
Reduce Your Heirs' Taxes via Basis Step-up Planning under the New Tax Act

By Leonard J. Adler, Esq. and Mark R. Parthemer, Esq.
Bessemer Trust

By now you've heard it many times – the current federal estate tax applies to only about one-tenth of one percent of all Americans. So it's no longer necessary to plan for taxes at death, right?

Unfortunately, planning has become more necessary and complex, not less. The increased estate tax exemption is temporary and other taxes must be considered. Even if the estate tax doesn't apply to you, favorable tax law permits the cost basis of assets for income taxes purposes to be adjusted to fair market value at death. But planning is necessary to take full advantage of the gift of "free" basis.



Leonard J. Adler

Mark R. Parthemer

Suppose Harry has $10 million of estate tax exemption and $8 million of assets with a $3-million cost basis. Harry's first wife and the mother of his four children, died years ago. He is now married to Sally. Sally has no significant assets of her own. Harry wants to take care of Sally financially after his death and have the assets pass to his children after Sally has died. What is the best plan?

Basis Adjustment at Harry's Death

Harry discussed this with Sally. She promises that if he puts his assets into joint name with her, she will leave the assets to Harry's children at her death. Ignoring the possibility that Sally could spend all of the money or lose it to creditors, there are two problems with that plan. First, as the years pass, Sally could change her mind and leave the assets to anyone, such as her children or her next husband. Second, only one-half the value of jointly owned assets receive a basis adjustment, leaving $2.5 million of gain to be taxed in the future.

If Harry is confident Sally will keep her promise, he could solve the second problem, but not the first, by keeping the assets in his own name and leaving them outright to Sally at his death, thus benefitting from a full basis adjustment. Harry could solve both problems by leaving his assets in trust for Sally, with the remainder passing to his children when she dies. There would be no estate tax, a full basis adjustment at Harry's death, and the assets would be protected for Harry's children.

Basis Adjustment at Sally's Subsequent Death

What if the trust assets appreciate to $16 million by Sally's death? A basis adjustment at her death could save Harry's children meaningful taxes, but would depend on the type of trust that Harry created for her. Since Harry's estate value was less than his exemption, he could have created a standard trust for Sally (i.e., didn't qualify for the marital deduction). There would have been no estate tax at his death, and the trust assets and all future appreciation would be excluded from Sally's taxable estate. However, there would be no basis adjustment at Sally's death, and Harry's children would receive the assets with $8 million of embedded capital gain.

Alternatively, if Harry had created a trust for Sally that could qualify for the marital deduction, it would create the option to cause the inclusion of the trust assets in Sally's estate. That would enable a second basis adjustment when Sally dies and eliminate all $8 million of the

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It Seemed Like a Good Idea Then, But Is it Time to Terminate Your Private Foundation?

By Cliff S. Gelber
Gerson Preston Klein
Lips Eisenberg Gelber

Cliff S. Gelber

The Private (non-operating) Foundation ("PF") is a useful tool for individuals or families with a strong philanthropic inclination. Benefits of creating a PF include obtaining immediate tax benefits from contributions, creating targeted planned giving through its charter and can provide a mechanism to get family members engaged in charitable giving, to name a few. There are other benefits as well, all of which create positive outcomes.

To use a PF, you must adhere to formalities that may require more time and effort than you are willing to provide. For example, you must attend board meetings, must comply with annual tax filings, and you must document grants that support its stated purpose. You are required to distribute as donations a minimum amount based on the size of the PF. You must comply with rules regarding, self-dealing, adequacy of investments and there are penalties for under distribution of grants. All of these rules require a degree of monitoring and fiduciary oversight. In smaller organizations, typically the Board depends on the accountants and attorneys to monitor and advise on corrections to avoid censure or loss of charitable status, resulting in additional administrative costs incurred.

After the 2008-09 recession many private foundations saw a decline in the value of their investments, and some have been unable to fully recover from the erosion in asset values. It is estimated that more than 150 private foundations had invested assets with Bernard Madoff, and we all now know those "investments" will never be fully recovered.

Statistics indicate that more than 60 percent of private foundations have assets of fewer than $1 million and almost the same percent make annual grants of $50,000 or less. All told, that's a lot of administrative burden, and fiduciary responsibility for a relatively small amount of corpus.

Once the PF has been established,

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Intergenerational Split-Dollar Arrangements: What's the "Big Deal"?

By R. Marshall Jones, JD, CLU, ChFC, AEP
Jones Lowry

The "Big Deal" is the IRS may have finally closed a huge estate tax loophole — the use of abusive "Death Bed" split-dollar arrangements to generate discounts of 90 percent or more for wealthy individuals with reduced life expectancies. The bigger deal, often overlooked, is that traditional split-dollar life insurance plans are a tremendous planning tool to fund estate tax-free trusts without paying gift taxes. But first, let's look at what most planners consider an overly aggressive split-dollar arrangement.

R. Marshall Jones

In *Estate of Cahill v. Commissioner,* a 2018 case, Mr. Cahill was 90 years old and in poor health when he advanced $10 million in premiums for policies on his son and his wife under a split-dollar insurance arrangement with his Irrevocable Trust. His Trust paid nothing for these trust-owned life insurance policies.

Why was the $10 million interest-free? Because Mr. Cahill's advisors selected the interest-free Economic Benefit (i.e., term insurance cost) option instead of the Loan (i.e., with interest) option. With the Economic Benefit method, the IRS says there's no imputed interest charge if you properly account for the Trust's Economic Benefit. Because Mr. Cahill paid everything, the Trust was deemed to have received an Economic Benefit gift of $7,578 for the year. Mr. Cahill reported that amount on his gift tax return.

What happened when Mr. Cahill died? When he died a year later, the estate valued the $10 million receivable at only $183,700! However, the cash surrender value was $9.6 million at the time. The IRS alleged a $9.6 million estate value and sought to impose an additional $2.2 million in penalty taxes. Mr. Cahill's estate asked the Tax Court to rule in its favor with a partial summary judgement. Summary judgement was denied. Instead, the Tax Court Memorandum provided a detailed analysis of the reasons for valuing the receivable at $9.6 million and referred the case back for trial.

Did the IRS win? Big time. Two months later, rather than go to trial, the estate accepted the IRS value of $9.6 million and agreed to pay a 20 percent accuracy-related penalty.

Observations

In our opinion, Cahill is a welcome outcome because abusive "Death Bed" Economic Benefit arrangements are simply wrong. You should expect an audit both with this type of transaction and with any scheme where the Exit Strategy is to cancel the policies after obtaining a valuation discount.

Two Safe and effective Split-Dollar Arrangements with Grantor Trusts

The good news is that there are safe split-dollar plans available to fund irrevocable trusts without paying any gift tax. Safety results by following the 2003 Final Treasury Regulations regarding split-dollar arrangements. Effectiveness results from using high quality life insurance contracts owned by flexible trusts that will be treated as grantor trusts for income tax purposes during life and will be estate tax-free when the grantor dies. Here are two examples:

■ **Example #1**: Guaranteed Level Premium 2nd to Die insurance policies with low or no cash value using the Economic Benefit Regime. The grantor advances premiums interest-free as long as both insureds are alive. The Trust pays the low Economic Benefit portion of the premium so that it will not have to pay loan interest. This al-

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Maximizing Trust Planning Advantages with Delaware Trusts

By Kalimah Z. White and Suzanne Holmes
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Kalimah Z. White

Suzanne Holmes

When it comes to estate planning, flexibility, control, and privacy are paramount to most. A significant advantage of using a Delaware trust is that it may provide many protections within one governing instrument. To illustrate, a settlor can transfer some of their assets into a self-settled asset protection trust and have them sheltered from most of their future creditors.[1] These trusts also permit the settlor to act as the investment advisor/trustee so that they can retain the authority to make investment decisions.[2] This same trust can also exist perpetually because Delaware has abolished the common law rule against perpetuities.[3]

Delaware law places significant emphasis on privacy. Delaware trusts are not required to file court accountings or register with the Delaware Court of Chancery, unless required in the governing instrument or by court order.[4] Furthermore, Delaware law permits "silent or quiet" trusts: the governing instrument can restrict a beneficiary's right to be informed of their interest in a trust for a period of time.[5] Such trusts can appoint a "designated representative" to receive trust information on behalf of a beneficiary, thereby diminishing concern regarding rogue trustees.[6] Silent trusts provide an additional layer of privacy and control for the settlor, especially where there is concern regarding the maturity and responsibility of future generations.

There are several reasons a client may need to modify a trust, including changes in law and family circumstances or a desire to update antiquated trust provisions. Delaware law provides several techniques to modify trusts, including decanting or merging trusts.[7] Under 12 Del. Code Section 3342, Delaware law permits modifying a trust, even trusts that specifically prohibit amendments, to include

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lows up to 99 percent of the Trust's other assets to be invested for estate tax-free growth. At the first insured's death, the Trust will repay the receivable either in cash or with an interest-bearing note.

■ **Example #2:** Increasing Cash Value insurance policies to insure family members individually or jointly using the Loan Regime. Each grantor loan can lock-in the long-term AFR (Applicable Federal Rate) for the life of the insured. The loan can be non-recourse and interest can accrue income tax free for the life of the grantor.

High-net-worth clients purchase permanent life insurance for the values they provide as an investment (i.e., Tax-Free Death Benefit IRRs or Lifetime Distributions of Cash Value). Estate planners use split-dollar arrangements to avoid paying gift taxes and loan interest when funding trust-owned life insurance. Great policies and great planning are always a "Big Deal."

R. Marshall Jones is a Principal of Jones Lowry and a non-practicing member for the Florida Bar, an Accredited Estate Planner, Chartered Advisor in Philanthropy, Chartered Financial Consultant and Chartered Life Underwriter. He is also a member of the M Financial Product Development Group. Jones Lowry is an independent M Financial life insurance planning firm specializing in innovative life insurance solutions for ultra-high net worth families including the analysis, design, implementation, funding and administration of life insurance portfolios. File #1458-2018.

Mystery Behind Cost of Insurance Increases Answered

By Adam D. Sendzischew and Sharon Lindsey
Jones Lowry

Have you or your client ever had a life insurance policy that failed? Have you ever wondered why? Well you are not alone. Most think that once they purchase a policy, it is "set it and forget it" as long as they pay their premiums. Sadly, that is often not true. This article will discuss one of the reasons policies fail.

Over the last 30 years, insurers have mostly left the cost of insurance (COI) element in a life insurance contract alone; only adjusting them periodically in response to economic environment changes and financial pressures. This has drastically changed since about 2015 when the prolonged impact of depressed interest rates gave carriers reasons to increase COI charges on inforce blocks of business, mainly Universal Life (UL) Contracts. Although these increases mostly have been within the contractually guaranteed limits, it has created concern with clients and advisors.

The effects of the prolonged low-interest rate environment

Insurers invest in highly-rated corporate and government bonds to meet their obligations to policy holders. Reinvestment risk, or the risk that the proceeds from bonds that are maturing may have to be invested at a lower rate than the original investment, has caused a major decline in carrier investment returns. This issue is magnified with UL policies since a primary driver of insurer profitability is the spread between investment yield and the interest rate credited to cash

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Sharon Lindsey

values. Lower returns have forced insurers to reduce inforce crediting rates which can cause problems with older blocks of business that were sold with higher guaranteed rates; 4-5% in the 80s, 3-4% in the 90s, for example, compared with 1-3% today. With treasuries and corporate bonds yielding 2-4%, insurers are being forced to subsidize the shortfall in older policies as General Account returns fall short of minimum guarantees.

A primary assumption in policy pricing is the prediction of future interest rates. Most carriers over the last decade predicted that rates would return to the normative curve of the yield curve. Unfortunately, this has not occurred. As a result, some carriers have increased COI charges, either openly or not so openly, to manage profitability. In addition, other factors such as higher mortality costs, higher reinsurance rates, lower lapse ratios, and adverse premium payment experience that historically were offset by higher investment returns, have amplified insurer pressure and led to a greater willingness to increase COI charges that historically have been left alone.

What can clients and advisors do?

Review! Review! Review! Advisors should request inforces annually to track the changes that are occurring in client policies. Look for historical changes in policy holder treatment. This may provide some guidance as to how they have managed non-guaranteed elements during other times of financial pressure. Also, senior leader comments may provide an alert regarding future inforce policy actions; e.g., will they be targeting COIs for increases, etc. If during a review, the projected performance is falling short of your clients' goals, consider doing some of the following:

- Reduce the face amount or increase premiums.
- Continue paying as planned and pay higher catch up premiums later on.
- If still favorably insurable, do a Sec. 1035 tax-free transfer of cash value to a new policy that is economically better.
- If uninsurable and increasing premiums is not an option, carefully

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Fundamentals of International Estate Planning

By Patricia A Giarratano
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Patricia A. Giarratano

The world is getting smaller and the laws pertaining to those subject to U.S. gift and estate tax (transfer tax) are becoming increasingly more complex. The U.S. estate tax applies not only to U.S. citizens, and U.S. citizens living abroad (known as expatriates) but also to U.S. permanent residents and non-resident aliens with U.S. situs assets. Residency is determined by a person's domicile or presence with the intent to remain indefinitely in the U.S. For transfer tax purposes, a noncitizen is a U.S. resident if he or she lives in the U.S. and intends to remain indefinitely. If, however, a person's intent is to return to his or her native country, that person is considered a non-resident alien (NRA) under the U.S. transfer tax law. A short review of the current U.S. estate tax regime may be helpful to understand the transfer tax consequences that apply to U.S. citizens, permanent residents and non-resident aliens.

All U.S. citizens and U.S. residents are subject to U.S. estate tax on their worldwide assets, with the first $11.2 million exempted from estate tax (the exemption amount is slated to sunset in 2026 and decrease to the pre-2018 exemption amount of $5.4 million). An unlimited amount may also be left to a surviving spouse if that spouse is a U.S. citizen, but if that spouse is not a U.S. citizen, the assets must given to a qualified domestic trust (QDOT) for that spouse's benefit to qualify for the unlimited marital deduction. In contrast, non-resident aliens are subject to U.S. estate tax only on their U.S. "situs" assets, with only the first $60,000 exempted from estate tax. Generally, U.S. situs assets include real estate located in the U.S., tangible personal property located in the U.S., shares of stock in U.S. corporations, and cash held with U.S. brokers.

There are two forms of international estate planning: inbound and outbound. Inbound planning is when a non-U.S. person invests in U.S. assets or contemplates a move to the U.S. Outbound planning pertains to a U.S. person that invests abroad. At death, a non-resident can transfer only $60,000 worth of U.S. situs property without paying U.S. estate tax and the top U.S. estate tax rate is 40 percent. As mentioned earlier, a non-resident is not entitled to an unlimited marital deduction, so transfers to a non-resident spouse are also subject to the $60,000 limit, unless the assets are placed in a qualified domestic trust (QDOT).

It is very common today for non U.S. persons to purchase real property in the U.S. for themselves or other family members. If U.S. real property is purchased in the name of the non-resident the property will potentially be subject to both U.S. gift and estate tax, barring a gift tax treaty with his native country. The current gift tax annual exclusion amount is $14,000 and therefore if a non-resident purchases a home for his or her child living in the U.S., the gift of real property could be subject to gift tax if it exceeds $14,000. A non U.S. resident might avoid the imposition of U.S. gift and estate tax by establishing a trust, in either the U.S. or a foreign country. Each has its benefits and disadvantages. U.S. law treats a foreign trust as a nonresident alien individual who is not present in the U.S. The gross income of a foreign trust that includes U.S. source income earned inside the foreign trust is not subject to U.S. tax. A foreign trust may be the preferred planning vehicle to hold real property or income producing U.S. assets when the beneficiaries are not U.S. citizens or residents. Another consideration may be purchasing U.S. real property in the name of a corporation if the nonresident does not plan on selling the property, as a sale may impose double taxation. It is vitally important for non U.S. persons to consult their accountants and attorneys prior to relocating to the U.S. to reduce overall taxation on their worldwide property.

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Your Life Changes: Is Your Estate Plan Keeping Up With You?

By Randell C. Doane
and Rebecca G. Doane
Doane & Doane, P.A.

The phrase "estate plan" is meant to encompass the comprehensive plan that addresses the manner of passing on your assets at death. However, many clients who initially set up an "estate plan" think of it purely as the set of documents that they sign. This is not the correct way to think about estate planning. We all know that simple things such as dinner plans or vacation plans are subject to change should your life circumstances change. Something as significant as your estate plan should be viewed in the same way. Because an estate plan is intended to ultimately go into effect upon your death or incapacity, it must be kept current. Otherwise, there is risk of having a plan go into effect that was created years ago and does not accurately reflect your family and financial situation.

The following are examples of some events which should cause you to revisit and evaluate your estate plan:

■ **Marriage or divorce.** The status of your property rights change significantly in either of these events. Spouses are generally entitled to economic rights in the other spouse's property which can severely restrict (and in some instances, completely eliminate) the ability to incorporate certain assets into an estate plan, at least not without obtaining the consent or cooperation of the other spouse. Conversely, in the event of a divorce, property is generally no longer subject to any

Randall Doane

Rebecca Doane

such rights.

■ **Birth of children**. Not only are there financial considerations (think planning for college or other wealth transfer events) but there are several non-financial considerations, such as who will be responsible for your children should you suffer incapacity or death and are unable to care for them yourself.

■ **Significant changes in income or assets.** Things such as significant payouts from investment activities or retirement are the most common, but also think of things such as receiving an inheritance or earning bonus compensation or an equity/incentive reward from your place of work.

■ **Moving states or acquiring real estate in another state.** Both of these events involve several financial and non-financial issues. Since so much of estate planning hinges on where you live (called your "domicile"), ensuring your plan takes into consideration the laws of your new home state is critical. Similarly, laws regarding ownership and transfer of real property are always governed by the state where the real property is located, so ensuring these potentially conflicting laws are addressed in your plan is a must. Lastly, each state has its own income tax and estate tax regimens, so these multi-state tax issues need to be addressed as part of your plan.

■ **Starting or selling a business**. While this might seem to fit under the "changes in income" category, there are additional issues to address, such as choice-of-entity for the business, the dynamics of business operation among co-owners, ownership/succession planning and the best means for accomplishing a business liquidation.

■ **Significant illnesses or medical issues.** While incapacity planning is almost always addressed in estate planning, sometimes a person's thoughts change as to how the issue should best be handled once a person is dealing with serious health issues firsthand. Additionally, if long-term wealth planning strategies are part of your estate plan, the onset of a significant illness or medical issue might require

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Designing Your Fountain of Youth: The Success Factors to Living Longer and Well

By Jennifer M. Eaton
Ballentine Partners

In elementary school, I played Spanish explorer Juan Ponce de Leon for a school play. Imagine an 8-year-old blonde girl dressed in tights, a homemade plaid skirt stuffed full with newspaper, and a white billowy blouse. My mother even penciled in a mustache and beard to perfect my authentic Conquistador ensemble! I didn't care that I was dressed as a man. I was eager to study Florida's rich history and learn about Ponce's journey to find Bimini and the Fountain of Youth, a supposedly restorative spring promising to improve lon-

Jennifer M. Eaton

gevity and health. I was fascinated by the fabled power of the Fountain of Youth and imagined how I could stay young forever. But alas, Ponce de Leon did not land in Bimini — he discovered Florida instead and he never did find the Fountain of Youth.

Fast forward 35 years and the search for the Fountain of Youth is still elusive, although as a society we are laser-focused on living longer and well. The United Nations describes longevity as one of the most "significant transformations" of the 21st Century. (Barratt, 2017) In fact, the number of older people – those aged 60 years or over – is growing faster than any other age group. (United Nations, 2015) With advancements in health and medical technologies, people are living longer and more healthy lives than ever before.

But longevity is an asset only if you know how to use it.

As a financial advisor working with wealthy families, the work I do planning for a client's later life has never been more important. Clients are typically eager to focus on addressing financial concerns like "will my assets sufficiently support me for the remainder of my life?" But there are important questions that go beyond financial considerations, like how and where will I best spend the days I have remaining, or where will meaning come from once the children are grown and my career has wound down? I find that I am spending more time with my clients working through these questions, allowing my clients to reflect on their goals and plan for how to best use these resources to ensure that they are aging well.

These are not easy conversations. In reality, contemplating mortality is a daunting task. Even more daunting is the task of planning for later life. But what if we could engage in a deliberate and thoughtful process with a singular purpose, to take control and design an ideal later life?

In *Aged Healthy, Wealthy & Wise*, my partner, author Coventry Edwards-Pitt, Chief Wealth Advisory Officer with Ballentine Partners, interviews vibrant and inspiring elders to uncover the intangible aspects of aging that contribute to their inspiring and youthful lives. In her work, Covie observed four "success factors" woven throughout her discussions. Those factors are Agency, Growth, Engagement, and Drive. By sharing these factors with you, I hope to inspire you to incorporate them into your own life.

Agency

The first success factor, agency, is about taking control of your life and making your life your own. Agency is the deliberate act of doing something. It is not sitting idly by and waiting for life to come to you. Covie's conversations reveal that the most vibrant and inspired elders possess a "mental toolkit" stocked full with perspective, positive attitude, gratitude and humor.

Growth

The second success factor, growth, is about continual learning and how to adapt to and manage change. Change at any age is difficult. Change in our later years

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Beware of Filing Requirements for Offshore Holdings

By Nancy Crowder-McCoy and Stephanie Murray
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Nancy Crowder-McCoy


Stephanie Murray

Understanding required disclosures and filings related to offshore holdings is imperative in order to remain compliant with the IRS and to avoid potential significant penalties. With the 2010 implementation of the Foreign Account Tax Compliance Act (FATCA), foreign financial institutions are required to report information on the financial accounts of U.S. holders. In addition, "U.S. persons" are required to report their foreign financial accounts and foreign assets to the IRS depending on the account value. The purpose of FATCA is to prevent "U.S. persons" from using offshore accounts to avoid U.S. taxation. "U.S. persons" that fail to comply will be subject to civil monetary penalties and the potential for criminal penalties. FATCA applies to U.S. residents as well as U.S. citizens and green card holders residing outside of the U.S.

"U.S. persons" should be aware of the following reporting obligations:

■ **Report of Foreign Bank and Financial Accounts (FBAR)** - U.S. taxpayers must report their foreign financial accounts to the Financial Crimes Enforcement Network (FinCEN) on Form 114. The FBAR is an annual report required to be filed by a "U.S. person" that has a financial interest in or signature authority over a foreign financial account if the aggregate value of all of the foreign financial accounts exceeds $10,000 at any time during the calendar year. A "U.S. person" includes U.S. citizens, resident aliens, trusts, estates and domestic entities that have an interest in foreign financial accounts. The filing requirement covers many types of foreign accounts, including bank accounts, securities accounts and certain foreign retirement arrangements.

Note: The penalty for willfully failing to file the FBAR can be as high as $100,000 or 50% of the account balance of each foreign account.

■ **Statement of Specified Foreign Financial Assets** - Form 8938 is required to be filed with the income tax returns of certain individuals or domestic entities that have an interest in specified foreign financial assets and the value of those assets is more than the applicable reporting threshold which varies depending on filing status and whether the taxpayer lives abroad. For married individuals living in the United States and filing a joint return, the reporting threshold is met if the total value of specified foreign financial assets is more than $100,000 on the last day of the tax year or more than $150,000 at any time during the tax year. For a specified domestic entity, the reporting threshold is $50,000 on the last day of the tax year or more than $75,000 at any time during the tax year.

■ **Ownership Interests in Foreign Corporations** - If you meet the ownership or control thresholds and are a "U.S. person", you must complete certain schedules and file Form 5471.

■ **Ownership Interests in Foreign Partnerships** - "U.S. persons" who own at least 10 percent interest in a controlled foreign partnership, contributed property in exchange for an ownership interest, or acquired, disposed or had a change in an interest that affected the 10 percent threshold, must file Form 8865.

■ **Making Payments of U.S. Source Income to Foreign Persons** - Generally, these payments require withholding of taxes on the foreign person and payment of the withheld taxes to the United States Treasury. This applies if you are

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Life Insurance Premium Funding: What to Look Out for and How to Implement

By Joseph A. Kawczenski
Financial Architects Partners

With life insurance policies, policy owners highlight two very significant items – cash surrender value and death benefit. However, without proper and monitored policy funding (premiums), the cash value and death benefit can become irrelevant (policy lapse).

With any financial instrument, the purpose and reason for allocation is the first question that should be posed. If you are looking for access to policy cash values and flexibility over your lifetime, it helps to think of an insurance policy as "living insurance." Conversely, if the focus is on maximizing the death benefit for your family, paying as little premium as long as possible may maximize the internal rate of return (IRR) of premiums paid to death benefit when the benefit ultimately pays out.

Joseph A. Kawczenski

Cash Value Focused Life Insurance

Typically, our clients use cash value focused life insurance as a cash alternative to capitalize on the unique tax advantages of life insurance. Assuming a policy is not a Modified Endowment Contract (MEC), the policy can be accessed basis first or "first-in-first-out" (FIFO). This allows the return of principal without any tax, even if there is gain in the policy. Policy cash values over and above the basis can be accessed through a tax-free policy loan, or used as collateral for a third party loan (cash values can often be credited up to 95% collateral).

In a cash value focused policy, the best practice is to "solve" for the amount of cash or cash alternatives to be allocated into a life insurance policy over a five-year period to avoid MEC status. The death benefit is then calculated to be the lowest allowable under the tax code. On a single life policy, withdrawals can be taken in the eighth policy year (check with your agent and tax professional). If it is a survivorship policy, you have to be extremely careful when taking withdrawals to ensure that the policy is not calculated as a MEC retroactively.

Death Benefit Focused Life Insurance

The other end of the spectrum that our clients use life insurance is pure death benefit. So-called "no lapse guaranteed policies" have little or no cash value. The death benefit is fully guaranteed as long as the premium is paid on time (and the carrier is solvent). The premiums are entirely flexible to the policy owner, as long as the minimum amount to continue the policy is paid every year.

In these types of policies, we often see a lifetime or graduated premium schedule. This increases the IRR on the policy death benefit at the time it pays out. Policy owners are allowed to prefund the guarantees, but this decreases the IRR at life expectancy. We often advise our clients to allocate a "one-time" premium (or their remaining lifetime exemption) into an irrevocable life insurance trust, and have the trust account invested with a money manager, and a portion of the income used as ongoing premiums. This type of insurance program requires constant oversight and an insurance adviser that is capable of post-policy service. Look for firms that have defined roles of a client service adviser or the like.

What You Need to Do

In the case of existing insurance portfolios, consult your trustee, insurance adviser, or other family resource to inquire about future policy performance. Request multiple illustrations at varying interest rates and payment schedules. For

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Man-Made Diamonds Vs. Natural Diamonds

By Art Samuels

Should you purchase a man-made diamond or a natural one mined from the Earth? Are they both real diamonds? Are they identical? Will they both hold their value into the future? Which would you want to give as a symbol of your love?

Natural diamonds were created billions of years ago, approximately 100 miles below the Earth's surface. There, carbon was subjected to extremely high temperature and tremendous pressure, and was transformed into crystallized carbon, and a diamond was formed. Most of these diamonds could never have reached the Earth's surface, except for very rare cases millions of years ago, when volcanic eruptions passed through diamond rich ore and carried them up. These natural diamonds exemplify the beauty, rarity and uniqueness of nature at its best.

Man-made diamonds, often referred to as synthetic diamonds, lab created, or lab grown diamonds, are grown today in massive factories in China, India, Russia and other countries. Since almost all diamonds today are manufactured in factories, "factory grown" is a more appropriate term. These diamonds are in fact real diamonds, however to state that they are "identical" to natural diamonds is not true. Factory grown diamonds are generally produced within days, and their differing characteristics make them detectable and identifiable by labs and trade professionals using commercially available equipment. These factory grown diamonds are

Art Samuels

also carbon that has crystallized. Carbon is one of the most common elements known to man, occurring in abundance in the Earth's crust and in gases. The fact that the supply of carbon is endless and cheap, and the fact that the ability to build more diamond producing factories is unlimited, bodes ominous implications for those purchasing these diamonds today.

Diamonds possess unique characteristics. They are by far the hardest substance known to man. Only a diamond can scratch another diamond. Also, diamonds are the best conductors of heat. These two sought after characteristics cause most factory grown diamonds to be used for cutting and drilling equipment, and for laser and electronics purposes. It is only during the last decade, when factory grown diamonds have become larger and cheaper, that they have been marketed for use in the gem and jewelry industry.

An interesting and pertinent analogy compares natural and man-made rubies. Over 100 years ago, when man started making rubies, natural rubies had been prized for centuries by royalty, and were highly valued. They were considered the gem of love, energy, passion, and power. Recently at Sotheby's a 25 carat natural ruby sold for 30 million dollars, or over a million dollars per carat. About the same time, a man-made ruby weighing 34 carats sold for less than 30 dollars, or less than one dollar per carat. They were both rubies, both had the same chemical composition, the same hardness, the same beauty and other physical properties. They could only be identified as man-made or natural by experts. In spite of the man-made ruby's low cost and plentiful availability, the price of natural rubies remained unaffected. There are similar examples with every gemstone, including emeralds, sapphires and even pearls. Pearls that are natural, created completely by nature, are today commanding astronomical prices. Pearls that have been cultured and grown on pearl farms have seen their prices drop considerably. This is in spite of the fact that natural pearls are generally not as beautiful, and they must be sent to a lab to be identified. We see many examples of consumers paying huge premiums for the natural gem, even though the corresponding man-made gem has little value.

There are stones that look like diamonds, but are not diamonds, that are also being marketed. These are called diamond simulants. The most common and recognizable simulants are CZs (cubic zirconias)

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A Tax Planning Strategy for the Migratory Client

By David Reynolds
Spearhead Capital, LLC

You wake up Jan. 1. If you have been on top of your estate and tax planning this past year, more than likely your attorney has revised your estate planning documents in light of the Tax Cuts and Jobs Act. To the extent you qualify, perhaps you have likewise shifted additional assets outside of your estate with the doubling of the Federal gift and estate tax exemption. Your planning appears to be running on auto-pilot…or is it? Are there other planning strategies you might consider?

In today's shifting planning landscape, an increasingly common refrain is that "income tax planning is becoming the new estate tax planning." Indeed, while high net worth clients are wise to update their existing estate plans, many clients and their advisors also would be wise to consider tax mitigation/deferral strategies, especially as it pertains to highly-taxed investment assets.

David Reynolds

One consideration high-net-worth clients ($30 million-plus in investable assets) may wish to explore is Private Placement Life Insurance ("PPLI") or Private Placement Variable Annuity ("PPVA").

PPLI and PPVA are comprehensive wealth management tools offered by certain domestic as well as offshore insurance companies that allow clients to invest on a tax-advantaged basis through variable insurance products. When properly structured, they allow high net worth investors as well as some institutional clients to defer and/or eliminate taxes on the growth of assets held within the policy.

Of note, clients sometimes utilize these structures to invest in tax-inefficient asset classes, thus allowing clients to compound their wealth much more effectively over the long term than otherwise can be achieved by investing on a traditional "taxable" basis. Further, when structured properly, PPLI also allows individuals to transfer wealth to future generations in a tax-efficient (income tax, estate tax and GST tax-free) and asset protected manner.

Generally, these products carry significantly lower overall upfront and annual cost structures when compared to traditional insurance products. In fact, policy-specific terms, death benefit, and fees (including all compensation paid to the carrier and insurance agent) are typically negotiated and disclosed to the client upfront. Further, these products often do not charge a penalty for early surrender.

Unlike most traditional insurance products, clients can gain exposure to a broad mix of potential investments via the contract, including mutual funds, hedge funds, private equity, private credit, real estate, MLPs, and other real assets (provided certain Internal Revenue Code rules are met).

In the case of a PPLI contract, the client must select an insured (typically some combination of the family patriarch, matriarch, or other immediate family members) to undergo a standard medical and financial underwriting. Depending on the carrier used, medical underwriting may need to be completed offshore.

In exchange for one or more premium payments from the client, an insurance carrier issues a PPLI (life insurance version) or PPVA (variable annuity version) contact. The premium payment, or cash used to fund the policy by the client, is deposited by the carrier into a segregated investment account linked to the contract - also known as the policy's "cash value" account. In the case of PPLI, the contract also provides a corridor level of death benefit in excess of the policy's cash value.

Further, unlike with traditional life insurance, the cash value investment account assets of PPLI and PPVA are considered segregated from the general assets and liabilities of the insurance carrier. Additionally, if structured as a non-MEC (modified endowment contract) policy, the client retains the ability to access liquidity (via tax-free loans) from the policy

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Does Bitcoin Belong in a Well-Rounded Investment Portfolio?

By Cory F. Lyon
TFG Financial Advisors

Having a good investment portfolio is part patience and part comprehension of the current state of the economy. An important piece of the puzzle is: Where is the money and where is it going? The latest wave of curiosities comes in digital form, like crypto-currencies. Think Bitcoin, but also Ethereum, Ripple and Litecoin! Everyone is asking if it's a scam, a risky gamble, or a future windfall worth considering for investments?

The short answer: All three. The long is answer is a bit more complex.

Let's start with what "cryptos" are not. They are not imaginary money. Cryptos (the real ones at least), are a form of ledger technology that records transactions, whether it's sales, accounting ledgers, proxy votes for corporations, or classified information. That information is then protected behind layers of encryption and is verified on a peer-to-peer network of computers around the world. It is decentralized, meaning there is no single computer to hack, or computer to steal to obtain the information. Blockchain technology is transparent and incorruptible.

Cryptos have value, which means they can certainly be profitable. For accounting purposes, they are not "currency" but treated as assets. In the eyes of the IRS, when you buy or sell there is basis, and a loss or gain.

So is it a scam you ask? No, not really. But there are scam "coins" out there, companies that invented

Cory F. Lyon

some coin or fraudulent crypto-currency to falsely entice you into giving them money with no intention to provide the ledger or to continue encryption. Scams are prevalent in any industry, especially in any digital industry, where it is easy to remain anonymous and transactions are instantaneous. So naturally scam artists and crooks jumped on the crypto boom of the last few years. Remember, when evaluating any investment, it is important to be cautious and properly educated.

Having been invented in 2009, at this point crypto-currency as a concept is not a gamble. It has proven itself to be of value, being adopted for use in several banks and many other businesses for obvious reasons. However, betting on an individual crypto-currency could be seen as risky. Betting on retail stocks could be seen as risky too. Back in 1995 picking Amazon instead of Sears was a gamble. Retail is still with us (and so is Amazon) but Sears is closing its doors. It's the same with crypto-currencies: The technology will not go away, but who knows for sure today which "coin" will be victorious and become the most valuable?

Why are cryptos so volatile? Well the simple answer is there is no good metric for its valuation. People are either buying it in the hope that eventually the valuation of the crypto will be higher than what it was purchased for, or they are selling it because they do not believe it will go any higher than what it is currently worth (which is generally what happens with short-term investors when the fascination with any investment wears off).

The important question to ask your financial advisor is: Should crypto-currencies be a part of a well-rounded investment portfolio? In today's market, it is still a high-risk investment with potential for significant loss. Most investors continue to have difficulty understanding what it is or how to obtain it. You cannot simply ask a broker to put it in your investment account. You need to open an account with a crypto-currency trading desk, fund the account, and trade from there. This necessitates more research into the different providers to make sure they are not fraudulent. All that being said, even if you have a high tolerance for risk, crypto-currency should not represent a significant portion of your investment portfolio.

The point is, everyday new technology, investment products, and financial opportunities present themselves, each ultimately bring-

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Trusts and Pass-Through Businesses May Qualify for Big Tax Breaks in 2018

By Adam Slavin, CPA
Berkowitz Pollack Brant's Tax Services

The new tax law that went into effect in 2018 offers owners of domestic businesses and beneficiaries of trusts and estates the potential for significant tax savings. This is based on a wide variety of factors, including their lines of business, the legal structure of their companies and trusts, and their taxable income. Maximizing these opportunities, however, will require the guidance of professional accountants who understand the law's complex, convoluted and still evolving set of rules.

Adam Slavin

Under the Tax Cuts and Jobs Act, pass-through businesses organized as LLCs, partnerships, S corporations, or sole proprietorships can potentially receive a tax deduction as high as 20 percent of the qualified business income (QBI) that passes from their businesses or trusts through to their personal income tax returns.

What is QBI? QBI is a new concept that refers to the net amount of U.S.- source income, gains, deductions and losses effectively connected with a taxpayer's pass-through businesses, trusts or estate. QBI includes qualified dividends taxpayers receive from real estate investment trusts (REITs), qualified cooperative dividends, qualified income from publicly traded partnerships (PTP), and income generated from rental property or from trusts and estates with interests in qualifying entities. QBI does not include foreign income, investment income, interest income, capital gains and losses, and wages that owners/partners earn as employees of those businesses.

For tax years 2018 through 2025, the maximum amount a qualifying business owner, trust or estate may deduct is the lesser of:

- 20 percent of QBI from each of the taxpayer's trades or businesses plus 20 percent of the taxpayer's qualified REIT dividends and qualified PTP income; or
- 20 percent of the portion of the taxpayer's taxable income that exceeds the taxpayer's net capital gain.

While it may appear that the QBI deduction is a huge win for business owners and trust beneficiaries, it is important to note that there are several exceptions to the rules.

Limitations Based on Type of Business

The QBI deduction is subject to further limitations or completely unavailable when taxpayers are considered specified service trades or businesses (SSTBs) that provide services in any of the following fields:

- accounting,
- actuarial science,
- athletics,
- brokerage services
- consulting,
- financial services,
- health,
- investing and investment management, trading, or dealing in securities, partnership interests or commodities,
- law,
- performing arts, or
- any trade or business in which income is derived directly from the taxpayer's fame or celebrity from.

However, the law does provide an opportunity for these types of excluded businesses to qualify for the QBI deduction when:

- Taxable income is less than 157,500 for individuals or $315,000 for married filing jointly the full 20% deduction is available. The deduction phases out completely when taxable income exceeds $207,500 for individuals or $415,000 for joint filers.
- Annual gross receipts from all operations are less than $25 million, and less than 10 percent of that amount comes from SSTB

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Communication: Key to Successful Transitions of Family Wealth and Values

By Cary Stamp
Cary Stamp Company

One of the great lessons I have learned from my experience as a business owner is the critical need to always have a backup plan. Being strategic positions us to get in front of real issues that arise and enact change with clear focus rather than forcing a reactive approach to unanticipated situations.


Cary Stamp

In business, we think about things like "what will we do when a key employee departs?" and "how will we handle succession in the event of a pre-mature death?"

Fortunately, many of us have addressed these issues as business owners and some of us have addressed them with our families, regarding how to transition the family wealth. Unfortunately, the planning we do for our business and the time we spend preparing our employees is usually far more comprehensive than the effort we make to prepare our families for the eventual transition of our business, wealth and values.

The statistics are staggering on this subject and they cross generational and cultural boundaries. For families that acquire significant wealth, that wealth is almost always dissipated in three generations or less! More than 90 percent of the time this is true. We often will spend time doing strategic and technical planning to save taxes or optimize the amount that can be passed to beneficiaries, but how much time and effort goes into training the beneficiaries to be responsible heirs and good stewards of the family fortune? Usually, very little is communicated and when a generation passes, the children are left with substantial money but few skills to manage the financial capital of the family.

We advise that wealth management training for family members be approached in a manner much like how a successful business plans and trains its next generation of talent. This model fosters critical sharing of knowledge and important values between parents and their children. It affords children important insight into the type of wealth they will be required to shepherd. This begins with a clarification of the family's values and ideally a family mission statement. In many cases, the first generation has skimped and saved to start a successful enterprise, but the second generation has rarely felt lacking in any material sense. This often can lead to disastrous false impressions that the resources are unlimited, yet preservation of the family wealth — with proper training — can be a simple task realized.

The academic and anecdotal research on this subject has found that the answer is simple: COMMUNICATE. Parents need to speak with their children about their estate and succession plans. Children need to be willing to assist in the process by embracing the family values, showing a willingness to lead and acquiring the work experience and intellectual capital (education) to carry the family into the next generation. Communication of family values and family history also has the effect of reducing the feeling of entitlement in the younger generations. Many business owners are the first generation of their family to have financial resources. They were raised with experiences that were very different than what their children experienced.

One of the most effective communication strategies is to hold an annual family meeting. This is not a "DIY" undertaking. At most family meetings, the services of an experienced facilitator are vital. This can be a highly trained financial advisor or a therapist who has the knowledge to tackle family business issues. In many cases both a financial advisor and therapist serve as team facilitators. The ideal setting for this meeting is on neutral ground, outside of the family home or corporate offices, with key stakeholders invited. The facilitator works with the family to set the agenda. The first meeting normally lasts anywhere from five to eight hours and covers a broad range of topics including: the succession plans, family philanthropic efforts, developing a family mission statement and a discussion of the family history.

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Using a Medicaid Asset Protection Trust®

By Darren J Mills, Esq., CPA, ChFC®, CLU®
Mills Elder Law LLC

I became an elder law attorney by becoming a caretaker for my mother who was suffering from dementia and Parkinson's. My parents were born during the Depression and never thought they would live to be 65, much less into their 80s. Fortunately, my mother had a long-term care ("LTC") insurance policy ("LTCi"). When it comes to asset protection, insurance is your first line of defense (e.g., LTCi in our context). The majority of the population does not have LTCi and pay for LTC out of pocket.

Ten thousand people a day are turning 65-years young with this

Darren Mills

trend continuing until 2030, causing a major shift in the demographics. People are living longer, and longevity planning is critical to make sure you don't have too much life at the end of your money. A female turning 65 has upwards of an 80 percent probability of needing LTC. From a financial perspective, would you invest in something where there was an 80 percent probability of losing money? No matter what your financial situation, most people are not willing to lose hundreds of thousands of dollars even if you can "self-insure." LTC is big business! It is obvious when you drive around and see the assisted living communities and/or skilled nursing homes being built.

A viable tool in a practitioner's toolbox for asset protection planning for LTC is a Medicaid Asset Protection Trust® ("MAPT"). Think of a trust as a treasure chest. With a revocable trust (a/k/a "living trust"), an asset can be placed in the treasure chest, and just as easily, can be removed from the treasure chest. The main benefit of a revocable trust is avoidance of probate, which in Florida can be a time-consuming, expensive process. A revocable trust does not provide any Medicaid benefits; therefore, the first requirement for a MAPT is the trust must be irrevocable.

With an irrevocable trust, once an asset goes into the treasure chest, it can check-out, but it cannot leave (putting aside processes like "decanting"). Irrevocable trusts are used for estate tax planning as well as domestic asset protection trusts.

This brings me to my first philosophy that I share with my clients. Bill Gates can theoretically receive Medicaid, but he would need 61 months to make that happen (unless you are a California resident). The point here is, no matter your net worth, obtaining Medicaid is possible. For people who may not otherwise be insurable, this could be the only way of being insured as Medicaid is an insurance program. Since Congress does not want Bill Gates to give away all of his assets and get Medicaid tomorrow, Federal law has a 60-month lookback to penalize anyone who gives away an asset for less than its fair market value (i.e., for Medicaid there is no annual exclusion like there is for gift tax). Florida has adopted the Federal 60-month lookback period. Ideally, the MAPT is established during a period where the probability within 60-months of needing LTC is low (e.g., a 70-year old vs. an 85-year old).

In addition to being irrevocable, a MAPT must not allow you (grantor) to have access to the principal as that would defeat the purpose of the MAPT, Medicaid would correctly assert that the asset in the trust is an available asset for Medicaid. Ideally, the MAPT also does not allow the grantor access to the income while mandating income distributions to the lifetime beneficiaries (typically the children). Another requirement is that the grantor cannot be the trustee; therefore, typically one (or more) child is the trustee and also the beneficiary(ies). The MAPT usually includes a "spendthrift" clause which offers creditor protection against claims of the beneficiaries while the asset resides in the trust.

The MAPT is typically structured as a grantor trust for tax purposes (i.e., it doesn't exist for income tax purposes) and included in your

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What Is My Jewelry Worth?

By Hank Siegel
Hamilton Jewelers

Sometimes, estate planning can be daunting and the importance of current and accurate appraisals for your fine jewelry and timepieces might be overlooked. Why get updated appraisals in connection with estate planning? There are many good reasons.

1. A professional appraisal provides you professional support to defend against an IRS audit.
2. The costs of appraisals are deductible expenses on estate tax returns and sometimes in estate planning (e.g., family limited partnerships).
3. An accredited appraiser can help you determine which pieces in your collection require a full report. He or she can also help catalog and identify your collection.
4. Often the appraiser can assist an attorney in structuring an estate plan that will maximize the tax benefits for the client by providing the attorney with a "value" point of view.
5. The appraisal can provide a benchmark of value for an asset or collection, so that subsequent appraisals will reassure the growth (or decline) in value.

A jewelry appraisal can be done on any item of jewelry, regardless of the composition, style, or condition. The purpose of a jewelry appraisal is to assign a precise value, precious metals and gemstone markets fluctuate, so it's critical to update your fine jewelry appraisals every three years.

Jewelry and watches may comprise a sizable portion of your

Hank Siegel

personal assets, and knowing their value is critical to any financial plan. Just like the other professionals on your financial planning team, it's important to work with a qualified and accredited appraiser to ensure that this asset class is properly managed, and that the proper valuation method is applied.

You may spend your life building your collection and your heirs often have no indication of what to do with them. Should the pieces be bequeathed? Should they be converted to cash? Should they be donated? When should these actions occur? Like any other asset, the proper dialogue with a professional is necessary to make sure the correct decisions are made.

What should you look for in a jewelry appraiser? First, the skills of a Graduate Gemologist (GG) are required to accurately identify and grade the components of the item including stone types, their weights and grades, metal type and how the piece was constructed. Once the work of the gemologist is finished, the work of the appraiser can begin. To properly assign a value to an item requires additional training in valuation and report writing. These are the skills of a Certified Gemologist Appraiser (CGA), American Gem Society. While GG's can provide you with information about your jewelry, it is not enough to simply know what you have. To determine the worth of your jewelry you need the additional skills of a CGA. Your appraiser also needs to be certified with the most recent standards of the Uniform Standards of Professional Appraisal Practice (USPAP) to ensure they meet the ethical and performance standards for an appraisal professional in the United States. Your appraiser and appraisal both should be USPAP compliant.

What if you want to donate jewelry to charity for a tax deduction or the items need to be valued for estate tax? This requires a different type of report and valuation. The IRS has very specific rules for a "Qualified Appraiser" and for the report itself. An appraisal that is USPAP compliant is a requirement for any appraisal where a Federal agency may be a user of the report. A qualified appraiser is an important part of your estate tax compliance team to assure that the tax liability is calculated properly or that distribution to beneficiaries is fair.

Hamilton Jewelers employs professional appraisers that have extensive experience and credentials in all matters regarding appropriate appraisal protocol. Our

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Charitable Gifting With Donor-Advised Funds

By Ben Lasater
United Capital Financial Advisers

Donating to charity is a great way to get involved with a cause that is close to your heart. There are many ways to pursue charitable goals. Donating your time, personal property, investments, and cash are some of the most popular options available. However, many are deterred from charitable gifts because they are either undecided on which charity they'd like to give to, or unable to make a cash donation.

Let's take a deeper look at one charitable vehicle that allows you to gift personal assets today, receive a charitable deduction today, and choose a charity whenever you're ready. A donor-advised fund empowers the philanthropic to take advantage of the tax deductions of an irrevocable charitable gift while maintaining the funds in an account that they can later grant to a charity or multiple charities of their choice.

Ben Lasater

The process varies among donor-advised funds but the basics are similar. First, the donation is made to remove the assets from the estate of the grantor. Then, the assets are liquidated to create a pool of funds that can be invested with the potential to grow tax-free. Finally, the assets are available to be granted to a charity or multiple 501(c)(3) charities.

Benefits of a Donor Advised Fund

■ Support multiple charities, at virtually any time, with a single contribution.

■ Take an immediate tax deduction for your contributions — separating the timing of your tax deduction from your charitable support.

■ Create the ability to contribute stocks, mutual funds, and non-publicly traded assets, such as real estate, which other charities may not be able to accept.

■ Streamline your recordkeeping and consolidate tax receipts in one location.

■ Serve as a valuable estate planning tool to support your legacy goals.

Maximize Your Gifts and Your Deductions

Consider this example: Without gifting to a donor-advised fund at federal long-term capital gains rate of 23.8%[1] selling securities that are currently worth $450,000 with an original cost of $300,000 would net $414,300 cash donation. Conversely, donating the $450,000 in appreciated securities to a donor-advised fund would net a $450,000 fund bucket and deduction. That's a $35,700 increase in the amount available to gift to charities of your choice with the additional benefit of allowing the funds to potentially continue growing.

What You Can Donate to a Donor Advised Fund

■ **Cash**: A cash donation can be invested in a donor advised fund with the potential for growth, tax-free, providing additional funding for your favorite charities.

■ **Stocks and other securities**
- Publicly traded stocks
- Mutual fund shares
- Bonds

■ **Privately held business interests**
- Private company C-corp, and S-corp stock
- LLC & Limited Partnership interests
- Private equity
- Pre-IPO shares

■ **Other non-publicly traded assets**
- Restricted stock
- Real estate
- Bitcoin
- Oil and gas royalty interests

Talk to a Financial Planner

Part of knowing how to donate is understanding how much you can afford to give, which can be difficult. Four in 10 donors surveyed by Fidelity Investments were conflicted about whether to hold on to money for personal needs or donate it to charity.

However, your financial planner can help you identify and work toward your charitable goals, alongside the rest of your financial goals.

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ensure proper administration is to make sure your estate planning documents address any digital assets. The conclusion is simple because not every provider offers a specific online tool (and likely, many users are unaware how to access it) and relying on terms of service can have an undesirable outcome.

With any estate planning matters, it is important to be proactive and consult with your attorney for guidance.

Joseph C. Pauldine is a Senior Vice President of Cypress Trust Company. Mr. Pauldine assists individuals and their families with custom investment management solutions and trust administration services. He received his B.S. in Business Administration from Old Dominion University.

Cypress Trust Company is a boutique corporate fiduciary that focuses on creating customized investment strategies, serving as a corporate trustee, personal representative or agent during estate settlement and as an administrative trustee for clients already committed to an investment plan.

SCHNEIDER

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Lisa A. Schneider is the Co-Chair of the Private Wealth Services Group at Gunster. She is a Board Certified Trusts and Estates attorney and concentrates her practice in estate and trust planning for high net worth individuals. She advises Firm clients on their personal and business needs, including business succession planning, charitable planning, the management of wealth that passes from one generation to another, and tax reduction strategies, among others.

PIERSHALSKI

From Page 9

between the shareholders often offer the best indication of the value of the subject interest. But, while binding parties to the agreement, the court is free to consider other factors when determining value in the context of divorce.

Shareholder loans and personal guarantees

Does your family business have shareholder loans on the balance sheet? Shareholder loans are a debt-like form of financing provided by shareholders to the business. They are considered personal assets includable in the marital estate, so they will need to be valued along with the family business. Shareholder loans are typically not worth their face value or unpaid balance. They are a contract to repay a debt in the future under specified terms. The amount and timing of the future payments as well as the current interest rate environment, strength of the borrower, and underlying collateral must all be taken into consideration before determining an estimated value. However, what if the shareholder loans are not really loans at all but capital contributions in disguise? There is considerable ambiguity from state to state regarding whether shareholder-level discounts are appropriate in business valuations prepared for divorce. Therefore, the reclassification of shareholder debt as equity can result in discounts and the loss of marital asset value.

Many questions need to be answered when classifying shareholder notes as debt or equity. They include:

- Has the obligation been formalized in writing?
- Is repayment unconditional with a fixed repayment schedule and reasonable interest rate?
- Is the loan collateralized and does it include default provisions?
- Does the company generate sufficient cash flow to repay debt obligations?
- Are the shareholder loans subordinated to other sources of debt financing?

These factors are not exhaustive, and the absence of one or more would not necessarily result in a reclassification, but help to determine the intent of the party making the loan.

Personal guarantees are more often than not required to obtain bank financing for small and mid-sized businesses. In some instances, debt is only extended because of the personal guarantee or pledge of personal assets. The possibility of releasing a guarantor needs to be addressed with the company's bank before finalizing a divorce agreement.

These are just a few of the many complicated issues your attorney and business appraiser will address on your behalf. While the inclusion of a family business in your divorce proceedings can make things a bit more complicated, working closely with your advisors and business appraiser will help you make the most informed decisions as you embark on this new chapter of your life.

Karen Piershalski provides business valuation of closely held businesses for Wilmington Trust's Business Owner Advisory group, which develops wealth planning strategies for business owners. Please contact Diane McNeal, Vice President and Private Banking Regional Managing Director, at 561.630.2103, or dmcneal@wilmingtontrust.com.

This article is not designed or intended to provide financial, tax, legal, accounting, or other professional advice since such advice always requires consideration of individual circumstances. There is no assurance that any business/estate planning or investment strategy is suitable for a specific business or investor. Wilmington Trust is a registered service mark. Wilmington Trust Corporation is a wholly owned subsidiary of M&T Bank Corporation.

HEIN

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long-term care and the inability to raise premiums in the long-term care annuity products are further advantages over traditional long-term care. Long-term care coverage in all forms helps with financial costs and additionally helps to ease caregiver strain and contribute to both quality of life and peace of mind.

Steven Hein C.P.A., J.D., M.B.A, LL.M., PFS, CFP® of Hein Wealth & Tax Solutions LLC is an independent financial planner. He works with individuals, families and business owners to help them develop a strategic, long-term financial plan that helps them achieve their financial objectives. He helps clients fully understand all of their options.

Long-term care insurance benefits may be subject to limitations, waiting periods, and other restrictions. Guarantees and benefits provided by life insurance products are subject to the claims-paying ability of the issuing insurance company.

KOHNER

From Page 11

allowed. This includes aviation expenses, regardless of whether they are directly related to a business discussion, unless such benefits are treated as taxable compensation to an employee (or includible in gross income of a recipient who is not an employee).

Prohibition on Deduction of Employees' Commuting Expenses

Distinguishing between business travels and commuting has now become extremely important. TCJA now prohibits employers from deducting the cost of providing transportation to employees to commute between the employee's residence and place of employment, unless it is provided for the safety of the high level executive employee. Most travel to or from business locations, other than an executive's primary place of business, may not be considered commuting even when such travel originates or terminates at the executive's residence. In such cases, the flights should be considered business travel. For income tax purposes, the word "home" typically refers to the person's regular or principal place of business, not to a person's primary residence. All the facts and circumstances of each particular situation will need to be considered.

Like-Kind Exchanges

The TCJA permanently limits like-kind exchanges to real property for transfers after 2017. As a result, taxpayers will no longer be eligible to defer taxable gain on the sale of aircraft via a like-kind exchange, and any prior depreciation taken would be subject to recapture and taxable at ordinary income tax rates. Through MACRS, the accelerated expensing of new and used property helps to compensate for the repeal of like-kind exchanges for tangible personal property. However this begins to phase out in 2023.

Transportation Excise Tax Does Not Apply to Owner Flights on Managed Aircraft

TCJA amended the tax law to provide that owner flights on managed aircrafts are not subject to Federal Transportation Excise Tax (FET). Instead, the flights are subject to the non-commercial fuel tax. The added provision aligns with the long time common understanding of this practice by the business aviation industry. Payments made by the aircraft owner (or lessee of a qualified lease) for aircraft management services related to maintenance, support, or flights on the aircraft are not subject to the FET. The owner or lessee does not need to be on the flight as long as he or she pays for the aircraft management services. Note that the FET exception only applies to flights paid for by the owner or lessee. Therefore, if an owner leases the aircraft to a management company and an affiliate of this owner pays for the flight, the exception may not apply.

Limitation of Excess Business Losses

Starting in 2018, an excess business loss is the net business loss from all trades or businesses of the taxpayer that exceed $500,000 (MFJ) or $250,000 (single). Excess business losses of a taxpayer (other than a C corporation) will now be deferred and carried forward as a part of the taxpayer's net operating loss. Therefore, a significant taxable loss created by an aviation activity may be limited by the new excess rules.

Michael Kohner has extensive experience servicing complex high net worth families and their companies in the real estate, technology, entertainment, distribution, and venture capital industries. He consults with his clients with respect to issues such as income tax planning, tax provisions, financial analysis, deal structuring, family wealth, and charitable gift planning.

KITROSER

From Page 12

of savings, self-sacrifice and life insurance in order to provide sufficient funding.

Legal

What can a lawyer do to help? Parents of special-needs children in Florida often become "Guardian Advocates" for their children through a Court proceeding. Once a child reaches adulthood (age 18), the parents lose the right to make medical and financial decisions for that child. Guardian Advocacy recognizes that many children with special needs will require someone else to continue to make medical and financial decisions for them into adulthood. Additionally, lawyers can create Supplemental Needs Trusts to shelter assets for persons on SSI and Medicaid, which enables a family to place funds into a trust that will be a source of financial assets for their child, without disqualifying the child from receiving those important benefits.

The issues facing families with special-needs children are significant and complex, requiring knowledge that covers a variety of social, economic and legal disciplines. Families should start planning early to provide their special needs children with the greatest level of support possible.

Mr. Kitroser is the founder and managing attorney of Kitroser & Associates.

A 1982 graduate of St. John's University School of Law. Mr. Kitroser is AV rated by Martindale Hubbell, the highest possible rating for an attorney. He is a member of the National Association of Elder Law Attorneys, the Academy of Florida Elder Law Attorneys, the Real Property and Trusts Section of the Florida Bar, The Elder Law Section of the Palm Beach County Bar and is an affiliate member of the Florida State Guardianship Association. In addition to being licensed in Florida, he is also admitted to practice law in New York and Colorado.

ALBERTSSON

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popularity remains and his items are highly sought after.

Since Abraham Lincoln's assassination in 1865, his autographs, signed documents and ephemera are treasured by collectors. Doyle auctioned off a feather from Lincoln's pillow, a piece of fabric and a portion of crepe that hung on the front door of the house for $8,750! Later presidents were fascinated by Lincoln memorabilia as well. A copy of the last photograph of Lincoln taken during his lifetime, gifted to President Kennedy upon his inauguration by the great Lincoln collector Frederick Hill Meserve, was sold by Doyle for $4,000.

Interestingly, John F. Kennedy did not hand sign as many documents as senator, congressman or president as one would assume; his secretaries signed much of his correspondence or autopen was used. Quite a few love letters written by JFK have turned up in Palm Beach over the last few years. Most notably Doyle sold two complete letters and two partial letters JFK wrote to Karin Adele Gunilla von Post Miller for $15,000.

Collectors are also fascinated by presidential pastimes and Doyle recently auctioned an inscribed copy of Grover Cleveland's book A Defense of Fisherman for $1,500 and a Herbert Hoover archive that included an album recording a Florida fishing trip for $12,500. President Eisenhower was our nation's first golfer-in-chief and played more than 800 rounds while in office. Many of his letters include comments on Augusta National Golf Club, including a 1952 letter in which he reports that he would like "to open a personal investigation" into recent changes to the 11th hole! Barack Obama loved basketball and signed balls can be acquired on the internet. Items related to presidential hobbies remind us that these were real men who needed a break from the pressures of the White House.

Presidential autographs, documents and personal effects have fascinated collectors since the dawn of our nation. These mementos remind us that the Presidents were men with frustrations, successes, heartbreaks, hopes and desires. Collecting these documents is our chance to own a small piece of history. Whether you're interested in rare historic documents or letters, stamps, coins, flags, campaign buttons, clothing or kitsch, there is something for everyone and at every price point.

Collin Sherman Albertsson is the Florida Regional Director for Doyle Auctioneers & Appraisers, a full-service auction house headquartered in New York City. She received her B.A. in Art History and History from Southern Methodist University and her M.A. in European Decorative Arts from Parson's School of Design. Her specialty is antique silver, textiles and wallpaper. Ms. Albertsson regularly travels throughout Florida to provide private collectors, heirs, families and fiduciaries advice on the sale of a single item, estate or collection.

VOGELSANG

From Page 14

agement to argue that it was doing much more than managing investments "for its own account."

■ **Management Fees:** Lender Management received compensation separate from the amounts that it received for its capital interests in the three Lender investment entities. Lender Management held a "profits interest" in each of the investment entities which was contingent upon a profit or an increase in the value of assets under management. The fact that Lender Management received a fee which was different than a mere return on invested capital was a significant factor in determining active trade or business status.

■ **Mere Investment Reporting:** Lender Management made investment decisions and executed transactions on behalf of the family investment entities. Lender Management employed five employees, most of whom were non-family members. The family office researched and pursued new investment opportunities, reviewing more than 150 private equity and hedge fund proposals per year. Lender Management's activities were more than mere oversight and reporting.

■ **Profit-Based Model:** Lender Management operated on a profit-based model rather than a cost-based office model.

■ **Lender Management Clients Did Not Act with a "Single Mindset":** Although the owners of the investment entities were members of the extended Lender family, they were geographically dispersed, many of them did not even know each other and they were frequently in such conflict that they did not attend family business meetings. Each investor understood that they could withdraw their investments at any time if they became dissatisfied with how the investments were being managed.

The 2017 Act changes the analysis for structuring family offices. Most family offices should seek the safe harbor of operating as "C" corporations. Those family offices that choose to organize as pass-through entities will need to follow the Lender blueprint in order to qualify their operating expenses for deduction under Section 162.

Stephen G. Vogelsang is a Board Certified Tax Lawyer with the Palm Beach firm of Pressly, Pressly, Randolph & Pressly. Mr. Vogelsang practices in the areas of Estate Planning and Administration for high net worth families, Trust Planning and Administration, and Gift and Estate Tax controversies with the Internal Revenue Service.

STAMP

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When families implement a few simple steps, we witness major breakthroughs that have brought the parents closer to their children, the children closer to each other and helped ensure successful transitions of family wealth and values.

Cary Stamp is a member of the Palm Beach County Estate Planning Council. He advises families all over the country on wealth management and transition issues. He is a frequent speaker who focuses on how you can make an impact on the lives of your children and grandchildren by carefully stewarding the family wealth. He is a CERTIFIED FINANCIAL PLANNER®, Accredited Estate Planner and Chartered Advisor in Philanthropy. Raised in Iowa and now residing in Jupiter, Florida, he has been a practicing financial advisor since 1990.

TURKO

From Page 15

favor of such beneficiary. On the same note, if the first trust does not confer a power of appointment on a beneficiary, the second trust cannot grant a power of appointment to such beneficiary.

The new statute allows for the second trust to extend beyond the term of the first trust. Importantly, for any period after the first trust would have terminated (the "extended term"), the provisions of the second trust are permitted to include language granting a trustee absolute power to invade the principal of the second trust for the benefit of the trust beneficiaries. The second trust can also create a power of appointment in a beneficiary during the extended term or expand a class of permissible appointees under an existing power of appointment. In other words, there is a lot of freedom in drafting the provisions of the second trust during the extended term. This can allow a trustee to address many common issues.

For instance, many trusts have specified age withdrawal rights for a beneficiary at which point the trust terminates. If the beneficiary has substance abuse issues this can be a big problem. The new decanting statute allows a trustee to decant to a new trust that extends the term of the trust for the life of the beneficiary. During the term until the beneficiary attains the specified age, the second trust will require a substantially similar distribution standard. Upon the beneficiary attaining the specified age, the second trust may become an absolute discretion trust that allows distributions in the trustee's sole, absolute and uncontrolled discretion for the beneficiary's lifetime. This gives a trustee maximum flexibility in ensuring that trust funds are not used to enable the beneficiary's substance abuse problems since the trustee can turn distributions off as necessary. If the complete distribution happened, the trustee would have no control over the funds and the distribution would only exacerbate the beneficiary's substance abuse problems.

The decanting statute preserves its notice and writing requirement. The power to decant must be exercised in a written instrument signed and acknowledged by the trustee and filed with the records of the trust. Furthermore, the trustee must provide written notification of the proposed decanting to all the qualified beneficiaries, trustees and any person with a power to remove or replace the trustee. This notice must be given at least 60 days before the effective date of the decanting.

The new Florida decanting statute introduces long-awaited changes making it more useful for trusts that contain ascertainable distribution standards. Like a fine wine it has gotten better with age!

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BESSEMER

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taxable gain.

What about estate tax? If the trust qualifies for the marital deduction, Sally will have a $16 million taxable estate. Assuming her exemption is $11 million, there will be estate tax to pay on $5 million. But if Harry's personal representative made the "portability" election on his estate tax return, his $10 million unused exemption will be added to Sally's, and the combined exemptions will more than cover her taxable estate.

There's More to Consider

After Sally's death, the $16 million trust is divided into separate trusts of $4 million each for Harry's children. Marie, one of Harry's daughters, receives income from her trust during her life, and the principal grows to $7 million. If Harry's personal representative made the appropriate generation-skipping transfer tax election when he died, Marie's trust would be exempt from generation-skipping transfer tax and pass to her children estate tax free.

However, those assets have $3 million of built-in gain. If Marie has a small estate of her own, under today's tax law it would be better if the assets were included in her estate – still no estate tax, but a third basis adjustment. If, on the other hand, Marie has a large estate, it might be better for the trust not to be included.

This is just one of numerous scenarios that point to the same conclusion - it simply is impossible to predict the future financial situation of beneficiaries or tax law changes. The solution is to structure a plan today that is flexible, and it begins with a conversation with your tax, financial and legal advisors.

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HAMILTON

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team includes gemologists who are Graduates of the Gemological Institute of America (GIA) and members of the American Gem Society, (AGS), and National Association of Jewelry Appraisers (NAJA). Our appraisers are highly trained specialists in the areas of antique and estate jewelry, buying and evaluations, insurance replacements, and customized appraisal services. Following a strict code of ethics governed by international organizations such as the Jewelers Vigilance Committee, Council for Responsible Jewelry Practices, and Jewelers of America, our associates are committed to promoting responsible practices in a clear and accountable manner.

Hamilton Jewelers, since its founding year of 1912, has always combined the distinction of an global fine jeweler with the hospitality of a family business. Specializing in fine jewelry of their own design and manufacture, Hamilton also offers the world's premium brands in jewelry and the best in luxury timepieces, with unrivaled service and quality.

GELBER

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it is not uncommon to realize that you may wish to find a different way to satisfy the objectives outlined earlier. A PF may terminate its status under Internal Revenue Code section 507(b) by distributing all its net assets to one or more organizations holding a Determination Letter as described under IRC Section 509(a)(1). There is no termination tax required for this method of termination.

The successor public charity must have been in existence for a continuous period of more than 60 months before the transfer. The private foundation should file its Notice of Termination and final Form 990PF with the IRS subsequent to the terminating distribution. It is important to file the Notice after the distribution of assets, so the private foundation can report net assets equal to zero and limit the termination tax to zero.

Two examples of public charities qualified to receive the assets of the private foundation are Community Foundations and/or Donor Advised Funds.

Community foundations

Community foundations provide a well-established record of stewardship for philanthropy and a knowledge of the local community's needs. Fiduciary responsibility shifts from the board of directors of the private foundation to the board of the Community Foundation, and all administrative responsibility transfers to the Community Foundation's staff. The family terminating the private foundation can, if they desire, advise the Community Foundation by identifying areas of interest for grant making, which could continue the private foundation's original intent. We are fortunate here in South Florida to have several Community Foundations that will accommodate this such as the Jacobson Jewish Community Foundation, the South Palm Beach County Foundation and the Community Foundation for Palm Beach and Martin Counties, to name a few.

Donor-advised funds

Donor-advised funds offer a very low-cost mechanism for benefactors who wish to remain in the philanthropy business, but at a lower price point. After conversion to the donor-advised fund, the benefactors may continue to provide input about how the funds should be disbursed to charities.

Although the public charity sponsoring the donor-advised fund has final say over how the funds are invested and disbursed, they will usually follow the wishes of the family.

Benefits of a donor-advised fund are:

- Lower costs (usually 1 percent or less of the fund balance) and lower administrative burden.
- Benefactors have fewer responsibilities, record-keeping is simplified, and the sponsor assumes all back-office duties, such as compliance, state and federal filings, verifying grantee's tax exempt status and ensuring grant disbursements in accordance with IRS guidelines.
- There is no federal excise tax on net investment income.
- There is no minimum 5 percent payout of grants.

The steps to terminate the private foundation should include:

a) The Board adopts a Plan of Dissolution.

b) The state agency with jurisdiction over charities approves the Plan
(usually the Attorney General's Charities Bureau or a local Court).

c) Transmission of assets to successor entity, e.g. Community Foundation or Donor Advised Fund.

d) Prepare and file the Notice of Termination and final Form 990PF with the IRS.

e) Dissolve the private foundation's corporate status with Secretary of State.

f) Obtain tax clearance letter from state tax authority (if necessary).

g) Get ready to enjoy life with less bother from accountants and attorneys.

Private foundations still have their place in the world of charitable giving, but there are many in existence today that have outlived their utility and should be terminated for structures that are less burdensome, while still accomplishing the original intent of doing some good in the world.

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GIARRATANO

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As the world gets smaller, it is becoming more and more common for U.S. citizens to own property outside the U.S., work abroad, marry non U.S. citizens and have children. This adds complexities to transfer tax planning for the typical global family. It is important to understand the laws of the country of domicile that govern the distribution of wealth, and the treaties that may exist to minimize overall taxes for U.S. citizens, U.S. permanent residents, and non-residents.

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TD WEALTH

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any provision that can be included in a governing instrument on date of modification upon the written consent (or no objection) of the settlor and all living fiduciaries and beneficiaries.[8] Unlike decanting or merger, Section 3342 permits modifying a trust even if the modification violates a material purpose of the trust.

Delaware law provides unique opportunities for clients to preserve and protect their assets. Clients can benefit future generations while simultaneously retaining maximum privacy and control over trust assets in flexible trust vehicles.

This material should not be considered as investment advice or a recommendation of any particular security, strategy or investment product. Particular investment or trading strategies should be evaluated relative to each individual's objectives and risk tolerance. Readers are urged to seek professional advice with respect to their specific financial, legal, tax, trading or investment matters.

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Investment Risks

Bonds are affected by a number of risks, including fluctuations in interest rates, credit risk, prepayment risk, and inflation risk. ***Corporate debt*** *securities are subject to the risk of the issuer's inability to meet principal and interest payments on the obligation and may also be subject to price volatility due to factors such as interest rate sensitivity, market perception of the creditworthiness of the issuer and general market liquidity.* ***High yield, lower-rated securities are subject to additional risks such as increased risk of default and greater volatility because of the lower credit quality of the issues.*** *Interest on municipal bonds is generally exempt from federal tax. However, some bonds may be subject to the alternative minimum tax and/or state or local taxes.*

Equities *may decline in value due to both real and perceived general market, economic industry conditions, and individual issuer factors.*

International investing may not be suitable for every investor and is subject to additional risks, including currency fluctuations, political factors, withholding, lack of liquidity, absence of adequate financial information, and exchange control restrictions impacting foreign issuers. These risks may be magnified in emerging markets.

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[1] 12 Del. C. Section 3570
[2] 12 Del. C. Section 3570 and 3313
[3] 12 Del. C. Section 503.
[4] 12 Del. C. Section 3521
[5] 12. Del. C. Section 3303 and 3339
[6] 12. Del. C. Section 3339
[7] 12 Del C. Section 3528
[8] 12 Del C. Section 3342

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SENDZISCHEW

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weigh the options below:

- Do a 1035 exchange to an annuity.
- Surrender the policy for its cash value.
- Sell the policy to a life settlement company.

The importance of advisor independence

In our opinion, independence is essential to achieve and properly safeguard the clients' needs both at time of purchase and when alternatives are considered due to changing circumstances. Unfortunately, the vast majority of insurance agents have one of two inherent conflicts of interest. At one end of the spectrum, career agents have contracts that require loyalty to their company and limit access to the products of other carriers. At the other end of the spectrum, brokerage agents affiliate with producer groups that focus on sales from a limited group of carriers in order to maximize revenues.

Insurance expertise and objective advice are needed more than ever in today's environment. Life insurance is complex, and clients purchase policies from people they trust, often not fully understanding what they are buying or how it was structured. Ideally, clients should seek insurance advice from an advisor who sits on the same side of the table with them and not the insurer. Hopefully that person will be an independent insurance expert with the skill, judgment, expertise and product solutions to guide clients successfully throughout their lifetime.

Adam D. Sendzischew is a Director at Jones Lowry, a Certified Financial Planner™, a Chartered Life Underwriter, a member of the Society of Trust and Estate Practitioners, and a graduate of the University of Miami with a B.S. in Finance & Law, an MBA in Finance and an MBA in Operations Management.

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Jones Lowry is an independent M Financial life insurance planning firm specializing in innovative life insurance solutions for ultra-high net worth families including the analysis, design, implementation, funding and administration of life insurance portfolios. File#1456-2018

DOANE

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those strategies to be significantly modified.

As the foregoing considerations illustrate, an estate plan is not a static collection of documents to be filed away until your death. If your estate plan is to function appropriately, it must be reviewed periodically, particularly upon the happening of any significant life events.

A principal of Doane & Doane, P.A., Rebecca G. Doane is Florida Bar board certified in wills, trusts and estates. She holds the highest ratings ("AV") from the premier attorney-rating service, Martindale Hubbell. She is also a certified public accountant and founder of the Guardianship Education Committee of the Palm Beach County Bar Association.

A principal of Doane & Doane, P.A., Randell C. Doane has practiced law in the area of estate planning, probate and taxation since 1975. He holds a post-doctorate degree in tax law and holds the highest ratings ("AV") from the premier attorney-rating service, Martindale Hubbell. He is board certified in wills, trusts and estates by the Florida Bar Board of Legal Specialization.

EATON

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is especially hard because we must pivot at every corner responding to ever-changing circumstances and needs. The most fulfilled and engaged elders possess a growth mindset. Allowing themselves to continue to learn and grow, many in ways they may have never imagined.

Engagement

The next success factor, engagement, is about finding energy by cultivating relationships with others. "Maintaining good connections with family, friends and community makes us happier and healthier period," according to Robert Waldinger, current Director of the Harvard Study of Adult Development, the longest study ever conducted on what make us age well. It is especially important to branch out and make connections beyond the family.

Drive

The final success factor, drive, is about preserving and maintaining a sense of purpose and motivation. For the first time, many elders find that they have the ability to consciously choose how to spend every moment of their lives. This can be an exciting endeavor because most elders choose to spend their time very differently than before, using their old skills for new purposes and to pursue new passions. Yet, it can be hard to pivot and I spend a lot of time with my clients helping them to discover ways they can continue to be engaged and purposeful at this stage of life.

I now think about these factors regularly, both in my own life and with my client work. I wonder whether advisors are the modern-day Ponce de Leon, armed with the tools and resources to help elder clients embrace each of the four success factors to design their own Fountain of Youth, and live a vibrant and inspiring later life.

Jennifer M. Eaton is a Partner and Senior Client Advisor with Ballentine Partners, an independent, client-centric investment and wealth management firm. In her work with families, Jennifer draws on her extensive legal knowledge and wealth planning skills to assist families in defining, articulating and achieving their various planning goals.

OFFSHORE

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a U.S. business and making payments on U.S. source income to a foreign person, a partnership with income that has a foreign partner, an estate or trust with income passing out to foreign beneficiaries, or you are buying real estate from a nonresident alien. In all of these situations, there are exceptions and some treaty provisions that override the general rule. Failure to withhold and file the applicable forms can lead to very significant penalties.

■ **Direct or Indirect Ownership of Foreign Companies with Passive Investments** - Form 8621 must be filed and there are elections associated with this form that must be addressed for the first year the investment is owned or a nonresident alien becomes a "U.S. person."

■ **Engaging in Transactions with Foreign Trusts or Receiving Certain Foreign Gifts** - These transactions require the filing of Form 3520.

These are just a few of the myriad of forms that the IRS requires a "U.S. person" to file when there is foreign involvement.

What should you do if you are not in compliance?

While the Offshore Voluntary Disclosure Program has ended, the IRS still offers Streamlined Filing Compliance Procedures for individuals who were not aware they had reporting obligations. This option is available for taxpayers who voluntarily come forward by disclosing their offshore income and assets. The applicant must certify under penalty of perjury that the failure to comply was non-willful. Since the IRS may terminate this procedure at any time, taxpayers are encouraged to come forward now.

In all cases, we recommend you consult a tax advisor that is knowledgeable about these matters.

Nancy Crowder-McCoy and Stephanie Murray are partners with the professional services firm Carr, Riggs & Ingram LLC, providing tax and estate planning services to high net worth individuals and families.

KAWCZENSKI

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new policies and portfolios, look into the marketplace of carriers, products, and funding patterns, discuss with your advisers before implementing, and know your options going forward – whether it be premium or death benefit changes.

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SAMUELS

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and moissanites. A jeweler might pay $5000 for a beautifully cut one carat natural diamond when a similar looking CZ would cost one dollar. The introduction of these diamond simulants into the marketplace has not hurt diamond prices nor the high demand for natural diamonds.

To summarize: natural diamonds, created solely by nature, reign supreme. They are rare and getting rarer. Man-made diamonds, manufactured in huge factories, are still relatively expensive today, but they are being produced faster, cheaper, and in ever increasing quantities. Historical examples we've seen with rubies and pearls have indicated that the prices of gems made by man or with the help of man can drop like a rock, while not hurting the strong prices of the natural gems. Buying a man-made diamond at today's relatively trong prices would not be a good investment. Generally, if people can afford it, they will pay the much higher price to give a natural diamond as a symbol of their love.

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REYNOLDS

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during his or her lifetime.

So how does this relate to the migratory client, you might ask? Many clients, while living in high income-tax states (here's looking at you, CA, NY, CT, MA, NJ!), establish and fund irrevocable grantor trusts as a long term means to transfer assets outside of their estate, for the ultimate benefit of their loved ones. However, while representing an effective strategy from an estate tax planning perspective, these trusts often subject the grantor to capital gains and/or income taxes generated by investments held within said trusts.

One alternative to consider is to have said trust purchase a PPLI or PPVA contract on the grantor (in fact, a wide variety of trusts common to any core estate plan could technically purchase a PPLI or PPVA contract). In doing so, assets held within the contract grow tax-deferred. Further, to the extent that the grantor still lives in one of the above-mentioned high income-tax states, but plans to establish tax residency in a lower tax jurisdiction in the future (hello, Florida!), the client can benefit from near-term tax deferral, and then reserve the right to access their funds in the future while living in a much sunnier (i.e. friendlier) income tax environment.

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LYON

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ing profit or loss. It is our personal responsibility to educate ourselves about these opportunities before committing to them, and if we are educated decision makers, our chances of reaping profits somewhere along the line is greater.

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SLAVIN

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services, or

■ Annual gross receipts from all operations are more than $25 million, and less than 5 percent of that amount is derived from the performance SSTB services.

Limitations based on Taxable Income for Qualifying Businesses

Once taxable income (before the QBI deduction) exceeds $157,500 for individuals, or $315,000 for married couples filing jointly, the deduction is subject to restrictions based upon a wide range of factors, including the amount of W-2 employee wages the business pays and the unadjusted tax basis immediately after acquisition (UBIA) of qualified property those businesses own. More specifically, when taxable income exceeds the annual threshold, the deduction is limited to:

■ the lesser of 20 percent of QBI, or

■ the greater of:

▪ 50 percent of the entity's W-2 wages; or

▪ 25 percent of W-2 wages plus an additional 2.5 percent of the UBIA (or the original purchase price) of depreciable tangible property, including real estate, furniture, fixtures and equipment, that the business owns and uses to generate qualifying business or trade income.

Under these limitations, pass-through entities that pay large sums of W-2 wages may be able to take a larger QBI deduction than those that pay less in wages or have fewer W-2 employees. The same is true for owners of capital-intensive businesses, such as real estate, who may be in a better position to maximize their QBI deduction.

While many taxpayers will receive big breaks from the new law, the rules for determining eligibility and calculating the new QBI deduction may diminish or eliminate those tax savings for the majority of businesses structured as pass-through entities. However, this provision of tax reform provides individuals with several opportunities to plan ahead and implement strategies that could ultimately reduce their tax liabilities.

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MILLS

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taxable estate to take advantage of the basis step-up upon death. With a stroke of the key, the MAPT could be a non-grantor trust and excluded from your taxable estate depending on your individual circumstances.

Why consider a MAPT? Use a MAPT to carve out a portion of your estate today for your heirs while maintaining certain income tax benefits as if you owned the asset directly. For example, fund a MAPT with the primary residence and a life insurance policy so that you have taken steps to preserve assets for your heirs. The goal is to shift LTC risk from you to a third party. The point is, do something, as there is no perfect answer to each situation.

DISCLAIMER: This article does not constitute tax, accounting, legal or financial advice nor does it create an attorney-client relationship.

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LASATER

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They can also help you identify charitable tax-saving strategies you may not even know about.

A financial planner can help you take full advantage of your donor advised fund. You can give them full or partial access to your Giving Account, enabling them to make donations and recommend grants to charities on your behalf. They may be able to actively manage the invested balance, applying their expertise to help drive higher returns from every donation. After all, if your Giving Account balance grows, that's even more money for the charities you support.

*NOTES: *Some of this material has been resourced from Fidelity Charitable. United Capital Financial Advisers, LLC ("United Capital") provides financial life management and makes recommendations based on the specific needs and circumstances of each client. For clients with managed accounts, United Capital has discretionary authority over investment decisions. Investing involves risk and clients should carefully consider their own investment objectives and never rely on any single chart, graph or marketing piece to make decisions. The information contained in this article is intended for information purposes only, is not a recommendation to buy or sell any securities, and should not be considered investment advice. Please contact your financial adviser with questions about your specific needs and circumstances.*

1 This assumes all realized gains are subject to the maximum federal long-term capital gains tax rate of 20% and the Medicare surtax of 3.8%. This does not take into account state or local taxes, if any.

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